EXHIBIT

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Mascoma, which received $80 million for an ethanol plant.[209] Wagle left Vantage Point and moved to DOE shortly after Obama's election, "just as the administration embarked on a massive program to stimulate the economy with federal investments in clean-technology firms."[210] His former firm and the companies it invested in, therefore, had a large stake in the financing decisions being made by DOE at the time.[211]

Steve Spinner

Steve Spinner served as an advisor to Secretary Chu from April 2009 to September 2010. In that position, Spinner helped oversee the strategic operations of the clean energy loan guarantee program under the Recovery Act.[212] Spinner was previously an energy-focused venture capitalist and high-tech consultant.[213] He is also an Obama bundler, having raised over $500,000 for the President in 2008,[214] and over $200,000 thus far for 2012. [215]

Spinner's wife, Allison Berry Spinner, is a partner at Wilson Sonsini Goodrich & Rosati, the law firm that represented Solyndra on matters related to the DOE loan.[216] According to federal records, the firm received at least $2.4 million in federal funds for legal fees related to the representation.[217]

White House e-mails released late last year indicate that Spinner was influential in securing the $528 million loan to now-bankrupt Solyndra. Many of those emails were written just days after he signed an ethics agreement pledging that he would "not participate in any discussion regarding any application involving" his wife's law firm.[218] In one message to a DOE official on August 28, 2009, Spinner wrote, "How hard is this? What is he waiting for? . . . I have OVP and WH breathing down my neck on this." [219] The e-mail went on to demand that the DOE official "walk over there and force [the official working on the Solyndra evaluation] to give [him] an answer."[220] After just being contacted by Solyndra, Spinner inquires in another e-mail, "Any word on OMB? Solyndra's getting nervous."[221] The e-mail correspondence occurring in the final days before the Solyndra loan closed in September 2009 centers heavily on Spinner's

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[209] *Id.*
[210] *Id.*
[211] *Id.*
[212] Matthew Daly, *Steve Spinner, Energy Department Advisor, Pushed Solyndra Loan, Emails Show*, HUFFINGTON POST, Oct. 7, 2011 *available at* http://www.huffingtonpost.com/2011/10/07/obama-fundraiser-pushed-s_n_1000826.html.
[213] Matthew Mosk, *Obama Fundraiser Pushed Solyndra Deal From Inside*, ABC NEWS, Oct. 7, 2011 *available at* http://abcnews.go.com/Blotter/obama-fundraiser-pushed-solyndra-deal-inside/story?id=14691618#.TzrE9MXQIsI.
[214] OpenSecrets, *supra* note 182.
[215] BarackObama.com, "Obama For America Victory Fund 2012 Volunteer Fundraisers" *available at* http://www.barackobama.com/pages/volunteer-fundraisers-Q2/.
[216] Mosk, *supra* note 213.
[217] Daly, *supra* note 212.
[218] Mosk, *supra* note 213.
[219] *Id.*
[220] *Id.*
[221] *Id.*

efforts to coordinate plans for either the President or Vice President to announce the first loan approval at a scheduled visit to Solyndra.[222]

Peter Weeks

Peter Weeks currently serves as Clean Energy Advisor at DOE, a position to which he was appointed in March 2009.[223] To be clear, there is no apparent connection between Mr. Weeks and a project that received a loan from DOE. However, his profound lack of experience in the renewable energy arena before being named as a top DOE advisor causes some concern. Prior to joining the Administration, Weeks's resume consisted primarily of Democratic campaign positions with groups such as Obama for America, Maine Democratic Party, Kerry for President, and Gephardt for President.[224] His prior experience was limited to communications and politics, and includes no record of any energy policy expertise.[225]

According to Weeks, his work at DOE has included helping to "develop due diligence and procurement plans of 200 awards worth over $10 billion," as well as "manage two multi-billion dollar energy tax programs."[226] Additionally, Department e-mails also indicate that Weeks participated in meetings with and had access to high-level officials,[227] including Ron Bloom, giving him the opportunity to participate in decisions and exert some degree of influence.[228] Weeks's position at DOE appears to involve highly technical issues with high stakes and great sensitivity.

It is puzzling how someone without any prior energy, project management, or finance experience would be appointed to a position with responsibilities of this magnitude and particular nature. A private sector institution responsible for due diligence for billions of dollars in loans would never trust someone with only campaign experience to be involved with such technical issues. Given Weeks's consistent history of strong support of the Democratic Party and President Obama, his appointment adds to the perception that many of the Administration's decisions have been driven by politics as opposed to any viable, coherent, energy policy.

VI. Concerns Relating to Section 1705 Loan Guarantee Recipients

A. Solopower at CCC+ Setting the Standard for Inappropriate Loan Commitments

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[222] *Id.*
[223] Peter Weeks, Linked In, Profile *available at* http://www.linkedin.com/in/weekspeter.
[224] *Id.*
[225] *Id.*
[226] *Id.*
[227] E-mail from Peter Weeks, Clean Energy Advisor, U.S. Dep't of Energy, to Brandon Hurlbut, Udai Rohatgi, Peter Gage, Tom Reynolds, and Rachel Tronstein (Feb. 23, 2011, 6:36 PM EST) (on file with author).
[228] *Id.*

Solopower is a European firm that seeks to build a solar factory in Oregon. Solopower accepted $40 million of Oregon taxpayer money in addition to DOE's approval of a $197 million loan via the Federal Financing Bank (FFB).[229] They received this federal assistance despite a rather dire prediction of Solopower's prospects by Standard & Poor's (S&P). According to internal documents obtained by the Committee, S&P warned DOE that:

> We believe that [average selling price (ASP) per watt] could decline to $1 or less within the next 1-2 years. From the output provided by the DOE, we concluded that even if SoloPower achieves the efficiency and yield projections of the DOE's base case, an ASP of $1 or less would severely strain SoloPower's ability to meet its debt service obligations.[230]

In other words, S&P predicted that Solopower will fail to meet its debt obligations. Additionally, the loan's already extremely poor S&P rating of CCC+ appears to depend on lender protections that prevent loan disbursements unless benchmarks are met:

> It is to lenders' advantage that the company will not have access to the credit facility until it constructs and operates Line 1A at expected levels of performance. Similarly, the company cannot make the first or subsequent draws unless 30% of installed capacity is under contract to be sold.[231]

According to S&P, these lender protections enable S&P to provide a CCC+.[232] In short, the primary protection against losing $197 million of taxpayer money is the small chance that Solopower will ever get the money. Without these protections, it can only be presumed that the credit rating would fall to levels reflecting default.

The story of Solopower reflects a very concerning form of waste that creates substantial uncertainty as a byproduct, tying up private investor capital and federal funds until the entity fails (or succeeds) to achieve targeted benchmarks. If Solopower fails to achieve success sufficient to receive DOE funds, then those private investors anticipating the benefit of DOE loans will suffer substantial loss, resources will have been wasted, and employees will be let go after a short time. However, if Solopower meets the requirements for disbursement, then the likelihood for failure and loss to the taxpayer are significant as the base case for the panel manufacturer's production costs does not reflect expectations for sufficiently competitive pricing.

What Solopower lacked in economic value, it made up for in political connections. Unlike other 1705 loan guarantee recipients, Solopower exerted bipartisan political influence on DOE through strong ties to both the Bush and Obama Administrations. Solopower itself built the ties to the Obama Administration. Bruce Khouri, who served on the Board of Directors[233]

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[229] Ted Sickinger, *Solyndra Meltdown a Cautionary Tale for Oregon and SoloPower, its Latest Solar Bet,* The Oregonian, Sept. 27, 2011, *available at* http://www.oregonlive.com/business/index.ssf/2011/09/solyndras_plight_casts_cautionary_tale_for_oregon_and_solopower_its_latest_solar_bet.html.
[230] Standard &Poors Credit Report, Solopower, Inc., July 11, 2011 (on file with author).
[231] *Id*.
[232] *Id*.
[233] Board of Directors, Solopower,*available at* http://www.solopower.com/brucekhouri.html (last visited Mar. 15, 2012).

and now serves as the Chief Commercial Officer,[234] donated $28,500 to the Democratic National Committee's "Obama Victory Fund" in 2008.[235] Lou DiNardo, who served as interim CEO[236] and now serves as Chairman of the Board of Directors, previously worked as a General Partner at VantagePoint Venture Partners where DOE stimulus advisor Sanjay Wagle worked.[237] Solopower, based in San Jose, California, developed an ally in Democratic San Jose Mayor Chuck Reed. Mayor Reed sent letters to DOE and talked with DOE's Jonathan Silver in person to advocate for and attempt to speed up Solopower's loan guarantee.[238]

Hudson Clean Energy Partners, the biggest investor in Solopower,[239] had strong ties to the Bush-era DOE. Craig Cornellius, a member of the Board of Directors at Solopower and Managing Director at Hudson Clean Energy Partners, and Alexander Karsner, a member of the Hudson Clean Energy Partners Advisory Board, both worked in renewable energy positions for DOE during the Bush Administration.[240] Another Managing Partner for Hudson Clean Energy Partners, Neil Auerbach, donated tens of thousands of dollars to Republicans in 2008.[241] Hudson Clean Energy Partners also retained BlueWater Strategies to lobby both branches of Congress and the White House.[242] According to BlueWater Strategies' website, Andrew Lundquist, founder and Managing Partner, "led George W. Bush's transition team for the Department of Energy" and "served as a senior advisor and strategist on energy issues for the President and Vice President."[243]

With its ties to DOE officials in both the previous and current Administrations, Solopower had people on both sides of the political aisle that could use their influence to pressure DOE into issuing and finalizing Solopower's loan guarantee.

B. Beacon Power: Taxpayers Predictably Lose Millions

Led by CEO F. William Capp – an Obama donor[244] – Beacon Power became the second 1705 loan guarantee recipient to go bankrupt on October 31, 2011.[245] Despite warnings from

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[234] Management,Solopower,*available at* http://www.solopower.com/management.html (last visited Mar. 15, 2012).
[235] Federal Election Commission, FEC Form 3X filed by 2008 Obama Victory Fund, at 1650.
[236] Press Release *SoloPower Prepares for Market Entry and Names Lou DiNardo as Interim CEO*, July 8, 2009, *available at* http://www.solopower.com/ceov11.html.
[237] Lou DiNardo,SoloPower, *Aavailable at* http://www.solopower.com/loudinardo.html (last visited Mar. 15, 2012).
[238] Aaron Glantz, *After Solyndra, a 2nd Solar Energy Firm Is Scrutinized*, N.Y. TIMES, Oct. 15, 2011, a*vailable at:* http://www.nytimes.com/2011/10/16/us/after-solyndra-a-2nd-solar-energy-firm-is-scrutinized.html?pagewanted=all.
[239] *Id.*
[240] Joel Gehrke, *Solopower, a Connected Company with DOE Support*, THE EXAMINER, Nov. 9, 2011, *available at* http://campaign2012.washingtonexaminer.com/blogs/solopower-connected-company-doe-support.
[241] Aaron Glantz, *After Solyndra, a 2nd Solar Energy Firm Is Scrutinized*, N.Y. TIMES, Oct. 15, 2011, a*vailable at:* http://www.nytimes.com/2011/10/16/us/after-solyndra-a-2nd-solar-energy-firm-is-scrutinized.html?pagewanted=all.
[242] *Id.*
[243] Andrew D. Lundquist, *available at* http://www.bwstrategies.com/index.php?option=com_content&task=view&id=35&Itemid=22 (last visited Mar. 15, 2012).
[244] Center for Responsive Politics, *available at* http://www.opensecrets.org/indivs/search.php?name=capp&state=MA&zip=&employ=&cand=&c2012=Y&c2010=Y&c2008=Y&sort=N&capcode=wsp3w&submit=Submit+your+Donor+Query (last visited Mar. 15, 2012).
[245] Dawn McCarty, *Beacon Power, Backed by U.S. Loan Guarantees, Files Bankruptcy*, BLOOMBERG, Oct. 31, 2011, *available at:* http://www.businessweek.com/news/2011-10-31/beacon-power-backed-by-u-s-loan-guarantees-files-bankruptcy.html.

both S&P and its own internal analysis regarding risky business models, DOE proceeded with a deal that will cost taxpayers millions in losses.

Before its demise, Beacon Power relied on funding from the federal government. DOE gave Beacon Power over $25 million in grants.[246] However, the largest investment came when DOE announced a conditional $43 million loan guarantee to Beacon Power on July 2, 2009, to create a "20 megawatt flywheel energy storage plant" in Stephentown, New York.[247] In April 2010, S&P evaluated the loan guarantee project and assigned it a dismal CCC+ credit rating, even though the rating incorporated the benefit of the $43 million loan guarantee.[248] The S&P rating noted that "Beacon is currently an unprofitable start-up" and that "significant exposure to commodity price volatility" could significantly hurt the company.[249] S&P ran two default scenarios, both of which demonstrated that taxpayers would lose millions.[250] DOE conducted its own risk analysis and also assigned Beacon Power a junk CCC+ rating.[251] DOE, however, ignored these warnings and finalized the loan guarantee in August 2010.[252]

As predicted, Beacon Power continued to remain unprofitable and burn through money at a rapid rate. In the weeks leading up to its bankruptcy, Beacon Power began spending hundreds of thousands of dollars on law firms.[253] When Beacon Power went bankrupt, DOE tried to minimize the bad publicity by arguing that it had required "many protections for the taxpayer" in the loan guarantee contract.[254] However, as Beacon Power continues to go through the bankruptcy process, DOE now admits that taxpayers will likely lose millions on this bad investment.[255] DOE could have avoided these loses by taking the warnings of S&P and its own analysis seriously and not risking over $39 million on a company destined for failure.

C. Abound Solar: Politics and a Risky Investment Collide

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[246] Steven Mufson and Juliet Eilperin, *Beacon Power Declares Bankruptcy; Second Loan Guarantee Recipient to Falter*, THE WASH. POST, Oct. 31, 2011, *available at* http://www.washingtonpost.com/national/health-science/beacon-power-declares-bankruptcy-second-loan-guarantee-recipient-to-falter/2011/10/31/gIQACNAaaM_story.html.

[247] Press Release, *Obama Administration Offers $59 Million in conditional Loan Guarantees to Beacon Power and Nordic Windpower, Inc.*, U.S. Dep't of Energy, July 2, 2009, *available at:* https://lpo.energy.gov/?p=834. Beacon Power created a wholly owned subsidiary called Stephentown Regulation Services, LLC., that ran the DOE funded flywheel energy storage plant and directly received the DOE loan guarantee. When Beacon Power, the parent company, went bankrupt on October 31st, it decided to place its subsidiaries in bankruptcy as well. .

[248] Letter from Swami Venkataraman, Standard & Poors, to Beacon Power, April 30, 2010 (on file with author).

[249] *Id.*

[250] *Id.*

[251] Letter from David Frantz, Acting Executive Director of Loan Program Office, U.S. DOE, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, Feb. 14, 2012 (on file with author).

[252] Beacon Power Corporation, U.S. Dep'tt of Energy, *available at* https://lpo.energy.gov/?projects=beacon-power-corporation (last visited Mar. 15, 2012).

[253] Beacon Power Bankruptcy Filings, Provided to Committee by U.S. DOE (on file with author).

[254] Dawn McCarty, *Beacon Power, Backed by U.S. Loan Guarantees, Files Bankruptcy*, BLOOMBERG, Oct. 31, 2011, *available at:* http://www.businessweek.com/news/2011-10-31/beacon-power-backed-by-u-s-loan-guarantees-files-bankruptcy.html.

[255] Letter from David Frantz, Acting Executive Director of Loan Program Office, U.S. DOE, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, Feb. 14, 2012 (Stating "the DOE stands to recover more than 70 percent of the taxpayer's investment." However, even if DOE recovered 80 percent of its investment, taxpayers would still lose millions).

On July 3, 2010, President Obama announced during his weekly radio address that DOE would again invest hundreds of millions of dollars in a risky solar panel manufacturer. Much like Solyndra, Abound Solar manufactures solar panels using unproven technology, received a dismal credit rating for its loan guarantee, and has strong Democratic political connections. In fact, DOE finalized Abound Solar's loan in the same month that DOE worked to restructure the failing Solyndra's loan.

In between DOE issuing Abound Solar its $400 million conditional loan guarantee and finalizing it in December 2010, Fitch Ratings evaluated the project and assigned it a junk credit rating. Fitch gave the project a credit rating of "B" (worse than Solyndra's) with a recovery estimate of only 45%.[256] Despite including the benefit of the DOE loan guarantee in the rating (which likely made the rating more favorable), Fitch labeled the project "highly speculative" and described Abound as lagging in technology relative to its competitors, failing to achieve stated efficiency targets, and expecting that Abound Solar will suffer from increasing commoditization and pricing pressures.[257] In addition to these concerns, Fitch worried that Abound Solar needed to raise more private money to build its new facilities and that, if it could not, Abound Solar could default on its DOE loan.[258]

Recently, Abound Solar began encountering the financial problems that Fitch predicted. In line with Fitch's prediction, Abound Solar has recently struggled to raise additional capital, causing DOE to stop disbursing loan payments to the company.[259] More troubling, Abound Solar announced on March 1st that it would stop producing solar panels and would fire 180 employees, even though it has already received $70 million from DOE.[260] Abound Solar continues to claim publicly that it does not have serious financial problems and will survive;

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[256] Letter from Jason Paraschac, Senior Director, Fitch Ratings, to Steve Abely, Chief Financial Officer, Abound Solar, Nov. 4, 2010 (on file with author).

[257] *See id.* at 4

> "Abound's lagging conversion efficiency negatively impacts the panel's installed costs which should negatively impact expected panel [average selling prices]. In addition, Fitch expects further price pressures in this market over the next 3-5 years…"
>
> "Abound has not provided an explanation as to why gains in [solar panel] conversion efficiency have not materialized as expected…"
>
> "[Average selling price] assumptions in the new model are significantly below the prior plan. While this may in part reflect the lower conversion efficiency of [Abound's] solar panel, it is largely a reflection of severe price contractions in the [solar photovoltaic panel] market over the past 24 months.".

[258] *See id.* at 7

> "Abound must raise additional equity to fund the completion of its planned manufacturing facilities. An inability to access equity markets could force an early default of the loan before construction is complete but also before the loan is fully drawn down.".

[259] Yuliya Chernova and Cassandra Sweet, *California Solar Deal Hits a Snag*, THE WALL ST. J., Feb. 11, 2012, *available at:* http://online.wsj.com/article/ SB10001424052970203646004577214973345400202.html.

[260] Todd Woody, *Abound Solar, Recipient of $400 Million Federal Loan Guarantee, Halts Production*, FORBES, Mar. 1, 2012, *available at* http://www.forbes.com/sites/toddwoody/2012/03/01/abound-solar-recipient-of-400-million-federal-loan-guarantee-halts-production/.

however, its inability to raise capital and meet DOE's requirements likely indicate serious troubles ahead for the company, as predicted by Fitch.

Abound Solar has ties to Democratic politicians at the federal level and the state level in Colorado. Bohemian Companies, LLC, founded by Pat Stryker, became an early investor in Abound Solar (at the time AVA Solar) in October, 2008.[261] In addition to the initial funding, the CEO of Bohemian Companies, Joseph Zimlich, has served as both a director[262] and a board member of Abound Solar.[263] Pat Stryker is a major Democratic donor who *Forbes* included on its 2011 list of top liberal spenders.[264] In 2008, Stryker donated $50,000 and bundled $87,500 for President Obama's 2009 inauguration, and has given $35,800 to the 2012 Obama Victory Fund.[265] Abound Solar also developed ties to Congressional Democrats. The company hired then Democratic Congressman Paul Kanjorski's nephew Russell as its vice president for marketing.[266] Abound Solar supported the 2009 cap and trade bill in the House of Representatives and funded an advertisement thanking then-Colorado Democratic Congresswoman Betsy Markey for her vote in favor of the bill.[267]

At the state level, then-Democratic Colorado Governor Bill Ritter strongly supported Abound Solar and its application for a DOE loan guarantee. When Energy Secretary Chu visited Colorado, Governor Ritter handed Secretary Chu a letter urging him to approve Abound Solar's loan guarantee because it would allow the company to expand and hire new workers.[268]

The combination of Abound Solar's junk credit rating, financial problems, and the company's political connections raise serious concerns about whether DOE based the decision to invest $400 million on merit and whether taxpayers could again lose millions on a dubious solar manufacturing project.

D. Ormat Nevada: Strong Ties to Harry Reid

Senate Majority Leader Harry Reid announced on September 23, 2011, that DOE finalized a $350 million partial loan guarantee for three geothermal power plants owned by Ormat Nevada, Inc.[269] Ormat also benefitted from the $98.5 million loan guarantee to Nevada

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[261] Press Release, *AVA Solar Completes $104 Million Equity Financing*, Abound Solar, Oct., 2008, *available at* http://www.abound.com/news/ava-solar-completes-104-million-equity-financing.
[262] *Se:* U. S. Securities and Exchange Commission Form D, AVA Solar, Inc., Dec. 21, 2010, *available at:* http://sec.gov/Archives/edgar/data/1391624/000139162410000003/xslFormDX01/primary_doc.xml.
[263] *See* The Board of Governors of the Colorado State University System, Colorado State University System, *vaailable at* http://csusystem.edu/pages/board.asp.
[264] Jon Bruner and Clare O'Connor, *Liberal Spenders*, FORBES, Sept. 21, 2011, *available at* http://www.forbes.com/forbes/2011/1010/forbes400-11-networks-data-driven-liberal-spenders-bruner-oconner.html.
[265] Keenan Steiner, Another Renewable Energy Loan Recipient Hires Lobbyists, has Fundraising Ties to Obama, Sunlight Foundation, Nov. 30, 2011, *available at* http://reporting.sunlightfoundation.com/2011/ another-renewable-grantee-hires-lobbyists-has-fundraising-ties-o/.
[266] Bill O'Boyle, *Kanjo Nephew Works at firm that Gets Loan*, THE TIMES LEADER, July 13, 2010, *available at* http://www.timesleader.com/news/Kanjo_nephew_works_at_firm_that_gets_loan_07-12-2010.html.
[267] Thank You Betsy Markey, The Environmental Defense Action Fund, July 15, 2009, *available at* http://www.youtube.com/watch?v=uvBD3XvRf2Y (last visited Mar. 15, 2012).
[268] Cathy Proctor, *Ritter Backing Colo. Companies Seeking Department of Energy Loan Guarantees*, DENVER BUS. J., May 17, 2009, *available at* http://www.bizjournals.com/denver/stories/ 2009/05/18/story5.html?page=all.
[269] Press Release,*Reid Announces Finalized Loan Guarantee for Ormat Geothermal Projects*, United States Senator Harry Reid, Sept. 23, 2011, *available at*http://reid.senate.gov/newsroom/ pr_092311_geothermalloan.cfm.

Geothermal (see below) as Ormat received an almost $80 million engineering, procurement, and construction contract to build Nevada Geothermal's Blue Mountain plant.[270]

Meaningful ties exist between the Senator and Ormat. Two of Ormat's federal lobbyists previously worked for Senator Reid. Ormat's outside lobbyist, Kai Anderson of Cassidy and Associates, served as Senator Reid's Deputy Chief of Staff up until 2005.[271] Anderson lobbies both the House of Representatives and the Senate for Ormat.[272] Anderson has given close to $90,000 to Democratic candidates and campaign committees over the past three cycles, including thousands to Senator Reid.[273] Ormat's company lobbyist, Director of Policy and Business Development Paul Thomsen, served as a "Regional Representative" for Senator Reid through 2005.[274] Thomsen gave thousands in political contributions to Senator Reid.[275] During Senator Reid's 2010 reelection campaign, Thomsen starred in a campaign ad for Senator Reid to advertise the benefits of Ormat's loan guarantee for Nevada.[276] In addition to Anderson and Thomsen, Ormat's President, Yoram Bronicki, gave thousands in political contributions to Senator Reid.[277] The strong ties between the company and the Senate Majority leader raise questions about whether the DOE acted in the best interests of the American people when it approved the loan guarantee.

E. Nevada Geothermal's Blue Mountain Project

On June 15, 2010, DOE announced that it would conditionally issue a $98.5 million partial loan guarantee to Nevada Geothermal Power Company (Nevada Geothermal).[278] This loan enabled Nevada Geothermal to refinance the Blue Mountain Geothermal Project (Blue Mountain) through John Hancock Financial Services (John Hancock). In other words, the DOE

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[270] Nevada Geothermal Application for DOE Loan Guarantee, U.S. Dep't of Energy, Nov. 2, 2009 (on file with author).

[271] Eric Lipton and Clifford Krauss, *A U.S.—Backed Geothermal Plant in Nevada Struggles*, N.Y. TIMES, Oct. 2, 2011, *available at* http://www.nytimes.com/2011/10/03/business/a-us-backed-geothermal-plant-in-nevada-struggles.html?pagewanted=all; Kai S. Anderson, Congressional Staffer—Salary Data, Legistorm: Transparency's Sidekick, *available at*http://www.legistorm.com/person/ Kai_S_Anderson/201.html.

[272] *See* Lobbying Report for Cassidy & Associates, *available at* http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=68E4AB5B-FB37-4072-AA8E-187A97BF8E66.

[273] Center for Responsive Politics, *available at*http://www.opensecrets.org/indivs/search.php?capcode=t3hhk&name=anderson,%20kai&employ=&cand=&state=DC&zip=&all=n&old=N&c2008=Y&c2010=Y&c2012=Y&sort=N&page=1.

[274] Eric Lipton and Clifford Krauss, *A U.S.—Backed Geothermal Plant in Nevada Struggles*, N.Y. TIMES, Oct. 2, 2011, *available at* http://www.nytimes.com/2011/10/03/business/a-us-backed-geothermal-plant-in-nevada-struggles.html?pagewanted=all ; Paul Thomsen, Congressional Staffer—Salary Data, Legistorm: Transparency's Sidekick, *available at* http://www.legistorm.com/person/Paul_Thomsen/30414.html; *Legislative Hearing on H.R. 2170, H.R. 2171, H.R. 2172 and H.R. 2173 Before H. Comm. on Energy and Power,* 112th Cong. (2011) (statement of Paul A. Thomsen, Director of Policy and Business Development, Ormat Technologies, Inc.).

[275] Center for Responsive Politics, *available at*http://www.opensecrets.org/indivs/search.php?name=&state=&zip=&employ=ormat&cand=&c2012=Y&c2010=Y&c2008=Y&sort=N&capcode=xbhnq&submit=Submit+your+Donor+Query (last visited Mar. 15, 2012).

[276] *See* Geothermal, Harry Reid 2010, June 10, 2010, *available at*http://www.youtube.com/watch?v=XvI_AY68BjQ&feature=plcp&context=C305c198UDOEgsToPDskIRhi7yhmpxqikeNWd9-nC0; *Reid Campaign Releases TV Ads on Clean Energy Jobs*, Friends for Harry Reid, *available at*http://www.harryreid.com/index.php/news/release/reid_campaign_releases_tv_ads_on_clean_energy_jobs/.

[277] *Id.*

[278] Press Release, *Energy Department Offers Conditional Commitment to Support Nevada Geothermal Development with Recovery Act Funds*,U.S. Dep'tt of Energy, June 15, 2010, *available at:* https://lpo.energy.gov/?p=805.

loan paid back a prior financial obligation of Nevada Geothermal. This was the first of DOE's "Financial Institution Partnership Program" (FIPP) loan guarantees, under Section 1705, where private investment groups worked with DOE to provide financing to energy projects.[279] Less than three months after the conditional approval, DOE finalized this loan guarantee, enabling Nevada Geothermal to refinance a loan from TCW through John Hancock.[280]

The loan did not finance any new construction and therefore did not help to create a single new job. DOE's awarding of this loan guarantee raises questions about why DOE was investing significant taxpayer resources in an entity with well-established financial difficulties.

In the press release for the project, Secretary Chu and Senate Majority Leader Harry Reid touted Blue Mountain's potential, with Senator Reid saying that, "I am glad to see economic recovery funding being used to put Nevadans to work on a project that will help us achieve energy independence. Northern Nevada is the Saudi Arabia of geothermal energy and I thank Secretary Chu for recognizing the Silver State's enormous job-creating potential to produce plenty of clean and affordable energy."[281] It was known to him at that time, however, that the loan would not create a single job, but instead simply refinance an existing loan, despite DOE's claim that it would create over 200 jobs.[282]

1. Misuse of the DOE Loan Guarantee as a Tool to Bailout Creditors

Nevada Geothermal has a well documented history of major financial problems. By the time DOE conditionally approved the loan guarantee, Nevada Geothermal had already violated contract terms and debt covenants relating to financing from its primary lender, TCW. According to Nevada Geothermal's financial statements, the firm would not avoid default without the benefit of a loan guarantee.

On October 2, 2011, *The New York Times* ran a story about the financial difficulties of Nevada Geothermal, relying partially on a September 2011 Deloitte & Touche audit of the company which stated "significant doubt about the company's ability to continue as a going concern."[283] In response, DOE dismissed the financial problems of Nevada Geothermal and instead pointed to the alleged financial health of Blue Mountain to argue that the loan guarantee would be repaid.[284] Given that Nevada Geothermal's principal operation is Blue Mountain's Faulkner I Power Plant, such a distinction has questionable merit.[285]

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[279] Press Release, *Department of Energy Issues Loan Guarantee Supported by Recovery Act for Nevada Geothermal Project*,U.S. Dep'tof Energy, Sept. 7, 2010, *available at* https://lpo.energy.gov/?p=787.
[280] *Id*.
[281] *Id*.
[282] Loan Programs Office, U.S. Dep't Of Energy, *available at* https://lpo.energy.gov/?page_id=45 (last visisted Mar. 15, 2012).
[283] Eric Lipton and Clifford Krauss, *A U.S.-Backed Geothermal Plant in Nevada Struggles*, N.Y. TIMES, Oct. 2, 2011, *available at* http://www.nytimes.com/2011/10/03/business/a-us-backed-geothermal-plant-in-nevada-struggles.html?pagewanted=all.
[284] Peter Urban, *DOE Remains Confident in Nevada Geothermal Plant*, LAS VEGAS REVIEW-JOURNAL, Oct. 4, 2011, *available at* http://www.lvrj.com/news/doe-remains-confident-in-nevada-geothermal-plant-131035678.html.
[285] *See* Nevada Geothermal Power Inc., Consolidated Financial Statements, June 30, 2010 at 6, *available at*http://www.nevadageothermal.com/i/pdf/Annual_Financials_2010.pdf.

As noted above, at the time DOE approved the conditional loan guarantee, Nevada Geothermal had already violated terms to the loan agreement with its primary creditor, TCW. Based on financial disclosures, Nevada Geothermal avoided default as a result of TCW's granting a waiver and extension in anticipation of the John Hancock financing backed by the DOE loan guarantee. The resulting DOE bailout of Nevada Geothermal was planned out in advance, as made clear by Nevada Geothermal's March 31, 2010 Financial Statements:

> The Company has engaged John Hancock to provide long term debt up to $95 million which will be used to pay down the TCW loan and to fund additional drilling. However, this potential John Hancock loan is subject to due diligence and final credit committee approval by John Hancock. There is no certainty that the anticipated debt financing through John Hancock will be obtained. **Failure to obtain the John Hancock loan, or a similar loan from another lender, and/or unsuccessful drilling may result in a default under the terms of the TCW loan agreement. In the event of a default TCW may elect to call the loan and execute upon the security, which would result in a material adverse effect on the Company**, including delay or indefinite postponement of operations and further exploration and development of our projects with the possible loss of such assets.[286] (emphasis added)

The story continued to unfold in Nevada Geothermal's June 30, 2010 Financial Statements, where the plan to bailout their lender, TCW, was successfully executed by DOE:

> **As at June 30, 2010, the Company was not in compliance with the terms of the TCW loan**. The non-compliance results from the Company having exceeded the maximum loan amount of $180 million, and having exceeded the drilling expenditure budget by more than $3.8 million, as well as some instances of technical non-compliance with other loan terms …. **As a result, for balance sheet purposes, the TCW long-term loan has been classified as a short-term liability.** On November 20, 2009, TCW agreed in principle to waive the non-compliance until March 31, 2010 in return for 4.5 million NGP Inc. warrants exercisable at CAD 1.50 (Note 21(f)). Subsequently, **TCW agreed to extend the agreement in principle, without change, until the John Hancock loan [guaranteed by DOE[287]] closed. The John Hancock loan was closed on**

[286] Nevada Geothermal Power, Inc., Consolidated Financial Statements, Mar. 31, 2010, at 11, *available at* http://www.nevadageothermal.com/i/pdf/Q3_March_31_2010.pdf.

[287] Nevada Geothermal Power, Inc., Consolidated Financial Statements, June 30, 2010, at 55, *available at* http://www.nevadageothermal.com/i/pdf/Annual_Financials_2010.pdf (Explainingthe John Hancock loan guaranteed by DOE: "On October 13, 2009 the Company [Nevada Geothermal] announced that it appointed John Hancock Life Insurance Company ("John Hancock") to be the exclusive debt provider for up to $95 Million 20-year term loan. Further to the above, on October 7, 2009, the DOE announced its Financial Institutions Partnership Program ("FIPP"), a program supported by the 2009 ARRA. The FIPP program is designed to facilitate long term financing for renewable development projects using commercial technology and applies to up to 80 percent of the loan amount. John Hancock, as Lender for the Blue Mountain 'Faulkner 1' geothermal project, made an application to the DOE for a Loan Guarantee under the FIPP. The loan guarantee was conditionally approved on June 15, 2010, and the loan closed on September 3, 2010….At the closing of the John Hancock/DOE loan after paying associated fees and funding reserve accounts for drilling, interest and plant maintenance the Company paid the TCW loan down to approximately $86.9 million. The Company plans to apply for a second ARRA grant based upon work, to

September 3, 2010, and a repayment of $81,076,669 was made on the TCW loan.[288] (emphasis added)

Confirming this troubling misdirection of taxpayer funds, the Summary of Proposed Terms and Conditions for the Conditional Loan Guarantee, signed by Secretary Chu, provides that the "proceeds of the Guaranteed Obligation will be used for the following: (i) Partial repayment of intercompany loan from HoldCo [Blue Mountain], in the amount of approximately 80 million;…"[289] This intercompany repayment would ultimately flow to TCW as described above. The remaining amount of the loan went to the posting of cash collateral to NV Energy, Inc., funding a debt service reserve account, funding a maintenance reserve account, funding a drilling expenditure account (which included already incurred costs), and other fees. As these numbers total to around $98 million, it appears that little, if any, of the loan went to fund new drilling or new construction.[290]

2. This Bailout Appears to Violate the American Recovery and Reinvestment Act of 2009

Not only does it appear that DOE purposely directed taxpayer funds to a failing enterprise, DOE's action robbed taxpayers of genuine investment toward renewable energy. This loan guarantee bailed out lenders (TCW) and provided no assurance that TCW would apply the money that it recovered toward the economy or jobs as required by the American Recovery and Reinvestment Act of 2009.

Title XVI, Section 1602 of the American Recovery and Reinvestment Act of 2009, requires that "recipients shall also use grant funds in a manner that maximizes job creation and economic benefit."[291] Paying off a creditor clearly does not maximize job creation and economic benefits. Rather, it provides an opportunity for private industry to exit an investment, deleverage and transfer the extraordinarily high default risk to taxpayers.

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increase power production, subsequent to the first grant that will be partially funded by the John Hancock/DOE loan.").

[288] *Id*.

[289] Loan Guarantee LGPO Loan Number: F1001, U.S. Dep't of Energy, June 15, 2010 at. 4 (on file with author).

[290] Nevada Geothermal Power, Inc., Conditional Loan Guarantee, U.S. Dep't of Energy, Summary of Terms and Conditions at 4 Summary of Terms and Conditions (Stating "USE OF PROCEEDS: The proceeds of the Guaranteed Obligation will be used for following:

(i) Partial repayment of intercompany loan from HoldCo in the amount of approximately $80 million;
(ii) Funding security requirements under the power purchase agreement signed on August 18, 2006 with NV Energy, f/k/a Nevada Power Company (***"PPA"***), either by posting cash collateral, cash collateralizing one or more letters of credit, or otherwise in accordance with the PPA in amount of $3.8 million (the ***"PPA Credit Support"***);
(iii) Funding of the Debt Service Reserve Account in the amount of approximately $5.5 million, Major Maintenance Reserve Account in the amount of $125,000, and Drilling Expenditure Account in the amount of approximately $8,400,000 (less amounts applied to reimburse the Borrower for Project Costs incurred prior to the Closing Date in connection with the Additional Wells (as defined below));
(iv) The payment of certain fees and transaction expenses associated with the Guaranteed Obligation which are permitted to be paid with such proceeds under the Solicitation as set forth in Schedule 1; and
(v) Initial funding of the Operating Account with all remaining proceeds of the Guaranteed Obligation.").

[291] American Recovey and Reinvestment Act of 2009 §1602, Pub. L. No. 111-5.

For this reason, it appears DOE, in its very first FIPP section1705-based loan guarantee, violated the spirit and, quite possibly, the letter of the law.

3. Given the "Pari Passu" Deal Terms and the Required Consent of all Lenders to Reorder Priority, the Terms of the DOE Loan Guarantee Appear to Violate the Requirement of Superiority under Title XVII, Section 1702(g)(2)(B)

The Summary of Terms and Conditions in the Conditional Loan Guarantee signed by Secretary Chu that relates to the Blue Mountain loan guarantee, at page 8, provides for a pari passu and pro-rata right of payment for senior creditors.[292] This means that the unguaranteed senior lender, John Hancock, stands equal to taxpayers in terms of recovering a share of their loss in the event of default. The Summary of Terms also requires the consent of all Lenders in the event that DOE seeks to "change to the priority of payment in the payment waterfall."[293] The combination of the pari passu credit terms, which ranked John Hancock as an equal to taxpayers, with DOE's inability to reorder priority in case of a default, disables the ability of DOE to rely on its superiority as required under Section 1702(g)(2)(B).

4. Nevada Geothermal's Continuing Problems

Since DOE finalized Nevada Geothermal's loan guarantee in September 2010, the project continues to have operational and financial problems. The project has an ongoing problem with electrical fires. In January 2010 (before the loan guarantee), part of the Blue Mountain plant was damaged after electrical cables were placed too close together and burned; a significant amount of cable was destroyed and had to be replaced.[294] In October 2011, another fire occurred because the seal on one of the pumps failed, causing part of the plant to go offline for major repairs.[295] Operational problems at the Blue Mountain project resulted in revenue being less than estimated the last four months of 2011.[296] Additionally, in November 2011, one of Nevada Geothermal's major creditors considered placing Nevada Geothermal in default because of a late payment,[297] and Nevada Geothermal lost $3.9 million in the fourth quarter.[298]

F. Granite Reliable

In September 2011, Granite Reliable Power, LLC, a wind generation company owned by the Brookfield family of companies, received a partial guarantee for $168.9 million loan from DOE.[299] The funds will finance Granite Reliable Power Windpark, a wind generation project in

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[292] Nevada Geothermal Power, Inc., Conditional Loan Guarantee, U.S. Dep't of Energy, Summary of Terms and Conditions at 8.
[293] *Id*. at 25-6.
[294] Email from Max Walenciak, Nevada Geothermal, to Brian Fairbank, Nevada Geothermal, Mar. 1, 2010 (on file with author).
[295] Email fromMax Walenciak, Nevada Geothermal, to Thomas Pollog, DOE, Nov. 22, 2011 (on file with author).
[296] Operations Budget Reviews,Nevada Geothermal, Sept.-Dec. 2011 (on file with author).
[297] Email from Andrew Studley, Nevada Geothermal, Nov. 1, 2011 (on file with author).
[298] *Nevada Geothermal Power Reports Dec Quarter Results*, Nasdaq, Feb. 28, 2012, *available at* http://community.nasdaq.com/News/2012-02/nevada-geothermal-power-reports-dec-quarter-results.aspx?storyid=123602.
[299]DOE Loan Programs Office, Loan Guarantee Program Projects, *available at* https://lpo.energy.gov/?projects=granite-reliable.

Coos, New Hampshire.[300] Unlike other loan recipients, Granite Reliable was a very profitable company without any demonstrated need to obtain a loan subsidy in order to secure private financing. [301] A deeper look into the players and circumstances surrounding this decision suggest that politics may have led DOE to approve the loan.

Until 2011, Granite Reliable was owned and controlled by Noble Environmental Power, Inc. Noble sold that 75% interest to BAIF Granite Holdings, Inc., just prior to the project's loan approval in September 2011.[302] BAIF Granite Holdings (BAIF) was created by Brookfield Renewable Power, a subsidiary of the $3.2 billion company Brookfield Asset Management (BAM).[303] Brookfield Renewable Power financed the creation of BAIF from its Brookfield Americas Infrastructure Fund, which reportedly has assets totaling $2.7 billion.[304] The remaining minority interest is owned by Freshet Wind Energy, LLC, which partnered with BAIF on the project.[305] Given the solid financial background from which Granite Reliable was formed, it is unclear why DOE determined that the company needed a $168.9 million loan guarantee.

1. Brookfield's Company Background: Board Members, Holdings, and Investors

One reason DOE determined a loan guarantee may have been necessary may lie in the inner workings of the BAM family of companies and the companies' strong Democratic ties. BAM owns BAIF, which owns Granite Reliable, as well as Brookfield Office Properties (BOP). BOP's Board of Directors is chaired by John Zuccotti, the man for whom New York City's Zuccotti Park is named, and includes Diana Taylor, New York City Mayor Michael Bloomberg's long-time girlfriend.[306] George Soros and Martin J. Whitman, both prominent Democratic donors, are both heavily invested in Brookfield.[307] Moreover, Heather Podesta, sister-in-law of Obama's influential White House transition director John Podesta, and the Podesta Group served as the lobbyists for BAIF.[308]

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[300] Press Release, *Department of Energy Finalizes Loan Guarantee of Nearly $170 Million to Granite Reliable Power,* U.S. Dep't of Energy, *available at* http://energy.gov/articles/department-energy-finalizes-loan-guarantee-nearly-170-million-granite-reliable-power.

[301] *See* Opinion, *A NH Solyndra? Wind Farm Gets Fed Loan*, UNION LEADER, Sept. 28, 2011.

[302] Press Release, *Noble Environmental Power Signs Agreement for the Sale of its Interest in its New Hampshire Wind Project*, Noble Power, Dec. 7, 2010, *available at* http://www.noblepower.com/pressroom/documents/10-12-7_NEP-SignsAgreementForSaleOfNHWindProject_Final.pdf; Ehren Gossens,*Brookfield Picks RMT to Build New Hampshire's Largest Wind Farm*, Bloomberg, Feb. 12, 2010, *available at* http://www.bloomberg.com/news/2011-02-23/brookfield-renewable-picks-rmt-to-build-new-hampshire-s-largest-wind-farm.html.

[303] Opinion, *A NH Solyndra? Wind Farm Gets Fed Loan*, UNION LEADER, Sept. 28, 2011.

[304] *Id.*

[305] Granite Reliable Power Wind Project, Brookfield Renewable Power, *available at* http://brookfieldrenewable.com/content/united_states/granite_reliable_power_wind_project-30823.html (last visited Mar. 15, 2012).

[306] Board of Directors, Brookfield Office Properties, *available at* http://brookfieldofficeproperties.com/content/corporate_governance/board_of_directors-16350.html?Page=2 (last visisted Mar. 15, 2012).

[307] Steve MacDonald, *NH Wind Farm Project Comes with Inside Deal Making?*, Oct. 15, 2011, *available at* http://www.allrightmagazine.com/environment/nh-wind-farm-project-comes-with-inside-deal-making-11752/#more-11752.

[308] Aaron Klein, *Look Whose Sister-in-law Just Secured $135.8 Million Energy Loan,* Oct. 12, 2011, *available at* http://kleinonline.wnd.com/2011/10/12/look-who%E2%80%99s-sister-in-law-just-secured-135-8-million-energy-loan-latest-%E2%80%98green%E2%80%99-company-with-deep-white-house-ties-to-get-massive-public-funds/.

2. Nancy Ann DeParle: Obama's Deputy Chief of Staff for Policy and Noble Interest Holder

As described in Section V, Part B of this report, Nancy DeParle suffered a conflict of interest during her time in the Administration. As indicated on her financial disclosure forms, prior to joining the White House, Nancy DeParle was one of five managing directors of a multi-billion dollar private equity firm CCMP[309] While with CCMP, she sat on the board of directors for Noble Environmental Power, LLC, one of CCMP's investments.[310] She served as a board member of Noble for about two years and quit in March of 2009.[311] Noble owned Granite Reliable.

Coinciding with her tenure at the White House, DOE considered a loan guarantee for Granite Reliable. The Granite Reliable project was well underway by late 2009.[312] Noble then sold Granite Reliable in December 2010 to Brookfield Asset Management, just 6 months prior to the conditional approval of the DOE loan guarantee and deep into the application process.[313] The DOE loan guarantee was conditionally approved in June 2011 and finalized in September 2011.

The ultimate approval of the DOE loan guarantee that followed the sale of Granite Reliable is tainted by DeParle's position within the White House and her financial interest in Noble. DeParle's position in the Administration could have been used to influence the successful sale by ensuring or increasing the likelihood of ultimate approval of the DOE loan guarantee. The loan guarantee would increase the value of the Granite Reliable, improving the sale price and, thereby, improving the investment of DeParle's son.

G. Record Hill Wind: DOE Uses the First Solar Precedent to Speed Through Another Questionably "Innovative" Technology

DOE relied on the First Solar precedent to approve Record Hill Wind's $102 million loan guarantee project as "innovative," despite the project using commercial technology. DOE knew that the Record Hill project did not use significantly innovative technology. The Standard & Poor's credit rating for the project that DOE received clearly indicates the commercial (and non-innovative) nature of the project:

> Record Hill has entered into a Turbine Supply Agreement for the shipment of 22 Siemens 93SWT[Siemens Wind Turbine] 2.3MW wind

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[309] CCMP Capital Advisors, LLP, *available at* http://www.ccmpcapital.com/ (last visited Mar. 15, 2012).
[310] *See* Noble Environmental Power, LLC, U.S. Securities and Exchange Commission, Form S-1, May 8, 2008, *available at* http://www.nasdaq.com/markets/ipos/filing.ashx?filingid=5635802.
[311] Company Overview of CCMP Capital Advisors, LLC, Bloomber Businessweek, *available at* http://investing.businessweek.com/research/stocks/private/person.asp?personId=1090061&privcapId=28674590&previousCapId=35644&previousTitle=DaVita%20Inc.
[312] Federal Aviation Admin. Determination of No Hazard to Air Navigation, Nov. 18, 2009 (on file with author); Engineering, Procurement and Construction Agreement between RMT, Inc. and Granite Reliable Power, LLC, Apr. 26, 2010 (on file with author).
[313] Press Release, *Noble Environmental Power Signs Agreement for the Sale of its Interest in its New Hampshire Wind Project,* Noble Environmental Power, Dec. 7, 2010, *available at* http://www.noblepower.com/pressroom/documents/ 10-12-7_NEP SignsAgreementForSaleOfNHWindProject_Final.pdf.

> turbines to be installed at the site. **The SWT-2.3-93 turbine has been in operation in Europe since 2005, and the first turbines in the US were installed and began operations in 2006. Currently, there are a total 1,374 SWT-2.3-93 turbines operating worldwide**….
>
> …Due to harsh winter conditions in Maine, the project plans to install a cold weather package on all turbines, which will keep the turbines running in cold temperatures. **Siemens' cold weather packages are currently in use on turbines in Canada, Norway, and other cold areas**, and have performed to expectations. Along with a cold weather package, the project expects to make use of Siemens proprietary Turbine Load Control (TLC) technology…**Given that the technology is software-based, however, and is not considered a fundamental component in the performance of the turbine**, the TLC could be shuttered without damaging the turbine if it does not work properly. In this case, the turbines would continue to run similar to Siemens' existing fleet.[314] (emphasis added)

Much like First Solar's "innovative" projects, the Record Hill Wind project attempted to categorize minor modifications to existing commercial technology as "innovativeness." DOE eventually agreed with Record Hill Wind's questionable reasoning. On December 14, 2010, Todd Shrader of DOE sent an email to several DOE personnel with the subject line "Eligibility Intepretation (sic)" that read:

> An eligibility issue arose during the technical evaluation of Ocotillo Express (FIPP—F1033). This project is utilizing Siemens SWG-2.3-101 wind turbine generators. It is claimed to be a commercial technology based on the wide spread use (including in this country) of the closely related Siemens SWG-2.3-93 turbines, which are essentially the same just with smaller blade lengths (101 feet vs. 93 feet). Without looking deeper into the design differences (which will occur at due diligence), I concur with the applicant that this is a commercial technology. However, for Record Hill, which is using SWG-2.3-93 turbines, it is claimed that this is a new and innovative technology, partially based on no use over 5 years in the US for these turbines. I also believe there were some differences in internal controls. **However, the 101 and 93 units are essentially the same technology. Can the same technology be innovative under the Renewables Solicitation and Commercial under the FIPP's solicitation?**[315] **(emphasis added)**

Later in the day, Ruth Ku of DOE replied that the same question had occurred before with a different project and that the "project was asked whether it could obtain alternative financing in the private market…the project was able to get alternative financing (e.g., with John Hancock) and I think the recommendation was for it to move its application to FIPP…don't know where Record Hill is in its process for it to be

[314] Record Hill Wind, LLC., Standard & Poors Credit Report, July 1, 2011 (on file with author).
[315] Email from Todd Shrader, U.S. Dep't of Energy, Dec. 14, 2010 (on file with author).

feasible for it to apply under FIPP at this point."[316] Ruth Ku forwarded her email to Douglas Schultz, a Program Manager at DOE's Loan Programs Office. Douglas Schultz replied, "Record hill is well into due diligence with [D]avid [S]chmitzer. No reason to transfer at all. In terms of precedent of innovative and not **look no further than first solar where there [sic] panels are both innovative and noninnovative given the inverter used**."[317] (emphasis added)

Ruth Ku agreed with Douglas Schultz but worried that submitting two project applications using the same technology as innovative and not innovative could cause a "policy issue for OMB." She wrote back to Douglas Schultz stating "[I]t cld [sic] be a policy issue for OMB if record hill followed Ocotillo. Think it's probably less of an issue if record hill was first then Ocotillo."[318] After scheming about how to get the two applications through OMB without problems, DOE allowed the Record Hill Wind project to continue as an "innovative" project.[319] DOE would eventually finalize a $102 million loan guarantee (guaranteed 100% by the federal government) in August 2011.

H. Genesis Solar: An Expedited Approval Process Now Threatens Entire Project

On August 20, 2011, DOE awarded NextEra Energy Resources LLC (NextEra) a partial loan guarantee for $825 million to fund the Genesis Solar Energy Project (Genesis). A planned 250-megawatt plant to lie on 1,950 acres of federal land located outside Blythe, California, Genesis plans to power more than 187,500 homes by 2014.[320] Standard & Poor's gave NextEra a BBB+ rating, highly dependent on a long term Power Purchasing Agreement (PPA) with Pacific Gas &Electric (PG&E), and a Construction Completion Agreement with NECH, noting that if either's credit ratings were downgraded in the interim, it would hurt Genesis's rating as well.[321] S&P emphasizes that the loan guarantee would only support the project for up to a six month delay. Additional delays would restrict Genesis's ability to meet the PPA and jeopardize the success of the project.[322]

An accelerated state and federal site approval process allowed the project to gain DOE approval, but the hasty work may now endanger the entire project. Genesis's original site resided on a section of Ford Dry Lake, which archeologists suspected contained ancient cremation sites.[323] To minimize delays, NextEra moved the project two miles north to a new site, still on federal land. DOE's application process requires extensive vetting of project sites for a variety of environmental factors. However, to expedite site approval, NextEra opted for a less thorough process developed by the state energy commission (The Commission) and the Bureau of Land Management (BLM) that would "streamline the time necessary to produce the

[316] Email from Ruth Ku, U.S. Dep't of Energy, Dec. 14, 2010 (on file with author).
[317] Email from Douglas Schultz, U.S. Dep't of Energy, Dec. 14, 2010 (on file with author).
[318] Email from Ruth Ku, U.S. Dep't of Energy, Dec. 14, 2010 (on file with author).
[319] DOE did not finalize a loan guarantee for the Ocotillo Express project.
[320] Louis Sahagun, *Problems Cast Shadows of Doubt on Solar Project,* L.A. TIMES, Feb. 11, 2012, *available at* http://articles.latimes.com/2012/feb/11/local/la-me-solar-foxes-20120211.
[321] Genesis Solar LLC , Standard & Poor's, July 21, 2011 `BBB+' Rating (on file with author).
[322] *Id*.
[323] *Id*.

joint cultural resources analyses…foregoing potentially lengthy investigations to evaluate the historical significance of the cultural resources found."[324]

The Commission did warn Genesis of the potential consequences associated with the site approval process in August 2011, stating, "This approach however has the real potential to result in…delays in construction start-up, increase in requisite construction monitoring, and cost."[325] As part of the process, NextEra dug 500 test pits 3feet deep and found no artifacts, allowing them to proceed with construction.

After DOE granted final approval to the project and construction began, grading equipment unearthed grinding stones lying on a bed of charcoal, indicating possible evidence of human settlements. This discovery caused work to halt on 400 acres of the Genesis site while the company and regulatory agencies discuss various options. The hasty approval process that prevented the earlier discovery has compromised the construction schedule and put Genesis in serious jeopardy of not satisfying its obligations under the PPA. NextEra has admitted that these delays may have serious consequences for the project; according to a NextEra Senior Vice President, "the project could become uneconomical."[326]

In addition to these problems, the new site also encroached on the habitat of the endangered Kit Foxes, native to the California desert. NextEra used "passive hazing" techniques approved by state and federal biologists to remove the foxes prior to site grading of the area. Essentially, NextEra sprayed coyote urine around dens and removed food sources. Two dead foxes were found on site in October 2011, which died from Distemper, a disease similar to Rabies spread by bodily fluids, never previously recorded in Kit Foxes. Ultimately, seven foxes died from NextEra's removal process.

I. General Electric's Broad Access to Loan Guarantees: Caithness Shepherds Flat, 1366 Technologies and Kansas City Southern Railway Company

General Electric (GE) sponsored a project called Caithness Shepherds Flat (Caithness), and also supplied the project with 338 wind-turbines. High level Administration officials expressed concern that the project was receiving an excessive amount of public subsidy, and that private parties did not have sufficient "skin in the game." In a Memorandum for the President ("Summers' Memo") dated October 25, 2010, Carol Browner, Ron Klan and Larry Summers revealed concerns regarding excessive over-subsidization of the Caithness project, where grants, tax credits and loan guarantees provided 65% of the funding for the project. Because of the excessive subsidy, the memorandum reveals expectations of a 30% return to the

[324] Letter from Mike Monasmith, Project Manager, California Energy Commission, to Scott Busa, Director, NextEra Energy Resources, LLC, Dec. 3, 2009, *available at* http://www.energy.ca.gov/sitingcases/genesis_solar/documents/2009-12-03_New_Alternate_Approach_TN-54332.pdf.
[325] *Id*.
[326] Louis Sahagun, *Problems Cast Shadows of Doubt on Solar Project,* L.A. TIMES, Feb. 11, 2012, *available at* http://articles.latimes.com/2012/feb/11/local/la-me-solar-foxes-20120211.

private investors generated on the backs of taxpayers.

Appendix: Shepherds Flat Loan Guarantee

The Shepherds Flat loan guarantee illustrates some of the economic and public policy issues raised by OMB and Treasury. Shepherds Flat is an 845-megawatt wind farm proposed for Oregon. This $1.9 billion project would consist of 338 GE wind turbines manufactured in South Carolina and Florida and, upon completion; it would represent the largest wind farm in the country. The sponsor's equity is about 11% of the project costs, and would generate an estimated return on equity of 30%.

- Double dipping: The total government subsidies are about $1.2 billion.

Subsidy Type	Approximate Amount (millions)
Federal 1603 grant (equal to 30% investment tax credit)	$500
State tax credits	$18
Accelerated depreciation on Federal and State taxes	$200
Value of loan guarantee	$300
Premium paid for power from state renewable electricity standard	$220
Total	$1,238

- Skin in the game: The government would provide a significant subsidy (65+%), while the sponsor would provide little skin in the game (equity about 10%).

- Non-incremental investment: This project would likely move without the loan guarantee. The economics are favorable for wind investment given tax credits and state renewable energy standards. GE signaled through Hill staff that it considered going to the private market for financing out of frustration with the review process. The return on equity is high (30%) because of tax credits, grants, and selling power at above-market rates, which suggests that the alternative of private financing would not make the project financially non-viable.

- Carbon reduction benefits: If this wind power displaced power generated from sources with the average California carbon intensity, it would result in about 18 million fewer tons of CO2 emissions through 2033. Carbon reductions would have to be valued at nearly $130 per ton CO2 for the climate benefits to equal the subsidies (more than 6 times the primary estimate used by the government in evaluating rules).

Four months after DOE approved the Caithness loan, President Obama named Jeff Immelt, the CEO of GE, as the Chairman (Job Czar) of the President's Council on Jobs and Competitiveness (Jobs Council). As the Chairman of the Job Council, Immelt had direct access to President Obama.[327] Since Immelt's appointment as Job Czar, two additional GE related

[327] About the Council, President's Council on Jobs and Competitiveness, *available* at http://www.whitehouse.gov/administration/advisory-boards/jobs-council/about (Stating it shall, "*Report directly to*

government-backed transactions have occurred. First, the poorly rated 1366 Technologies, sponsored in part by GE,[328] received a direct $150 million loan commitment from DOE for its solar manufacturing plant.[329] Second, on February 22, 2012, the Federal Railroad Administration (FRA) loaned $54.6 million to Kansas City Southern Railway Company (KCSR) under the Federal Railroad Administration-administered Railroad Rehabilitation and Improvement Financing (RRIF) Program to purchase thirty new General Electric ES44AC diesel-electric locomotives.[330]

Regarding KCSR's purchase of GE locomotives, the railroad's filings with the Securities and Exchange Commission (SEC) reveal a twenty-five year, $54.6 million loan at 2.96%.[331] KCSR received this loan despite reporting strong earnings. For the year 2011, KCSR reported operating income of $612 million on $2.1 billion in revenues, a 26% increase over the prior year – not the picture of a company in need of assistance in the form of a $54.6 million loan.[332] As a result of this subsidized loan, the highly profitable KSCR gained a competitive advantage over its freight rail competitors.

VII. Breakdown of Problems with ATVM Loans

Each of the "Big Three" auto manufacturers, Ford, General Motors, and Chrysler, along with Nissan, applied for loans under the ATVM Program. Ford and Nissan are the only major manufacturers that received an ATVM loan. The companies received $5.9 billion and $1.4 billion respectively.[333] Both General Motors and Chrysler withdrew their applications after waiting over a year for responses from DOE.[334] Initially, financial viability was the primary roadblock that kept GM and Chrysler out of the running for Department of Energy loans.[335] Some speculated that the entire program had been put on hold in order to give these two manufactures time to prove their financial viability and qualify for loans that would have drained

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the President on the design, implementation, and evaluation of policies to promote the growth of the American economy…").

[328] *See* Sustainable Business, *GE Backs 1366 Technologies*,Mar. 4, 2011, *available at* http://www.matternetwork.com/ 2011/3/ge-backs-1366-technologies.cfm.

[329] Press Release, *Energy Department Finalizes $150 Million Loan Guarantee to 1366 Technologies that Could Drive Down Manufacturing Costs and Make American Solar More Competitive*, U.S. Dep't of Energy, Sept. 8, 2011, *available at* http://energy.gov/articles/energy-department-finalizes-150-million-loan-guarantee-1366-technologies-could-drive-down.

[330] William Vantuono, *RRIF Loan Will Finance 30 KCSR Locomotives* Railway Age, Feb. 22, 2012, *available at* http://www.railwayage.com/index.php/mechanical/locomotives/rrif-loan-will-finance-30-kcsr-locomotives.html.

[331] Kansas City Southern Railway Company, Form 8-K Report, Feb. 22, 2012 (on file with author)

[332] Kansas City Southern Railway Company, Form 8-K Report, Jan. 23, 2012 (on file with author).

[333] U.S. Dep't of Energy Loan Programs Office, Description of ATVM program, *available at* https://lpo.energy.gov/?page_id=43.

[334] Benson Kong, *GM Withdraws DOE Loan Application, Speeds Up Volt Production,* Motor Trend, Jan. 27, 2011, *available at* http://wot.motortrend.com/gm-withdraws-doe-loan-application-speeds-volt-production-26459.html; Press Release, *Chrysler Group Statement Regarding Department of Energy Advanced Technology Vehicles Manufacturing Loan* Application, Feb. 16, 2012, *available at* http://www.wkrn.com/story/16953247/chrysler-group-statement-regarding-department-of-energy-advanced-technology-vehicles-manufacturing-loan-application.

[335] Josie Garthwaite, *GM, Chrysler's Green Car Loan Bids Inch Forward, Face Upstart Competition,* May 14, 2012, *available at* http://gigaom.com/cleantech/gm-chryslers-green-car-loan-bids-inch-forward-face-upstart-competition/.

the program of remaining funds.[336] In the end, both companies withdrew their applications, choosing instead to seek private financing. The other loan recipients are Fisker, Tesla, and The Vehicle Production Group, receiving $529 million, $465 million, and $50 million, respectively.[337] To date, the ATVM Program has loaned $8.339 billion to five auto manufacturers for the production of ATVs.

It is unclear whether DOE has a set of objective standards by which it judges the relative merit of applicants. Based on materials obtained by the Committee, it appears that DOE applies inconsistent standards to each applicant, leaving innovative car companies in a state of perpetual uncertainty over how they will be treated under the process. These concerns are apparently shared by Senator Diane Feinstein, who wrote DOE complaining that, "On multiple occasions, the department has missed internal deadlines for initial decisions, term negotiations, final decisions and loan closure."[338] This haphazard administration of the ATVM Program creates confusion in the advanced technology vehicle market and may have actually hurt President Obama's goal of fostering a new generation of vehicles.[339]

Despite an apparent lack of discernible objective criteria to judge the relative merit of loan applicants, it does appear that ties to the Obama Administration were important for those companies securing an ATVM loan early on in the process. Both Ford Motor Co. and Nissan were heavily engaged in negotiations with the Administration over fuel economy standards for model years 2012- 2016 at the time DOE was considering their applications.[340] Both companies eventually expressed publically their support for these standards, which the Administration described as the "Historic Agreement."[341] In addition to this curious timing associated with the approval of Ford and Nissan's loan, the other recipients each enjoyed close ties to the Administration. For example, Fisker was backed by Kleiner, Perkins, Caufield & Byers, which has significant ties to the Administration.[342] One of the senior partners at Kliner Perkins is former Vice President Al Gore. Another partner, John Doerr, serves on Obama's Council on Jobs and Competitiveness.[343] In the case of Tesla, board member Steve Westly was a major Obama campaign bundler and a frontrunner for the position of Secretary of Energy.[344]

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[336] Edward Niedermeyer, *GM Withdraws $14.4b Government Loan Request,* Jan. 27, 2011, *available at* http://www.thetruthaboutcars.com/2011/01/gm-withdraws-14-4b-government-loan-request/.
[337] U.S. Dep't of Energy Loan Programs Office, Description of ATVM program, *available at* https://lpo.energy.gov/?page_id=43.
[338] Edward Niedermeyer, *Government Retooling Loans: On Hold for Gm and Chrysler?*, Jan. 24, 2011, *available at* http://www.thetruthaboutcars.com/2011/01/government-retooling-loans-on-hold-for-gm-and-chrysler/.
[339] Letter from Rueben Munger, Chairman and CEO Bright Automotive, and Mike Donoughe, Chief Operating Officer Bright Automotive, to Hon. Steven Chu, Secretary, DOE, Feb. 28, 2012.
[340] Mike Allen & Eamon Javers, *Obama Announces New Fuel Standards,* POLITICO, May 18, 2009, *available at* http://www.politico.com/news/stories/0509/22650.html.
[341] *Id*.
[342] Al Gore Investment Partner, *available at* http://www.kpcb.com/partner/al-gore (last visited Mar. 15, 2012).
[343] President's Council on Jobs and Competitiveness, *available at* http://www.whitehouse.gov/administration/advisory-boards/jobs-council/members/doerr (last visited Mar. 15, 2012).
[344] Lindsay Riddell, *Westly 'Honored to be Considered' for Obama Cabinet,* Sacramento Bus. J., Nov, 13, 2008, *available at* http://www.bizjournals.com/sacramento/stories/2008/11/10/daily62.html; Ronnie Greene, et al., *Energy's Risky $1 Billion Bet on Two Politically-connected Electric Car Builders,* iWatch News, *available at* http://www.iwatchnews.org/2011/10/20/7152/energys-risky-1-billion-bet-two-politically-connected-electric-car-builders.

Case Studies:

There has been very little activity in the ATVM loan program over the last three years, as DOE has only approved one loan since April 2010. Moreover, the Committee has yet to receive a response from DOE to its February 10, 2012, letter asking for additional information about the loan application process. Even so, the Committee has gleaned some information about the companies that DOE has considered for ATVM loans. These stories reveal the haphazard manner in which DOE is administering the program and how ever-changing goal posts and broken promises have promoted the misallocation of scarce resources and pushed some innovative companies into bankruptcy.

Aptera

Aptera first applied for an ATVM loan in December 2008, looking for money to fund the production of the Aptera 2e, a three-wheeled vehicle capable of nearly 200 miles per gallon.[345] Although DOE rejected Aptera's original application for a loan because a three-wheeled vehicle did not meet the criteria of a Section 136 loan, Congress amended the program in October 2009, and Aptera resubmitted its application in January 2010 for both the 2e and a four-wheeled vehicle.[346] By late 2010, DOE determined that the 2e would not be able to pay back capital costs.[347] Accordingly, Aptera shifted its focus to the 4e, a four door electric sedan, that DOE believed would be more suited to an ATVM loan program.[348] After numerous negotiations with DOE, in September 2011, Aptera received a letter from DOE offering them a conditional loan commitment of $150 million if the company was able to raise $80 million privately.[349]

Aptera shut down on December 2, 2011, citing the inability to raise additional private capital, having exhausted a bridge loan that was supposed to last through the time DOE made a final decision on the loan.[350] At this point, Aptera's investors had funneled $40 million of their own money into the project. Former Aptera CEO Paul Wilbur and former marketing Vice President Marques McCammon have publically asserted that the prolonged timeframe spent engaging with DOE to secure a loan ultimately consumed their cash reserves.[351] Wilber stated that a "bright shiny object disease" characterized the ATVM Program and suggested in retrospect, "We should have raised the money ourselves rather than relying on DOE."[352] However, the loans given to Fisker and Tesla gave Aptera hope that DOE would eventually act on their application. More importantly, since the DOE continued to engage with the company

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[345] John Voelcker, *Aptera Collapse: How & Why It Happened, A Complete Chronology,* Dec. 12, 2011, *available at* http://www.greencarreports.com/news/1070490_aptera-collapse-how-why-it-happened-a-complete-chronology; Basem Wasef, *Aptera Unveils 200-mpg 2E Prototype,* Popular Mechanics, Apr. 12, 2010, *available at* http://www.popularmechanics.com/cars/news/preview-concept/aptera-200-mpg-2e-prototype.
[346] John Voelcker, *Aptera Collapse: How & Why It Happened, A Complete Chronology,* Dec. 12, 2011, *available at* http://www.greencarreports.com/news/1070490_aptera-collapse-how-why-it-happened-a-complete-chronology.
[347] *Id.*
[348] *Id.*
[349] *Id.*
[350] *Id.*
[351] *Id.*
[352] *Id.*

throughout the time period, management was convinced that DOE was interested and willing to provide financing for the company.[353]

Bright Automotive

Bright Automotive was an Indiana company that developed a plug-in hybrid delivery vehicle that it planned to market to fleet customers.[354] On February 28, 2012, Bright sent DOE a scathing letter announcing that they "have been forced to say uncle" and that it would withdraw from the ATVM application process.[355]

Bright applied for an ATVM Loan in December 2008 and its application was deemed "substantially complete" at that time.[356] DOE continued to review the application for an additional 1,175 days.[357] According to the company, Bright secured letters of support sent to Secretary Chu from large fleet vehicle users such as Cox, Comcast, and Bust Buy, and had order letters from Duke, Vectren, and Snap On.[358]

According to documents obtained by the Committee, on March 2, 2012, Lachlan Seward, then the Director of the ATVM Program, indicated to Bright that a loan for less than $300 million would be quickly approved.[359] In DOE's next communication, DOE suggested that Bright partner with a large OEM in order to speed up the loan process, intimating that conditional approval would occur in "weeks, not months."[360] Pursuant to this advice, Bright entered into a strategic partnership with GM in July 2010.[361] At that time, DOE officials informed Bright that they would receive a conditional loan agreement within two months.[362] Two months later, DOE came back to Bright and directed the company to satisfy six additional loan pre-conditions.[363] By January 2011, Bright received a "near final" conditional agreement for a $314 million loan.[364] It was reviewed by the DOE credit team for five months when on May 18, 2011, DOE determined that it would not consider Bright's loan based on a volume consideration report generated by DOE, one that Bright had asked DOE to reassess.[365] DOE contractors, A.T. Kierney, conducted a new volume study, which led to Bright's reconsideration for a loan by DOE in June 2011.[366] DOE once again assured Bright that just as soon as the company's credit package went through the interagency process, it would receive an offer of

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[353] *Id*.
[354] Jim Motavalli, Citing Onerous Energy Dept. Loan Terms, Bright Automotive Says it Will Close, N.Y. TIMES blog, Feb. 29, 2012.
[355] Letter from Rueben Munger, Chairman and CEO Bright Automotive, and Mike Donoughe, Chief Operating Officer Bright Automotive, to Hon. Steven Chu, Secretary, DOE, Feb. 28, 2012 (on file with author).
[356] Letter from Rueben Munger, Chairman and CEO Bright Automotive, and Mike Donoughe, Chief Operating Officer Bright Automotive, to Hon. Steven Chu, Secretary, DOE, et. al. Dec. 27, 2011 (on file with author).
[357] Jim Motavalli, Citing Onerous Energy Dept. Loan Terms, Bright Automotive Says it Will Close, N.Y. TIMES Autoblog, Feb. 29, 2012.
[358] Letter from Rueben Munger, Chairman and CEO Bright Automotive, and Mike Donoughe, Chief Operating Officer Bright Automotive, to Hon. Steven Chu, Secretary, DOE, et. al. Dec. 27, 2011 (on file with author).
[359] *Id*.
[360] *Id*.
[361] *Id*.
[362] *Id*.
[363] *Id*.
[364] *Id*.
[365] *Id*.
[366] *Id*.

conditional agreement no later than October 2011.[367] However, instead of an agreement, in October 2011, DOE told Bright to raise additional equity and perform other financial changes to bolster its balance sheet and credit.[368] This last demand caused Bright to withdrawal from the ATVM loan process.[369] In February 2012, the company closed down.

In their letter to the DOE, Bright's CEO Rueben Munger and COO Mike Donoughe flatly stated that the ATVM process distorted the U.S. private equity markets, effectively making DOE the only way for ATV companies to receive funding. According to Munger and Donoughe, DOE then used this position to submit the applicants to the control and "whim" of government bureaucrats. [370] As the letter points out, the ATVM program, as DOE is administering it, contravenes the purpose of the program because it stymies rather than advances technology within the automotive market. After spending millions of dollars to comply with DOE's endless finish line and consuming nearly three years of time, Bright withdrew its application from the ATVM Program, closing the company and its idea.

Severstal

While DOE was stringing along potentially innovative auto manufacturers, they were working to approve a conditional loan agreement for a business that did not appear to qualify at all for the ATVM Program. In June 2011, DOE conditionally approved a $730 million loan to steel company Severstal North America, a subsidiary of OAO Severstal, and a multibillion-dollar Russian steel and mining corporation. The ATVM loan would have financed Severstal's expansion and re-equipment of a Dearborn, Michigan, steel plant, located within Ford's manufacturing campus, to produce advanced high strength steel (AHSS). Chairman Issa challenged the appropriateness of this loan for several reasons: Severstal applied for a loan to produce AHSS, a material, not a "component part" as required under Section 136;[371] and it did not appear that the company needed public funding to "bring its product to market" as it was a subsidiary of a multi-billion dollar Russian corporation. Moreover, Severstal had already made significant strides towards completing the Dearborn project through private financing, even before receiving any money from DOE.[372] In its initial response to the Committee, DOE defended its due diligence and decision-making on the Severstal loan, touting the market strength of the company's product.[373]

On January 6, 2012, DOE reversed its position and denied Severstal's loan. When asked why it has changed its mind, DOE informed Committee staff, "We [DOE] could not get

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[367] *Id*.
[368] *Id*.
[369] Jim Motavalli, Citing Onerous Energy Dept. Loan Terms, Bright Automotive Says it Will Close, N.Y. TIMES Autoblog, Feb. 29, 2012.
[370] Letter from Rueben Munger, Chairman and CEO Bright Automotive, and Mike Donoughe, Chief Operating Officer Bright Automotive, to Hon. Steven Chu, Secretary, DOE, Feb. 28, 2012 (on file with author).
[371] Advanced Technology Vehicles Manufacturing Incentive Program, 73 Fed. Reg. 66,721, 66,722 (Nov. 12, 2008) (to be codified at 10 C.F.R. pt. 611).
[372] Press Release, *Severstal North America Completes Asset Sale and Accelerates Capital Improvements,* Severstal North America, Mar. 31, 2011.
[373] Letter from David G. Frantz, Acting Executive Director Loan Program Office, U.S. DOE, to Hon. Darrell Issa, Chairman, H. Committee on Oversight and Gov't Reform, Nov. 18, 2011 (on file with author).

comfortable with apparent discrepancies and potential of fluctuation in steel prices," and therefore would not offer the loan to Severstal.[374]

This explanation is curious, as DOE offered the conditional loan agreement based on a forecasted increase in market demand for AHSS.[375] DOE had originally projected Severstal to be the market leader in domestic AHSS production, even as other companies entered the American AHSS market.[376] DOE decided not to give a final loan to Severstal and, in so doing, questioned the company's ability to repay the loan. Based on the apparent contradiction between DOE's analyses, it is obvious that DOE has no clearly established standard it uses to evaluate ATVM loan applicants.

Fisker

One of DOE's original loans has been suffering severe setbacks in production, and many have predicted its eventual collapse.[377] In April 2010, DOE issued an ATVM loan of nearly half a billion dollars to Fisker. DOE froze the loan in February 2012, halting the issuance of any further money, because the company failed to meet DOE's benchmarks. Fisker's woes began with with regulatory issues and delays in production of the Karma, Fisker's $100,000 luxury sedan. Fisker has since engaged DOE to renegotiate its loan agreement and renegotiate benchmarks.[378] Due to the financial troubles, including DOE's freezing of the loan, Fisker has laid off 23 employees from its Delaware manufacturing plant[379] and 40 employees and contractors in its California plant.[380] In addition, Fisker recently announced that it was replacing founding CEO Henrik Fisker with Tom LaSorda, a former executive at both Chrysler and GM.[381] Furthermore, the Fisker Karma that *Consumer Reports* purchased to review broke down after less than 200 miles of operation and had to be towed 100 miles back to the dealer because the car would not even start.[382] Based on this reshuffling and DOE's actions, Fisker appears to be a volatile company with a questionable future. Fisker's current problems raise serious questions about DOE's decision-making and an inconsistent standard in the ATVM Program.

ATVM Conclusion

DOE mismanagement of the ATVM Loan Program has put potentially viable companies out of business and caused major setbacks within the ATV market. DOE has only succeeded in

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[374] Interview with David G. Frantz, Acting Director ATVM Program, Jan. 13, 2012.
[375] U.S .Dept. of Energy, ATVM Loan Evaluation – Severstal Dearborn Market Analysis, Mar. 22, 2010 (on file with author).
[376] *Id*.
[377] Eric Ruth, et al., *Can Fisker Keep its Promise?,* Delaware Online, Feb. 13, 2012, *available at* http://www.delawareonline.com/article/20120213/BUSINESS09/302130001/Can-Fisker-keep-its-promise-.
[378] Matthew Mosk, *Another Green Energy Company Stumbles: Fisker Announces Layoffs,* Feb. 6, 2012, *available at* http://abcnews.go.com/Blotter/fisker-automotive-announced layoffs/story?id=15524021.
[379] *Id*.
[380] Associated Press, *Fisker Announces Layoffs as Automaker Misses Targets, has DOE Loans Frozen*, Feb. 7, 2012, *available at* http://www.foxnews.com/leisure/2012/02/07/fisker-announces-layoffs-as-company-misses-targets-has-doe-loans-frozen/.
[381] Dana Hull, *Fisker Automotive Replaces CEO with Auto Industry* Veteran, Mercuty News, Feb. 28, 2012, *available at* http://www.mercurynews.com/business/ci_20062262.
[382] Tom Mutchler, *Bad Karma: Our Fisker Karma Plug-in Hybrid Breaks Down,* CONSUMER REPORTS, Mar. 8, 2012, *available at* http://news.consumerreports.org/cars/2012/03/video-bad-karma-our-fisker-karma-plug-in-hybrid-breaks-down.html.

giving billions of dollars to two large auto manufacturers and to companies with strong political connections to the Obama Administration. However, hundreds of other companies wait in DOE's loan queue. At least two of these companies have declared bankruptcy after engaging with DOE for a number of years, believing, based on representations from the Department, that they would eventually receive a government loan. Meanwhile, DOE conditionally approved a loan for a company that did not meet threshold requirement to be in the program. DOE's haphazard and inconsistent administration of the loan program has created significant uncertainty within the advanced vehicle manufacturing community and has potentially retarded progress on the next generation of automotive technologies.

Conclusion

The findings regarding the DOE loan programs discussed in this report tell only part of a much greater story—a story of mismanagement, waste and abuse symptomatic of reaching too far, working too fast, and spending too much to achieve unrealistic objectives. There are significant concerns about DOE's management and administration of the weatherization, 1705, and ATVM programs. And a management structure unprepared and incapable of dealing with the challenges it faced when pressed to push out the door tens of billions of dollars in a short period of time. In the days ahead, the Committee will continue its investigation and examine DOE's record on a loan-by-loan basis, with the continued hope that spotlighting these shortcomings will provide Congress and the American people with the insight they need to assess the true value—or cost—of these types of programs.