

ENERGY POLICY ACT OF 2005

SEC. 1702. TERMS AND CONDITIONS

(d) REPAYMENT

(1) IN GENERAL.—No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the borrower.

(2) AMOUNT.—No guarantee shall be made unless the Secretary determines that the amount of the obligation (where combined with amounts available to the borrower from other sources) will be sufficient to carry out the project.

(3) SUBORDINATION.—The obligation shall be subject to the condition that the obligation is not subordinate to other financing.

Solyndra Fab 2, LLC Credit Committee Recommendation

From: Chairman Loan Guarantee Credit Committee

To: Director Loan Guarantee Program Office

Subject: Credit Committee Recommendation re: Solyndra Fab 2 LLC, solar photovoltaic power panel project for a loan guarantee of \$ 535,000,000.

On January 9, 2009, the Credit Committee convened to consider the referenced project for a loan guarantee of \$535,000,000 under Title XVII of the Energy Policy Act of 2006.

On January 9, 2009, following a presentation to the Credit Committee and further deliberations among its members, the committee reached the following conclusions:

- The apparent haste in recommending the project meant that certain LGPO credit procedures were not adhered to. Of particular concern were the receipt of the Final Credit Committee Paper and Credit Committee policies and procedures without the requisite advanced notice.
- While the project appears to have merit, there are several areas where the Information presented did not thoroughly support a finding that the project is ready to be approved at this time;
 1. **There is presently not an independent market study addressing long term prospects for this specific company** beyond the sales agreement already in place. Since the independent credit assessment raised the issue of obsolescence in marketing this project **it is important to have an independent analysis of that issue, as well as the current state of the competitive market.**
 2. While the sales agreement is said to have been analyzed by the outside legal advisor assigned to this case, the committee did not have access to this document
 3. **There are questions regarding the nature and the strength of the parent guarantee for the completion of the project.**
 4. While it is encouraging to see the apparent progress in the development of the product at the Fab 1 facility, **there is concern regarding the scale-up of production assumed in the plan for Fab 2.**

The Credit Committee is appreciative of the hard work done by the origination staff, but believes that **the number of issues unresolved makes a recommendation for approval premature at this time. Therefore, the committee, without prejudice, remands the project to the LGPO for further development of information addressing the issues outlined above.**

“The Credit Committee is appreciative of the hard work done by the origination staff, but believes that the number of issues unresolved makes a recommendation for approval premature at this time. Therefore, the committee, without prejudice, remands the project to the LGPO for further development of information addressing the issues outlined above.”

- January 9, 2009: Bush Administration DOE Credit Committee remands Solyndra application, calling it premature and citing a number of unresolved issues.
- January 20, 2009: Obama Inauguration
- January 26, 2009: Email - a DOE staff member states that “we are approaching the **beginning of the approval process for Solyndra again,**” and goes on to list the credit questions that remain unresolved in the deal.

- An email between DOE staff dated August 19, 2009, stated that “we still have a major outstanding issue The issue of working capital assumptions has been a major issue repeatedly raised since December [2008].”

-August 19, 2009, email between DOE regarding “Solyndra”

- An email the following day states that “The issue of working capital remains unresolved. . . . the issue is cash balances, not cost. [Solyndra] seems to agree that the model runs out of cash in Sept. 2011 even in the base case without any stress. This is a liquidity issue.” The DOE staff member went on to ask “how we can advance a project that hasn’t funded working capital requirements and that generates a working capital shortfall of \$50 [million] when working capital assumptions are entered into the model?”

-August 20, 2009 email between DOE staff regarding “FW: Solyndra: Responses to Credit Analysis

“The true engine of economic growth will always be companies like Solyndra.”

– President Obama, May 25, 2010

“This announcement today is part of the unprecedented investment this Administration is making in renewable energy and exactly what the Recovery Act is all about.”

–Vice President Biden, Solyndra Groundbreaking Event, September 4, 2009

“We are confident they can repay the loan.”

– DOE Secretary Steven Chu, March 3, 2011, after the Solyndra loan guarantee was restructured

- In Congressional testimony on March 19, 2009, DOE Senior Advisor Matt Rogers stated that Secretary Chu “has directed us to **accelerate the process significantly and deliver the first loans in a matter of months**, while maintaining appropriate oversight and due diligence to protect taxpayers’ interests.”

--Testimony of Matthew Rogers, Senior Advisor, U.S. Department of Energy, before the Subcommittee on Investigations and Oversight, Committee on Science and Technology, March 19, 2009.

- A statement released after the DOE Credit Review Board (CRB) voted to offer a loan guarantee to Solyndra stated that these improvements in loan processing “**allowed the Department of Energy to offer its first loan guarantee within the first two months of the Obama Administration.**”
- --March 17, 2009 email between DOE staff regarding Urgent--- Draft Solyndra press release.”

In early March, OMB staff exchanged an email stating that “DOE staff just told me that there’s a 99 percent certainty that President Obama, on March 19 in California for other reasons, will announce that DOE is offering a loan guarantee to Solyndra. As far as I can tell the obligation won’t be entered into until May, but **once the President endorses it, I doubt seriously that the Secretary will withdraw for any reason.**”

-- March 6, 2009, email between OMB staff regarding “Title XVII.”

On the same day, Ronald Klain, then-Chief of Staff to Vice President Joe Biden, sent an email to OMB staff and asked “[c]an we chat on Monday about the DOE flag in here on Solyndra

If you guys think this is a bad idea, I need to unwind the W[est] W[ing] QUICKLY.”

--March 7, 2009, email between Ronald Klain and OMB staff.

- “this deal is NOT ready for prime time,” and explained that the deal could not be finalized by March 19 as OMB approval steps had yet to be completed.

--March 10, 2009, email between OMB staff regarding “RE: Solar co loan announcement in northern california.”

- “[g]iven the time pressure we are under to sign-off on Solyndra, we don’t have time to change the model.”
- “[a]s long as we make it crystal clear to DOE that this is only in the interest of time, and that there’s no precedent set, then I’m okay with it. **But we also need to make sure they don’t jam us on later deals so there isn’t time to negotiate those, too.**”

-August 27, 2009, email between OMB staff regarding “Final Solyndra Credit Subsidy Cost.”

- In an email dated August 31, the special assistant noted the Vice President's announcement at Solyndra on September 4, and whether “there is anything we can help speed along on OMB side.”
- That OMB staff member responded that “I would prefer that this announcement be postponed. . . . This is the first loan guarantee and we should have full review with all hands on deck to make sure we get it right.”

--August 31, 2009, email between DOE and OMB in advance of groundbreaking

“We have ended up with a situation of having to do rushed approvals on a couple of occasions (and we are worried about Solyndra at the end of the week). We would prefer to have sufficient time to do our due diligence reviews and have the approval set the date for the announcement rather than the other way around.”

August 31, 2009, email between OMB and Terrell McSweeney of the Office of the Vice President, regarding “DOE Announcement.”

“[w]hile the company *may* avoid default with a restructuring, there is also a good chance it will not. . . . At that point, additional funds would have been put at risk, recoveries *may* be lower, and questions will be asked”

–January 31, 2011, email between OMB staff regarding “Solyndra Optics” (emphasis in original).