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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

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

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

March 15, 2012

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania, N.W.
Washington, D.C. 20220

Dear Secretary Geithner:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining the implementation of Section 1603 of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), as extended as part of the Tax Relief, Unemployment Reauthorization, and Job Creation Act of 2010 (P.L. 111-312), including its record of job creation in the field of renewable energy technologies.

The Section 1603 grant program, administered by the Department of the Treasury (Treasury) in conjunction with the Department of Energy (DOE), offers renewable energy project developers cash payments in lieu of investment tax credits. As of February 21, 2012, over $10 billion in federal funds under this program have been directed to more than 5,000 businesses for thousands of projects to build wind farms, solar projects and other alternatives to oil and natural gas.[1]

In testimony before the Committee on March 16, 2011, Secretary of Energy Steven Chu stated that "the Section 1603 tax grant program has created tens of thousands of jobs in industries such as wind and solar by providing up-front incentives to thousands of projects" and supported the program's extension by another year.[2] Yet, we are concerned by reports of tremendous variability in estimates of temporary and permanent jobs spawned by the Section 1603 grant

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[1] "Recovery Act –1603 Program: Payments for Specified Energy Property in Lieu of Tax Credits," Department of the Treasury. http://www.treasury.gov/initiatives/recovery/Pages/1603.aspx

[2] Statement of Secretary Steven Chu before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy, Committee on Energy and Commerce, March 16, 2011. http://energy.gov/sites/prod/files/ciprod/documents/3_16_11_S_Final_Testimony.pdf

program from the Congressional Research Service (CRS)[3] and the *Wall Street Journal*.[4] Those reports suggest a paltry record of long-term job creation. CRS, referencing an earlier study,[5] notes that "the potential for job creation has become a key factor in evaluating renewable energy investment incentives and programs" but that "despite being an issue of importance, quantifying and measuring green job creation and growth has been difficult" and adds that "it is recommended that any job creation estimate be viewed with skepticism."[6]

We are also concerned that as of December 2011, up to one third of total Section 1603 funds obligated, or $3.37 billion in grants, were awarded to just nine companies – all of them members of the board of the American Wind Energy Association.[7]

Overall, significant doubts have been raised about the program's vetting and selection of recipients, high costs, and record of achievement in its job growth objectives thus far, calling into question the wisdom of President Obama's proposed extension of the Section 1603 grant program, in the FY 2013 Budget, through the end of 2012.[8]

In light of the public interest in the responsible and accountable use of federal funds to further job creation, as well as the timeliness of the President's latest budget request, we therefore ask that you provide the following documents and information by March 29, 2012:

1. In 2009, what were Treasury's initial cost estimates for implementation of the Section 1603 program?

2. Please provide a list of all Section 1603 grant recipients whose projects have been grandfathered and will continue to receive funding post-December 31, 2011.

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[3] Phillip Brown and Molly Sherlock, "ARRA Section 1603 Grants In Lieu of Tax Credits for Renewable Energy: Overview, Analysis, and Policy Options," *Congressional Research Service*, Nov. 9, 2011, pp. 24-5. http://www.crs.gov/Products/R/PDF/R41635.pdf

[4] Ianthe Dugan and Justin Scheck, "Cost of $10 Billion Stimulus Easier to Tally Than New Jobs," *The Wall Street Journal*, Feb. 24, 2012. http://online.wsj.com/article/SB10001424052970203710704577050412494713178.html

[5] Richard Campbell and Linda Levine, "Renewable Energy – A Pathway to Green Jobs?" *Congressional Research Service*, Sept. 24, 2009. http://www.crs.gov/Products//r/pdf/R40833.pdf

[6] Phillip Brown and Molly Sherlock, "ARRA Section 1603 Grants In Lieu of Tax Credits for Renewable Energy: Overview, Analysis, and Policy Options," *Congressional Research Service*, Nov. 9, 2011, p. 24. http://www.crs.gov/Products/R/PDF/R41635.pdf

[7] Robert Bryce, "Why the Wind Industry Is Full of Hot Air and Costing You Big Bucks," *FoxNews.com*, December 20, 2011. http://www.foxnews.com/opinion/2011/12/20/fossil-fuel-industry-big-business-cashing-in-big-on-renewable-subsidies/

[8] "Creating the Clean Energy of Tomorrow and Protecting the Environment," Office of Management and Budget. http://www.whitehouse.gov/omb/factsheet/creating-the-clean-energy-of-tomorrow-and-protecting-the-environment

a. How much additional Section 1603 grant funding will ultimately be obligated if all of these projects are completed?

3. In reviewing Section 1603 grant applications, did Treasury or DOE apply a heightened level of scrutiny to applicants citing levels of price per kilowatt-hour above or below a certain threshold?

4. How many Section 1603 grant applications listed Novogradac & Company LLP or the Reznick Group as Certified Public Accountants?

   a. In these instances, was a heightened level of scrutiny triggered?

5. Please produce all internal Treasury documents and communications related to any internally- and externally-generated past or present estimates of the number of temporary and permanent jobs created under the Section 1603 grant program. Please indicate which estimates reflect data reported by recipients themselves, including the basis for trusting the accuracy of such self-reported data, and which estimates have been independently confirmed by Treasury.

   a. In addition, please provide a full breakdown of jobs created by duration of each job's existence, industry sector, and location.

   b. How many of these temporary or permanent jobs were created by recipient Thompson River Power, LLC as a result of the $6.5 million awarded to it by the Section 1603 grant program for a plant in Thompson Falls, Montana?

   c. How many of these temporary or permanent jobs were created by recipient Cedro Hill as a result of the $108 million awarded to it for a wind farm in Webb County, Texas?

   d. How many of these temporary or permanent jobs were created by recipient Thermo No. 1 BE-01, LLC as a result of a $33 million grant awarded to it for a geothermal plant in Beaver County, Utah?

   e. How many of these temporary or permanent jobs were created by recipient NGP Blue Mountain I LLC as a result of a $65 million grant awarded to it for a geothermal plant near Winnemucca, Nevada?

6. Does Treasury consider any, or all, of the jobs listed in response to Questions 5(a)-(e) to be "green jobs"?

   a. If so, please explain how Treasury's definition of "green jobs" relates to the final definition of "green jobs" derived by the U.S. Bureau of Labor Statistics for statistical purposes.[9]

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[9] "Notice of Comments Received and Final Definition of Green Jobs," U.S. Bureau of Labor Statistics. http://www.bls.gov/green/frn_2010_09_21.pdf

7. Do procedures exist whereby DOE or Treasury may recoup funds from recipients that violate the terms of their Section 1603 grants?

    a. If so, please detail all instances where either DOE or Treasury has attempted to recoup such funds and the outcomes of such attempt(s).

An attachment to this letter provides additional information about how to respond to the Committee's request.

If you have any questions regarding this request, please contact Sam Spector with the Committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

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

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.

4. Each document should be produced in a form that may be copied by standard copying machines.

5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.

6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.

8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

a. how the document was disposed of;
b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
c. the date of disposition;
d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms “you” or “your” mean and refers to

For government recipients:

“You” or “your” means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.