Opening Statement of the Honorable Fred Upton
Chairman, Committee on Energy and Commerce
Oversight and Investigations Subcommittee Business Meeting to Consider a Motion Authorizing the Issuance of Subpoenas
November 3, 2011

I wish it had not come to this.

Oversight is a core Congressional responsibility, one that has a proud tradition in this committee under both Republicans and Democrats.

Sometimes, in the course of an investigation, we find ourselves unable to secure necessary evidence. House Rules expressly give us the power of subpoena to compel cooperation in these instances. It is a tool we use sparingly, and only as a last resort.

Today, it is our last resort.

We began reviewing the loan guarantee made to Solyndra by the federal government all the way back in February. Several news accounts had identified problems with the company, and industry experts had questioned whether Solyndra's business model was a sustainable one.

Solyndra was not chosen at random; we had reason to believe taxpayer dollars could be at risk, and we had a responsibility to look into the loan and understand how and why it was made. Unfortunately, we have had nothing but eight months of frustration.

There is a natural and appropriate tension between the Legislative and Executive Branches of government. But what we have seen in the course of this investigation is downright obstruction.

The administration has touted the tens of thousands of pages of documents – most of them highly technical – it has turned over, never mentioning that producing those documents was like extracting a tooth without anesthesia – unnecessarily painful and time consuming. Just last night, the Department of Energy turned over several boxes of documents, proudly sharing them with the press before delivering them to our investigators. But these documents are not responsive to the request we are discussing today – they are long-overdue responses to requests we made weeks, even months ago.

Many of the documents the administration has produced were delivered only after being compelled by a subpoena to OMB. Then, as now, we repeatedly reached out to the administration to attempt to negotiate review and release of the necessary documents.

And then, as now, administration lawyers feigned a limited willingness to cooperate while steadfastly refusing to actually deliver the documents needed to get to the bottom of the Solyndra affair.

We began this investigation eight and a half months ago, and the administration has put up roadblocks at every turn. We were forced to contemplate a subpoena once before, and we did everything we could to avoid that outcome. But after months of negotiations and broken agreements, we had no choice but

to subpoena OMB's records. And unfortunately, we had to issue that subpoena over the objections of every member of the minority.

Unfortunately, we cannot get to the bottom of this matter without White House cooperation. Yet we're hearing the same excuses about the need for more time and vague promises to deliver something, but no details on some basic questions – what does the White House have, and when will they let us see it? Just yesterday, Chairman Stearns and I met with the White House Counsel to try to broker an agreement. Ranking Member Waxman and Subcommittee Ranking Member DeGette joined us for that meeting.

What the White House offered was exactly the open-ended pledges that were given to us before the OMB subpoena. Almost four months after we served that subpoena, we still haven't received all of the responsive documents from OMB. They are using exactly the same tactics now, which means we have no choice but to expect the same outcome and move forward with our subpoena accordingly.

Late last evening, shortly before 7:00 p.m., and after the House had recessed, the White House Counsel's office contacted our investigators with a last-minute attempt to narrow the scope of our request. In exchange, the White House made no commitment to produce documents. However, their lawyers did express a willingness to conduct a search of their internal communications for only those items in the categories they had identified. While this is encouraging, it is insufficient. This is the sort of negotiation that should occur after the initial request for documents, not on the eve of a subpoena.

Any sign of cooperation is better late than never, and we fully intend to take last night's proposal into consideration as we refine the scope of the subpoena and work with the White House on its document production.

With the Solyndra loan, we smelled a rat from the beginning, and the investigation proved we were on the right track. We have clearly established that red flags were ignored, both with the initial loan guarantee and with its subsequent restructuring. We have clearly established that senior White House advisors had close knowledge of the Solyndra loan, and that DOE officials felt pressure from the White House to approve the loan.

We have made our case about the need for these documents. The White House has refused to produce them, and we have no choice but to authorize the issuance of a subpoena to compel them. I will say it again: I wish it had not come to this. But it has, and I hope members on both sides of the aisle will join me today to assert our Congressional authority and issue this subpoena.