

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

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

February 16, 2012

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

Dear Secretary Chu:

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



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Fred Upton  
Chairman



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Cliff Stearns  
Chairman  
Subcommittee on Oversight and Investigations

Letter to the Honorable Steven Chu  
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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.