

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

October 26, 2011

The Honorable Fred Upton
Chairman
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Chairman Stearns:

Earlier this month, you broadened the Committee's investigation of the Solyndra loan guarantee to encompass 27 additional loan guarantees for solar, wind, and other renewable energy projects.¹ While we do not oppose expanding the Committee's inquiry, we do not believe you should limit the Committee's investigation solely to loan guarantees provided to renewable energy companies. We ask that you also include in the Committee's investigation (1) loan guarantees for nuclear companies and (2) the \$267 million loan to the communications company Open Range, which filed for bankruptcy this month, putting the taxpayers at risk for potentially large losses.

The Committee's goal should be to protect the taxpayer, not to single out an industry you may disfavor for special scrutiny. From a taxpayer perspective, there is no reason to ignore the nuclear loan guarantees. Nuclear power companies are slated to receive loans significantly larger than the loan received by Solyndra. In fact, the Energy Department has conditionally committed more than \$10 billion to just two nuclear projects.² This is nearly 20 times the funding committed for Solyndra. The DOE office administering these programs is the Loan Programs Office, the same office that issued the loan guarantee to Solyndra and other renewable

¹ Letter from Chairman Fred Upton and Chairman Cliff Stearns, *et al.* to Secretary Steven Chu (Oct. 6, 2011).

² Department of Energy, Loan Programs Office, *Our Projects*, (online at https://lpo.energy.gov/?page_id=45).

The Honorable Fred Upton
The Honorable Cliff Stearns
October 26, 2011
Page 2

energy companies. Moreover, there has been congressional pressure pushing DOE to review the nuclear loan guarantee applications rapidly.³

There is also no good rationale for ignoring the \$267 million loan to Open Range. This loan, the largest federal broadband loan in history, was approved in March 2008 for the purpose of delivering high speed wireless Internet service and satellite communications to more than 500 communities in 17 states.⁴ The project, however, encountered financial and operational difficulties. On October 5, 2011, Open Range filed for bankruptcy.⁵

Your reaction to the Open Range bankruptcy could not be more different than your reaction to the Solyndra bankruptcy. When Solyndra filed for bankruptcy in September, you issued press releases trumpeting the bankruptcy and said, “We smelled a rat from the onset” and Solyndra was a “bad bet from the beginning.”⁶ Your concern was to “protect American taxpayers” and to examine whether there had been “disregard for taxpayer dollars.”⁷ You made no similar comments when Open Range filed for bankruptcy.

Like Solyndra, however, the Open Range loan puts millions of taxpayer dollars at risk. The main distinction between the Solyndra guarantee and the Open Range loan appears to be that the Open Range loan was approved in 2008, when President Bush was in office. That is not a defensible reason for ignoring Open Range.

We recognize that Open Range involves a broadband communications project, not a renewable energy project, and that the loan was issued by the Department of Agriculture, not the Department of Energy. But these are not reasons for ignoring Open Range and its costs to the taxpayer. Our Committee’s jurisdiction encompasses both energy projects and broadband communications projects. Indeed, Committee on Energy and Commerce members were conferees on the provision establishing the loan program for broadband services in rural areas when Congress enacted this program in 2002.⁸

³ Letter from Representative Ed Markey to Chairman Fred Upton and Chairman Cliff Stearns (Sept. 23, 2011).

⁴ US Department of Agriculture, USDA Announces \$267 Million Rural Broadband Loan (Mar. 25, 2008) (online at <http://www.rurdev.usda.gov/ne/FY08OpenRangeBroadband.pdf>).

⁵ Bloomberg News, *Open Range, Rural Wireless Provider, Files for Bankruptcy* (Oct. 6, 2011).

⁶ Committee on Energy and Commerce, Press Release, *Solyndra Bankruptcy Confirms \$535 Million Loan Guarantee Was a Bad Bet for Taxpayers from the Beginning* (Aug. 31, 2011).

⁷ *Id.*

⁸ See Conference Report to Accompany H.R. 2646, the Farm Security and Rural Investment Act of 2002, 107th Cong., 2d Sess., at 686 (Report 107-424). The Open Range loan was approved under the program established through an amendment to the Rural Electrification Act of 1936 under the Farm Security and Rural Investment Act of 2002 to provide grants, loans, and loan guarantees to support broadband service in rural communities. P.L. 107-171, Section 6103.

The Honorable Fred Upton
The Honorable Cliff Stearns
October 26, 2011
Page 3

Oversight should be conducted with an even hand. That requires giving a failed multi-million-dollar loan issued by the Bush Administration as much attention as failed multi-million-dollar loan guarantee issued by the Obama Administration. And it requires giving DOE nuclear loan guarantees as much scrutiny as DOE renewable energy loan guarantees.

You have both criticized the Obama Administration for “picking winners and losers” based on political considerations. While the evidence to date does not support these charges, the Committee certainly should not be picking oversight targets based on which administration approved the loan or loan guarantee or on whether you approve or disapprove of the type of energy produced.

In your October 6, 2011, letter to DOE, you requested a broad range of financial information as well as communications between and among DOE, Department of the Treasury, and Office of Management and Budget officials regarding each section 1705 loan guarantee. For the reasons discussed in this letter, we respectfully request that you request that DOE also provide relevant documents concerning the four conditional loan guarantee commitments DOE has issued for nuclear and other projects under section 1703 and that you request that the Department of Agriculture provide relevant documents concerning the Open Range loan.

Sincerely,



Henry A. Waxman
Ranking Member
Committee on Energy
and Commerce



Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations



Edward J. Markey
Member
Committee on Energy
and Commerce