May 19, 2009

The President
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. President:

We want to thank you for your strong leadership on clean energy issues and to convey again our support for your goal of doubling renewable energy supply over the next three years. We appreciate the stimulus for clean energy development in the American Recovery and Reinvestment Act (ARRA) and look forward to working closely with your Administration to ensure that these programs achieve your energy policy goals.

Our organizations, representing thousands of clean energy technology companies, are writing now to urge the Executive Branch to act promptly to adopt regulations that will allow clean energy projects to participate in two loan guarantee programs administered by the Department of Energy (DOE): the new Section 1705 loan guarantee program for renewable energy projects authorized by ARRA, and the existing Section 1703 loan guarantee program established in 2005 for innovative clean energy technology projects. These loan guarantee programs, properly implemented by workable regulations, will significantly increase access to debt financing for clean energy projects at a time when sources of capital in the private markets have been substantially reduced. With access to these loan guarantees, our member companies will be able to start construction of planned projects that would otherwise need to be delayed or cancelled due to current capital market conditions.

Unfortunately, the regulations necessary to implement these programs effectively have not yet been developed. It is critical that new regulations be developed to implement Section 1705 and to address defects in the existing Section 1703 rules, and we appreciate that DOE is working diligently to develop such regulations. We understand, however, that there are disagreements

between DOE and the Office of Management and Budget over these regulations, as evidenced by the fact that DOE's draft revised regulations for the Section 1703 program were submitted to OMB more than two months ago and have not been acted on. Three months have passed since enactment of ARRA, and we have little confidence that ongoing discussions between DOE and the Office of Management and Budget over these regulations will produce a satisfactory result in a timely manner.

We are not seeking additional budgetary funding for these loan guarantee programs. We ask only that funds already authorized be made available expeditiously and under reasonable terms and conditions so as to facilitate the financing of worthy projects, in full compliance with appropriate government oversight, transparency and accountability. Prompt action is particularly necessary in the case of the new Section 1705 program, which is only available to projects that commence construction by September 30, 2011. Changes are also required for the Section 1703 loan guarantee program, which is being implemented by DOE under regulations put in place by the previous Administration that have not proven effective in generating the financing that the program was intended to promote. In the almost four years that have passed since enactment of the 2005 Energy Policy Act, no loan guarantees have been finalized under the Section 1703 program.

The attachment to this letter lists the changes needed to the existing Section 1703 loan guarantee regulations and the characteristics necessary for a successful Section 1705 loan guarantee program. These proposals reflect the experience of our member companies over the past three decades in accessing debt and equity capital and using commercially acceptable methods to structure the financing of clean energy projects.

We would not take the unusual step of asking for your help in this matter if we believed that the Executive Branch departments and offices involved would reach agreement, with dispatch, on the rules necessary to implement these loan guarantee programs successfully. Further delay endangers the planned role of the green energy economy in the nation's economic recovery and undermines the effort to meet your Administration's energy policy goals, including the doubling of renewable energy supply in three years.

We would welcome the opportunity to provide additional information about this important matter, or to meet with your staff to discuss these matters further. Thank you for your attention to this critical concern.

Sincerely,

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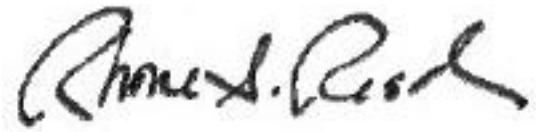

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cc: Joseph R. Biden, Jr.
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Enclosure: Administrative Changes Necessary for a Workable Title XVII Loan Guarantee Program

Administrative Changes Necessary for a Workable Title XVII Loan Guarantee Program

To be effective and workable, the DOE loan guarantee program requires significant revisions to the regulations governing the Section 1703 program and new regulations to implement the new Section 1705 program. The regulatory provisions proposed below for the Section 1703 and Section 1705 programs are consistent with well-established commercial banking practices as well as standard practices for successful loan guarantee programs used by government institutions like the Export-Import Bank of the United States and the Overseas Private Investment Corporation (OPIC), both successful from a risk-management perspective. The President's FY 2010 budget projects that both programs will be profitable to the taxpayer in FY 2010 – i.e., fee revenues will exceed the budget subsidy cost of new loan guarantees.

Our recommendations that apply to both the Section 1703 and the Section 1705 loan guarantee programs are set forth below:

- Correct the current requirement under the 2007 regulations that DOE must have a first lien on all project assets (which requirement we understand DOE's Office of General Counsel no longer believes to be required by statute), and permit DOE discretion as to the scope of a given project's collateral package. The regulations must allow for more flexible collateral-sharing arrangements, including *pari passu* treatment of the collateral shared among co-lenders. The existing Section 1703 regulations assume that clean energy technology projects would largely have a single equity owner and a single lender. In reality, clean energy technology projects may have multiple equity holders with undivided interests in project assets and more than one co-lender. Changing the regulations as proposed would be beneficial to the federal government because the change would bring more parties into the financing structure and reduce the federal government's risk exposure.
- Permit collateral to be shared *pro rata* and *pari passu* among all project lenders, including export credit agencies.
- Recognize an undivided interest in specific project assets as itself constituting a financeable project qualified for loan guarantees, with that undivided interest qualifying as the relevant project asset for purposes of complying with collateral requirements.
- Because of the current lack of liquidity in capital markets, the regulations must allow commercial lenders greater flexibility to create secondary markets for guaranteed loans, including permitting the unguaranteed portion of the loan to be "stripped" and placed separately from the guaranteed portion.
- Ensure access to the long term (e.g., 30 year) loan tenors and interest rates (Treasury plus 25 basis points) available from the Federal Financing Bank (FFB) for all loans extended under Section 1703 and Section 1705 loan guarantees, and allow the FFB premium to be credited to budget credit subsidy costs, as authorized by the Federal Credit Reform Act.

- Allow credit subsidy costs and application fees to be considered project costs and to be paid at closing (though out of the equity portion of the capital structure rather than from the proceeds of guaranteed debt).
- Ensure that developers have the ability to bundle small distributed generation systems and energy efficiency projects under one loan guarantee to gain the efficiencies necessary to make the programs attractive for small projects. Absent a mechanism to provide guarantees to support financing of multiple small projects, the loan guarantee programs would not be helpful to distributed generation projects because the transaction costs for individual projects would outweigh the benefit of the individual project loan guarantee, and leaving distributed generation projects stranded.
- Expand the definition of "equity" to include in-kind contributions.
- Ensure that other forms of government assistance provided to a project (including, for example, production tax credits, investment tax credits, government grants, access to transmission, or access to federal lands) do not prejudice or disqualify an application. Other government assistance for a given project is positive from DOE's perspective. In some cases, such as access to federal lands or transmission lines owned by federal power marketing authorities, it is fundamental to the project. Financial incentives, such as a government grant, reduce the cost of the project, thus reducing the size of any loan and loan guarantee and increasing the likelihood of repayment. These additional forms of assistance should be viewed as complementary.
- Eliminate the requirement for a "preliminary credit assessment" for projects at the time of application. This requirement adds significant cost to the application process for little to no benefit to DOE. For commercial technologies, with which both the market and DOE have significant experience, the step is not necessary to protect taxpayers; for innovative technologies, the ratings agencies are not necessarily equipped to evaluate technology risk. This rating requirement is not standard for a bank loan and would unnecessarily delay start of construction.
- Avoid duplication of effort on verifying environmental compliance. For many projects, companies are already engaged in mandatory environmental review processes with state or federal agencies. DOE should be required to accept the review and decisions of state and Federal permitting agencies and not require applicants to pay for additional review of these assessments.
- Allow DOE to enter into loan guarantee commitments, as authorized by the Federal Credit Reform Act, and not just merely conditional agreements subject to cancellation at the sole discretion of the Secretary. A full commitment would protect the sunk investment cost of project sponsors seeking to accelerate the pace of project development in advance of the loan guarantee agreement, while also allowing the government to protect its interests through the identification of clearly defined conditions precedent that would need to be satisfied prior to final closing on a loan guarantee agreement.
- In the Section 1703 program, ensure that developers can submit multiple applications for any particular technology.

Our further recommendations for implementing the Section 1705 loan guarantee program are set forth below:

- Allow access to FFB loans for the guaranteed portions of loans guaranteed under Section 1705.
- Ensure access to the Section 1705 program for all forms of renewable energy systems (including solar, wind, biomass, waste-to-energy, advanced biofuels, combined heat and power, recycled energy, hydropower and geothermal).