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February 13, 2012

The Honorable Steven Chu, Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington D.C. 20585

Dear Secretary Chu:

In an effort to improve the management of the Department of Energy's (DOE's) loan guarantee program, I write to urge you to implement all recommendations made in the White House-ordered review of the Energy Department's loan guarantee program prior to awarding any further loan guarantees, either on a conditional or final basis. I am particularly concerned that with last week's Nuclear Regulatory Commission (NRC) approval of the construction and operating license for two new nuclear reactors at the Vogtle facility in Georgia owned by the Southern Company, DOE is now technically able to finalize its $8.3 billion conditional loan guarantee for that project.

The independent White House-ordered report, which was written by former Treasury Department official Herb Allison, reviewed the Department of Energy's Loan Guarantee Program (LGP). The report found that the program has—as it was intended to do—funded far more successful projects than failures, and the overall risk of the loan portfolio is far lower than anticipated. The report also found absolutely no evidence of illegality on the part of DOE or the White House and no evidence of politicization of the loan guarantee process. This report represents a strong dose of reality for Congressional Republicans who have chosen to use the failure of one loan guarantee recipient—Solyndra—as a rationale for abandoning all support for clean energy and as the basis for waging politically-motivated investigations over the past year.

However, the report also found shortcomings within the program and suggested measures to mitigate them, including the following key recommendations:

- DOE should assign authorities for decision-making only to individual managers and never to committees where collective responsibility can obscure individual accountability.

- DOE should develop explicit objectives and standards of performance for managing the Portfolio during the construction phase of the projects and beyond.
- DOE should create a new Risk Management department encompassing all DOE functions that monitor LPO and should appoint a highly experienced Chief Risk Officer ('CRO') to head it. DOE should also reorganize oversight of the Program.
- Overall governance of the Programs would benefit from access to senior government officials of other departments and agencies who have knowledge of proven 'best practices' across credit programs government-wide.

The proposed nuclear loan guarantee to the Southern Company is $8.3 billion, far larger than any previous loan guarantee under the DOE program and more than 15 times larger than the loan guarantee granted to Solyndra. Credit rating agencies have spoken loudly and clearly about the financial risk associated with this project. Over the past 18 months, the Southern Company has had its credit rating downgraded by both Moody's and Morningstar as a direct result of its pursuit of this nuclear project. Private financial markets have shown no interest in financing new nuclear projects because the technology's long track record of delays, cost overruns, and project defaults. On top of that, wind, solar, and natural gas have recently become much cheaper, further eroding the competitiveness of nuclear power. Just last week, the president of the Nuclear Energy Institute, Marv Fertel, suggested that low natural gas prices would push back construction of nearly all planned nuclear projects by a decade or more.[1]

It is impossible to view taxpayer support for any nuclear energy project without recalling the triple meltdowns at the Fukushima Dai-ichi Nuclear Power Plant that occurred nearly a year ago. After that disaster, companies that began considering abandoning their nuclear plans were rewarded with improved financial outlooks from analysts. For example, regarding NRG Energy's plans for two new nuclear facilities in Texas, Barclay's Capital wrote this in a note to clients in March 2011: "For NRG Energy we think the potential added pressure could be the end of its nuclear loan guarantee award from the Department of Energy for STP (units) 3 and 4 in Texas which could cause a write-off in the short term, but would be likely positive in the long-term."[2] UBS Utilities said "Given the lower overall probability of (the Texas nuclear project), we see positive implications for NRG shares."[3]

The understanding that the Fukushima meltdowns have fundamentally changed both the economics of nuclear power as well as the necessary level of public safety associated with nuclear power rightfully goes beyond just the private sector. In a March 2011 hearing in the House Energy and Commerce Committee, you agreed with me that the federal government should re-evaluate the financial risk of nuclear projects in the same way the private sector has. In dissenting on the issuance of the construction and operating licenses for Vogtle units 3 and 4 last week, the Chairman of the Nuclear Regulatory Commission Gregory Jaczko said, "I cannot

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[1] http://www.scientificamerican.com/article.cfm?id=first-new-nuclear-reactor-in-us-since-1978-approved

[2] http://mobile.reuters.com/article/idUSTRE72D7VH20110314?ca=rdt

[3] http://www.mysanantonio.com/news/energy/article/CPS-Energy-suspends-talk-about-nuclear-expansion-1128743.php

support issuing these licenses without a binding commitment that the Fukushima enhancements that are currently planned would be made before operation." He went on, "I cannot support issuing these licenses as if Fukushima never happened. But, without this license condition, in my view, that is what we are doing."

Given the unprecedented magnitude of debt that the taxpayer will assume under the proposed loan guarantee for the Southern Company project and the extraordinary financial and safety risk associated with it, I believe it is imperative that you take all steps that could reduce the likelihood of a taxpayer bailout of the Southern Company nuclear project as soon as practicable. Anything less would be short-changing the American taxpayer and repeating past mistakes.

With these concerns in mind, I ask the following questions:

1. How do you plan to address the findings and recommendations included in the Allison report? Will you incorporate any recommendations from the report into the process by which the LGP analyzes projects and associated risks? Will these changes be implemented via the same sort of public rulemaking DOE used when it developed its implementing regulations for the loan guarantee program in 2007 and 2009? If not, why not?

2. Will all loan guarantee applications currently under consideration, including those that have already received conditional commitments, be subject to additional review? If so, please specify all steps the Department plans to take to conduct such reviews. If not, why not?

3. When you testified before the Energy and Commerce Committee on March 16, 2011, as the nuclear disaster was then unfolding in Japan, I asked you whether the conditional nuclear loan guarantee to Southern Company and the credit subsidy risk premium attached to it should be re-examined in light of the events in Fukushima. You stated that ultimately the Office of Management and Budget (OMB) was the part of the government responsible for determining the credit subsidy but that you anticipated "they will include anything like what has happened in Japan in their determination." I subsequently wrote a letter to OMB asking them to confirm this, but, in nine months, I have not received a response to that letter.

    a. Has the risk premium associated with the Southern Company nuclear project changed since the conditional commitment was granted two years ago? Has the risk premium changed since the nuclear meltdowns at the Fukushima facility in Japan?

Please provide all dates in which the credit subsidy calculation was updated, whether the updated calculation resulted in increase or decrease in the credit subsidy score, and the amount of the change in the credit subsidy score (either in absolute or percentage terms).

Thank you for your attention to this important matter. I request that you provide your response no later than the close of business on March 2, 2012. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff at 202-225-2836.

Sincerely,

Edward J. Markey

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