

**FROM DOE LOAN GUARANTEE TO BANKRUPTCY
TO FBI RAID: WHAT SOLYNDRA'S EXECUTIVES
KNEW**

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

SEPTEMBER 23, 2011

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Brian Harrison, President and Chief Executive Officer, Solyndra, Inc. ¹	
W.G. Bill Stover, Senior Vice President and Chief Financial Officer, Solyndra, Inc. ¹	

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Subcommittee exhibit binder	36
Majority memo, dated September 21, 2011, submitted by Mr. Stearns	49

¹Mr. Harrison and Mr. Stover did not present opening statements.

**FROM DOE LOAN GUARANTEE TO BANK-
RUPTCY TO FBI RAID: WHAT SOLYNDRA'S
EXECUTIVES KNEW**

FRIDAY, SEPTEMBER 23, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:03 a.m., in room 2123, Rayburn House Office Building, Hon. Cliff Stearns (chairman of the subcommittee) presiding.

Members present: Representatives Stearns, Terry, Sullivan, Murphy, Burgess, Blackburn, Myrick, Gingrey, Gardner, Griffith, Barton, Pompeo, Upton (ex officio), DeGette, Schakowsky, Markey, Green, Dingell, and Waxman (ex officio).

Staff present: Carl Anderson, Counsel, Oversight; Jim Barnette, General Counsel; Sean Bonyun, Deputy Communications Director; Karen Christian, Deputy Chief Counsel, Oversight/Investigations; Andy Duberstein, Deputy Press Secretary; Todd Harrison, Chief Counsel, Oversight/Investigations; Kirby Howard, Legislative Clerk; Carly McWilliams, Legislative Clerk; Andrew Powaleny, Press Assistant; Krista Rosenthal, Counsel to Chairman Emeritus; Alan Slobodin, Deputy Chief Counsel, Oversight; John Stone, Associate Counsel, Oversight/Investigations; Jean Woodrow, Director, Information Technology; Kristin Amerling, Democratic Chief Counsel and Oversight Staff Director; Alvin Banks, Democratic Investigator; Phil Barnett, Democratic Staff Director; Stacia Cardille, Democratic Counsel; Karen Lightfoot, Democratic Communications Director and Senior Policy Advisor; and Matt Siegler, Democratic Counsel.

Mr. STEARNS. Good morning, everybody.

The Subcommittee on Oversight and Investigations of the Energy and Commerce Committee will come to order.

My colleagues, before we begin today, I would like to address the procedures used at this hearing. I called Ranking Member DeGette yesterday evening to consult with her about today's hearing.

Ranking Member DeGette and I agreed to the following process for opening statements and questions. I will recognize myself and Ranking Member DeGette for 5-minute opening statements. Then each member of the committee will be able to give a 2-minute opening statement. After swearing in the witnesses, the majority and minority each will have 10 minutes to ask questions of today's witnesses. This time will be allotted among members who wish to ask

questions at the discretion of the chair and the ranking member. We will start with 5 minutes for questions for majority members, then 5 minutes for minority members, then repeat.

I would like to thank the ranking member, distinguished member, for her support.

And now I recognize myself for a 5-minute opening.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Good morning, everybody. We convene this hearing of the Subcommittee on Oversight and Investigations to examine what Solyndra's executives knew about the company's financial condition and how it represented that condition to the Department of Energy, the White House, and members of this committee.

Just 2 years ago, after Solyndra received its \$535 million loan guarantee and 6 months after the Department of Energy restructured the deal, Solyndra has laid off over a thousand workers, filed for bankruptcy, and has been raided by the FBI. Yet only 2 months ago Solyndra's CEO Brian Harrison met with me in the committee offices. He looked me in the eye and assured me that everything was just fine, and the company was on track to be cash-flow positive. Mr. Harrison told me and other members of this committee that Solyndra was continuing to make excellent progress, that it was meeting all its cost and performance milestones, and that revenues were projected to nearly double in 2011.

I was hoping that Mr. Harrison would testify today and explain to me and to this committee how he could make those representations in late July about Solyndra improving prospects when the company was on the path to bankruptcy just 30 days later.

It seems clear to me that Mr. Harrison knew or should have known in July that the company was going to restate its financial projections to reflect increasing market and pricing pressure on its products, resulting in decreased revenue.

When the committee invited Mr. Harrison and Mr. Stover to testify at last week's hearing, Solyndra's counsel said that Mr. Harrison would appear voluntarily and would answer the committee's questions. However, Solyndra's counsel asked the committee to postpone their testimony by 1 week, claiming that Mr. Harrison and Mr. Stover were involved in active negotiations to potentially sell the company and that an earlier sale might potentially result in a better recovery for the taxpayer at the company's bankruptcy.

I agreed to this request, provided that Mr. Harrison appeared this week and testified. In return for postponing his testimony by 1 week, I was provided written assurance by Solyndra's counsel that Mr. Harrison would answer the committee's questions.

Unfortunately, we won't get those answers today. Mr. Harrison and Mr. Stover's counsel informed the committee 3 days ago that they would decline to answer the committee's questions and would invoke their rights under the Fifth Amendment to the United States Constitution. I respect the witnesses' rights under the Fifth Amendment, but I want to make it clear today, though, that this subcommittee's investigation will continue.

We have been asking questions about this deal since February of this year. We will get to the bottom of why this loan was pushed

out to a company whose liquidity issues were a major issue to Department of Energy staff reviewing the loan back in 2009 and which ultimately caused its bankruptcy. We will also figure out just how DOE concluded that restructuring the Solyndra deal positioned the U.S. taxpayer for maximum recovery, end quote, when documents produced to the committee showed that OMB staff doubted that it would prevent a Solyndra bankruptcy or result in greater recovery for the government. We are also determined to know why DOE allowed the taxpayers to be subordinated to the private investors during that restructuring in violation of the clear letter of the law.

What we do not know is whether the Solyndra executives here today have something to hide. Was all the information they submitted to DOE accurate and complete? What did they know about their financial situation and when did they know it? And how did they represent it to others, including this committee? What did DOE understand about Solyndra's financial situation? Did DOE know what they were doing and did they properly monitor Solyndra and the taxpayers' money being used to prop Solyndra up?

My colleagues, these are all the questions I would have liked to have received answers from our witnesses today. Congress and the American taxpayers have a right to know whether this loan guarantee was rushed out the door before it was ready for prime time, whether the administration doubled down on a bad bet after knowing of the company's dubious commercial prospects or, even worse, whether \$535 million of taxpayers' dollars were wasted on false or incomplete information. We intend to get those answers.

And that concludes my statement.

With that, I recognize the ranking member, Ms. DeGette, for her opening statement.

[The prepared statement of Mr. Stearns follows:]

**Opening Statement of the Honorable Cliff Stearns
Chairman, Subcommittee on Oversight and Investigations
“From DOE Loan Guarantee to Bankruptcy to FBI Raid: What Solyndra’s
Executives Knew”
September 23, 2011**

(As Prepared for Delivery)

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Just two years after Solyndra received its \$535 million loan guarantee, and six months after DOE restructured the deal, Solyndra has laid off over a thousand workers, filed for bankruptcy, and been raided by the FBI. Yet, only two months ago, Solyndra CEO Brian Harrison met with me in the Committee offices. He looked me in the eye and assured me that everything was just fine, and the company was on-track to be cash-flow positive. Mr. Harrison told me, and other Members of this Committee, that Solyndra was continuing to make excellent progress; that it was meeting all its cost and performance milestones; and that revenues were projected to nearly double in 2011.

I was hoping that Mr. Harrison would testify today and explain to me, and to this Committee, how he could make those representations in late July about Solyndra’s improving prospects when the company was on the path to bankruptcy just 30 days later. It seems clear to me that Mr. Harrison knew, or should have known, in July that the company was going to restate its financial projections to reflect increasing market and pricing pressure on its products, resulting in *decreased* revenues.

When the Committee invited Mr. Harrison and Mr. Stover to testify at last week’s hearing, Solyndra’s counsel said that Mr. Harrison would appear voluntarily and would answer this Committee’s questions. However, Solyndra’s counsel asked the Committee to postpone their

testimony by one week, claiming that Mr. Harrison and Mr. Stover were involved in active negotiations to potentially sell the company, and that an earlier sale might potentially result in a better recovery for the taxpayer in the company's bankruptcy. I agreed to this request, provided that Mr. Harrison appear this week and testify. In return for postponing his testimony by one week, I was provided written assurance by Solyndra's counsel that Mr. Harrison would answer the Committee's questions.

Unfortunately, we won't get those answers today. Mr. Harrison's and Mr. Stover's counsel informed the Committee three days ago that they would decline to answer the Committee's questions and would invoke their rights under the Fifth Amendment to the United States Constitution.

I respect the witnesses' rights under the Fifth Amendment. I want to make it clear today, though, that this Subcommittee's investigation continues. We have been asking questions about this deal since February. We will get to the bottom of why this loan was pushed out to a company whose liquidity issues were a "major issue" to DOE staff reviewing the loan back in 2009 — and which ultimately caused its bankruptcy. We will also figure out just how DOE concluded that restructuring the Solyndra deal "positioned the U.S. taxpayer for maximum recovery," when documents produced to the Committee show that OMB staff doubted that it would prevent a Solyndra bankruptcy or result in greater recoveries for the government. We are also determined to know why DOE allowed the taxpayer to be subordinated to the private investors during that restructuring, in violation of the clear letter of the law.

What we do *not* know is whether the Solyndra executives here today have something to hide. Was all the information they submitted to DOE accurate and complete? What did they know about their financial situation and when? And how did they represent it to others, including this Committee? What did DOE understand about Solyndra's financial situation? Did DOE know what they were doing and did they properly

monitor Solyndra and the taxpayer money being used to prop Solyndra up? These are all questions I would have liked to receive answers about today.

Congress and the American taxpayers have a right to know whether this loan guarantee was rushed out the door before it was ready for prime time, whether the Administration doubled down on a bad bet after knowing of the company's dubious commercial prospects or, even worse, whether \$535 million taxpayer dollars were wasted on false or incomplete information. We intend to get those answers. I yield back.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. Chairman, 2 weeks ago, Ranking Member Waxman and I requested that this subcommittee seek testimony from Solyndra President and CEO Brian Harrison, so I am pleased that the subcommittee sought the testimony of Mr. Harrison and his colleague, Mr. Stover, for today's hearing.

I respect that witnesses appearing before the committee have the right to invoke their constitutional rights under the Fifth Amendment, but I am disappointed that the executives here today won't be responding to questions. I believe that their testimony would greatly inform the subcommittee's investigation of the Department of Energy loan guarantee to Solyndra, and I hope that once those constitutional questions are resolved, that they will be able to return and testify voluntarily.

Nonetheless, Mr. Chairman, I am glad that the subcommittee will continue to examine key questions relating to the Solyndra loan guarantee. As I noted in my statement at the September 14th subcommittee hearing, it is critically important that we understand a number of factors: First, whether the Bush and Obama administrations conducted due diligence on the loan guarantee; whether Solyndra made accurate representations to the government; whether the administration sufficiently monitored the financial status of Solyndra, particularly as market forces seemed to be against the company; and finally, whether the government made correct decisions about restructuring the loan.

But in addition to our specific concerns around this loan, it is also imperative that the subcommittee examine these issues in the broader context of how government should support development of our Nation's clean energy technology industry. The United States has an unparalleled history of innovation, and at the beginning of the 21st century, it would be to our long-term economic peril if we cede leadership to any other nation in clean energy technology development.

To advance the subcommittee's understanding of these issues, Ranking Member Waxman and I have urged you, Mr. Chairman, to take several additional steps in this investigation. First, we have asked that the subcommittee convene hearings to ensure whether U.S. policies and incentives are adequate to ensure that U.S. manufacturers can compete in the global clean energy market. We have already heard testimony in our investigation that China's share of the solar market has jumped from 6 percent in 2005 to 54 percent just 6 years later. And we have heard that half of the 10 largest solar panel manufacturers are now based in China.

At the same time, just last week, some of the country's business leaders, including the CEOs of General Electric and Xerox, stated that, quote, the Federal Government has a vital role to play in energy innovation and warned, quote, if the U.S. fails to invent new technologies and create new markets and new jobs, that will drive the transformation and revitalization of the \$5 trillion global energy industry. We will have lost an opportunity to lead in what is arguably the largest and most pervasive technology sector in the

world. Accordingly, review of the Solyndra loan guarantee should go hand in hand with review of the appropriate path our Nation can take to avoid ceding leadership of the clean energy technology market to China and other countries.

Second, Mr. Waxman and I have asked Chairman Stearns to obtain the testimony of representatives from the two private equity firms, Argonaut and Madrone, which were the most significant investors in Solyndra. Private investors invested twice as much as the government in Solyndra. The subcommittee should understand why Solyndra attracted so much private capital and what representations the company made to private investors as well as to the government.

I am certain the chairman sees the merits of these requests, Mr. Chairman, and I look forward to working together on these and other issues as the investigation continues.

And I yield back the balance of my time.

Mr. STEARNS. Thank the gentlelady, and now the full chairman of Energy and Commerce, the distinguished gentleman from Michigan, Mr. Upton, is recognized for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman.

In 1963, there was a great train robbery in England. At the time, I think it might have been the largest heist ever, and because of its cleverness, the legend continues. The take was 2.6 million pounds; that is about \$7.5 million in 1963 dollars. But now we have our own modern day great train robbery. But it appears that we have a great heist of over half a billion dollars and possibly even willing collaborators, maybe even co-conspirators called the U.S. Government, who rushed out a \$535 million loan to Solyndra.

It is a very sad commentary that we met resistance every step of the way as this subcommittee has tried to seek answers to basic questions overseeing the approval process of this project. We finally had to resort to a subpoena, and now the outright resistance of getting answers that both of you, our two witnesses, assured us only last week that you would provide.

Let me just warn you and the other folks involved in this taxpayer rip-off, we are not done. No, we are not.

In 2009, Solyndra was the very first company to receive a Department of Energy loan guarantee funded with stimulus dollars. The company was touted in statements by the President, the Vice President, the Secretary of Energy as a model for the government's investment in green technology. And now less than 2 years later, Solyndra has filed for bankruptcy and was raided by the FBI.

I understand that our two witnesses today, Mr. Harrison and Mr. Stover, intend to invoke their rights under the Fifth Amendment and will not testify. Solyndra has left taxpayers holding the bag for a \$535 million guarantee, and we still can't get answers.

Last week we learned even more troubling facts about the administration's review of the Solyndra guarantee. Concerns about the liquidity and cash flow were ignored. The financial model showed that the company would run out of cash by September 2011, which, as it turns out, it precisely did. OMB felt pressured

to complete its review in time for a groundbreaking event with the Vice President. And when Solyndra faced default at the end of last year, the administration restructured the guarantee and put the taxpayers behind the investors, despite concerns by OMB staff that the restructuring would not be a better deal for the government and, frankly, in direct contradiction to the law. These facts clearly show that the committee was right to start asking questions about Solyndra when we opened up our investigation 7 months ago.

The administration's actions in this case are deeply troubling, and so is their response to our findings. Rather than engage in a dialogue about their efforts to protect the taxpayer from the risks posed by Solyndra, they are arguing to the press the clean energy and DOE projects that Republicans on this committee have supported. They believe that this somehow undermines our basis for asking tough questions about Solyndra.

According to Politico, "Obama administration officials have spent the last week digging up letters, sound bites, and media stories from Republican lawmakers who had previously begged for clean energy spending in their districts."

First let's talk about clean energy. Yes, Republicans do support innovation, and we are uniform in our support of any solution that improves our energy security. While we may question whether the Federal Government is capable of selecting the most promising companies and technologies, we had concerns about the stimulus when it passed in 2009, and we have concerns now that it failed to deliver the jobs that were promised. This is not a debate about the virtues of clean energy. It is a serious inquiry into reckless use of taxpayer dollars on a company that was known to pose serious risks before a single dime went out the door.

Yield back.

[The prepared statement of Mr. Upton follows:]

**Opening Statement of the Honorable Fred Upton
Chairman, Committee on Energy and Commerce
“From DOE Loan Guarantee to Bankruptcy to FBI Raid:
What Solyndra's Executives Knew”
September 23, 2011
(As Prepared for Delivery)**

In 1963, there was a Great Train Robbery in England. At the time, I think it might have been the largest heist ever, and because of its cleverness, the legend continues.

The take was over £2.6 million.

Now, we have our own, modern day, great train robbery.

But it appears that we have a great heist of over half a billion dollars and possibly even willing collaborators, maybe even co-conspirators, called the U.S. Government, who rushed out a \$535 million loan to Solyndra.

It is a very sad commentary that we met resistance every step of the way of seeking answers to basic questions overseeing the “approval process” of this project.

We had to finally resort to a subpoena and now the outright resistance of getting answers that both of you assured us, only last week, that you’d provide.

Let me just warn you and the other folks involved in this taxpayer rip-off.

We’re not done. No we’re not.

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Last week we learned even more troubling facts about the administration’s review of the Solyndra guarantee. Concerns about liquidity and cash flow were ignored. The financial model showed the company would run out of cash by September 2011 — which, as it turns out, is precisely when it did. OMB felt pressured to complete its review in time for a groundbreaking event with Vice President Biden. When Solyndra faced default at the end of last year, the administration restructured the guarantee and put the taxpayers behind the investors – this

despite concerns raised by OMB staff that the restructuring would not be a better deal for the government. These facts clearly show that this committee was right to start asking questions about Solyndra when we opened our investigation seven months ago.

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This is not a debate about the virtues of clean energy – it is a serious inquiry into reckless use of taxpayer dollars on a company that was known to pose serious risks before a single dime went out the door.

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Mr. STEARNS. The chairman yields back.

Ms. Schakowsky, the gentlelady from Illinois, is recognized for 2 minutes. As I told all the members, we are trying to strictly enforce that 2 minutes. I would appreciate your support. Thank you.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

I am saddened that a company in which both the Bush and Obama Departments of Energy saw such promise has filed for bankruptcy, causing the loss of more than 1,000 high-tech jobs. I also seek answers from Solyndra's executives about the possibly misleading or incomplete assessment of the company's financial position and the cause and circumstances behind the FBI raid on Solyndra facilities and executives' homes earlier this month.

And it is unfortunate that Mr. Harrison and Mr. Stover have elected not to testify or answer questions today so that our subcommittee together might have answers to those questions.

However, I think it is important that as we work to address the Solyndra situation that we don't throw the baby out with the bath water. Last night, exploiting the Solyndra case, this House voted to cut the DOE loan guarantee program. This is a shortsighted mistake that will undermine our ability to compete in the global energy sector. As the demand for energy rises, emerging technologies will need our support to compete with businesses in China, whose solar industry was provided with \$30 billion in government subsidies just last year. Conceding the green energy race to China would be a reckless and irreversible decision.

In a Politico op-ed last week, a group of leading American venture capitalists said that the, "nascent clean energy industry needs more than venture capital to succeed." They insist that only a program like the loan guarantee program has the resources required to fully promote our green energy economy. As we move forward with our investigation of Solyndra, we should ensure that the loan guarantee program remains a priority for this Congress and our country.

And now I yield back the remainder of my time.

Mr. STEARNS. I thank the gentlelady.

And the chairman emeritus of the full committee and the distinguished gentleman from Texas is recognized for an opening statement for 2 minutes.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Mr. Chairman.

Let's set the scene. It is a sunny day in northern California. It should be a good day for a solar energy company, especially a solar energy company that has just received a government guaranteeing loan of over half a billion dollars, a solar energy company that has been paid a visit by the President of the United States himself, a solar energy company that President Obama called the true engine of economic growth and touted as a green energy success story, a stimulus success story, and a job-creating success story.

As it turns out, that day was not a good day for the company. Instead, that company, after taking a half a billion dollars of taxpayer money, closed its doors, laid off over a thousand employees, and declared bankruptcy. The next week the FBI knocked down the company's door to secure its files.

The question before the subcommittee today, Mr. Chairman, is, how does a company go from having the President of the United States visit it to having the FBI come in and confiscate its files? The American people deserve an answer to that question, Mr. Chairman.

The two gentlemen who sit before the committee today told us informally and in meetings with the staff that they were ready to answer questions; they had nothing to hide. They made a deal with this committee to delay the date of the hearing with a promise that when they came they would answer our questions.

Now they are going to assert their Fifth Amendment right and refuse to answer our questions because those questions, the answers to those questions might be incriminating. However, I am sure that the members of this subcommittee will still ask those questions so at least the American people, Mr. Chairman, know what questions should be answered.

With that, I yield back.

[The prepared statement of Mr. Barton follows:]

**Opening Statement of the Honorable Joe Barton
Chairman Emeritus, Committee on Energy & Commerce
Subcommittee on Oversight and Investigations, Hearing
“From DOE Loan Guarantee to Bankruptcy to FBI Raid:
What Solyndra’s Executives Knew”
September 23, 2011**

Thank you Mr. Chairman. Let me set the scene for you: it’s a sunny afternoon in Northern California, which should be a good day for a solar energy company. Especially a solar energy company that received a government guaranteed loan of over \$530 million dollars. A solar energy company that was paid a visit by the President of the United States. A solar energy company that President Obama called “the true engine of economic growth” and touted as a green energy success story, a stimulus spending success story, a job-creating success story. As it turns out, that day was not a good day for that company. Instead that company declared bankruptcy, closed its doors, and laid off over a thousand employees. The next week, the FBI knocked down the company’s door.

Well, the outlook for this company, Solyndra, is not any brighter today. Now, this company has Chairman Stearns, Chairman Upton and this Committee knocking on its door and we are just as tough as the FBI.

The two gentlemen who sit before this Committee today are the CEO and CFO of Solyndra. And despite making a deal with this Committee to delay the date of this hearing with the promise to answer our questions, they have indicated that they are not willing to uphold their end of the bargain. I understand that these men plan to assert their 5th Amendment right and refuse to answer our questions because the answers may be incriminating. However, it is my intention to ask them questions that I know my constituents and the American people want the answers to.

I want to ask these gentlemen if it is true that the former CEO and other investors of Solyndra met frequently with the White House? I don’t understand why they can not answer that question unless they feel that these meetings somehow could be incriminating. I want to ask these gentlemen if they were telling the truth to me and other members of this Committee when they visited us this summer and told us that the company was a good investment, remained strong, and was leading the way in solar energy? I don’t understand why they can’t answer that question unless they feel that the truth could somehow be incriminating.

The truth is that after reviewing the documents, this Committee has discovered some of the mischievous dealings by these Solyndra executives, Department of Energy representatives, personnel at the Office of Management and Budget, and staff at the White House itself. The facts illustrate that this was a bad bet, a bad deal, and now a failed enterprise financed on the backs of honest taxpayers who will not be repaid. This is just the beginning of this investigation, and I support the Committee’s ongoing efforts to get to the bottom of what is going on at the Department of Energy under this Administration.

Mr. STEARNS. Thank the gentleman.

The gentleman from California, the ranking member of the full committee, Mr. Waxman, is recognized for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Two weeks ago, Ranking Member DeGette and I requested the senior executives from Solyndra appear before our committee, and I am pleased that Chairman Stearns agreed and invited Brian Harrison, CEO, and Bill Stover, the CFO, to testify before us today. The attorneys for Mr. Harrison and Mr. Stover have indicated that both witnesses will invoke their constitutional rights under the Fifth Amendment. I respect that they have this constitutional prerogative, but I am disappointed they will not answer our questions.

When Mr. Harrison was in my office in July, he said that Solyndra's future was bright, with sales and production booming, and I would like to know why he told me that in July and then filed for bankruptcy 1 month later. Unfortunately, I will not get an answer today.

As this investigation continues, one key question is whether the Department of Energy made a mistake in investing in Solyndra. Chairman Upton and Chairman Stearns said they already know the answer to this question. They said last week that Solyndra was a "bad bet from the beginning."

A lot of smart people thought otherwise. In March 2010, the Wall Street Journal announced a ranking of the top 10 venture-backed clean technology companies. Solyndra was number one on that list. Some very successful and experienced private venture capitalists invested over a billion dollars in Solyndra, twice the support of the Federal Government. They obviously did not share Chairman Upton's views.

Our next step in this investigation should be to hear from these investors. That is why Ranking Member DeGette and I wrote Chairman Stearns and Chairman Upton early this week to request a hearing with Argonaut Private Equity and Madrone Capital Partners, Solyndra's two largest private investors. They will be able to tell us what private investors thought about the company and its business prospects.

We need to put our investigation into perspective. Republicans in Congress are now dancing on Solyndra's grave, but they seem to have a case of collective amnesia. It wasn't too long ago they were urging the Department of Energy to award loans and loan guarantees to companies in their districts.

One Republican member of our committee, Representative Blackburn, welcomed the award of a \$1.6 million loan to a Japanese company in her district. Another member, Representative Bass, said he believed in the subsidies received by Granite Reliable Power in his district. Two other members, Representative Bilbray and Representative Bono Mack wrote the Speaker earlier this year to support DOE's loan guarantee program. Even Chairman Upton pressed for clean energy loans in his State.

Risk is an inherent component of the loan guarantee program. That is necessarily the case with a program designed to help new technologies get off the ground. The alternative is to simply give up on the important role that government can play in supporting development of these technologies.

We need to face reality and stop denying science. Climate change is real, and it is caused by man. In the past year alone, extreme weather has caused record floods, droughts, and fires that have turned much of our Nation into disaster areas. The future will belong to the countries that recognize reality and invest in clean energy. China knows this and invested \$30 billion in Chinese solar manufacturers last year alone. We need an effective strategy to compete.

That is why Ranking Member DeGette and I wrote the chairman yesterday to ask for a hearing. Unfortunately, we seem intent on denying the future.

Last night, Republicans voted to block funding for clean vehicles, and they voted to take away funding for innovative renewable energy projects. That is not an economic plan for the future. It is a job-destroying strategy that keeps us tied to a fossil fuel past.

Mr. STEARNS. The gentleman yields back the balance of his time. We are in opening statements.

The gentleman from Nebraska, Mr. Terry, is recognized for 2 minutes.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman, and this was to be an important hearing. As the chairman of the full committee said, we want clean jobs. We like clean energy. All of us want jobs to be created in our own districts. Some of the districts mentioned by Mr. Waxman have very high unemployment rates. So when you combine the two, it only makes sense that Members would encourage job growth in their own communities.

And I think it is a tactic that is being used by the White House and now by members of this committee to deflect attention away from the real issues, and that is whether or not, the fundamental question, was DOE and OMB and the White House duped by Solyndra or did they ignore the information that was available to them for whatever purposes, whether it was to put green energy in a better light than it was currently in the markets, for press availability or even more onerous, for one of its major shareholders, Mr. Kaiser, who had 16 contacts with the White House, some of which were during important times of consideration for Solyndra's request.

Those are all legitimate questions that we need answered, that could have been answered here today. So it is disturbing that when the taxpayers have been duped out of over \$500 million, that we are not receiving the information on their behalf that could resolve questions and fix the problems for the future.

And I yield back.

Mr. STEARNS. The gentleman yields back.

The gentleman from Massachusetts is recognized for a 2-minute opening statement.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. Last night, the Republican House passed a bill that would destroy the advanced technology vehicle loan program and destroy the renewable energy loan guarantee program and destroy thousands of jobs. And what was the rationale? They used Solyndra. Is this just a failed company that could not compete when faced with a 42 percent decline in the price of solar energy? Or was wrongdoing involved? We don't know the answer to that. But the Republican majority is recklessly exploiting this one case to advance a political agenda that is very clearly aimed at killing the solar, wind, and renewable industries. It is reckless to toss around accusations of illegality on the part of the Department of Energy officials who agreed to restructure the Solyndra loan guarantee by putting some private investors ahead of taxpayers in the reimbursement line.

I sent Mr. Upton and Mr. Stearns a letter this morning that provides a bit of a history lesson. The loan guarantee program was created at 2:30 a.m. in this room in July of 2005 in the conference between the House and Senate on what would become the Energy Policy Act of 2005. Senator Domenici authored the provision largely as a way to pay for the nuclear power plants that Wall Street had no interest in financing. I offered an amendment to strike, but the amendment was opposed by the Republican majority, and the provision became law.

The nuclear industry hailed the new law, but soon everyone started complaining. Republican members of this committee, along with the nuclear industry, excoriated DOE for not getting the loan guarantees out the door more quickly, and the nuclear industry said repeatedly that if DOE did not allow private investors to jump ahead of taxpayers in the reimbursement line, Wall Street wouldn't give them the money to build any new nuclear power plants. DOE finally acceded to the nuclear industry's wishes and changed the rules—

Mr. STEARNS. The gentleman's time has expired.

Mr. MARKEY. But it wasn't secret. It wasn't sudden—

Mr. STEARNS. The gentleman's time has expired.

Mr. MARKEY [continuing]. And it followed the right regulatory—

Mr. STEARNS. With that, I recognize the gentleman—

Mr. MARKEY. We should hold hearings on the nuclear industry's—

Mr. STEARNS [continuing]. From Pennsylvania, Mr. Murphy, is recognized for an opening statement.

Mr. MARKEY [continuing]. To change these rules.

OPENING STATEMENT OF HON. TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. MURPHY. Thank you, Mr. Chairman.

In January 2009, the Department of Energy Bush administration credit committee unanimously rejected the Solyndra loan. Three weeks later, the process began again. In March, they said this deal

is not ready for prime time, and by August, DOE employees warned that Solyndra model runs out of cash, and yet what happened next was pretty incredible.

There are two major factors that suggest strongly the focus was on protecting the money of the investors and executives, not the taxpayers. It was an airtight scheme that trumps the Bernie Madoff scheme. First, Solyndra executives filed with the SEC in December 2009 this initial public offering, which could ensure them a strong financial return by being able to profit from stock sales. The New York Times said behind the pomp and pageantry of a Presidential visit, Solyndra was rotting inside, hemorrhaging cash so quickly that within weeks of Mr. Obama's visit, the company cancelled plans to offer shares to the public.

Secondly, the law clearly and unequivocally states the taxpayers will not be subordinate to other financing in these loans, but the executives and investors arranged the contract to put themselves first in January of 2011.

It appears you knew the Titanic was sinking and you made sure you got to the life boats first. I am very disappointed we will not get answers to this today, but the taxpayers deserve answers, and they deserve to get their money back.

I yield back.

Mr. STEARNS. The gentleman yields back.

For an opening statement, the gentleman from Texas, Mr. Green, is recognized for 5 minutes—2 minutes, 2 minutes.

**OPENING STATEMENT OF HON. GENE GREEN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Mr. Chairman. I thought you were going to give me extra time because we are kind of slow talkers.

Today's hearing should be an opportunity for Solyndra to clear its name. However, due to the ongoing investigation and the witnesses exercising their constitutional right, they will not shed any light on the events surrounding a loan guarantee or the restructuring of the loan. It is their right to do so, but I am disappointed we will not get the information.

Like other Members of Congress, in July, shortly after this issue was first raised by the subcommittee, our staff met with the representatives of Solyndra. During this meeting, our office was assured that Solyndra was solvent and well positioned to grow. Only days later Solyndra filed bankruptcy.

It is clear that they were disingenuous at best. They misled our office and other members of this subcommittee. This leads me to believe that there is a good chance they similarly misled investors and the Federal Government throughout the loan guarantee process.

What is important to recognize is no entity, even the Federal Government, is immune to fraud. The case of Solyndra should not lead anyone to believe that our country should not stop exploring the development of alternative energy sources, particularly solar. Loan guarantees need to be thoroughly vetted, but if a mistake is made, a fraud happens, we can't simply turn and run away. Wrongdoing should be thoroughly and vigorously investigated, and

perpetrators should be punished, but we must continue to explore ways to derive energy from alternative sources.

For instance, 90 percent of Israeli water is heated with solar power. Other countries are doing this, and so should we. If we are not aggressively pursuing these technologies, we will be left behind. If we lose our competitive edge, if our Nation ceases to be the world leader in technological development and innovation, the financial loss we are experiencing due to Solyndra will be dwarfed by our inability to compete.

While I am shocked at the conduct of this company, and I welcome the investigations by this subcommittee and the Department of Justice, the allegations have been made and maybe in this case cannot be used as a pretext for abolishing Federal programs that have enormous potential.

And I yield back my one second.

Mr. STEARNS. I thank the gentleman.

And for an opening statement, Dr. Burgess is recognized for 2 minutes.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. I thank the chairman for the recognition. I want to thank the witnesses for appearing today and do note they are here voluntarily and not under subpoena. I am obviously disappointed, as is every other member of the committee, that we will not be able to get our questions answered today as the assertion is that you will assert your privileges under the Fifth—or your rights under the Fifth Amendment.

Mr. Chairman, we have been trying for months to get this information out of the Department of Energy and Office of Management and Budget, and it is a shame that this committee has been stonewalled. It is a shame that this committee had to resort to a subpoena in July of this year in order to get this information and that that subpoena passed on a party line vote. I suspect there are several members on the other side of the dais that would like to have that vote back in light of what we know.

Yes, last night, the money for further disbursements of cash to these energy programs was corralled in the continuing resolution. I think that was a good thing. I only wish we could have gotten more.

Mr. Markey, in March of 2010, at this very table, one of your subcommittee hearings, Cathy Zoi, an assistant secretary of the Department of Energy, told this committee that all of the money for these energy programs was obligated and out the door at the Department of Energy. That was 15 months ago. And now we learn that rapidly approaching the end of the fiscal year, they are trying to cram \$8 billion more out the door. Hell, yes, we took that money back. So if DOE is going to continue to be chumps, we ought to at least try to corral what they are doing.

I only wish we could have appropriated a little bit more money, invested in some crime scene tape and taken it down there and circled their building. I hope they will be forthcoming in the future, I hope Secretary Chu will be down here to our committee to testify. It is only the right thing to do, you owe it to the taxpayers, come

to our committee, bring the documents, and tell us what you know. I yield back.

Mr. STEARNS. The gentleman yields back. The chair recognizes the gentleman, the distinguished gentleman, from Michigan, Mr. Dingell, for 2 minutes of an opening statement.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, like every other member of this committee, I am disappointed, and we feel that we should be able to ask questions of today's witnesses. If we are going to look into this issue, we need to get both sides of the story, and in all truth, I believe the witnesses today have much to tell us that is probably in their interest, but their behavior is fully within the Constitution, and like everybody else, I have to support and protect those rights because they were wisely given by great men.

Now, having said this, I am hard put to believe there is wrongdoing on the part of the Department of Energy's loan program office. I believe that that agency has documented that fact over the course of 3 years and two administrations, one of each, Republican and Democratic. And I believe that they have shown that due diligence was done by the loan program office and by outside engineering and market consultants. And I know how hard it is to get loans because I have had to support on a number of occasions constituents of mine who had need of this kind of assistance.

In any event, members of the subcommittee were assured earlier this year that the company was thriving and on track to success, and it concerns me that we may have been given inaccurate information. I did hope that we could hear Solyndra's story at some point as we went through these matters. How many of my colleagues on this subcommittee support renewable energy is very clear. Many members on both sides of the aisle submitted letters in support of Recovery Act funding projects for this district, for their districts, Republicans and Democrats, and I hope that we don't take the failure, for whatever reason, of this project to mean that all renewable energy projects are bad investments or that the Congress or that the government should not establish programs that enable the government to support new technology to keep this country competitive.

I thank you for the time, Mr. Chairman. I yield back.

Mr. STEARNS. I thank the gentleman.

We recognize the gentlelady from Tennessee, Mrs. Blackburn, for an opening statement of 2 minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And welcome to our witnesses. We are pleased that you are here. We are very disappointed that you are not going to answer the questions that we have on behalf of our constituents and the American taxpayers that want to know what happened to the money.

And Mr. Harrison and Mr. Stover, I think it is important that you realize, this hearing is not about science or energy policy. It is not about previous legislation. This hearing is about you, the Department of Energy, and your interaction with the administration. There is a desire to be accountable. We want to be accountable to the taxpayers. We need to have the answers from you. There are plenty of questions to go around.

Mr. Chairman, did Mr. Harrison plead the Fifth as he interacted with the White House? Did he find it necessary to plead the Fifth when he visited with some of my colleagues and said that you were on pace to triple your output? In fact, if we have learned anything about Mr. Harrison, it is that until this morning, he has had no problem talking about the company.

In fact, it makes you wonder what you are trying to hide or cover up. Did your 1,100 former employees know that they were going to be laid off on the morning of August 31st? Did they know that there was going to be difficulty with the financial bearings of your company? Did they understand that there are plenty of questions that are yet to be answered?

I think another part of this story that causes concern is what is going to happen with the \$783 million you owe to creditors that trusted you.

I yield back.

[The prepared statement of Mrs. Blackburn follows:]

**Opening Statement of The Honorable Marsha Blackburn
Subcommittee on Oversight & Investigations
From DOE Loan Guarantee to Bankruptcy to FBI Raid: What Solyndra's
Executives Knew
September 23, 2011**

Thank you Mr. Chairman and welcome to our witnesses,

We are pleased that you are here; we are very disappointed that you are not going to answer the questions that we have on behalf of our constituents and the American taxpayers that want to know what happened to the money. And Mr. Harrison and Mr. Stover I think it is important that you realize this hearing is not about science or energy policy. It is not about previous legislation. This hearing is about you, the Department of Energy and your interaction with the administration. There is a desire to be accountable. We want to be accountable to the taxpayers. We need to have the answers from you. There are plenty of questions to go around.

Mr. Chairman, did Mr. Harrison plead the fifth? Is he interacted with the White House? Did he find it necessary to plead the fifth when he visited with some of my colleagues and said that you were on pace to triple your output? In fact if we have learned anything about Mr. Harrison it is that until this morning he has had no problem talking about the company. In fact it makes you wonder what you are trying to hide or cover up. Did your 1,100 former employees know that they were going to be laid off on the morning of August 31st? Did they know that there was going to be difficulty with the financial bearings of your company? Did they understand that there are plenty of questions that are yet to be answered? I think another part of this story that causes concern is what is going to happen with the 783 million dollars you owe to creditors that trusted you.

I yield back.

Mr. STEARNS. The gentlelady yields back.

There is no longer on the Democrat side, so we will move to the Republican side.

The gentlelady from North Carolina, Sue Myrick, is recognized for an opening statement for 2 minutes.

OPENING STATEMENT OF HON. SUE WILKINS MYRICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mrs. MYRICK. Thank you, Mr. Chairman, I appreciate that, and it goes without saying that I am, like everyone else on this committee, very disappointed that we are not going to get any answers today. We appreciate your being here, and we respect your Fifth Amendment rights, no problem about that.

But I am confident that the committee will get to the bottom of this in the future because we want to find out exactly what went on and how this loan guarantee was handled. And also, what was the real reason for the company's eventual failure after the Federal Government provided support?

I would also be very interested to hear about the financial controls internally or lack thereof because a September 22nd Washington Post article about Carol Leonnig and Joe Stephens cited former employees who saw Solyndra's executives burning through cash after receiving the Federal loan guarantee. The article also mentions that inventory continued to pile up in Solyndra's leased space at the same time they were building their \$340 million-plus facility around the corner. Like most Americans, I would be very interested to know how Solyndra spent so much money so quickly and if the company's management team really believed in the financial picture that they painted at the same time the company was evidently spiraling toward ruin. I would also like to ask our witnesses if they could point to anything that Solyndra did that will ultimately benefit the American people.

Unfortunately, these questions won't be answered this morning. However, as I said before, it is not the end of the investigation, and I know we will get these questions answered in due time. It is the least we can do for the taxpayers who have been left holding the bag on this one.

I yield back.

Mr. STEARNS. The gentlelady yields back.

The gentleman from Georgia, Dr. Gingrey, is recognized for an opening statement for 2 minutes.

OPENING STATEMENT OF HON. PHIL GINGREY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. GINGREY. Mr. Chairman, I want to thank you for calling today's hearing as we attempt to get answers from the executives of Solyndra. Unfortunately, despite assurances from Solyndra's executives in an email dated September 10, 2011, that they would testify before this subcommittee, I am extremely disappointed that CEO Brian Harrison and CFO W. G. Stover have reneged on this pledge to provide us with answers and instead chose to invoke their constitutional rights under the Fifth Amendment to avoid self-incrimination.

Mr. Chairman, hundreds of millions of taxpayers are owed an explanation as to how they were swindled out of \$535 million in loan guarantee money. My constituents in northwest Georgia deserve to know why it is that this company, whose financial outlook in August of 2009 indicated that they would be out of cash in September of 2011, in fact the time that they declared bankruptcy, and yet received a hefty loan in a rush to judgment about unproven technology. Yet today we hear nothing.

Even more frustrating than the carelessness in which Solyndra acted after putting taxpayers on the hook for over half a billion dollars is the fact that these executives sitting before us today had the audacity to tell members of this subcommittee 2 months ago the merits of Solyndra, only to see its doors close, leaving another thousand people out of work.

Now, as we all know, Solyndra is the subject of a criminal investigation by the FBI. Mr. Chairman, my constituents would like to know the answers to several questions. How did Solyndra manage to obtain this loan in the first place, given the shaky financial outlook? What interaction did Solyndra have with the White House during this process? How did Solyndra restructure its finances in February of this year and obtain Obama administration's approval to return \$75 million to private investors before taxpayers were paid back? Was this a violation of Federal law? Mr. Chairman, these questions will be answered with nothing but silence, as you can see. This subcommittee deserves better—

Mr. STEARNS. The gentleman's time has expired.

Mr. GINGREY [continuing]. And quite frankly, the American people deserve better.

Mr. STEARNS. And the gentleman from Colorado, Mr. Gardner, is recognized for an opening statement for 2 minutes.

OPENING STATEMENT OF HON. CORY GARDNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. GARDNER. Thank you, Mr. Chairman.

And I thank you for being here today. You received the full faith and credit of the United States. The American people deserve answers. What went wrong? What could have been done? Did the lobbyists know? Was information hidden from the Department of Energy? Did the Department of Energy paint a rosy picture, hiding from Congress? Half a billion dollars was taken from the American people. They won't get it back. This morning this Congress passed a continuing resolution, and you have managed to do something that few Congresses have. You have killed a program.

We don't have answers, but we will continue to ask. We will restore the full faith and credit of this country and the answers that they deserve.

Yield back.

Mr. STEARNS. The gentleman yields back, and we recognize the gentleman from Virginia, Mr. Griffith, for an opening statement 2 minutes.

OPENING STATEMENT OF HON. H. MORGAN GRIFFITH, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. GRIFFITH. I respect your decision to invoke your constitutional Fifth Amendment rights. That stated, the American people deserve to know the answers to a lot of questions. After all, it is their money we are talking about.

If I had the opportunity to ask questions which would be answered today, I would ask, in light of the fact the Justice Department got a search warrant for your records shortly after the unflattering emails from within the Obama administration were given to this committee, do you feel you have been unfairly targeted by the Obama administration's Justice Department in order to keep you from testifying here today? Or do you believe the Justice Department's investigation in this matter is a smokescreen by the administration to shield the administration's gross negligence in giving you and possibly others questionable loan guarantees in the first place? Or do you believe it is a smokescreen for the administration's decision to subordinate \$75 million of taxpayer money against the clear meaning of the law?

Secondly, did you or anyone at your direction speak with anyone, particularly legal counsel, at the Department of Energy in an attempt to persuade or educate them that there was a legal theory that would allow subordination of taxpayer loan guaranteed money? Also I would like to know, did you have knowledge of anyone else possibly speaking to, particularly legal counsel, at the Department of Energy in an attempt to persuade or educate them that there was a legal theory that would allow such a subordination?

I would also have inquired whether you could affirmatively state that you don't have any knowledge of representatives from Argonaut or Madrone speaking to anyone, particularly legal counsel, at the Department of Energy in an attempt to persuade or educate them that there was a legal theory that would allow subordination.

Thank you, Mr. Chairman, I yield back.

Mr. STEARNS. The gentleman yields back.

We have completed our opening statements at this point, so now we will move to the witnesses.

Mr. Sullivan is recognized for 2 minutes in an opening statement.

OPENING STATEMENT OF HON. JOHN SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SULLIVAN. Thank you, Mr. Chairman.

This is a critical hearing to examine Solyndra's representation on its financial status to this committee and the Department of Energy.

Mr. Harrison, on July 21st, you came to my office to meet with me, and I quote from your meeting request to my office to discuss Solyndra's continued success in the global marketplace. I guess a lot can change in 5 weeks.

In our meeting, you lied to me about the financial health of your company because just 5 weeks later, your company was bankrupt. What happened?

Today I want to know how your now-bankrupt company got \$535 million taxpayer-funded loan guarantee from DOE, and I also want to know how your chief financial officer, Mr. Stover, duped the Obama administration and others on the financial health of your company. The American people deserve answers because they footed the bill. Did you know when you were meeting with me and other members that your company would be bankrupt 5 weeks after your Hill visits?

As a long-time critic of the Solyndra loan guarantee, I want to know what happened. Americans deserve to know their taxpayer dollars are being spent wisely.

And I yield back.

Mr. STEARNS. The gentleman yields back. I think at this point we are complete with our opening statements. Now we will move to our witnesses.

My colleagues, my understanding is that Mr. Harrison and Mr. Stover authorized their counsels to advise the committee that they will rely on their constitutional right not to testify at today's hearing. I believe that this privilege should be personally exercised before the members, as we have done in the past, and that is why we have requested Mr. Harrison and Mr. Stover's appearance today. I request that given the importance of their testimony, they reconsider their decision to invoke the Fifth Amendment—their Fifth Amendment rights, especially because the American people deserve answers about what happened to half a billion dollars of their money, and because Mr. Harrison met with many of us and made statements to us, so we think we should answer our questions—they should answer our questions now.

In addition, both of you and your company, Solyndra, have made statements that you don't know of any wrongdoing and that you are cooperating with the Department of Justice. If you are not aware of any wrongdoing, how can you plead the Fifth Amendment and say that answers to our questions will expose you to criminal liability? I ask you today, both of you, to reconsider.

I am now going to place both of the witnesses under oath.

Mr. Harrison, you are aware that the subcommittee is holding an investigative hearing, and in doing so, we have the practice of taking testimony under oath. Do you have any objection to being under oath during your testimony?

Mr. HARRISON. No.

Mr. STEARNS. Mr. Stover, you are aware that the subcommittee is holding an investigative hearing, and in doing so, we have the practice of taking testimony under oath. Do you have any objection to being under oath during your testimony?

Mr. STOVER. No.

Mr. STEARNS. The chair also advises you that under the Rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

Mr. Harrison?

Mr. HARRISON. Yes.

Mr. STEARNS. Mr. Stover?

Mr. STOVER. Yes.

Mr. STEARNS. In that case, would you please identify your counsel for the record, each of you?

Mr. HARRISON, please identify your attorney by name.

Mr. HARRISON. Mr. Walt Brown.

Mr. STEARNS. Mr. Stover?

Mr. STOVER. Jan Little.

Mr. STEARNS. Thank you.

At this time, will you both please rise and raise your right hand, and I will swear you in. And I need you to make sure your mike is on if you don't mind.

[Witnesses sworn.]

Mr. STEARNS. Thank you, Mr. Harrison, and thank you, Mr. Stover.

The chairman recognizes himself for questioning of the witnesses. And I should be less than 2 minutes hopefully.

Mr. Harrison and Mr. Stover, was every document and piece of information you submitted to the Department of Energy and the White House, Office of Management and Budget, the United States Congress, and your investors accurate and complete to the best of your knowledge?

Mr. HARRISON. Mr. Chairman, I have tremendous respect for this subcommittee and the important oversight role that it plays. As much as I wish to be able to answer the members' questions, I have been advised by my counsel that it is the better course for me to assert my constitutional right to decline to answer questions under the Fifth Amendment. While I hope to have an opportunity to assist this committee's inquiry in the future, on the advice of my attorney, I must respectfully decline to answer any questions put forth to me by this committee.

Mr. STEARNS. Mr. Stover?

Mr. STOVER. Mr. Chairman, on the advice of my counsel, I must invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution, and I respectfully decline to answer any questions put to me by this committee and subcommittee. I have great respect for the crucial oversight role that Congress plays in our democracy. I trust that the members of this subcommittee similarly have great respect for the privilege afforded every citizen by the Fifth Amendment.

Mr. STEARNS. Mr. Stover, knowing the financial conditions of the company in mid July, were you aware of Mr. Harrison coming to Congress and painting such a rosy picture of the company? Did you review all the financial information being presented to Members of Congress, Department of Energy, and OMB, and did you discuss it with Mr. Harrison?

Mr. STOVER. On the advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution, and I respectfully decline to answer any questions.

Mr. STEARNS. My time has expired. We will now go to the gentleman from Texas, Mr. Barton, who is recognized for a minute and a half. I am sorry, we recognize—I think what we are going to do is go 5 minutes on this side, and then 5 minutes on their side. So, Mr. Barton, you are recognized for a minute and a half.

Mr. BARTON. Before my time starts, could I inquire of the chair if the witnesses were given an opportunity to give an opening statement? They didn't, but were they offered that?

Mr. STEARNS. No, they were not.

Mr. BARTON. They were not offered an opportunity?

Mr. STEARNS. They are certainly welcome the opportunity to speak today.

Mr. BARTON. I would ask unanimous consent that we give them the opportunity to give a statement if either of them wishes to.

Ms. DEGETTE. I don't have an objection.

Mr. BARTON. Normally we give witnesses an opportunity to make a statement.

Mr. STEARNS. It is my understanding, Mr. Barton, that when you are taking the Fifth, there is no opportunity for opening statements.

The gentlelady.

Ms. DEGETTE. If the gentleman will yield, we were—the way this subcommittee has operated for, as you know, Mr. Chairman Emeritus, for the last number of years is when witnesses appear to take the Fifth, they generally don't give an opening statement, but I would certainly have no objection if either of these witnesses decided to give one.

Mr. BARTON. I just think we should give them that opportunity to show that we are fair and balanced, as they say.

Mr. STEARNS. Mr. Barton, we are told by their counsel that met with our counsel, they did not wish to give an opening statement, and that is what we are hearing from their counsel.

Mr. BARTON. Well, we were also told that they were going to answer questions.

Mr. STEARNS. Well, I think this is a fine point, but I think judging from the counsel's reaction here, they do not wish to give opening statements, and I think if you look at their nodding heads, I think that should be apparent to you they do not wish to give opening statements.

Do you wish to give an opening statement?

Mr. BARTON. I wish to ask questions, Mr. Chairman.

Mr. STEARNS. Go ahead and give your—excuse me, ask your questions, yes.

Mr. BARTON. I want to ask Mr. Harrison if he thinks the American people who have invested over half a billion dollars deserve to know what happened to that money.

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the Constitution, and I respectfully decline to answer any questions.

Mr. BARTON. I want to ask the same question to Mr. Stover.

Mr. STOVER. On the advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer any question.

Mr. BARTON. I don't understand what is self-incriminating about a yes or no answer as to whether the American people deserve to know what happened to over half a billion dollars of their money, but then I am not a defense lawyer, Mr. Chairman.

I would, secondly, like to know what changed between January of 2009, when the Bush administration and DOE rejected the loan

application, to March of 2009, when the Obama administration reversed course and approved this half a billion dollar loan. Mr. Harrison, would you care to answer that question?

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the Constitution of the United States, and I respectfully decline to answer any questions.

Mr. BARTON. I would like to ask the same question to Mr. Stover.

Mr. STOVER. On the advice of counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer any questions.

Mr. BARTON. Again, Mr. Chairman, I am puzzled by the assertion of a right against self-incrimination, which the only obvious thing that changed is the occupant in the White House. And that is certainly not illegal for the American people to decide to put a new President in the White House.

I have got time for one more question.

Is it not true, Mr. Harrison, that the former CEO and other investors of Solyndra met frequently with officials in the Obama White House?

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the Constitution of the United States, and I respectfully decline to answer any questions.

Mr. STEARNS. The gentleman's time has expired.

Mr. BARTON. I would like Mr. Stover to be given an opportunity to answer that question.

Mr. STEARNS. Mr. Stover, answer the question.

Mr. STOVER. On the advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer the question.

Mr. BARTON. Again, Mr. Chairman, I see nothing that is incriminating about people going to see folks in the White House.

Mr. STEARNS. The gentleman's time has expired.

Mr. BARTON. I will say this, Mr. Chairman.

I hope on a bipartisan basis we get to the bottom of this. I hope our staffs look at the constitutionality of invoking a broad privilege when in fact there doesn't appear to be any reason for these gentlemen not to answer the questions of the subcommittee.

Mr. STEARNS. I thank the gentleman.

And the gentleman from Nebraska is recognized for 1 minute.

Mr. TERRY. Thank you, Mr. Chairman.

To Mr. Harrison and Mr. Stover, did you or someone on Solyndra's behalf discuss with investor Mr. Kaiser of the perilous financial position before February 23, 2011, when the DOE and OMB agreed to subordinate the United States' position to recover funds in a bankruptcy to investors like Mr. Kaiser?

Mr. Harrison.

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the United States Constitution, and I respectfully decline to answer any questions.

Mr. TERRY. Mr. Stover.

Mr. STOVER. On the advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer the question.

Mr. TERRY. Yield back.

Mr. STEARNS. The gentleman yields back.

The gentlelady, the ranking member, is recognized for 5 minutes.

Ms. DEGETTE. Gentlemen, based on the answers that you have given to the other members of this committee, Mr. Harrison, I would like to ask you first, it is my understanding that upon the advice of counsel, you intend to exercise your Fifth Amendment right to not answer any questions on any subject put to you by this committee today. Is that correct?

Mr. HARRISON. Yes.

Ms. DEGETTE. Mr. Stover, I am going to ask you the same question. Based on your responses to the questions asked to you by the other members of this committee, it is your intention, based on the advice of your counsel, that you do not intend to answer any questions based on exercise of your Fifth Amendment right. Is that correct?

Mr. STOVER. Yes.

Ms. DEGETTE. Both of you gentlemen, I will just say these are important constitutional rights that we all treasure. And while we are frustrated today, particularly because you told a number of us in August that the company was strong, that it was doing well, and this was only 5 weeks before the bankruptcy—we would like to get to the bottom of that—we have the utmost respect for the United States Constitution.

And so, therefore, based on that, I will decline to ask you any further questions today.

However, Mr. Chairman, as I said in my opening statement, I would be hopeful that these witnesses, once their legal issues are cleared up and based upon the advice of their counsel, they will voluntarily come back and answer all of the questions put to them by both sides of this committee.

With that, Mr. Chairman, I will just ask the other members on my side if they have any questions for these witnesses at this time. OK.

Mr. Chairman, in that case, we will yield back the first 5 minutes and reserve our second 5 minutes.

Mr. STEARNS. All right. I understand then you are yielding back you're a little over 3 minutes, and you will get another 5 minutes.

At this point, we will go to our side, and recognize for 1 minute the gentleman from Pennsylvania, Mr. Murphy, for 1 minute.

Mr. MURPHY. Thank you, Mr. Chairman.

To both witnesses, in this question, I am not asking you or compelling you to be a witness against yourself, nor am I depriving you of life, liberty or property without due process of law. This question is not of a criminal basis or anything else, but it is important. What is your plan to pay back the taxpayers the \$535 million you owe them, and when will you pay it back?

Mr. Harrison.

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the United States Constitution, and I respectfully decline to answer any questions.

Mr. MURPHY. Mr. Stover.

Mr. STOVER. On the advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer any questions.

Mr. STEARNS. I thank the gentleman.

And now we recognize Dr. Burgess, the gentleman from Texas, for 1 minute.

Mr. BURGESS. Thank you, Mr. Chairman.

Again, thank gentlemen for being here.

A question for both of you, Mr. Harrison and Mr. Stover. In today's New York Times article about this problem, administration officials lay blame for Solyndra's problems on part of the global collapse. Some lawmakers on Capitol Hill question whether the firm's executives have engaged in a coverup of their precarious financial condition. An aide to a top White House official, Valerie Jarrett, was met with three times to push for loans. Would you be willing to provide to this committee communications between yourselves or your senior executives with members of the West Wing of the White House, specifically Ms. Jarrett, Carol Browner, and Rahm Emanuel, or their staffs?

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the United States Constitution, and I respectfully decline to answer any questions.

Mr. BURGESS. Mr. Stover, same question.

Mr. STOVER. On the advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer any questions.

Mr. STEARNS. The gentleman's time has expired.

The gentlelady from Tennessee is recognized for 1 minute.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And to both Mr. Harrison and Mr. Stover, what we would like to know is, who was the first in your company to realize that you were not going to be profitable? And when you became aware, was this discussed at a board meeting? And were DOE staff members present? Were White House employees or administration appointees present for such board meetings? And prior to your bankruptcy filing and your awareness of your financial straits, did you issue bonuses to your senior management, your leadership team, or your board? And was this discussed as an agenda item in a board meeting?

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the United States Constitution, and I respectfully decline to answer any questions.

Mrs. BLACKBURN. Mr. Stover?

Mr. STOVER. On advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer the question.

Mrs. BLACKBURN. Yield back.

Mr. STEARNS. The gentlelady yields back.

The gentleman from Virginia, Mr. Griffith, is recognized for 1 minute.

Mr. GRIFFITH. Thank you, Mr. Chairman.

Gentlemen, I would like to know what role you all played in the subordination and whether or not your company or agents of your

company came up with the legal theory that allowed subordination, in direct conflict with what the statute passed by this Congress says. So if each of you could answer that, I would appreciate it.

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the U.S. Constitution, and I respectfully decline to answer any questions.

Mr. STOVER. On advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the U.S. Constitution. I respectfully decline to answer the question.

Mr. GRIFFITH. Thank you, Mr. Chairman. I yield back.

Mr. STEARNS. Yield back. All right.

When I did my questions, we had 1 minute left on our side.

And I will ask this question for Mr. Harrison. In relation to Solyndra's February 2011 restructuring agreement with DOE, did anyone from DOE or OMB ever once discuss with you the issue that subordinating taxpayers to Solyndra's primary investors was a violation of the law?

Mr. Harrison?

Mr. HARRISON. On the advice of my counsel, I invoke the privilege afforded to me by the Fifth Amendment of the United States Constitution, and I respectfully decline to answer any questions.

Mr. STEARNS. All right. We have completed our questions on this side, and we recognize the minority for 5 minutes.

The ranking member, Mr. Waxman, is recognized for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

The chairman could have easily have asked a few questions to ascertain whether the Fifth Amendment was going to be asserted. That is consistent with other situations in which we faced witnesses invoking their Fifth Amendment rights.

But what we have instead heard today is a line of questions that seem designed to create catchy sound bites rather than establish a clear record regarding the witnesses' intent to assert their constitutional rights. And these questions constitute witness badgering that is both unseemly and inconsistent with a long line of precedent under which courts have recognized that protections of the Fifth Amendment would be meaningless if prosecutors could require criminal defendants to repeatedly assert their privilege in the face of incriminating questions.

According to a Supreme Court ruling, it is considered prosecutorial misconduct when the government calls witnesses in a conscious and flagrant attempt to build its case out of inferences arising from the use of testimonial privilege. And a Federal appeals court has written that misconduct may yet arise if the prosecution continues to question a witness once her consistent refusal, legitimate or otherwise, has become apparent.

So I just want to take this moment to assert the fact that I think it is unseemly and inappropriate for members to be asking questions that we know you will not answer. You do have a privilege under the U.S. Constitution not to give us testimony.

Should you answer any of these questions, you may well then have waived your rights. So, therefore, it seems to me when members ask questions, like, when are you going to pay back the money, when did you tell the White House this information, when did you tell your board about it, when did you subordinate the

loans from others, that, to me, is an improper line of questioning. They are sound bites. They are attempts not to get real answers. I think our committee is better than this.

This is an important inquiry. We must find out what happened to ensure that similar companies do not suffer the same fate. And let's not put our desire for media attention above our duty to conduct fair and balanced investigations into matters of national importance.

I yield back the time.

Mr. BARTON. Would the distinguished former chairman yield for a question to himself?

Mr. WAXMAN. Yes, certainly. I will not take the Fifth Amendment.

Mr. BARTON. OK. Good. I was told that you appeared on the Today Show this morning and said that the committee deserved to have the right to ask questions and that you wanted to ask questions. Was I told that erroneously?

Mr. WAXMAN. You were told that erroneously. I did not appear on the Today Show. I came to this hearing directly from home. But I have told the press, and I have told everyone else that has asked me that I—in fact, I requested these witnesses be brought to our committee because I do have questions I would like to ask them. And I think we are entitled to get answers to these questions.

But we do have the Constitution of the United States. And there may be other ways we can elicit some of the information. And I am willing to work—excuse me, it is my time.

Mr. BARTON. It is your time.

Mr. WAXMAN. I am willing to work with the chairman of the committee and the members of this committee to pursue other ways to get the information.

But if they have asserted the Fifth Amendment, there is nothing else we can do. And to badger them with questions that are simply sound bites for the press does not strike me as a fair way, or a balanced way, for the committee to conduct its business.

Mr. STEARNS. The gentleman yields back the balance of his time?

Mr. WAXMAN. I do.

Mr. STEARNS. I would point out to the ranking member that this format today was agreed to by your side, the ranking member. Ms. DeGette and I both—

Ms. DEGETTE. If the gentleman will yield—

Mr. STEARNS. Sure.

Ms. DEGETTE [continuing]. Just because I agreed to the format doesn't mean I agreed to the witnesses being badgered by sound bite questions.

Mr. STEARNS. No, no, I understand. But I am just saying, the format we did. I just point that out. Let me move to close here.

Mr. HARRISON, will you invoke your Fifth Amendment rights in response to all questions here today?

Mr. HARRISON. Yes.

Mr. STEARNS. Then you are excused from the witness table at this time, but I advise you that you remain subject to the process of the committee, and that if the committee's needs are such, then we may recall you. You may leave.

Mr. Stover, let me be clear, Mr. Stover, are you refusing to answer the questions on the basis of the protections afforded to you under the Fifth Amendment of the Constitution? Yes or no?

Mr. STOVER. Yes.

Mr. STEARNS. Can the press step down a little bit so we can see each other? Do you want me to repeat the question for you? Let me be clear, are you refusing to answer the questions on the basis of the protections afforded to you under the Fifth Amendment to the United States Constitution?

Mr. STOVER. Yes.

Mr. STEARNS. Mr. Stover, will you invoke your Fifth Amendment rights in response to all of the questions here today?

Mr. STOVER. Yes.

Mr. STEARNS. Then you are excused from the witness table at this time, but I advise you that you remain subject to the process of the committee, and that if the committee's need is such, then we may recall you.

And with that, my colleagues, I ask unanimous consent to enter the document binder and majority supplemental memo.

Ms. DEGETTE. No objection.

Mr. STEARNS. No objection.

[The information appears at the conclusion of the hearing.]

I thank the members for coming today and for the questions. I am sorry that Solyndra executives were unable to provide any answers. Nonetheless, the committee's investigation will continue to go forward.

The committee sent three document requests this week, one to the Department of Energy seeking their communications with the White House on Solyndra, and two to Solyndra's investors, Argonaut and Madrone. We are continuing to get documents from the Department of Energy and the White House about their involvement in the guarantee. We will get to the bottom of what the administration understood about Solyndra's financial position and why they continued to believe Solyndra was a good bet for \$535 million in taxpayers' money, even though DOE and OMB staff raised repeated concerns during their reviews about the very same financial problems that resulted in Solyndra's bankruptcy 2 years later.

We will also press forward in trying to understand the political and time pressures that may have pushed this loan out the door before it was ready for prime time. And despite Mr. Harrison's and Mr. Stover's inability to answer questions today, we will determine whether Solyndra played any part in the government's failure to accurately assess the risks this deal presented to the government and the United States taxpayers. This hearing—

Ms. DEGETTE. Mr. Chairman?

Mr. STEARNS. Yes.

Ms. DEGETTE. If you will yield.

Mr. STEARNS. I will yield.

Ms. DEGETTE. The chairman has stated about the continuing document requests that are outstanding. I am wondering if the chairman has reviewed the request that Mr. Waxman and I have made about having general hearings about our policies and incentives about whether U.S. manufacturers can compete in the global

clean energy market, and also the request that Mr. Waxman and I had made to obtain the testimony of the representatives of Argonaut and Madrone, the two private equity companies that invested in Solyndra, so we can get a more clear picture from that angle.

Mr. STEARNS. We are taking both your suggestions under advisement. We think they are very good suggestions.

Ms. DEGETTE. Thank you.

Mr. STEARNS. With that, the hearing is now adjourned.

[Whereupon, at 10:15 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Committee on Energy and Commerce
 Subcommittee on Oversight and Investigations
 From DOE Loan Guarantee to Bankruptcy to FBI Raid:
 What Solyndra's Executives Knew
 September 23, 2011**

Exhibits Index

TAB	DESCRIPTION	DATE
1	Solyndra Document, <i>Exceeding Expectations: Solyndra Today</i>	N/A
2	Email from Solyndra Counsel to Energy and Commerce Staff Subject: Solyndra	07.13.11 11:19 AM
3	Letter from Solyndra President and CEO, Brian Harrison, to The Honorable Clifford B. Stearns and the Honorable Diana L. DeGette	07.13.11
4	Email from Solyndra Counsel to Energy and Commerce Staff Subject: Re: I am ready to talk time urgent	09.10.11 12:06 PM
5	Letter from Solyndra Counsel, Walter F. Brown, Jr. to The Honorable Clifford B. Stearns and the Honorable Diana L. DeGette	09.20.11
6	Letter from Bill Stover's counsel, Jan Nielsen Little, to The Honorable Clifford B. Stearns and the Honorable Diana L. DeGette	09.20.11



Exceeding Expectations: Solyndra Today

Solyndra, one of the only volume solar manufacturers in the United States, continues to make excellent progress to the company's overall annual strategic plan, while meeting the company's technical, cost and performance milestones. The factory is ramping and Solyndra is hiring employees today, creating jobs at the company, within our primarily domestic supply chain, and through integrators and installers implementing our systems on rooftops in the U.S. and around the world.

Solyndra does not publicly release quarterly results but is on track for this year. The ability to command a slight pricing premium as a result of substantial differentiation and product benefits continues and our cash production cost per watt is dropping rapidly at pace with the industry. In a highly competitive global marketplace Solyndra continues to win large projects on commercial rooftops around the world and we are confident we are competitive on the merits of our differentiated, lightweight, simple to install cylindrical rooftop and greenhouse products.

Evidence of Strong Momentum

- 1166 employees and growing, 49 open jobs on website
- Exporting more >50% of product
- Over 1000 installations >20 countries
- Over 100MW shipped
- 2010 revenue ~\$140M
- 2011 shipments expected to double over 2010
- Fab ramp to 300MW on target
- 14th largest shipper from the Port of Oakland, more than 1000 containers this year
- Doubled U.S. sales and marketing team in past 6 months

Factory Status

Factory output is ramping rapidly. Solyndra shipped more than 70,000 panels in the first quarter, and will ultimately triple that output. Today Fab 2 is producing nearly 10,000 panels a week or approximately 2 megawatts (enough to power the equivalent of more than 500 homes). In Q3 we will install the last of the planned equipment in the factory and build-out will be complete, 24 months from the start of construction. The company is ahead of its panel power and production yield projections.

- The Fab 2 project employed 3000 construction workers in the worst construction downturn in California history.
- The Fab supports jobs at Solyndra and in 18 states around the U.S. Approximately 70% of suppliers are in the U.S. and Solyndra's business has created 300 jobs in 9 supplier firms alone.

Strong Customer Momentum

- World's largest Solyndra installation, a 3MW rooftop system in Belgium (>17,000 panels, >\$10M U.S. dollars).
- 781Kw system for Seattle Seahawks Quest Center
- 750Kw for Vitex in Greece

SOLYNDRA®

- 205Kw system for Pfizer in Belgium
- 700Kw system on PSE&G, a New Jersey Utility headquarters building.
- Installations continue with major brands such as Anheuser Busch, Coca Cola and others.
- Projects in development include a 2MW office building in MO, 15MW of rooftops in Southern Calif., 1.2MW beverage distributor in NJ, and a 3MW warehouse roof in Calif.

Product Milestones

Solyndra's unique greenhouse solution has been well received in Europe. The first large customer installed an approximately 800Kw system allowing dual use of agricultural land to grow crops and generate power. Interest in the product is very strong in Italy where incentives make this application economical.

At the Intersolar show in Germany Solyndra announced a new metal roof mounting system which is unique in the industry and which dramatically further expands Solyndra's total available market in an area where the non-penetrating, non-roof damaging design is highly appealing to customers.

Recent Press and Accolades

- Solyndra was the only early stage solar company among seven recently compared by market researchers Green Tech media. <http://www.greentechmedia.com/articles/read/competitive-positioning-in-pv-manufacturing-the-seven-metrics-that-matter/N2/>. The report gave Solyndra strong marks for technical differentiation -- a key driver of demand and pricing.
- One of the "Cool Companies to Watch in 2011" by *Gartner Group*
- "One of the Most Innovative Companies in Energy" by *Fast Company Magazine*

Industry Trends

Germany announced the extension of their FIT program and the Italian market has been robust since the announcement of their new incentive scheme. Solyndra benefits from these changes as well as continued incentives in New Jersey and potential new business in Australia and Japan. The U.S. market has been strong with several multi-megawatt projects underway. Solyndra exhibits at the largest tradeshows in Europe gathered more than 1500 sales leads. Interest in our lightweight, non-penetrating system remains very strong.

Some Other Mentions

- "The company in question, Solyndra, built an enormous robotics factory to produce solar panels, on time and under budget. There are actually more people working there today than when we first funded them. The story has been a little bit misunderstood."
Jonathan Silver, Executive Director of Loan Programs, DOE, radio interview May 12, 2011.

SOLYNDRA®

- “Solyndra has shipped a total of 100 megawatts, had revenues of \$140 million in 2010 and is employing 1000 Californians in one of the world’s most automated and impressive solar panel factories...” *Solyndra’s Possible Futures: Comeback Kid or ...? Greentech Media, March 14, 2011*

From: [REDACTED]
To: Harrison, Todd; Christian, Karen
cc: [REDACTED]
Subject: Solyndra
Date: Wednesday, July 13, 2011 11:19:24 AM

I will be sending the Chair and Ranking Member a letter today from the company that Solyndra asks be placed in the record of tomorrow's proceedings. It will provide current data on Solyndra's positive economic and job situation. The Committee's release continues to perpetuate an incorrect picture of Solyndra's condition, despite consistent staff representations that this is not the Majority's intent. We believe the updated information is critical to balance what has been said. I also respectfully ask that the letter be shared with other Majority offices.

Once you see the upbeat letter, please let me know if the Chair is willing to place the letter in the record, or I will request the Minority to do so. Please call me if you have any questions, or in my absence, my partner [REDACTED].

[REDACTED]
McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, DC 20005-3096

(P) [REDACTED]
(F) [REDACTED]

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Via Hand Delivery

July 13, 2011

The Honorable Clifford B. Stearns
Chairman, Subcommittee on Oversight and Investigations
U.S. House Committee on Energy and Commerce
2175 Rayburn House Office Building
Washington, DC 20515-6115

The Honorable Diana L. DeGette
Ranking Member, Subcommittee on Oversight and Investigations
U.S. House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Stearns and Ranking Member DeGette:

I am writing today on behalf of the 1,166 employees of Solyndra, the only large-volume manufacturer of solar photovoltaic systems with 100 percent of its production located in the United States, in Fremont, California.

Specifically, I am writing in anticipation of the Subcommittee's business meeting scheduled for Thursday, July 14, to ensure that you and other Members of the Subcommittee have the most accurate and up-to-date information regarding Solyndra and our performance in the market.

You should be aware of the following facts:

- Solyndra's revenues grew from \$6 million in 2008 to \$100 million in 2009 to \$140 million in 2010. For 2011, revenues are projected to nearly double again.
- The company just completed a record quarter for shipments, with strong demand in the United States. Last year we shipped 65 megawatts of panel production and expect that to double again this year.
- The company's new manufacturing facility ("Fab 2"), which was built with support from the Department of Energy (DOE) loan guarantee, will produce nearly half of its maximum output this year – only 24 months after the project broke ground. The construction of Fab 2 was completed under budget and ahead of schedule.

Solyndra LLC
47488 Kato Road
Fremont, California 94538

Main: 510-440-2400
Fax: 510-440-2401

www.solyndra.com

- The Fab 2 project is currently on track to meet the job creation commitments agreed upon with the DOE. During construction, Fab 2 created 3,000 jobs in the midst of one of the deepest construction downturns in California history. Today, Solyndra has 1,166 employees and is hiring, with 49 open positions on our website. The company has experienced a total net direct employment increase of over 300 regular, full-time jobs since the DOE made its conditional commitment and Fab 2 planning began. The company continues to hire and grow as our Fab 2 manufacturing ramp continues.
- More than 70 percent of Solyndra's supply chain is represented by companies located in the United States. Solyndra's supply requirements have led to the creation of 300 jobs in just nine of our many suppliers across 18 states.
- Solyndra is an example of a U.S. company using American innovation and ingenuity to compete in the global solar market – exporting more than 50 percent of our products into a competitive global marketplace that includes the products of Chinese and other companies which have the benefit of less restrictive business environments and significant government subsidies and incentives to support all aspects of their business.

On behalf of Solyndra, our 1,166 employees and our extensive supply chain of U.S. companies, we appreciate your consideration of these facts about our business.

Sincerely,



Brian Harrison
President and Chief Executive Officer

cc: The Honorable Frederick S. Upton, Chairman, Committee on Energy and Commerce
The Honorable Henry A. Waxman, Ranking Member, Committee on Energy and Commerce

From: [REDACTED]
Sent: Saturday, September 10, 2011 12:06 PM
To: Harrison, Todd; Christian, Karen; [REDACTED]
Subject: Re: I am ready to talk time urgent

As I discussed a few moments ago, the CEO of Solyndra, Brian Harrison will appear voluntarily and answer the Committee's questions on any day the Committee chooses, beginning next week and continuing thereafter. He will appear without any need to issue a subpoena. I respectfully request this delay for the reasons I described, particularly the possible benefit to the taxpayer.

[REDACTED]
Counsel to Solyndra's estate.

----- Original Message -----

From: [REDACTED]
Sent: Saturday, September 10, 2011 10:29 AM
To: 'Todd.Harrison@mail.house.gov' <Todd.Harrison@mail.house.gov>; 'karen.christian@mail.house.gov' <karen.christian@mail.house.gov>
Subject: I am ready to talk time urgent

Solyndra [REDACTED]

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September 20, 2011

Walter F. Brown, Jr.
(415) 773-5995
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The Honorable Clifford B. Stearns
Chairman, Subcommittee on Oversight and Investigations
U.S. House Committee on Energy and Commerce
2175 Rayburn House Office Building
Washington, DC 20515-6115

The Honorable Diane DeGette
Ranking Minority Member, Subcommittee on Oversight and Investigations
U.S. House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515-6115

Re: Testimony of Brian Harrison, CEO of Solyndra, before the House Energy & Commerce Committee, Subcommittee on Oversight and Investigations

Dear Chairman Stearns and Ranking Member DeGette:

I write regarding the appearance of Mr. Brian Harrison, the current Chief Executive Officer of Solyndra, who I represent. As you know, Mr. Harrison will appear voluntarily before the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations on Friday, September 23, 2011.

Mr. Harrison has great respect for the work of this Subcommittee and its oversight role. Mr. Harrison looks forward to the day when he can cooperate fully with this Subcommittee's investigation and present the facts known to him.

I have advised Mr. Harrison that he should decline to answer questions put to him by this Subcommittee based on his rights under the Fifth Amendment to the United States Constitution. Therefore, Mr. Harrison intends to invoke his Fifth Amendment rights in response to any questions asked by this Subcommittee and will not provide testimony.

This is not a decision arrived at lightly, but it is a decision dictated by current circumstances. On September 8, 2011, federal agents executed a search warrant at Solyndra's facilities. Moreover, the United States Department of Justice has initiated an investigation into Solyndra. In light of these circumstances, I had no choice but to advise Mr. Harrison to assert his Fifth Amendment rights in response to any questions posed by the Subcommittee. While I have instructed my client not to



The Honorable Clifford B. Stearns
 The Honorable Diane DeGette
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testify at the hearing, it would be a mistake to infer anything from this other than that it is the act of a prudent lawyer who is newly engaged to represent a witness in ongoing government investigations.

Mr. Harrison regrets that these circumstances prevent him from offering full and complete answers to this Subcommittee. He respects the role that this Subcommittee plays in our Constitutional system. I know, however, that this Subcommittee understands the reasons and basis for my advice in the context of an ongoing Department of Justice investigation—even when ultimately it is found that there is no cause for charges.

Mr. Harrison hopes to have the opportunity to offer his views on the events at Solyndra. He cannot do so presently given the current circumstances.

Very truly yours,

Walter F. Brown, Jr.

cc: The Hon. Lee Terry
 The Hon. John Sullivan
 The Hon. Tim Murphy
 The Hon. Michael Burgess
 The Hon. Marsha Blackburn
 The Hon. Sue Myrick
 The Hon. Brian Bilbray
 The Hon. Phil Gingrey
 The Hon. Steve Scalise
 The Hon. Cory Gardner
 The Hon. Morgan Griffith
 The Hon. Joe Barton
 The Hon. Fred Upton
 The Hon. Jan Schakowsky
 The Hon. Mike Ross
 The Hon. Kathy Castor
 The Hon. Edward J. Markey
 The Hon. Gene Green
 The Hon. Donna Christensen



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The Honorable Diane DeGette
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The Hon. John D. Dingell
The Hon. Henry A. Waxman

KEKER & VAN NEST LLP

Jan Nielsen Little
 (415) 676-2211
 jlittle@kvn.com

September 20, 2011

VIA FACSIMILE AND U.S. MAIL

The Honorable Clifford B. Stearns
 Chairman, Subcommittee on Oversight and
 Investigations
 House Energy and Commerce Committee
 2175 Rayburn House Office Building
 Washington, DC 20515-6115
Facsimile: (202) 225-3977

The Honorable Diana DeGette
 Ranking Member, Subcommittee on Oversight
 and Investigations
 House Energy and Commerce Committee
 2322A Rayburn House Office Building
 Washington, DC 20515-6115
Facsimile: (202) 225-5657

Re: Testimony of W.G. Stover, Jr. before the House Energy & Commerce Committee,
 Subcommittee on Oversight and Investigations

Dear Chairman Stearns and Ranking Member DeGette:

I represent W.G. "Bill" Stover, Jr., Senior Vice President and Chief Financial Officer of Solyndra, Inc. Mr. Stover has been invited to testify before the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations on Friday, September 23, 2011.

Mr. Stover agreed to appear at Friday's hearing voluntarily, and will do so. However, I have advised Mr. Stover to decline to answer any questions put to him by this or any other congressional committee or subcommittee, based on his rights under the Fifth Amendment to the United States Constitution. Acting on my advice, Mr. Stover plans to invoke his Fifth Amendment rights in response to any questions put to him during Friday's Subcommittee hearing, and he will not provide testimony.

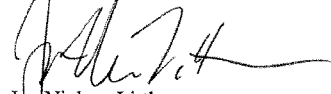
Our decision that Mr. Stover would assert his Fifth Amendment rights was taken with care and deliberation. On September 8, 2011, the Federal Bureau of Investigation executed a highly-publicized search warrant at Solyndra's offices, seizing documents, computers, and other materials. The United States Department of Justice has initiated a criminal investigation into Solyndra. Under these circumstances, Mr. Stover must invoke his rights under the Fifth Amendment of the U.S. Constitution; indeed, it would be irresponsible for anyone in his position not to do so.

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The Honorable Diana DeGette
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Nothing of substance should be read into Mr. Stover's decision to heed his counsel's advice and assert his Fifth Amendment rights. As this Subcommittee's members well know, witnesses involved in ongoing inquiries often invoke their rights under the Fifth Amendment. It is a privilege afforded every American, and it applies with equal force to testimony given at a congressional hearing, as it does in a court of law. Our United States Supreme Court has made clear that one of the Fifth Amendment's "basic functions ... is to protect innocent men" and affords them protection because "truthful responses of an innocent witness, as well as those of a wrongdoer, may provide the government with incriminating evidence from the speaker's own mouth." *Ohio v. Reiner*, 532 U.S. 17, 21 (2001).

Mr. Stover respects the important role this Subcommittee plays in performing its constitutional oversight function in service to the American people. He looks forward to a time when he can assist the Subcommittee's efforts, and make known his perspective about events at Solyndra. Unfortunately, the current circumstances do not permit it.

Respectfully submitted,



Jan Nielsen Little

JNL/csh

cc: The Hon. Lee Terry
The Hon. John Sullivan
The Hon. Tim Murphy
The Hon. Michael Burgess
The Hon. Marsha Blackburn
The Hon. Sue Myrick
The Hon. Brian Bilbray
The Hon. Phil Gingrey
The Hon. Steve Scalise
The Hon. Cory Gardner
The Hon. Morgan Griffith
The Hon. Joe Barton
The Hon. Fred Upton
The Hon. Jan Schakowsky
The Hon. Mike Ross
The Hon. Kathy Castor
The Hon. Edward J. Markey
The Hon. Gene Green
The Hon. Donna Christensen
The Hon. John D. Dingell
The Hon. Henry A. Waxman

The Committee on Energy and Commerce
Internal Memorandum



September 21, 2011

TO: Members, Subcommittee on Oversight and Investigation

FROM: Subcommittee on Oversight and Investigations Staff

RE: Hearing on "From DOE Loan Guarantee to Bankruptcy to FBI Raid: What Solyndra's Executives Knew"

On Friday, September 23, 2011, at 9:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled "From DOE Loan Guarantee to Bankruptcy to FBI Raid: What Solyndra's Executives Knew." The purpose of the hearing was to examine Solyndra's representations about its financial status to the Department of Energy and to this Committee, including statements made in a July 13, 2011, letter to Chairman Cliff Stearns and Ranking Member Diana DeGette. Counsel for the witnesses informed the Committee on Tuesday, September 20, however, that the witnesses will decline to answer any questions posed to them by Members of the Committee based on their rights under the Fifth Amendment to the United States Constitution.

I. WITNESSES

The Committee has invited two witnesses to testify at the hearing:

Brian Harrison President and Chief Executive Officer Solyndra, Inc.	W.G. Stover, Jr. Sr. Vice President & Chief Financial Officer Solyndra, Inc.
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II. DISCUSSION

The Committee initiated an investigation of the DOE loan guarantee to Solyndra, Inc., on February 17, 2011, with a letter to DOE Secretary Steven Chu requesting documents and certain information. A discussion of the Committee's investigation, and the review of the Solyndra loan guarantee, is included in the Majority Staff Memorandum dated September 12, 2011.

During the course of the Committee's investigation, Solyndra submitted two documents to Committee staff that detailed the company's financial status: (1) a three page outline entitled

Majority Memorandum for September 23, 2011, Oversight & Investigations Subcommittee Hearing
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“Exceeding Expectations: Solyndra Today,” provided to the Committee on June 23, 2011, and (2) a July 13, 2011, letter addressed to Chairman Stearns and Ranking Member DeGette. A copy of those documents is attached to this memorandum (Attachments A & B).

Following Solyndra’s announcement that it intended to file for bankruptcy, and a Federal Bureau of Investigation (FBI) raid of the company’s headquarters, Committee staff sent invitations to Solyndra Chief Executive Officer Brian Harrison and Chief Financial Officer William G. Stover, Jr. on Thursday, September 8, inviting them to testify at a September 14, 2011, hearing.

On Saturday, September 10, 2011, counsel for Solyndra, Inc. informed Committee staff that Solyndra CEO Harrison could not appear at the September 14 hearing because he was involved in negotiations to sell the company. Counsel for Solyndra told Committee staff that Mr. Harrison would appear voluntarily any time after September 19, and would answer the Committee’s questions (*see* Attachment C). Counsel for Solyndra also informed Committee staff that CFO Stover would appear voluntarily, but could not represent whether he would be able to answer the Committee’s questions.

On Friday, September 16, 2011, the Committee sent invitations to Harrison and Stover, inviting them to testify at the September 23 hearing before the Subcommittee on Oversight and Investigations. On Wednesday, September 20, both Harrison’s and Stover’s individual counsels sent letters informing the Committee that, while both intended to appear voluntarily, they would decline to answer any questions based on their rights under the Fifth Amendment to the United States Constitution.

III. CONTACTS

If you have any questions about this hearing, please contact Karen Christian or Todd Harrison at (202) 225-2927.