

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

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

April 19, 2013

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

Dear Secretary Chu:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is examining the Department of Energy (DOE) Alternative Technology Vehicle Manufacturing (ATVM) loan program. We write today regarding the \$528.7 million loan DOE issued to Fisker Automotive, Inc. (Fisker) in April 2010 under the ATVM program for the development of two lines of plug-in hybrid vehicles.

The ATVM program was authorized by Congress pursuant to section 136 of the Energy Independence and Security Act of 2007, as amended. The program is administered by DOE's Loan Programs Office. The purpose of the ATVM program is to originate, underwrite and service loans from the U.S. Department of Treasury's Federal Financing Bank (FFB) to eligible automotive manufacturers and component suppliers to finance the cost of (i) reequipping, expanding or establishing manufacturing facilities in the United States to produce advanced technology vehicles (ATVs) and qualifying components and (ii) engineering integration performed in the United States of ATVs and qualifying components. Accordingly, Members of Congress have written letters to DOE asking it to consider the ATVM applications of their States' companies and manufacturers. Members did so with the expectation that DOE was thoroughly vetting the applications to ensure that the applicants were eligible and met the program's stated objectives.

Over a three-year period from 2009 to 2011, DOE issued five loans under the ATVM program. Fisker received its conditional commitment for an ATVM loan in September 2009. According to DOE's press release announcing the conditional commitment, \$169.3 million of the loan was to cover engineering integration costs required to complete the company's first vehicle, the Karma. The remaining \$359.36 million was to support Fisker's Project Nina, involving production of the company's second vehicle, the Atlantic. DOE noted in the release, "The

combined projects will result in approximately 5,000 jobs created or saved for domestic parts suppliers and thousands more to manufacture a plug-in hybrid in the U.S.”¹

Before the loan was approved, Fisker announced the Karma would be built by Valmet Automotive at its assembly plant in Finland. According to Fisker, “there are no contract manufacturers like Valmet in the U.S., and none of the established domestic automakers were willing to partner with Fisker to provide a manufacturing option in the U.S. that would work for the Karma program.”² The Atlantic, on the other hand, was at least intended to be produced at a former General Motors factory in Wilmington, Delaware.

Fisker subsequently experienced several widely reported setbacks. In February 2012, Fisker disclosed that DOE stopped funding the loan in May 2011 because of unmet milestones relating to production and sales of the Karma. As a result, the company suspended its renovation of the Wilmington factory and announced that it was laying off numerous workers. At the time, DOE informed the Committee that Fisker had drawn down less than \$200 million of the loan and the Department was working with the company to review a revised business plan and determine the best path forward.³ On April 3, 2012, Fisker’s Chief Executive Officer, Tom LaSorda, announced that work may not continue at the Delaware plant and the decision where to produce the Atlantic would be made by the end of the summer based on “what’s best for the company.” He also stated with respect to the remainder of the loan, “If we get it fine. If we don’t, we can still have a great company. We’re going to build this car with or without DOE funding.”⁴

It is well known that Fisker has been working for months to raise \$500 million so it could restart production of the Karma, as Fisker had stopped making the \$110,000 plug-in hybrid in 2012 after A123 Systems Inc., the manufacturer of its lithium-ion battery component, filed for bankruptcy. Fisker has been seeking investors after the Department of Energy stopped further drawdowns of its loan guarantee. Later in April 2013, the first payment on some of the \$192 million Fisker borrowed is due.⁵

Recently, Fisker called an employee meeting at its Anaheim, California headquarters and dismissed all but 40 employees with no severance (this after requiring the employees to take a one-week furlough last month to maintain some reserve cash).⁶ It is reported that Fisker is seeking investment with several Chinese companies, including Geely Holding Group and

¹ Press Release, *US Energy Secretary Chu Announces \$528 Million Loan for Advanced Vehicle Technology for Fisker Automotive*, U.S. Dep’t of Energy, Sept. 22, 2009, available at <https://lpo.energy.gov/?p=888>.

² Press Release, *Fisker Statement re: Misleading News Reports*, Fisker, Oct. 21, 2011, available at <http://media.fiskerautomotive.com/global/en-us/Media/PressRelease.aspx?mediaid=567&title=fisker-statement-re-misleading-news-reports>.

³ Email from DOE Office of Legislative Affairs staff, U.S. Dep’t of Energy, Feb. 7, 2012 (on file with author).

⁴ Jeff Plungis, *Fisker Considers Overseas Options for Building Second Car*, BLOOMBERG, Apr. 4, 2012, available at <http://www.bloomberg.com/news/2012-04-04/fisker-readying-second-luxury-plug-in-after-karma-setbacks-1-.html>.

⁵ Jerry Hirsch, *Fisker Automotive lays off most workers, struggles to find investor*, LA Times, Apr. 5, 2013, available at <http://www.latimes.com/business/autos/la-fi-hy-fisker-layoff-staff-20130405,0,6931960.story>.

⁶ *Id.*

Wanxiang Group Corp., which recently bought A123 Systems during its bankruptcy proceedings.⁷ Other news reports have speculated that Fisker's bankruptcy is imminent.

The Committee is concerned whether taxpayer interests have been prioritized in approval decisions or in subsequent negotiations with loan recipients and foreign investors. Knowing that Fisker previously determined the best manufacturing option for the Karma was in Finland and that overseas options are now being considered for the Atlantic,⁸ we question whether this company was an appropriate recipient of such a substantial sum of U.S. taxpayer dollars. It was reported last year that DOE was working with an outside restructuring adviser to track the company's capital-raising efforts.⁹ Knowing that DOE was very proactive in attracting additional capital during Solyndra's restructuring negotiations and was ultimately willing to subordinate the government's interest to do so, the Committee is intent on ensuring that taxpayers remain the principal priority, especially in the event of a possible bankruptcy.

Over the last two years, the Committee has monitored developments and concerns with DOE's management of the ATVM program and with the viability of certain loan recipients, including receiving a briefing from DOE staff. To assist the Committee in its ongoing efforts, we request that you make appropriate individuals from DOE available to brief Committee staff on DOE's decision to issue the \$538.7 million loan to Fisker as well as on the negotiations currently being held with the company and foreign investors. This briefing should address the advice provided by outside consultants, current or potential investors and current negotiations with the company. Additionally, we ask that you provide by May 10, 2013 the following:

1. All documents provided or submitted to the Department of Energy by Fisker relating to the \$538.7 million loan guarantee supported by ARRA funds including, but not limited to, applications; financial statements, reports, or data; analyses; letters; and memoranda.
2. All documents containing communications between the Department of Energy and Fisker relating to the \$538.7 million loan guarantee for Fisker including, but not limited to, letters and email.
3. All documents containing communications between and among Department of Energy officials, staff, administrators, and employees relating to the \$538.7 million loan guarantee for Fisker including, but not limited to, letters and email.
4. All documents containing communications between and among the officials, staff, administrators, and employees of the Department of Energy and the officials, staff, administrators, and employees of the Department of the Treasury and the Office of Management and Budget (OMB) relating to the \$538.7 million loan guarantee for Fisker including, but not limited to, letters and email.

⁷ *Id.*

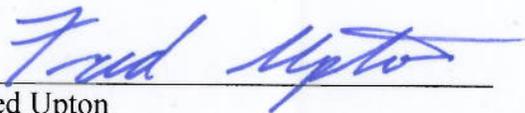
⁸ See *Fisker Considers Overseas Options for Building Second Car*.

⁹ Mark Clothier. *U.S. Said to Hire Restructuring Advisor to Monitor Fisker*, BLOOMBERG, Apr. 24, 2012, available at <http://www.bloomberg.com/news/2012-04-23/u-s-said-to-hire-restructuring-adviser-to-monitor-fisker-loan.html>.

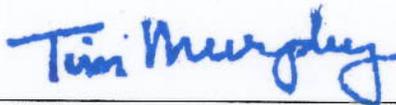
5. All documents in possession of the Department of Energy relating to the \$538.7 million loan guarantee for Fisker including, but not limited to, notes, analyses, reports, and memoranda, and all drafts of such documents to include Credit Committee Reports and Minutes, presentations to OMB, consultant reports, monitoring reports, waiver letters, terms and condition drafts, disbursement justification statements and annual reviews.

An attachment to this letter provides additional information about how to respond to the Committee's request. In the interim, we request that you contact Carl Anderson with the Committee staff at (202) 225-2927 to schedule a staff briefing on Fisker no later than one week from the date of this letter. Thank you for your attention to this matter.

Sincerely,



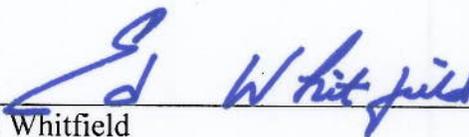
Fred Upton
Chairman



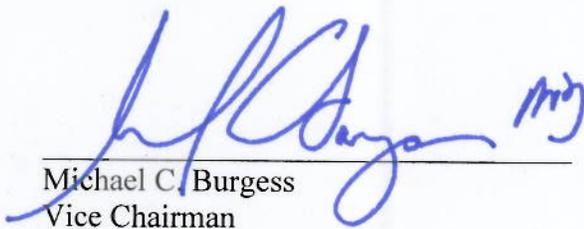
Tim Murphy
Chairman
Subcommittee on Oversight
and Investigations



Marsha Blackburn
Vice Chairman



Ed Whitfield
Chairman
Subcommittee on Energy and Power



Michael C. Burgess
Vice Chairman
Subcommittee on Oversight
and Investigations



Joe Barton
Chairman Emeritus

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:
 - a. how the document was disposed of;
 - b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
 - c. the date of disposition;
 - d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.
16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.
17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.