

March 17, 2010

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

SUBJECT: *Lack of transparency in the DOE Loan Guarantee Program*

Dear Secretary Chu:

We are writing to express our deep concern regarding the Department of Energy's (DOE's) lack of transparency in managing the Title XVII Loan Guarantee Program. DOE's continuing refusal to disclose even the most basic information about the program stands in gross violation of the Freedom of Information Act (FOIA) and is inconsistent with President Obama's January 21, 2009, Memorandum on Transparency and Open Government and Memorandum on the Freedom of Information Act; and the Office of Management and Budget's (OMB) December 8, 2010 Open Government Directive. DOE has been authorized to issue a total of \$51 billion in loan guarantees under Section 1703 with \$18.5 billion earmarked for nuclear reactors, \$2 billion for uranium enrichment, \$8 billion for coal projects and \$18.5 billion for renewable energy and energy efficiency. These guarantees could expose taxpayers to tens of billions of dollars in default risk; yet DOE's lack of transparency regarding this program means that taxpayers will have little, if any, ability to evaluate the feasibility of the projects they are being asked to underwrite.

As President Obama recognized in his January 21, 2009 Memorandum on Transparency and Open Government, FOIA "is the most prominent expression of a profound national commitment to ensuring an open government." With only the narrowest exceptions, FOIA requires federal agencies to publish and disclose information about their decisions, including the processes for making those decisions and the information on which they rely. President Obama himself has called for "an unprecedented level of openness in government" and has directed federal agencies to administer FOIA "with a clear presumption: In the face of doubt, openness prevails."

President Obama has also ordered federal agencies to "take affirmative steps to make information public," including using "modern technology to inform citizens about what is known and done by their Government." And he has ordered that "...disclosure should be timely." To achieve a transparent and well run program, DOE must ensure that the public is given access to information about decisions and commitments that DOE makes on its behalf. Yet, DOE has consistently failed to post on its website any meaningful information about its criteria or processes for approving and issuing Title XVII Loan Guarantees.

Moreover, with the exception of one response that consisted of 18 highly redacted one-page letters, DOE has failed to respond to three separate parties' FOIA requests for information about the department's review of applications for nuclear loan guarantee or coal project loan guarantee that have been submitted since late 2008. *See, e.g.*, FOIA-2008-000694 (submitted by Texans for a Sound Energy Policy (TSEP) on November 17, 2008); FOIA-2009-000019 (submitted by TSEP on January 9, 2009); FOIA-09-00619 (submitted by TSEP on July 28, 2009); and FOIA-

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2010—00297 (submitted by Friends of the Earth on November 1, 2009). The Sierra Club also submitted a FOIA to DOE on November 24, 2009 regarding review of coal project applications to LGP. DOE has also failed to respond to administrative appeals for these FOIA request.

In order to provide the level of openness and accountability that FOIA requires and to which President Obama has committed, we strongly urge that you immediately take the following actions:

- Post all publicly available information about the administration of DOE's Loan Guarantee Program on its website, including:
 - the processes and objective criteria used by DOE in its evaluation of all loan guarantee applications;
 - DOE's evaluations of all loan guarantee applications;
 - correspondence between DOE and applicants regarding all loan guarantee applications.
- Fully respond to pending FOIA requests regarding the Loan Guarantee Program.
- Respond to future FOIA requests in a full and timely manner.

We recognize that some information regarding DOE's evaluation of specific loan guarantee applications may be exempt from public disclosure under FOIA, but that does not excuse DOE from publishing the non-exempt portions of its analyses. DOE should also not be excused from publishing information about its criteria for evaluating the applications, or from disclosing non-financial information, such as information about environmental impacts of the projects that DOE reviews.

We urge you to immediately correct the current lack of transparency in the program, which is unlawful, destructive to the public interest, and corrosive of public trust in government. We stand ready to work with you to achieve this critical transparency.

Sincerely,

Tyson Slocum, Director, Energy Program
Public Citizen

Lexi Shultz, Director of Advocacy, Climate and Energy Program
Union of Concerned Scientists

Sara Barczak, Program Director, High Risk
Southern Alliance for Clean Energy

Michele Boyd, Safe Energy Program Director
Physicians for Social Responsibility

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Cc: Miriam Nisbet, Director of the Office of Government Information Services
Cc: Peter Orszag, Director of the Office of Management and Budget