GREEN ENERGY OVERSIGHT: EXAMINING THE DEPARTMENT OF ENERGY'S BAD BET ON FISKER AUTOMOTIVE

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC GROWTH,
JOB CREATION AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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Wednesday, April 24, 2013,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION & REGULATORY AFFAIRS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:35 a.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan [chairman of the subcommittee] presiding.

Present: Representatives Jordan, DeSantis, McHenry, Lummis, Collins, Meadows, Issa, Cartwright, Connolly and Cummings.

Staff Present: Ali Ahmad, Majority Communications Advisor; Kurt Bardella, Majority Senior Policy Advisor; Molly Boyl, Majority Parliamentarian; Lawrence J. Brady, Majority Staff Director; Joseph A. Brazauskas, Majority Counsel; Daniel Bucheli, Majority Assistant Clerk; Sharon Casey, Majority Senior Assistant Clerk; Drew Colliatie, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Professional Staff Member; Peter Haller, Majority Senior Counsel; Ryan M. Hambleton, Majority Professional Staff Member; Frederick Hill, Majority Director of Communications and Senior Policy Advisor; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Mitchell S. Kominsky, Majority Counsel; Justin LoFranco, Majority Digital Director; Mark D. Marin, Majority Director of Oversight; Mary Pritschau, Majority Professional Staff Member; Laura L. Rush, Majority Deputy Chief Clerk; Scott Schmidt, Majority Deputy Director of Digital Strategy; Rebecca Watkins, Majority Deputy Director of Communications; Jeff Wease, Majority Deputy Chief Information Officer; Jaron Bourke, Minority Director of Administration; Jennifer Hoffman, Minority Press Secretary; Chris Knauer, Minority Senior Investigator; Adam Koshkin, Minority Research Assistant; Brian Quinn, Minority Counsel; Dave Rapallo, Minority Staff Director; Rory Sheehan, Minority New Media Press Secretary; Donald Sherman, Minority Counsel.

Mr. JORDAN. The committee will come to order.

We are going to start with a short video that we think sort of sets some context. My friends on the Democrat aisle may think otherwise, but we think this is important, particularly when you think about the fact that several hundred million of taxpayer dollars were lost. So we are going to show that, then we will get to opening statements.

As I indicated to our witnesses before the committee was gaveled into order, we may have to break for votes here in the next 20, 30 minutes. If we do, we will take a short recess, then we will come back.

So we will start with the video. Then each side has several opening statements and then we will get to your testimony.

If the staff could roll the tape.

[Video shown.]

Mr. JORDAN. Today's hearing is about getting to the bottom of the U.S. Department of Energy's Fisker Automotive loan fiasco. For over a year the committee has been examining DOE's loan to Fisker, and the facts that emerged are deeply troubling. We need to understand why the Department of Energy thought Fisker was a viable company. As the video points out, the Vice President bought the Fisker story. Mr. Biden proudly declared in his home State of Delaware that Fisker would produce "billions and billions of dollars worth of jobs." The factory at which Mr. Biden made these remarks alongside Mr. Fisker never produced a single car, and currently no one works there.

A couple of things are clear. First and foremost, Fisker should have never received taxpayer money. It was rated CCC+. In layman's terms, it was junk grade investment. The company built cars that cost $100,000. They built them in Finland. Taxpayers effectively subsidized luxury novelty vehicles for the likes of Justin Bieber, Leonardo DiCaprio, and Al Gore. Fisker was not a well thought out startup; it had a fancy design and big names behind it, but no real business acumen. It was never destined to be a company of job creators but, rather, skillful rent seekers. Fisker never oriented itself toward market signals and consumer demands; its north star was the political winds of Washington.

In his prepared testimony, Mr. Fisker states he does not "believe that any improper political influence was used in connection with the company's loan application or subsequent negotiations with the Department of Energy." But the facts seem to indicate otherwise.

We know for sure that partners at Kleiner Perkins, a major stakeholder and backer of Fisker, talked regularly with people in the Obama Administration and within the Department of Energy's loan office. Kleiner Partner Ray Lane was chairman of the board at Fisker and Kleiner General Partner John Doerr talked regularly with Loan Program Office head Jonathan Silver and was an outside advisor to President Obama on the Administration's green energy spending strategy.

Furthermore, the governor of Delaware contacted the Department of Energy in December of 2011 and asked that the DOE take prompt action to help Fisker, which the Department of Energy did that same month by issuing Fisker an accommodating waiver to forgive the company for missing milestones and breaching financial covenants.

Documents obtained by the committee show ample evidence that DOE's actions resulted in needless loss of additional taxpayer funds. The Department of Energy bent over backwards to accommodate Fisker at many stages even though the company was woefully underperforming and, according to documents obtained by the committee, potentially breaching financial covenants as early as June of 2010, before DOE disbursed any funds.

The Administration contends the program overall is a success and that we should ignore failures such as Fisker because taxpayers haven't lost even more money. This is entirely misleading and seeks to cover up the fact that the loan program has been one of the most disastrously mismanaged and corrupt programs in American history.

Today's hearing does not conclude our investigation into Fisker's loan; it is just the beginning of fulfilling the committee's obligation to the American people to get answers about the malfeasance uncovered at the Department of Energy.

With that, I would yield to the gentleman from Pennsylvania for his opening statement.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. I would like to thank our witnesses for appearing before the committee today and welcome the opportunity to hear your testimony on the Department of Energy's Advanced Technology Vehicles Manufacturing Loan Guarantee Program.

The ATVM Program was created under President Bush and has received widespread support from both Democratic and Republican administrations and members of Congress. The program was structured to invest in U.S. companies and technologies that improve the fuel economy of vehicles, promote economic growth and job creation in the U.S., and protect U.S. taxpayer dollars.

The ATVM Program provided most of its funds to Ford, which today markets highly efficient and successful electric and eco boost engines made in Lima, Ohio and several other U.S. facilities. The success of the Ford loan was replicated with the overwhelming majority of funds lent by the Department of Energy; $1.4 billion went to Nissan North America, which in 2012 reported a record-breaking year in sales, and $465 million to Tesla, which is on course to repay its loan early. In fact, 98 percent of the loan guarantees awarded in this program appear on track to be repaid.

Today's hearing seems to ignore these considerable successes. Instead, we are focusing on a $192 million loan made to Fisker Automotive. I absolutely believe there should be congressional oversight of these programs and I look forward to this discussion, but I would just like to point out the extensive amount of cherry picking that is going on here today, and that really has been going on in the oversight of the Loan Program Office overall. All of the evidence before us indicates that the Department of Energy protected taxpayers in implementing the ATVM Program and DOE followed the same rigorous due diligence procedures in awarding the Fisker loan as it did in awarding the Tesla loan, the Nissan loan, and the Ford loan.

Unfortunately, the Fisker loan is clearly not working out. But Congress, in creating this program, expected that some loans would not work out as hoped and Congress appropriated $7.5 billion to cover potential losses in the loan portfolio. And DOE protected taxpayers once the loans were made. Financial controls and contractual milestones on the release of funds were built into every deal to minimize the taxpayer loss on these loan guarantees. These controls are particularly relevant as we discuss Fisker, which received a $529 million loan guarantee, but drew down only $192 million of those funds; $192 out of $529 drawn down. DOE's oversight of Fisker's ability to meet project milestones led to the decision to cut off Fisker's access to the loan.

Earlier this week, DOE recovered $21 million from Fisker to protect against the loss of those taxpayer dollars. In the event the Government is unable to receive any return on the Fisker investment, losses would account for just 2 percent of the $8 billion in loan guarantees awarded in the ATVM.

Now, I suggest that if Congress were not such a dysfunctional, partisan place, this hearing would lend some perspective on this 2 percent potential loss. In the world outside the Beltway, anybody who exceeds expectations 98 percent of the time gets an A+. That is what the DOE's performance has been in this program.

All of the evidence in this committee that we have gathered leads to the conclusion that the ATVM is working as planned. DOE implemented the ATVM Program and awarded funds only after rigorous due diligence. Fisker's problems were clearly not hoped for, but Congress and DOE planned for the potential of some loans not working out. In fact, ATVM's performance has exceeded Congress's expectations, and only a portion of the funds authorized to Fisker are at risk of loss if the company fails to find a buyer.

While I appreciate the opportunity to hear the testimony of the witnesses today, I think the majority reveals a substantial partisan bias here. I note that nobody from Ford, nobody from Nissan, nobody from Tesla and their successful programs was called here to testify. The majority apparently did not want any contacts, didn't want to acknowledge those successes. That is really a shame. The American people should be quite proud of what our ATVM Program has achieved.

I yield back.

Mr. JORDAN. I thank the gentleman. I would just point Ford, Tesla, Nissan ATVM, they haven't lost $200 million of taxpayer money. That is why they are not here. We have the company here who has lost $200 million of taxpayer money. And only in Washington would a $200 million loss of taxpayer money be viewed as a success. I mean, it boggles the mind, the statements from the gentleman.

I now yield to the gentleman from the full committee.

Mr. ISSA. I thank the gentleman and I thank the chairman from Ohio and the ranking member from Pennsylvania.

I am currently from California, Mr. Fisker. Welcome. But I was born and raised in Ohio. I grew up in a car company family. I worked for General Motors; my father worked for General Motors. Everyone else worked for TRW. One way or the other, everybody in our family was in the car business. So I am going to open up by telling you you know that your place in history as a body designer is secure. You know the work you have done in other areas is well known and desirable. Yes, you are going to be with Preston Tucker for building an innovative car that didn't last; from a fiscal responsibility the company didn't make it. You will be with Malcolm Bricklin; you will be with John DeLorean. That is not necessarily bad company. Quite frankly, innovative cars have a history of failing.

This program was conceived, as the ranking member said, under President Bush; voted. It was not a partisan vote; it was not a partisan program. We have you here today not because you failed; not because you lost potentially U.S. dollars and other investors' dollars. We have you here today because we need to figure out not the successes of a program. We appreciate that and I think they should be lauded, and the Administration has done a pretty good job of doing it.

We have you here because there were a number of things that happened along the way in which DOE had an opportunity to not give you some of the money that they are now trying to recover. They had an opportunity in several documents to get the money back and allow you to be spun off to somebody else. At least the record indicates that. There were opportunities to not fail. More importantly, this was an investment in a finished car from Finland.

That was not something that was envisioned when this was produced, and most importantly to me as an owner of 37 patents, when I went through the file and I looked at DOE allowing this money to go to you while not owning any of the intellectual property because that is a company not covered by the loan, I looked and said there were fundamental mistakes that Mitt Romney, the day he left graduate school, would not have made that mistake. And that is why you are here. You are not here for your ambition; you are not here for what went wrong on your watch, nor your chief operating officer. You are here because DOE seemingly cannot miss an opportunity to miss an opportunity in this case. The mistakes are well documented.

And yes, as the chairman said, there is an indication that one of Mr. Fisker's major investors had extraordinary access to the White House, and one of the questions is would just anybody who had never produced a car, who wasn't going to actually produce a car in the first go-round, be able to get this kind of money and this kind of underlying guarantee if they didn't have a politically connected backer. That is a question, it not an answer. Those are some of the things that the chairman is looking to find out.

I do reject the ranking member's assertion that somehow this panel is not fair. It is subject specific and I think it is appropriate. Every panel that comes before this committee I look at before, during, and afterwards and say did I get it right. I do not believe that between the first and second panel we are going to particularly feel we didn't get it right.

I will mention, once again, that the absence of transparency by DOE, a consistent pattern of not being open and transparent, does make it difficult. But the chairman has been able to get enough documents for us to see a number of failures and, last but not least, I want people to understand if we are going to get in the business of investing, are we investing in everybody? Are we investing specific? Do we have a plan? And I think that if we are going to have a second hearing, and after the car makers, if you will, are gone, I think we are going to have DOE back again and back again, until the lessons learned are so undeniable that, in fact, we can have a confidence that you won't miss opportunities to minimize losses, make the best choices up front, make sure that you are free of political influence and effect, which you are not, and the emails we have received show anything but that.

So, yes, we want to have these decisions made by professionals. We want them made without political interference. We want them made consistent to a plan. And as other investigations this committee has done, we want to make sure there is no gamesmanship of essentially having multiple loans for the same technology. All of that is part of our mandate.

So, Mr. Fisker, as I said in the back, this is not a pleasant experience for anyone to go through, particularly at a time of a trauma for your own company and so on. We asked you to be here because we believe your story, your ambition, the work you did succeed in doing is a perfectly good story of the automotive business. We are here to look at how Government allocated resources and risk, and ultimately, whether they are made whole or not, the missed opportunities that we don't believe, based on the documents we have looked at, should be missed. And I hope people on both sides of the panel, I know my ranking member will speak next, focus on that, focus on the missed opportunities to get it right up front, or at least to minimize losses.

I thank the chairman for the extra time and I yield back.

Mr. JORDAN. I thank the chairman for his well stated opening remarks.

I now yield to the gentleman from Maryland.

Mr. CUMMINGS. Thank you very much. I too hope that we get it right, and I hope that we don't go through a motion, commotion, emotion exercise and no results. That is what happens.

Mr. Chairman, I want to thank you for this hearing, and I thank our witnesses for testifying before the subcommittee today about the Department of Energy's Advanced Technology Vehicles Manufacturing Loan Guarantee Program and the Fisker Automotive.

I hope today's hearing could be a substantive evaluation of the Department's loan program, but I am concerned that the Republicans continue to make the false and irresponsible claims that this program is nothing more than an effort by the Obama Administration to reward political cronies.

Last year, Republican presidential candidate Mitt Romney claimed publicly that the Energy Department's loan to Fisker Automotive was the result of "crony capitalism." He said the President handed out this loan and others to reward campaign contributors. After Mr. Romney made this claim, The Washington Post fact checker gave him four Pinocchios. Not three, not two; four. That is the most you can get for such a blatantly untrue statement.

As the Post reported, the business partner mostly closely associated with Fisker Investment is Ray Lane, who contributed mostly to Republicans, including Rudolph Giuliani, John McCain, and George W. Bush, not Barack Obama.

The fact is that after five hearings last Congress, an exhaustive 18-month investigation, the evidence before the committee makes clear that the Department's loan guarantees were awarded not based on political contributions, but on the Department's unprecedented due diligence. And anyone who continues to make this discredited claim is ignoring the evidence.

The evidence before the committee also demonstrates that the Department's loan portfolio is exceeding the expectations set by President Bush and Congress when they created this program in 2008. The Department committed $8.4 billion to five automated projects across the Country. These included $5.9 billion to Ford Motor Company to upgrade its facilities and develop hybrid engines in Michigan and Ohio; $1.4 billion to Nissan to build an advanced battery manufacturing plant and retool its manufacturing facility in Tennessee; $465 million to Tesla, which recently announced that it would pay off its loan five years early; and $50 million to the Vehicle Production Group to help develop a six passenger wheelchair-accessible vehicle that will run on compressed natural gas.

Despite these successes, we are here today to discuss Fisker Automotive, which represents about 2 percent of the total ATVM portfolio. In April 2010, the Department approved two loans to Fisker totaling $529 million. In 2011, the Department capped the loan amount at $192 million after Fisker failed to meet its contractually required milestones. Earlier this week the Department required Fisker to return $21 million of this amount.

There is no evidence that the Department did anything wrong with this loan; no evidence that the Department employed lesser due diligence than it did with successful loans to Ford, Nissan, Tesla, and VPG; no evidence that politics played any part in the award to Fisker.

Unfortunately, there is evidence that the majority is disregarding the interest of taxpayers in holding this hearing today. Both Fisker and the Department raised concerns that the timing of today's hearing could negatively impact the company's efforts to obtain financing, avert bankruptcy and preserve the maximum recovery possible for American taxpayers.

Of course, we are all concerned about the job creators.

I ask unanimous consent to enter into the record the April 17th, 2013 letter from Fisker's counsel expressing the company's willingness to cooperate with the committee, but requesting a brief delay. To be sure, the committee has a legitimate oversight interest in reviewing the Department's program. I support robust efforts to learn more about these programs, but I hope that we can do that today in a responsible way.

Mr. Chairman, I go back and I ask that the letter of April 17th be admitted into the record.

Mr. JORDAN. I thank the gentleman for his statement. I would just point out evidence the Democrat party has all the same information we have. We think at the conclusion of this hearing there will be evidence to show why this hearing was needed and, frankly, why we had the CEO of Fisker here to give his side of the story as well.

I would also point out the gentleman talked about the loan programs at the Department of Energy. To date, Solyndra is bankrupt, Beacon Power is bankrupt, Abound Solar is bankrupt, A123 Battery is having all kinds of problems, Nevada Geothermal is having all kinds of problems, Solo Power is having all kinds of problems, and, of course, the company we have in front of us today. So to say that this program at the Department of Energy is just wonderful ignores the facts, ignores the evidence.

With that, I would yield to the gentleman from Florida.

Mr. CUMMINGS. Mr. Chairman, you never answered my question. I asked you could I have my document admitted into the record.

Mr. JORDAN. You certainly can.

Mr. CUMMINGS. Thank you.

Mr. JORDAN. Without objection.

Mr. JORDAN. The gentleman from Florida.

Mr. DESANTIS. Thank you, Mr. Chairman. Thank you for calling this hearing. I think it is going to be useful to examine the mistakes made by both Fisker and the Department of Energy, and to highlight the waste of hundreds of millions of dollars in taxpayer funds.

But I think these issues also bring up the larger issue of Government's involvement in betting on handpicked private companies. I don't think Government, through central planning, is competent enough to play venture capitalist, especially with other people's money. The political allocation of capital undermines free enterprise by favoring cronyism over economic viability. I don't think crony capitalism is consistent with the truly free market economy, and I definitely don't think it is the recipe to get our Country back on track, which is something we need to do.

So I look forward to the questions. Thank you for providing all this information for us, I think it has been very enlightening, and I thank the witnesses for their willingness to attend the hearing.

Mr. JORDAN. I thank the gentleman.

Members have seven days to submit opening statements for the record.

We will now recognize our first panel. We have, first, Mr. Nicholas Whitcombe, who is the Supervisory Senior Investment Officer at the Department of Energy's Loan Program Office. Mr. Whitcombe, we thank you for being here.

We have Mr. Henrik Fisker, who is the Co-Founder, former CEO, and former Executive Chairman of Fisker Automotive. We know you had to travel a long way; we appreciate you being here, Mr. Fisker.

And Mr. Bernhard Koehler, who is also Co-Founder, former Chief Operating Officer, and current Chief Executive Officer for Europe and the Middle East at Fisker Automotive.

We thank all of you for being here. We have to swear you in, so if you would stand up and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses respond in the affirmative.]

Mr. JORDAN. Let the record show that each of the witnesses answered in the affirmative.

With that, we will move five minutes each. You get a lighting system that should be right in front of you. Make sure you turn your mic on, pull it close. You get five minutes, more or less, but try to keep it to five if you can. Hopefully we will get through all three and then we may have to, as I said before, break for votes and then come back for questions.

Mr. Whitcombe?

WITNESS STATEMENTS

STATEMENT OF NICHOLAS WHITCOMBE

Mr. WHITCOMBE. Chairman Issa, Chairman Jordan, Ranking Member Cummings, Ranking Member Cartwright, members of the committee, thank you for the opportunity to testify before you today. My name is Nicholas Whitcombe, and until recently I served as the Acting Director of the Department of Energy's Advanced Technology Vehicle Manufacturing Program. This was during 2012. I currently serve as a Supervisory Senior Investment Officer in the Loan Program Office, of which the ATVM is a part. I have been with the Department since 2009 and have over 20 years of commercial and lending experience for major global financial institutions.

The LPO administers two loan programs, Section 1703 and 1705, for energy technologies authorized by Title XVII of the Energy Policy Act, as amended. It also administers direct loans for the Advanced Technology Vehicle Manufacturing Loan Program, as authorized under Section 136 of the Energy Independence and Security Act of 2007. Congress created these programs to support clean energy and an advanced technology vehicle project. As such, the LPO provides loan guarantees for cutting-edge, innovative energy technology and manufacturing generation projects in a wide variety of sectors, including renewable, nuclear, fossil, automotive, and transmission. As of today, the LPO has committed or closed nearly $35 billion in direct loans and loan guarantees, supporting nearly three dozen projects with total project costs over $55 billion. The financing has levered billion dollars of private investment, augmented the capacity of capital markets to finance innovative and large-scale clean energy projects.

The ATVM Program. Created by Congress with strong bipartisan support, the ATVM Program was designed to accelerate the development and deployment of advanced technology vehicles that would help automotive manufacturers meet more stringent CAFE standards, create jobs, and reduce the Nation's dependence on oil.

The Program provides loans to automobile and automobile parts manufacturers for the cost of reequipping, expanding, or establishing manufacturing facilities in the United States to produce advanced technology vehicles or qualified components and for costs of associated engineering integration performed in the United States.

The ATVM Program has received numerous applications from both automotive original equipment manufacturers and component manufacturers, and remains open to receive applications from the automotive industry on a continual basis. To date, the DOE has committed and closed five ATVM loans, totaling $8.4 billion, to automotive manufacturers large and small, and we are adopting cutting-edge technologies and deploying them into the market.

We conduct rigorous due diligence to protect taxpayers' interests. The LPO underwrites and structures its loans and loan guarantees to protect the interests of taxpayers and maximize the prospects of full repayment. Before making a loan or a loan guarantee, the LPO conducts extensive due diligence on the application, with rigorous financial, technical, legal and market analysis by DOE's professional staff, including qualified engineers, financial experts, and outside advisors. A Government Accountability Office report stated that "it is noteworthy that the process developed for performing due diligence on loan guarantee applications may equal or exceed those used by private lenders to assess and mitigate project risks."

Following the loan closing, the LPO monitors each borrower's performance against its business plan and projections. As part of this process, the program works to mitigate risk to the portfolio. As the Allison Report stated, the LPO is not a "passive bystander" when monitoring a loan; rather, the LPO has the ability to reduce or mitigate risk of its portfolio over time and has "robust tools" for protecting itself from elective risk and to ensure adequate protection of the U.S. taxpayers. The Allison Report also confirmed that while these projects by their nature involve certain risk, the LPO portfolio is, as a whole, performing well.

Fisker Automotive. On April 22nd, 2010, LPO closed a $529 million loan to Fisker Automotive for the development and production of two lines of plug-in hybrid vehicles, the Karma and the Atlantic. To date, $192 million has been disbursed to Fisker to fund eligible Karma expenses and to partially fund the purchase of the General Motors plant in Delaware. These funds were used, for example, to support engineering for the Karma at Fisker's United States facilities in Anaheim, California to develop tools, equipment, and manufacturing processes.

From the outset, the Department established rigorous benchmarks, keyed to progress on the Karma and Atlantic production lines, as conditions precedent to any disbursement of Fisker's loan. As has been publicly reported, the Department understands that Fisker has recently faced certain financial difficulties and engaged in a process seeking additional private investment.

The Department has acted decisively to protect the taxpayers' interest since it became evident that Fisker faced financial difficulties. In June 2011, the Department ceased making disbursements to Fisker after the company fell short of the milestones required in the loan agreement. Since then, the Department has continued to communicate with Fisker as it has sought to revise its business plan and achieve profitability. The Department is continuing to communicate with Fisker regarding its obligations under the loan agreement and is committed to ensuring that the taxpayers' interests are protected to maximize their loans received.

I look forward to answering any of your questions.

[Prepared statement of Mr. Whitcombe follows:]

Written Statement of Nicholas Whitcombe
Former Acting Director of the Advanced Technologies Vehicles Manufacturing Loan Program
U.S. Department of Energy
Before the
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs
Committee on Oversight and Government Reform
United States House of Representatives

April 24, 2013

Introduction

Chairman Issa, Chairman Jordan, Ranking Member Cummings, Ranking Member Cartwright, and Members of the Committee, thank you for the opportunity to testify before you today. My name is Nicholas Whitcombe, and I served until recently as the Acting Director of the Department of Energy's (DOE) Advanced Technology Vehicles Manufacturing Loan Program. I currently serve as a Supervisory Investment Officer in the Loan Programs Office (LPO), of which the ATVM program is a part.

The Loan Program Office

The LPO administers two federal loan guarantee programs — Sections 1703 and 1705 — for energy technology projects authorized by Title XVII of the Energy Policy Act (EPAct) as amended. It also administers direct loans for the Advanced Technology Vehicles Manufacturing (ATVM) loan program as authorized under Section 136 of the Energy Independence and Security Act of 2007 (EISA). Congress created these programs to support innovative clean energy and advanced technology vehicle projects. As such, the LPO provides loans and loan guarantees to cutting-edge, innovative, energy technology manufacturing and generation projects in a wide range of sectors including renewables, nuclear, fossil, automotive, and transmission.

As of today, the LPO has committed or closed $35 billion in direct loans and loan guarantees, which support nearly three dozen projects, with total project costs greater than $55 billion. In 2011, the LPO represented the largest single public or private source of debt financing for clean energy projects in the United States as recognized in the *Bloomberg New Energy Finance, 2011 Clean Energy & Energy Smart Technology League Tables*. This financing has leveraged billions of dollars of private investment and augmented the capacity of capital markets to finance innovative and large-scale clean energy projects. LPO's projects include:

- One of the world's largest wind farms;
- The world's largest photovoltaic and concentrating solar power plants currently under construction;
- The first two all-electric vehicle manufacturing facilities in the United States;
- A conditional commitment to the first commercial nuclear power plant to be licensed and built in the United States in three decades; and
- One of the country's first commercial-scale cellulosic ethanol plants.

The ATVM Program

Created by Congress with strong bipartisan support, the ATVM Program was designed to accelerate the development and deployment of advanced technology vehicles that would help automobile manufacturers meet more stringent CAFE standards, create jobs, and reduce the nation's dependence on oil.

The ATVM Program provides loans to automobile and automobile parts manufacturers for the cost of reequipping, expanding, or establishing manufacturing facilities in the United States to produce advanced technology vehicles or qualified components and for costs of associated engineering integration performed in the United States. In 2009, Section 136 was amended to include ultra-efficient vehicles within the definition of advanced technology vehicles. The ATVM program differs from the Title XVII program in that the ATVM program provides direct loans of federal funds, rather than loan guarantees, to the borrowers.

The ATVM Program has received numerous applications from both automobile original equipment manufacturers and component manufacturers and remains open to receive applications from the automotive industry on a continuous basis. To date, DOE has committed and closed five ATVM loans, totaling $8.4 billion, to auto manufacturers large and small who are adopting cutting-edge technologies and deploying them into the market.

Rigorous Due Diligence to Protect Taxpayers' Interests

Congress appropriated nearly $10 billion to cover the credit subsidy costs of ATVM loans and Title XVII loan guarantees, thereby acknowledging the inherent risks of funding new and innovative technologies in industries that were facing significant market and economic challenges. As former Assistant Secretary of the Treasury for Financial Stability Herbert Allison noted in a January 2012 report, since the LPO focuses "on providing support to projects involving innovative technologies that needed support to become commercialized and diffused through the marketplace, the supported projects inherently involve higher degrees of risk and uncertainty than projects that are typically financed in the banking and securities markets."[1] By appropriating this credit subsidy, Congress also ensured that estimated defaults, prepayments, fees, penalties, and other recoveries in the LPO's portfolio would be properly accounted for in the federal budget, pursuant to the Federal Credit Reform Act.

The LPO underwrites and structures its loans and loan guarantees to protect the interests of taxpayers and maximize prospects for full repayment. Before making a loan or loan guarantee, the LPO conducts extensive due diligence on the application, with rigorous financial, technical, legal and market analysis by DOE's professional staff, including qualified engineers and financial experts, and outside advisors. A Government Accountability Office report stated that, "it is noteworthy that the process [the LPO Title XVII loan guarantee program] developed for

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[1] Herbert Allison, "Report of the Independent Consultant's Review with Respect to the Department of Energy Loan Guarantee Portfolio," January 31, 2012, *available at* http://www.whitehouse.gov/sites/default/files/docs/report_on_doe_loan_and_guarantee_portfolio.pdf.

performing due diligence on loan guarantee applications may equal or exceed those used by private lenders to assess and mitigate project risks."[2]

Following the loan closing, the LPO monitors each borrower's performance against its business plan and projections. As part of this process, the program works to manage risk to the portfolio. As the Allison Report stated, the LPO is not a "passive bystander" when monitoring a loan; rather, the LPO has the ability to reduce or mitigate risk in the portfolio over time and has "robust tools" for protecting itself from elective risk and to ensure adequate protection of the interests of U.S. taxpayers. The Allison Report also confirmed that while these projects by their nature involve certain risk, LPO's portfolio as a whole is performing well.

The ATVM Portfolio

ATVM funding has played a critical role in the development of advanced technology vehicles by providing long-term capital when private financing was not available:

> The LPO provided a $5.9 billion loan to Ford Motor Company to upgrade and modernize thirteen factories across six states and to introduce new technologies to raise the fuel efficiency of more than a dozen popular vehicles, including Focus, Escape, Fusion, Taurus, and F-150 trucks, representing approximately 900,000 new vehicles annually.
>
> In Smyrna, Tennessee, the first advanced battery packs produced in the United States are coming off the production line of Nissan North America's production plant. These advanced batteries are powering U.S.-made all electric Nissan LEAF cars. The construction of the 1.3-million-square-foot, state of the art battery facility was made possible through a loan from the LPO for up to $1.4 billion.
>
> Tesla Motors received a $465 million loan from the Department in 2010, allowing the company to reopen an auto manufacturing plant in Fremont, California and develop a manufacturing facility to produce battery packs, electric motors, and other powertrain components. Tesla vehicles have won wide acclaim, including the 2013 Car of the Year from both Motor Trend and Automotive Magazine. Tesla recently announced it will complete the repayment of its $465 million loan from LPO in 2017, five years ahead of schedule.
>
> The Vehicle Production Group received a $50 million loan from the Department in March 2011, allowing the company to support the development of the six-passenger MV-1, a factory-built wheelchair accessible vehicle that will run on compressed natural gas.

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[2] Government Accountability Office, "DOE Loan Guarantees," March 2012, available at http://www.gao.gov/products/GAO-12-157. While the March 2012 GAO report focuses on the underwriting and diligence process for DOE loan guarantees under Title XVII of the Energy Policy Act of 2005, LPO, which manages both the Title XVII loan guarantee program and the ATVM loan program, employs similar underwriting and due diligence processes for both programs.

Fisker Automotive

On April 22, 2010, the LPO closed a $529 million loan to Fisker Automotive for the development and production of two lines of plug-in hybrid electric vehicles: the Karma and the Atlantic. To date, $192 million of the loan has been disbursed to Fisker to fund eligible Karma expenses and to partially fund the purchase of a former General Motors plant in Delaware. These funds were used, for example, to support engineering for the Karma at Fisker's United States facilities in Anaheim, California to develop tools, equipment, and manufacturing processes.

From the outset, the Department established rigorous benchmarks, keyed to progress on the Karma and Atlantic product lines, as conditions precedent to any disbursements of Fisker's loan. As has been publicly reported the Department understands that Fisker has recently faced certain financial difficulties, has terminated a significant portion of its workforce, and has been engaged in a process of seeking additional private investment.

The Department has acted decisively to protect the taxpayers' interest since it became evident that Fisker faced financial difficulties. In June 2011, the Department ceased making disbursements to Fisker after the company began to fall short of the milestones required in the loan agreement. Since then, the Department has continued to communicate with Fisker as it has sought to revise its business plan and achieve profitability. The Department is continuing to communicate with Fisker regarding its obligations under the loan agreement, and is committed to ensuring that the taxpayers' interests are protected to the maximum extent possible.

Conclusion

Four years ago, the American automobile industry was on the brink of collapse during a historic economic crisis. Now, in part because of help from the ATVM program, America's automotive industry is reinventing itself — expanding production, growing profits, creating jobs, and making more fuel efficient automobiles. While American manufacturing continues to face substantial challenges, its future prospects are stronger than they have been in over a decade. The Department looks forward to continuing its support of this success.

I look forward to answering any question you may have.

Mr. JORDAN. Thank you, Mr. Whitcombe.

What we are going to do is we have commenting from Mr. Fisker to do your five minutes, more or less. Then we will have to wait to hear Mr. Koehler when we come back from recess. But in the interest of time, Mr. Fisker, go.

STATEMENT OF HENRIK FISKER

Mr. FISKER. Thank you, Chairman Jordan, Chairman Issa, Ranking Member Cartwright, and Ranking Member Cummings, and the subcommittee members. Thank you. My name is Henrik Fisker and I am the former CEO, Chief Executive Officer and Chairman of Fisker Automotive.

From the outset, Fisker Automotive aimed to be a new American car company, setting pioneering standards for low-emission technology and cutting-edge design. I am proud of what Fisker Automotive and its incredible employees, shareholders, suppliers, dealers, and other stakeholders were able to accomplish: designing, engineering, and manufacturing an advanced plug-in hybrid vehicle from scratch and bringing it to production. We sold approximately 2,000 of these vehicles to buyers around the world before having to cease production due to several difficult events. After resolving initial launch challenges, the cars perform well and customers love them.

I am also proud that the Fisker Karma has been given many awards for its advanced technology, including Time magazine listing the car as one of the 50 Best Inventions of 2011. The technology that Fisker developed is cutting edge and will help pave the way for a new generation of American cars.

This hearing presents an important opportunity to set the record straight about what the company and I did right, what went wrong, and where factors beyond our control intervened. This hearing is also an opportunity to address some of the misinformation that has circulated in recent weeks.

Before we begin, I need to make an important statement about my testimony. I stepped down as Chief Executive Officer in early 2012 and became Chairman of the Board. In March of this year I left Fisker Automotive and no longer speak for the company. While the company retains my name, we are not one and the same.

I co-founded Fisker Automotive with several partners in Irvine, California in 2007 and we announced our plan for our first car, the Karma, in 2008. From the beginning, we knew that we would face significant challenges in building a plug-in hybrid vehicle from scratch.

In early 2008, I was approached at a sustainability conference in California by a senior Department of Energy official. We discussed the technology that Fisker Automotive was developing and he encouraged the company to apply for a loan from the Advanced Technology Vehicles Manufacturing Program, ATVM. Fisker continued its conversations with the Department and the company applied for a loan at the end of 2008. At that time, we already had significant financial backing from private investors.

In 2010, Fisker secured final approval for the two loans under the ATVM program. In total, the company drew down $192 million on the loans. The first loan supported American engineering for the

Karma, a car that was already designated for contract manufacturing in Finland before the company applied for the loan.

The second loan was used to support the engineering and manufacturing of a more affordable car, the Atlantic, in the United States. The company drew down a total of $23 million on that loan.

The Department's loans to Fisker Automotive contained milestones and covenants that the company was supposed to meet to allow additional loan draw-downs. Fisker was transparent with the Department about its progress at all times.

Some have alleged that the company only received the loans due to political connections. Let me be clear: I am not aware and do not believe that any improper political influence was used in connection with the company's loan applications or subsequent negotiations with the Department of Energy.

In 2011, the Karma ran into several significant obstacles that delayed our production and sales time line. First, regulatory approvals for the Karma took longer than anticipated; second, the Karma had two recalls related to parts provided by outside suppliers; third, our exclusive battery manufacturer filed for bankruptcy protection in mid-October 2012 and stopped manufacturing batteries; and, fourth, when Hurricane Sandy hit the northeast of the United States, over 330 Karmas were damaged beyond repair. This constituted a major share of the company's inventory and resulted in a drastic loss of revenue.

In spite of all these setbacks, I want to make clear that Fisker Automotive accomplished many notable achievements. We engineered and brought to market an exceptional new vehicle technology that won acclaim from customers and reviewers alike. Fisker still has the potential to build on those achievements if the company can secure financial and strategic resources. I sincerely hope that the company can find a way to move forward and repay its Department of Energy loans. Thank you.

[Prepared statement of Mr. Fisker follows:]

TESTIMONY OF HENRIK FISKER

Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs
Committee on Oversight and Government Reform

April 24, 2013

Thank you, Chairman Jordan, Ranking Member Cartwright, and Members of the Subcommittee. My name is Henrik Fisker and I am the co-founder and former Chairman and Chief Executive Officer of Fisker Automotive.

From the outset, Fisker Automotive aimed to be a new American car company, setting pioneering standards for low-emission technology and cutting-edge design. I am proud of what Fisker Automotive and its incredible employees, shareholders, suppliers, dealers, and other stakeholders were able to accomplish: designing, engineering, and manufacturing an advanced, electric plug-in hybrid engine vehicle from scratch and bringing it to production. We sold approximately 2,000 of these vehicles to buyers around the world before having to cease production due to several difficult events. After resolving initial launch challenges, the cars perform well and customers love them. Fisker still has the potential to build on these achievements if the company can secure financial and strategic resources. I sincerely hope that the company can find a way to move forward and repay its Department of Energy loans.

I am also proud that the Karma has been given many awards for its advanced technology, including *TIME* magazine listing the car as one of the 50 Best Inventions of 2011. The technology that Fisker developed is cutting edge and could help pave the way for a new generation of American car manufacturing. A decade from now, I hope we will look back on the last five years as the moment when the United States retook its leadership position to define the future of the automobile.

This hearing presents an important opportunity to set the record straight: about what the company and I did right, what went wrong, and where factors beyond our control intervened.

This hearing is also an opportunity to address some of the misinformation that has circulated in recent weeks.

Before we begin, I need to make an important note about my testimony. I stepped down as Chief Executive Officer in early 2012 and became Chairman of the Board. In March of this year, I resigned from the Board and left Fisker Automotive. I do not speak for the company nor am I privy to details of the company's current financial condition or ongoing negotiations with the Department of Energy. While the company retains my name, we are not one and the same.

The Fisker Automotive Story

I co-founded Fisker Automotive with several partners in Irvine, California in 2007 and we announced our plans for our first car, the Karma, in 2008. From the beginning, we knew that we would face significant challenges in building an electric plug-in hybrid engine vehicle from scratch. We started out with a premium model so the cost of technology could be absorbed by the high sale value of the product – a well established model for new technology launches. Fisker's plans to build the Karma generated a great deal of interest and a large amount of private capital. In total, Fisker received over $1 billion in private capital from investors in the United States and around the world that shared our vision for creating a new segment in environmentally-friendly vehicles that were designed and engineered in America.

Fisker delivered its first Karma in late 2011, after battling through regulatory and supplier delays. In total, Fisker has sold approximately 2,000 Karmas to customers around the world. Our single biggest market has been the United States but we also achieved notable success in Europe and elsewhere.

After deliveries to customers began, the Karma had two recalls related to parts supplied by outside vendors. Millions of cars are recalled in the United States every year, including by some of the largest and most well-established auto groups. We were no exception. Nevertheless, the Karmas that have been delivered are operating smoothly and continue to receive fantastic customer reviews. The Karma is the first American car to have won the coveted *Top Gear* Luxury Car of the Year award and many customers report that they achieve better than 100 MPG for their daily driving.

The Karma is a technology leader that will pave the way for more affordable vehicles with the same, if not better, emissions and fuel economy. Once we developed and manufactured the technologies for the Karma, we planned to apply those technologies to a more affordable sedan that would be manufactured here in the United States. We called that car the Atlantic but it was also referred to as the Nina or Kx. Although the Atlantic has not yet gone into production, its engineering is all but complete, a feat financed primarily with private investments. I believe that the opportunity still exists for the Atlantic to be produced and make its mark in the automotive industry.

Department of Energy Loans

In January 2008, Fisker Automotive showed the concept car for the Karma at the North American International Auto Show in Detroit. Soon after, I was approached at a sustainability conference in California by Mr. John Mizroch, the then-Acting Assistant Secretary of the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy. We discussed the technology that Fisker Automotive was developing and he encouraged the company to apply for a loan from the Advanced Technology Vehicles Manufacturing program (ATVM). Fisker continued its conversations with the Department and the company applied for a loan at the end of 2008. At that time, we already had significant financial backing from private investors.

During the loan application process, the Department conducted extensive due diligence over a period of nine months. The Department retained several independent consulting firms to assess all aspects of Fisker's business plan, technology, and finances. Fisker's business plan, based on extensive research, indicated a growing market for electric and plug-in hybrid vehicles due to stricter emission standards and growing consumer awareness. After a thorough independent examination and the input of its consultants, the Department issued a conditional commitment letter in September 2009. At this point, the company had made significant progress and developed unique expertise in advanced technology plug-in hybrid powertrains.

In early 2010, Fisker secured final approval for two loans under the ATVM program. In total, the company drew down $192 million on the loans. The first loan supported American design and engineering for the Karma, a car that was already designated for contract manufacturing in Finland before the company applied for the loan. At the time, the company employed engineers and designers at its headquarters in California and additional contractors, suppliers, and consultants throughout the United States. In 2008, we conducted an extensive review of contract manufacturing facilities in the United States, but we were unable to find a facility that could meet our requirements. That year, the company decided on the contract manufacturer in Finland as the only viable option for manufacturing the Karma to our specifications and timetable. Per our agreement with the Department of Energy, all Karma loan funds were dedicated to supporting Karma engineering in the United States. Fisker Automotive has filed over 80 patents for new U.S. technologies in low-emission systems and engineering.

Fisker Automotive also received a second loan for funds to support the engineering and manufacture of a more affordable car, the Atlantic, in the United States. The company drew down a total of $23 million on that loan. The company planned to use the Karma technology to create a second generation powertrain, with even better fuel economy and lower cost in support of the Atlantic. We purchased a closed GM factory in Delaware as the future site of production. We purchased that factory for its ready access to skilled labor, its proximity to major ports for export, and its state-of-the-art paint facility (the only one of its kind available for purchase at the time). We had hoped to employ up to 2,500 employees at that location when the Atlantic hit full production.

The Department's loans to Fisker Automotive contained milestones and covenants that the company was supposed to meet to allow additional loan draw-downs. For a variety of factors I will discuss shortly, the company met initial milestones before informing the Department that it would not meet certain future milestones on time. Fisker regularly apprised the Department of the company's progress.

Some have alleged that the company only received the loans due to political connections. Let me be clear: I am not aware and do not believe that any improper political influence was used in connection with the company's loan application or subsequent negotiations with the Department of Energy. As stated earlier, we were approached and encouraged to apply for a loan by the Department.

The Advanced Technology Vehicles Manufacturing program was approved by Congress in 2007 to provide financing to American companies that had the knowledge and wherewithal to develop the next generation of automobile technologies. Fisker Automotive was not only leading the way in developing advanced electric plug-in hybrid powertrain technology but we had attracted significant private capital during a very difficult investment period. By the time Fisker applied for the loan at the end of 2008, it had already brought together many of the best and brightest automotive engineers in the country. Ultimately, the company attracted over $1 billion in private capital from around the world – before and after the Department of Energy loans.

Rough Roads

Fisker Automotive began drawing down on the Karma loan in April 2010. In October 2010, we unveiled the Karma that was to go into production with its advanced powertrain technology. In 2011, the Karma ran into several significant obstacles. First, regulatory approvals for the Karma in the United States took longer than anticipated. Since the Karma was built from scratch on a totally new platform with a new powertrain, the EPA and National Highway Transportation Safety Administration required additional time to evaluate, test, and eventually certify it. That review period and some initial parts supply issues significantly delayed our production schedule and delivery to customers.

Second, after extensive U.S. certification, the Karma was launched in 2011. There were two recalls, but both were related to parts provided by outside suppliers, not the plug-in hybrid technology developed by the company. Such recalls are not unusual for newly launched automobiles but they are particularly difficult for a young company with limited resources. The recalls generated bad publicity, diverted management attention, impacted sales, and further delayed our production schedules.

Third, Fisker Automotive had an exclusive contract with A123 Systems in Massachusetts to supply the vehicles with lithium ion cells, and jointly develop the battery pack to fit the Karma platform. Before we entered into this exclusive agreement, we did a thorough analysis of several lithium ion battery manufacturers, but either they could not deliver to our specifications or had an exclusive contract with another vehicle manufacturer. After we chose A123, it took an extended period to develop the final battery pack for the Karma. Sadly, A123 filed for bankruptcy protection in mid-October 2012 and stopped manufacturing batteries. As a result, Fisker Automotive had to cease production of the Karma. We explored options for other battery suppliers, but due to large investment costs and long development cycles, we could not secure arrangements that would allow us to resume production immediately. This was a crippling factor in restarting production of the Karma.

And fourth, two weeks after A123's bankruptcy, Hurricane Sandy hit the Northeast of the United States. Port Newark New Jersey is one of the largest vehicle handling facilities in the United States and many thousands of vehicles were flooded. Over 330 Karmas were waiting for transshipment and were damaged beyond repair during this unforeseen natural disaster. This constituted a major share of the company's inventory and resulted in a drastic loss in revenue.

Driving Forward

In spite of all these setbacks, I want to make it clear that Fisker Automotive accomplished many notable achievements. We engineered and brought to market an exceptional new vehicle technology that won acclaim from customers and reviewers alike. Fisker still has the potential to build on that success if the company can secure financial and strategic resources. I sincerely hope that the company can find a way to move forward and repay its Department of Energy loans.

Mr. JORDAN. Thank you, Mr. Fisker.

We will stand in recess for 25 minutes, more or less.

[Recess.]

Mr. JORDAN. The committee will come to order and, Mr. Koehler, you are up for your five minutes.

STATEMENT OF BERNHARD KOEHLER

Mr. KOEHLER. Thank you and good afternoon, Mr. Chairman, Ranking Member Cartwright, and distinguished members of the subcommittee. My name is Barny Koehler and I am a co-founder and currently the Chief Executive Officer in Europe and the Middle East at Fisker Automotive.

I have been in the automotive industry for 33 years and have experience in prototyping and overall product creation from positions with several leading carmakers, including BMW, Aston Martin, and Ford Motor Company.

In 2005, Henrik Fisker and I founded Fisker Coachbuild. Two years later, in 2007, Fisker Coachbuild and powertrain developer Quantum Technologies formed Fisker Automotive. Fisker Automotive is an innovative company with a mission to develop and create fuel efficient vehicles with style, passion, and performance.

I understand that today's hearing will largely focus on some of the problems our company is facing, but in the next few minutes I would also like to highlight some of the company's achievements.

In 2007, Henrik and I recognized that there was a gap between gas-powered vehicles and all-electric battery powered vehicles envisioned for the future. So we set out to create a car that could bridge this gap through the use of innovative technology that provides the power and efficiency of an all-electric drive with extended range provided by an onboard generator powered by a gasoline engine.

Others shared our vision. Before we heard of the Department of Energy's ATVM loan, Henrik and I successfully raised private capital to support the development of our concept. Fisker Automotive ultimately raised approximately $1.2 billion of private funding. Of course, the company also obtained a loan from the Department of Energy and we used $193 million of loan funds to support our vision.

Fisker Automotive brought together in California a very talented group of people that had experience with automakers and suppliers from all around the world. This dedicated and diverse team, with a bold entrepreneurial spirit, worked tirelessly to bring our concept to life. With the Fisker Karma, we successfully designed, engineered, and delivered the world's first plug-in series hybrid electric vehicle. When fully charged, the Karma allows for an all-electric drive of up to 50 miles, plus up to another 250 miles with the onboard range extender.

The Karma has been certified in the United States, in Europe and Asia, and you can see it being driven on the road today. The vision has become a reality.

You cannot build a successful car company with just one car; you must have a portfolio with multiple models for consumers. The business plan for our second generation car, called the Atlantic, has been in development for more than two years, and the design and engineering work for the car is almost complete. Importantly, the Atlantic would feature an improved next-generation version of the innovative EVer powertrain technology. Given the experience and learning gained from the Karma, our expectation was that the Atlantic would be sold at lower prices, allowing a broader customer base the opportunity to own a Fisker car.

Without question, every automotive manufacturer faces challenges when new vehicles are developed and launched, and Fisker was no exception. While initial production of the Karma began in March of 2011, development and implementation of Fisker's tooling and component specifications and supply chain development moved the commencement of serial production to June 2011. Final emission testing and EPA approval was granted on October 3rd, 2011. Shortly after production of the Karma began, a manufacturing defect in our batteries supplied by A123 resulted in a safety recall and a shutdown during performance testing by Consumer Reports. We were left without a battery supplier after A123 filed for bankruptcy in October 2012. Faced with these challenges, Fisker has not been able to restart vehicle production since a previously-scheduled seasonal shutdown began in July 2012.

The difficulties that Fisker faced were not unusual for any auto manufacturing and are common in the industry. Despite these difficulties, I cannot understate the achievements of our employees who worked on the Karma program. I am grateful for their commitment and dedication. Our company took a giant step in combining the usability of an everyday car with the benefits of an all-electric vehicle. While I do not know exactly what the future holds for Fisker Automotive, including whether the company will find new investors or whether the company may be obliged to seek bankruptcy protection to facilitate its continued efforts to preserve value for all stakeholders, I intend to keep working toward achieving the mission and vision for the company.

Thank you, and I look forward to any questions you may have.

[Prepared statement of Mr. Koehler follows:]

WRITTEN TESTIMONY OF
BERNHARD KOEHLER
CO-FOUNDER AND CHIEF EXECUTIVE OFFICER - EUROPE AND THE MIDDLE EAST, FISKER AUTOMOTIVE

BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND REGULATORY AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

APRIL 24, 2013

Good morning, Mr. Chairman, Ranking Member Cartwright, and distinguished members of the Subcommittee. My name is Barny Koehler and I am a co-founder and currently the Chief Executive Officer in Europe and the Middle East at Fisker Automotive.

I have been in the automotive industry for 33 years, and have experience in automobile prototyping and overall product creation from positions with several leading automobile makers, including BMW, Aston Martin, and Ford Motor Company.

In 2005, Henrik Fisker and I founded Fisker Coachbuild. Two years later, in 2007, Fisker Coachbuild and powertrain developer Quantum Technologies formed Fisker Automotive. Fisker Automotive is an innovative company with a mission to develop and create environmentally conscious vehicles with style, passion, and performance.

I understand that today's hearing will largely focus on some of the problems our company is facing. But in the next few minutes, I would also like to highlight some of the company's achievements.

In 2007, Henrik and I recognized that there was a gap between gas-powered vehicles and all-electric battery powered vehicles envisioned for the future. So, we set out to create a car that could bridge this gap through the use of innovative technology that provides the power and efficiency of an all-electric drive with extended range provided by an onboard generator powered by a gasoline engine.

Others shared our vision. Before we heard of the Department of Energy's ATVM Loan Program, Henrik and I successfully raised private capital to support the development of our concept. Fisker Automotive ultimately raised approximately 1.2 billion dollars of private funding. Of course, the company also obtained a loan from the Department of Energy, and we used $193 million of those loan funds to support our vision.

Fisker Automotive brought together in California a very talented group of people that had experience with automakers and suppliers from all around the world. This dedicated and diverse team, with a bold entrepreneurial spirit, worked tirelessly to bring our concept to life. With the Fisker Karma, we successfully designed, engineered, and delivered the world's first plug-in series hybrid electric vehicle. The Karma has been certified in the United States, Europe, and Asia, and you can see it being driven on the road today. The vision has become a reality.

The Karma uses a brand new powertrain technology – we call it the Electric Vehicle with extended range or EVer - which consists of an efficient gasoline engine, an electric generator, a Lithium-ion battery pack, and two electric motors at the rear wheels. When fully charged, the Karma allows for an all-electric drive of up to 50 miles plus up to another 250 miles with the on-board range extender.

The Karma has won numerous awards from well regarded publications. In 2011, it won the BBC *Top Gear* Luxury Car of the Year award; *Automobile* magazine named it 2012 Design of the Year; and *TIME* magazine listed the Karma as one of the 50 Best Inventions of 2011.

You cannot build a successful car company with just one car - you must have a portfolio, with multiple models for consumers. The business plan for our second generation car – called the Atlantic – has been in development for more than two years, and the design and engineering work for the car is almost complete. Importantly, the Atlantic would feature an improved next-generation version of the innovative EVer powertrain technology. Given the experience and learning gained from the Karma, our expectation was that the Atlantic would be sold at lower prices, allowing a broader customer base the opportunity to own a Fisker car.

Without question, every automotive manufacturer faces challenges when new vehicles are developed and launched, and Fisker was no exception. While initial production of the Karma began in March 2011, development and implementation of Fisker's tooling and component specifications and supply chain development moved the commencement of serial production to June 2011. Final emissions testing and EPA approval was granted on October 3, 2011. Shortly after production of the Karma began, a manufacturing defect in our batteries supplied by A123, Inc. resulted in a safety recall and a shutdown during performance testing by *Consumer Reports*. We were left without a battery supplier after A123 filed for bankruptcy in October 2012. Faced with these challenges, Fisker has not been able to restart vehicle production since a previously-scheduled seasonal shutdown began in July 2012. At the same time, our operating position has been impacted by the effects of Hurricane Sandy, when 338 Karma sedans were destroyed in the port of Newark, New Jersey, resulting in a loss of more than $30 million of irreplaceable inventory.

The difficulties that Fisker faced were not unusual for any automotive manufacturer and are common in the industry. Despite these difficulties, I cannot understate the achievements of our employees who worked on the Karma program. I am grateful for their commitment and dedication. Our company took a giant step in combining the usability of an everyday car with the benefits of an all-electric vehicle. While I do not know exactly what the future holds for Fisker Automotive, including whether the company will find new investors or whether the company may be obliged to seek bankruptcy protection to facilitate its continued efforts to preserve value for all stakeholders, I intend to keep working toward achieving the mission and vision of the company.

Thank you. I look forward to any questions you may have.

Mr. JORDAN. Thank you, Mr. Koehler.

We now turn to the chairman of the full committee. The gentleman from California is recognized for five minutes.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. Fisker, I have a number of questions for DOE, but I have one question for you and for your co-founder. Why did you give up any rights to your intellectual property being within the entity the Department of Energy invested in for purposes of development of technology?

Mr. FISKER. Chairman, we have developed a new technology where we have filed for several patents.

Mr. ISSA. In Fisker Automotive?

Mr. FISKER. In Fisker Automotive. And they can take up to five years until they are fully granted.

Mr. ISSA. So the other patents that are in the portfolio that are not in your possession, why were those not in Fisker Automotive?

Mr. FISKER. When Fisker Automotive started, it was founded by Quantum Technologies and Fisker Automotive in 2007, and everything that was developed in Fisker Automotive from that point in time are remaining with the company and engineers have developed the most advanced technology throughout the couple of years before we got the Department of Energy loan, and all the patents that are developed in Fisker Automotive stays within Fisker Automotive.

Mr. ISSA. I appreciate that, and the committee would like to follow up to make sure we have that. We don't have documents to that effect. Thank you.

Mr. Whitcombe, all the way back in June 2nd of 2010, an email says Fisker's draw request may be in limbo due to a lack of compliance with financial covenants.

Mr. CARTWRIGHT. Mr. Chairman, I raise a point of order in sending that. I must object to inclusion of that email into the hearing record.

Mr. ISSA. On what basis?

Mr. CARTWRIGHT. Mr. Chairman, did you or your staff speak to the person who wrote this email before you released them yesterday to The Associated Press?

Mr. JORDAN. I am not sure what the gentleman's point is.

Mr. ISSA. I don't hear a point of order, and I have been around here 12 years.

Mr. CARTWRIGHT. Well, Mr. Chairman, my staff did speak to the author of these emails.

Mr. ISSA. Mr. Chairman, I must insist the gentleman, if he is going to play the game of point of order, please state his point of order.

Mr. CARTWRIGHT. This is the point. May I be heard?

Mr. JORDAN. The gentleman is recognized.

Mr. CARTWRIGHT. Nobody on the Republican staff contacted her before they released some select emails sent by her, and I wonder if you knew that, Mr. Chairman.

Mr. ISSA. Mr. Chairman, the man is asking a question and creating testimony. That is not a point of order. Can I ask he please state his point of order?

Mr. JORDAN. State your point of order.

Mr. CARTWRIGHT. Mr. Chairman, were you aware that her job responsibilities did not include reviewing Fisker's performance on the loan?

Mr. JORDAN. That is not a point of order. The gentleman is not stating a point of order.

The gentleman from California is recognized.

Mr. ISSA. Thank you.

Mr. CARTWRIGHT. So, to be clear, the majority apparently has no idea of the source and the meaning of this evidence and has no basis to know whether or not this email is significant.

Mr. JORDAN. The gentleman from California is recognized and will be given an additional minute and a half on his time.

Mr. ISSA. Thank you.

Mr. Whitcombe, are you aware of any question, and I will have this email given to you momentarily; I apologize if you don't already have it. But was there, on or before June 2nd, 2010, any question, to your knowledge, as to Fisker's request that in fact it may be in limbo, as this one says, because of lack of compliance with financial covenants?

Mr. WHITCOMBE. Thank you for the question. I am briefly scanning this document that I can read here. I have identified the two individuals as consultants to the Department of Energy Loan Program Office. With respect to it being in limbo due to lack of compliance with financial covenants, I would believe that this is part of the normal course of discussion that all parties and consultant would have between each other.

Mr. ISSA. No, I appreciate that. My time is limited. If in fact there is a failure to meet financial covenants, isn't it true the loan has to be called and either renegotiated or the money pulled back?

Mr. WHITCOMBE. That is not true. As a senior secured lender, you retain all your rights under the loan agreement under the status of senior secured lender.

Mr. ISSA. What do you do when somebody doesn't meet their requirements, do you waive them? And, if so, is there a formal process?

Mr. WHITCOMBE. This document does not say that.

Mr. ISSA. I am asking you about what happens when a company doesn't meet its promises the way Fisker didn't in a number of areas related to the loan agreement based on documents we have good faith to believe are accurate and true.

Mr. WHITCOMBE. In terms of the draw request and lack of compliance with financial documents, the company would certify that it met the financial conditions of any draw request. It would certify to the senior executive of the company; we would review that kind of information on a continuing basis relative to that certification to advance any funds.

Mr. ISSA. Okay, well, let's go on to something that is a little more mainstream Department of Energy. I have, from the same individual, a document, and I will read the extract. Gentlemen, just wanted you to be aware of a request from Chairman Issa. Assume that GC, general counsel, I assume, or CI will reach out to you regarding the requested documents.

Now, that was a request on February 13th of 2012. I haven't received those documents. Do you believe that in fact, since clearly you, as an organization, seemed to know the request was in, can I expect to see those documents pursuant to that request anytime soon?

Mr. WHITCOMBE. The loan guaranty program seek to provide all the information that you need, as I understand it.

Mr. ISSA. No. Stop. You don't determine what we need. We gave you a request for documents. Will you comply with the request? Not what you darn well think I need. This Administration has consistently, over a period of at least the years in which the Republicans have been a majority, decided that they will decide what we need and then not give us what we ask for. I am asking you today are you prepared, on behalf of the Department of Energy, to comply with the request, a substantial compliance with what the request says, not what you think I need?

Mr. WHITCOMBE. Congress has asked for literally millions of documents, encompassing literally thousands of DOE man-hours. We are attempting to comply with all the requests.

Mr. ISSA. Is my request here for millions of documents?

Mr. WHITCOMBE. I don't believe so.

Mr. ISSA. Okay. Are you aware that Secretary Chu appeared before this committee and I asked him at that time, Secretary, in modern technology, should you be delivering us paper documents with no Bates stamps? Couldn't you deliver us electronic data responsible? And he said we should be able to, more or less.

I might suggest to you that no production has occurred and, in fact, it is a push of a few buttons to deliver a substantial amount of this electronically.. And if you care about the taxpayers' money, as people on the dais here do, I would strongly suggest you go back, look at the record of previous hearings, and begin complying through the most expeditious means. This committee has a long history of taking partial document compliance. We work with agencies and, in fact, the chairman of the subcommittee and all the subcommittees have standing orders to meet with and attempt to narrow any request in concert with the agency so that we only get what we need. We are willing to do that in every case. But it has been a year. And to have a hearing this morning in which the ranking member pointed out that we didn't have a witness because they only had eight days to respond, I have to say, when you have had more than a year, it is unconscionable to call this the most open and transparent Administration, when in fact what you are is a stonewalling Administration and one that has lost over $100 million of taxpayers' money, and the record clearly indicates it could have been prevented.

I yield back.

Mr. JORDAN. I thank the gentleman and now recognize the ranking member of the subcommittee, the gentleman from Pennsylvania, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. At this time I do wish to register my lament that it is unclear whether the investigative standard of the majority here is to conduct an investigation and interview witnesses before or after holding a public hearing and leaking documents to the media. However, I do appreciate Chairman Issa's comments that the DOE has done a pretty good job overall with the ATVM program.

Under that program, Congress appropriated money for credit subsidies which has allowed DOE to issue loan guarantees. The amount of losses if Fisker fails is only a tiny fraction of the portfolio's value and is well below the amount Congress appropriated for some expected defaults.

Now, Mr. Whitcombe, isn't it true that the Energy Independence and Security Act of 2007 authorized DOE to make about $25 billion in loans in the ATVM program?

Mr. WHITCOMBE. The Act did authorize exactly $25 billion in loans.

Mr. CARTWRIGHT. And, Mr. Whitcombe, isn't it also the case that President Bush signed the fiscal year 2009 continuing resolution which provided the ATVM loan program with about $7.5 billion in appropriations to cover the program's credit subsidy costs, the pool of money that would be set aside to cover expected losses? Is that true?

Mr. WHITCOMBE. The continuing resolution for $7.5 billion was appropriated for credit subsidy.

Mr. CARTWRIGHT. Mr. Whitcombe, I understand that so far DOE has issued five loan guarantees under the ATVM program worth $8.4 billion, correct?

Mr. WHITCOMBE. Yes, sir.

Mr. CARTWRIGHT. Mr. Whitcombe, the amount of money that Fisker has received is only $192 million, or about 2.3 percent of the $8.4 billion for the program as a whole, isn't that correct?

Mr. WHITCOMBE. Yes, sir.

Mr. CARTWRIGHT. Now, Mr. Whitcombe, let's do a little math. If the worst case scenario develops and Fisker cannot repay the amount of its loan already received, isn't it true that the ATVM program incurs only about a 2.3 percent loss against the total portfolio value?

Mr. WHITCOMBE. Quickly looking at your math, that looks about right.

Mr. CARTWRIGHT. So in the world of project finance, is a total portfolio loss of about 2 percent considered failure?

Mr. WHITCOMBE. Any loss is unacceptable, but 2 percent for a senior secured loan portfolio is acceptable.

Mr. CARTWRIGHT. Thank you.

Now, Mr. Whitcombe, looking at chart number 2, we know that both Ford and Nissan appear to be doing well and they have the ability to repay their loans under this program. Tesla, I understand, is already paying back its loan. The fifth only other loan went to an applicant called the Vehicle Production Group, and they only represent less than 1 percent of the portfolio's total value.

Mr. Whitcombe, doesn't this mean that thus far, after taking into account Fisker's maximum potential losses, 98 percent of the portfolio appears to be doing well and has the ability to repay its loan?

Mr. WHITCOMBE. It appears that to be the case, sir.

Mr. CARTWRIGHT. Ninety-eight percent grade usually gets you an A+. Wouldn't any private equity firm love to have a success rate of 98 percent?

Mr. WHITCOMBE. Yes, they would. I remind you we are senior secured lender, but 98 percent would be excellent.

Mr. CARTWRIGHT. Mr. Chairman, any objective analysis of ATVM's potential losses from Fisker would conclude that the program is not only exceeding expectation, but any losses accruing from Fisker would be well within the reserves Congress already appropriated for this very purpose.

With that, I yield back.

Mr. JORDAN. Mr. Whitcombe, do you recall any speeches made by President Obama, Vice President Biden, or Secretary Chu where they indicated to the American taxpayers prior to this program and you loaning out $25 billion, do you recall any speeches where they said, you know what, American taxpayer, we are only going to lose 2 percent of your money? Do you recall any speeches to that effect?

Mr. WHITCOMBE. No, sir.

Mr. JORDAN. No, sir? Okay. Thank you.

I recognize the gentleman from Florida.

Mr. DESANTIS. Thank you, Mr. Chairman.

I am on slide 4B.

[Slide.]

Mr. DESANTIS. Mr. Whitcombe, one of the milestones associated with Fisker's loan was that it launched the Karma by February of 2011 and it failed to meet that milestone, is that correct?

Mr. WHITCOMBE. In February 2011, the company had represented that it did meet its commercial milestones.

Mr. DESANTIS. What happened in fact, did they meet the milestone or not?

Mr. WHITCOMBE. In February 2011, the company represented to us——

Mr. DESANTIS. What happened in fact? I am not asking what they represented. Did it meet the milestone or not?

Mr. WHITCOMBE. In June 2011, the DOE disagreed——

Mr. DESANTIS. That is not my question. It is a simple yes or no answer.

Mr. WHITCOMBE. The DOE disagreed——

Mr. DESANTIS. In February 2011, either commencement of commercial production of the Karma vehicle happened in fact or not. Based on your knowledge now, sitting here today, did it happen or did it not happen?

Mr. WHITCOMBE. We believe it did not happen and, therefore, we took decisive action.

Mr. DESANTIS. Well, I appreciate it. I am going to give you a chance to talk about that. I have limited time.

Slide 4C.

[Slide.]

Mr. DESANTIS. According to the DOE's quarterly credit report, it appears that although Fisker did miss this milestone in February 2011 for launching the Karma, that the loan was not frozen for Fisker until June of 2011. Is that accurate?

Mr. WHITCOMBE. During that interim period we did not have enough information to determine that.

Mr. DESANTIS. Is it accurate, though? Is it an accurate statement?

Mr. WHITCOMBE. At that point in time we acquired the best available information to make that determination.

Mr. DESANTIS. Is what I stated true or not true?

Mr. WHITCOMBE. Can you restate your question?

Mr. DESANTIS. Yes. It appears that Fisker missed the milestone requirements in February 2011 for launching the Karma, but that DOE did not freeze Fisker's loan until June of 2011. Is that accurate?

Mr. WHITCOMBE. Hindsight is 20/20.

Mr. DESANTIS. I am not asking about hindsight. I am just asking whether it is accurate.

Mr. WHITCOMBE. At that point in time, the loan program——

Mr. DESANTIS. Sir, is it accurate, yes or no?

Mr. WHITCOMBE. Was it accurate in June 2011, when they made that determination?

Mr. DESANTIS. So you froze it in June 2011, correct?

Mr. WHITCOMBE. Yes, sir.

Mr. DESANTIS. Okay. 4C.

[Slide.]

Mr. DESANTIS. Based on DOE's quarterly credit report, it appears that Fisker misled the DOE by stating that it had launched production of the Karma in March of 2011, when in fact it had not. And the report further states that DOE did not figure this out until June 2011, at which point it froze the loan. Is that true, did Fisker misrepresent information to DOE?

Mr. WHITCOMBE. If you would give me an opportunity, I would like to read what is boxed out in the red.

Mr. DESANTIS. Sure.

Mr. WHITCOMBE. Sir, I don't read the word misread here. I believe there was a difference of opinion, and our determination at that point in time was that they had not met the launch milestone, based on the best available information that the DOE had at that time, in June 2011.

Mr. DESANTIS. Right. So they did not provide you the information before that time.

Mr. WHITCOMBE. We worked all during that time period to get the best available information that ultimately led to the determination that they had not met the commercial launch milestone and, therefore, we took decisive and conservative action to stop funding under the loan agreement.

Mr. DESANTIS. So basically, on February 25th, 2011, Fisker received $10 million; on March 24th, 2011, Fisker received $9 million from DOE; April 21st, 2011, another $10 million from DOE; May 26th, 2011, Fisker received another $3 million from DOE. So this adds up to $32 million disbursed between the time that Fisker missed its milestone and the time the DOE determined Fisker missed the milestone and froze the loan. So it seems to me that there was a failure to identify this and that this $32 million was essentially wasted because DOE did not confirm early enough that Fisker had not in fact launched the car. And, in fact, Fisker did not launch the Karma until September of 2011. Is that true, that it was not actually launched until September of 2011?

Mr. WHITCOMBE. We have a very rigorous portfolio management process with professional managers overseeing each loan. Those professional managers are in constant contact with the company and reviewed the documentation that is provided by the company to us, and look at all sorts of other information as well, including financial and technical data. At the point in time when the company requested loan advances and certified against those loan advances, we reviewed that information and made loan advances against that. When we became uncomfortable with the information that they were providing to us that suggested that they had not met the commercial launch date, which was very important to the Department of Energy, we made no further loan advances.

Mr. DESANTIS. Okay. So in spite of that process, though, $32 million was given to Fisker that ultimately is going to fall on the taxpayers. So I guess my final question, I am running out of time, it did not become public that the loan was frozen until February of 2012. So this allowed Fisker to essentially solicit equity under the false notion, implicit notion that the company was still on good terms with the Department of Energy. So after the DOE froze Fisker's loan in June of 2011, why did the DOE not make this public? If the taxpayer was in fact on the hook, don't you think that they had a right to know that the loan was not going smoothly?

Mr. WHITCOMBE. Fisker is responsible for raising its own capital and notifying investors of its situation. Having said that, as to why no press releases or no public notification were provided by the Department of Energy, I will have to take that question on the record, sir.

Mr. DESANTIS. So you don't have an answer for it?

Mr. WHITCOMBE. I don't have an answer, sir.

Mr. DESANTIS. Okay.

Well, Mr. Chairman, thank you.

Mr. JORDAN. I recognize the gentleman from Maryland, the ranking member of the full committee.

Mr. CUMMINGS. I am really listening to all this and I have to tell you, Mr. Fisker, I don't know if these people are really listening to what you said. First, I am just looking at your testimony. You talk about the problems that you all had; first, regulatory approvals for the Karma in the United States took longer than anticipated. That was number one.

There were two recalls of the Karma, but both were related to parts provided by outside suppliers, not the plug-in hybrid technology developed by the company, is that right? Then you had another problem. Fisker Automotive had an exclusive contract with A123 Systems in Massachusetts to supply the vehicle with lithium ion cells and jointly develop the battery pack. They had a problem, right? So you didn't have any batteries, is that right? Mr. Fisker, I am talking to you.

Mr. FISKER. Yes, congressman. When we developed the plug-in hybrid system, the advanced technology, obviously we knew that there was a lot of risk. It is a new technology; it is very difficult to develop. But we finally did get the vehicle into production. However, the battery provider did have initial problems and, of course, that meant that we had problems as well. So there was a recall from the battery manufacturer that affected us and our production.

Mr. CUMMINGS. Mr. Fisker, then you had a fourth problem, and that was Hurricane Sandy hit the northeast United States, and that created a problem because you lost 330 Karmas were damaged, is that right?

Mr. FISKER. Congressman, that is correct.

Mr. CUMMINGS. You had some problems. You know, one of the things that always concerns me about these hearings is when accusations are made that are not fair. And I don't know whether it is fair or not, so I have to ask you some questions, because I can guarantee you I watched the way the press scurried quickly when Chairman Issa was making some statements about all of this, so I want to make sure that we correct it, because after I am long dead and gone, I want to make sure that people who appear before this committee, that we make it clear that if there is something accurate, that is one thing; but if it is not accurate, I want to know.

I will ask you this. Were you and your investors engaged in a pay-to-play relationship with the Obama Administration?

Mr. FISKER. No, we are not.

Mr. CUMMINGS. And I want to go now to some of the other witnesses. Over the past two and a half years this committee, the majority has made many allegations against the Federal Clean Energy and Advanced Technology Vehicle Programs, but in the past two and a half years Congress has been a highly partisan place where facts can be sacrificed for political expediency. In fact, the ATVM program and its awardees have had, until recently, strong bipartisan support.

When President Bush signed the bill which created the ATVM program into law, he said it should say to the American people that we can find common ground on critical issues.

Mr. Fisker, you were encouraged to apply for the ATVM funding in 2008 by John Mizroch, an assistant secretary of energy under President Bush, is that correct?

Mr. FISKER. That is correct.

Mr. CUMMINGS. And what do you think Mr. Mizroch saw in your company? Did he tell you?

Mr. FISKER. Yes. Well, we were discussing, back in 2008, of course, the fact that the American car industry generally was not doing very well, was in fact behind in new technology, and he explained that this loan was set up to get America back in the lead when it came to advanced technology, and specifically advanced technology that would contribute to not having to rely on the import of foreign oil and better emissions. So I explained that our technology was really meant for the consumer to drive the entire week without using one drop of gasoline, and only on long distances using gasoline, and that would dramatically reduce the fuel consumption. And eventually our customers have reported back to get more than 100 miles per gallon. In fact, there are customers driving up to three or four months before they fill up the car. So what we talked about at that time was exactly to achieve these goals, and he encouraged me and explained to me about the ATVM loan.

Mr. CUMMINGS. So you didn't go seeking out this loan.

Mr. FISKER. No.

Mr. CUMMINGS. They sought you.

Mr. FISKER. That is correct.

Mr. CUMMINGS. Oh, okay. Go ahead.

Mr. FISKER. So later in 2008, we finally decided to apply for the loan after we had raised considerable amount of money. We had already started to develop the technology. We had hired experts, really engineers that understood this and were starting to develop electric vehicles, and we had built up an engineering team. And we started then a nine month due diligence with Department of Energy, where they brought in consultants, engineering consultants, other consultants to look at our business plan market, etcetera, and after that we made our final application and got the final approval in April 2010.

Mr. CUMMINGS. Thank you, Mr. Chairman. I see my time has run out.

Mr. JORDAN. Mr. Whitcombe, approximately how many applicants were there to the ATVM program?

Mr. WHITCOMBE. About 150.

Mr. JORDAN. A hundred fifty. And how many got funded?

Mr. WHITCOMBE. Five.

Mr. JORDAN. Okay, look at this email. I just want you to look at the first line and the last time. The first line talks about Fisker was originally rejected by the Credit Review Board. The last line talks about their CCC+ credit rating.

Of the five who received funding, in other words, the other four who received funding, how many of them were initially rejected by the Credit Review board?

Mr. WHITCOMBE. I am sorry, this is the first time that I have seen this.

Mr. JORDAN. No, it is a simple question. Do you know if the other four who got taxpayer dollars, were any of them initially rejected by the Credit Review Board?

Mr. WHITCOMBE. I am trying to look at your document. Can you state your question again?

Mr. CUMMINGS. Mr. Chairman, would you let him look at the document, out of fairness?

Mr. JORDAN. Sure. But the question is do you know if any of the other four were initially rejected by the Credit Review Board, as Fisker was.

Mr. WHITCOMBE. Sir, I do not know. I will have to take that question for the record.

Mr. JORDAN. Do you know if any of the other four who received taxpayer money had a credit rating as bad or any of them have a worse credit rating than Fisker?

Mr. WHITCOMBE. I can't state for certain, but Ford, at that point in time, may have been similar to that level.

Mr. JORDAN. Say again?

Mr. WHITCOMBE. Ford, at the time, may have been similar to that level, but I am not certain.

Mr. JORDAN. Your best guess. Did the other four have a higher credit rating than Fisker or lower?

Mr. WHITCOMBE. I decline to guess on this, sir.

Mr. JORDAN. But you were involved. You are the witness from the Department of Energy. There is only five companies, five credit ratings. Were they better than CCC+ or were they worse?

Mr. WHITCOMBE. I was the acting director during 2012.

Mr. JORDAN. But you are the witness the Department of Energy sent here. It is a simple question. Did the other four have a worse credit position than Fisker when they started or a better?

Mr. WHITCOMBE. I am going to have to take that question for the record.

Mr. JORDAN. How many of the 150 other applicants who were denied funds, do you know if any of them had a better credit rating than CCC+?

Mr. WHITCOMBE. Most had no credit rating, sir.

Mr. JORDAN. But those that you know, did any of them have a better one?

Mr. WHITCOMBE. No.

Mr. JORDAN. Okay.

Well, let's go to slide 2, then.

[Slide.]

Mr. JORDAN. The key line here is the third line that says Fisker was also under-collateralized. Do you know if any of the four other companies who received taxpayer money, were they as poorly positioned relative to collateral as Fisker, or were they all better?

Mr. WHITCOMBE. This is the first time I have seen this document.

Mr. JORDAN. The document is just to show the statement. The question is real simple: Did the other four who got taxpayer money, did they have a better collateral position than Fisker or a worse position?

Mr. WHITCOMBE. I can make no determination whether Fisker had a better or worse collateral position.

Mr. JORDAN. You don't know the collateral position for the other companies that got all that money that Mr. Cartwright put up there? You don't know?

Mr. WHITCOMBE. Fisker itself was a startup company, and any collateral that it would have would have been for intellectual property, machinery, or cash that they had on the balance sheet.

Mr. JORDAN. Let's go back to the first slide, then.

[Slide.]

Mr. JORDAN. I am looking at the middle of the box square. How many of the other four companies were given a loan on a second generation product when the first generation product wasn't complete? Do you know of any of the other four who were given a similar kind of loan?

Mr. WHITCOMBE. Ford was provided loans to retool their factories.

Mr. JORDAN. Let's back up a second. Ms. Cleghorn, she was the credit consultant at the Department of Energy used, correct?

Mr. WHITCOMBE. She was an outside consultant for DOE.

Mr. JORDAN. Right. She was used throughout this whole process to make some evaluations, give you information; you used that information to base your decisions. She is pointing out that Fisker is getting a loan on a second generation product when the first one isn't even complete. All I am asking is did any of the other four companies who got taxpayer money, did they get the same kind of deal?

Mr. WHITCOMBE. Several of the other companies were large O&Ms.

Mr. JORDAN. Did Ms. Cleghorn raise any of these same objections, same kind of concerns about the other companies?

Mr. WHITCOMBE. I have no idea. Ms. Cleghorn is an advisor to the DOE.

Mr. JORDAN. Mr. Whitcombe, here is what we are trying to figure out: Were these guys treated special? Mr. Cartwright made this big deal about how the other four didn't lose money. They did. So I want to know did any of the other four have a credit rating as bad or worse than Fisker, or were they all better? Did any of the other four have such a poorly collateralized position as Fisker? Did any of the other four get a loan on a second generation product when they hadn't even completed their first generation product? Pretty simple, straight forward questions to know how did Fisker get this loan if it didn't apply to the other four.

Mr. WHITCOMBE. We make the awards for each individual applicant based on the merits of the transaction, each different company, after extensive financial market——

Mr. JORDAN. Let me ask you this. What was the credit rating of Nissan when they applied, do you know?

Mr. WHITCOMBE. I believe it was B plus, but I can't——

Mr. JORDAN. So better than Fisker. What was the credit rating of Tesla when they applied?

Mr. WHITCOMBE. I don't believe Tesla had a credit rating at the time; it was funded purely by equity.

Mr. JORDAN. What about Ford?

Mr. WHITCOMBE. I believe it was in the CCC category.

Mr. JORDAN. Okay, what about the Vehicle Production Group?

Mr. WHITCOMBE. Unrated because they had no debt securities.

Mr. JORDAN. All right.

Let's go to the fourth slide, if we could.

[Slide.]

Mr. JORDAN. I will give you a chance to look at this. Of the other four companies who received taxpayer money, were any of them allowed to miss milestones and breach covenants?

Mr. WHITCOMBE. All our borrowers we evaluate on a continuing basis. Certain of the other large corporate borrowers, like Nissan or Ford, commonly, within their financial profile, may or may not have issues; Tesla itself, VPG itself. So comparing each one of these borrowers against each other is unfair because each company has its own different product, its own different financial condition.

Mr. JORDAN. No, no, it is not unfair.

Mr. WHITCOMBE. So it is comparing apples and oranges.

Mr. JORDAN. Fisker is the one who has lost $200 million of taxpayer money. What I am trying to figure out is did the other four companies have any kind of similar position when they got taxpayer money. They haven't lost it like Fisker has. That is what I want to know at the start. Why did Fisker get the loan if they weren't somehow different than the other four?

Mr. WHITCOMBE. Fisker was a startup company. We conducted due diligence on the company and we issued the loans based on the merits of the transaction. Fisker, as an applicant, has to pass an eligibility criteria test and has to provide substantial information.

Mr. JORDAN. Okay, let me go to one last one. I know my time is up, but I want to go to one last. Let's go to I think it is the third or fourth slide, it is the email from Mr. Koehler.

[Slide.]

Mr. JORDAN. Okay, I will give you a chance to look at this and I will read the relevant part. This is from Mr. Koehler to the Department of Energy. This is August 10th, 2009, before they had been given any taxpayer money and before they had been approved. It says, I need a solution for a funding scenario with debt only starting Monday next week and an approval for the entire program within two weeks. I am sorry if I am very direct right now, but we don't have much time. I have to lay off all of my Fisker Coachbuild employees on Monday and some of the Fisker Automotive people. This is hurting me a lot personally and is business related, and is giving our competition a huge advantage.

So I have two questions. Did any of the other four applicants ever send you an email saying, hey, get on the stick and give us American taxpayer dollars, we need it now? Did you get any kind of emails from Ford or Nissan or Tesla that communicated in this fashion?

Mr. WHITCOMBE. There are literally thousands of emails for each loan.

Mr. JORDAN. Do you recall getting any emails that were this direct, saying, hey, we need the money now?

Mr. WHITCOMBE. I have not been presented with any emails to that effect.

Mr. JORDAN. Okay. Did any of the other four get approved for a loan when you had a senior officer at one of those companies admitting that they couldn't meet payroll without help from the taxpayer? Do you recall any other emails that were from Ford, Nissan, Tesla that would say, you know what, we can't meet payroll; we need American tax dollars and we need it now?

Mr. WHITCOMBE. Sir, I would like to see who the author and recipient of this document is.

Mr. JORDAN. From Mr. Koehler, who is sitting two people away from you, sent to Mr. Eckert at the Department of Energy.

Mr. WHITCOMBE. So Mr. Eckert was an investment officer at the DOE at that point in time.

Mr. JORDAN. I don't care what he was. He was at the Department of Energy. I am asking you a question. Do people typically talk to folks who are trying to get taxpayer money from with this kind of language?

Mr. WHITCOMBE. It does matter because he worked in the Loan Program Office, which provides the advice to the secretary about the viability of any loan.

Mr. JORDAN. You have a company that admits in writing from the COO of that company saying we can't meet payroll unless you give us American tax dollars, and you guys decided to give them to them. All I am asking is Tesla, Ford, or Nissan ever send you an email saying, you know what, we can't meet payroll if you don't give us some American tax dollars. Straight forward question. Do you recall any emails from those other companies who got money who would make this point?

Mr. WHITCOMBE. I can't recall of that fact. What I see here is Mr. Koehler sending an email to DOE and then a notification that the email has been forwarded on. That is all I see.

Mr. JORDAN. All right, Mr. Whitcombe, I am out of time, but you have a company under-collateralized, CCC+ credit rating, admits before they receive money they can't meet payroll and they need taxpayer dollars, asks the American taxpayers to give them a loan on a second generation product that they haven't produced, and yet they haven't even finished the first generation product, and the American taxpayers are on the hook for $200 million. It makes no sense to me how the Department of Energy can actually approve this loan from the get-go: under-collateralized, CCC rating, second generation product yet unseen, first generation incomplete, and they can't meet payroll before they ask for the loan, they say that is why we need the loan, and you guys gave it to them. And now we are surprised that the American taxpayers are out $200 million? We shouldn't be surprised; all the evidence points to they should have never gotten the loan in the first place.

Mr. Fisker, let me ask you one last question to finish up here. You said in your testimony there was no political influence. So here is what I can't figure out. If you are an under-collateralized company, you can't meet payroll, you are getting a loan on a second generation product no one has ever seen, you have a CCC+ credit rating, and yet you didn't get the loan because of any political influence. It is amazing. How did you get the $200 million of taxpayer money? You must have really laid it on thick when you went in to talk to these guys.

Mr. FISKER. Well, Chairman, first of all, we had shown the Karma at the time we started discussing with the DOE and beginning in 2008. I do not know exactly when this document is dated, but, as a startup company, there are always times when you are in difficult situations. But I don't know what time this email is dated, so I couldn't ask that specifically, but I do know we had no special treatments.

Mr. JORDAN. I yield to the gentleman from Virginia.

Mr. CONNOLLY. I would ask the chair for some indulgence and extra time.

Mr. JORDAN. You can have as much time as you want.

Mr. CONNOLLY. Thank you, Mr. Chairman.

I guess somebody watching this hearing might be forgiven for perhaps misconstruing a hearing in a democratic body, representative body like Congress, presumably designed to get to the truth in an honest inquiry and something resembling a Soviet show trial in which the press has leaked information that is one-sided but predictably, of course, shows up; in which witnesses are badgered; in which accusations are thrown out, unproven; in which emails that may or may not have any validity are presented as God's gospel truth and you have an obligation to respond to them even though you have never seen the document. We have had to take time out in this hearing for you to even have a chance to read accusatory documents or documents that are going to be used to make accusations.

In my view, this is not how an honorable congressional inquiry ought to be conducted. And I also fear that in order to get maybe cheap political headlines at the expense of the President, I might add we spent two years doing that in this committee and it didn't work. The American people were having none of it. This is an honorable President and his Administration has conducted itself honorably. Has it made mistakes? What administration hasn't? We are opening a library in Texas today for an administration that was rife with them on big things.

The accusation was made that this was an administration that was stonewalling and the least transparent in history. We have had hearings in this committee concluding the opposite. As a matter of fact, when it comes to transparency, this Administration has a very good record, has made enormous progress any way you count it; records-keeping, archiving, posting things using the Internet and the Web, accounting for money. Does it make mistakes? Of course it does; Government is a big enterprise.

Mr. Whitcombe, your title is investment officer. Does that mean that you make some kind of assessment as to the viability of investments?

Mr. WHITCOMBE. Yes, it is supervisory senior investment officer.

Mr. CONNOLLY. Now, I know it is not your responsibility, but if you think back in history, investments, innovative investments, did the Wright brothers make any mistakes in their research on manned flight?

Mr. WHITCOMBE. I am sure they crashed a few times.

Mr. CONNOLLY. So they had some failures, is that right?

Mr. WHITCOMBE. I am sure they did.

Mr. CONNOLLY. Henry Ford and kind of thinking through mass production, do you think he made any failures before he hit success?

Mr. WHITCOMBE. Probably so, sir.

Mr. CONNOLLY. Thomas Edison on the electric lightbulb. In fact, I seem to recall there was actually a fight about which bet to make and which current to use, is that not correct?

Mr. WHITCOMBE. AC versus DC and Mr. Tesla. I understand.

Mr. CONNOLLY. Federal investments. My friends on the other side might say, well, some of these are private investments. All right, Federal investments. The Internet, what is now known as the Internet, started out as Darpanet. Is that your recollection too, Mr. Whitcombe?

Mr. WHITCOMBE. Sometime in the 1980s, yes.

Mr. CONNOLLY. Do think there was some trial and error and perhaps some mistakes, failures, even, before we hit success on how to get it just right?

Mr. WHITCOMBE. Probably so, sir.

Mr. CONNOLLY. GPS technology, also a Federal investment. Paid off for us, but could there have been some trial and error that also included some failures before we actually got success with the technology?

Mr. WHITCOMBE. Probably so, and it is pretty cheap now.

Mr. CONNOLLY. Nuclear technology, also entirely a Federal investment initially. Any mistakes there, failures, successes, in the private sector as well as the public sector?

Mr. WHITCOMBE. Some dangerous.

Mr. CONNOLLY. Some come to mind.

Mr. WHITCOMBE. Yes, sir.

Mr. CONNOLLY. Now, we don't want any mistakes. We don't want any failures. On behalf of the taxpayer, we want to get it 100 percent right 100 percent of the time. But that is not how the real world works. And if we go too far for the sake of political points down this road, we will have a chilling effect on the ability of America to innovate, on the willingness of Government and the private sector to make investments that risk failure every time they make them, whether it be in the pharmaceutical realm or the energy realm or the automotive realm. Doesn't mean we shouldn't get to the bottom of a failure to better understand it. But to simply highlight it for the purpose of political exploitation has negative consequences I know my colleagues do not intend, but they are there nonetheless, and that is my concern with this kind of hearing, besides the issue of fair play.

With that, I yield back.

Mr. JORDAN. Mr. Whitcombe, do you know if Mr. Ford, Orville or Wilbur Wright, or Mr. Edison lost any taxpayer money when they were inventing the wonderful products that they invented?

Mr. WHITCOMBE. I am not certain of Mr. Ford's history or the Wright brothers.

Mr. JORDAN. Mr. Fisker, are you aware that the Wright brothers or Mr. Edison lost millions of dollars of taxpayer money?

Mr. FISKER. I am not aware.

Mr. JORDAN. Mr. Koehler, do you know if those guys lost any taxpayer money?

Mr. KOEHLER. No, I am not aware of it.

Mr. JORDAN. Okay. When my colleague from Virginia talks about cheap political headlines, I will point to the tape we showed at the start of the hearing. Vice President Biden said billions and billions of dollars worth of jobs will be created. You want to talk about political headlines? The folks who are pushing this program. We are just here because $200 million of taxpayer money was lost.

Now, the one thing he got right, Kleiner Perkins is a major investor in the Fisker company. Al Gore is a partner at Fisker. So Al Gore not only invented the Internet, he was involved in Fisker. So he got that part right. Everything else made no sense. We are talking about the loss of $200 million in taxpayer money.

The gentleman from North Carolina is recognized.

Mr. MCHENRY. Thank you, Mr. Chairman.

Thank you all for testifying. I want to begin, if we can put 15C up as a slide.

[Slide.]

Mr. MCHENRY. Mr. Whitcombe, you can review that while I have a question for Mr. Koehler.

This is an internal Department of Energy slide reviewed before the credit committee. Mr. Koehler, the slide is not important to this question. Now, in January of 2012, were you familiar with the plan that would stop the production of the Nina and repay $23 million back to the Government and pursue a sale?

Mr. KOEHLER. No, not to my recollection.

Mr. MCHENRY. Oh. Well, then you should read this document.

According to Fisker and Kleiner Perkins, actually, Mr. Fisker, if I could ask you, do you recall proposing a sale of Fisker and repaying the loan back to Department of Energy?

Mr. FISKER. Excuse me. When is this document from?

Mr. MCHENRY. Just listen to my question. Are you familiar with a plan from January of 2012 by which you would forego the Nina, the production of your automobile here in the United States, and repay $23 million already advanced from the Government back to the Government?

Mr. FISKER. I do not recall ever seeing that document.

Mr. MCHENRY. No, I am asking you a question. I said forget the document.

Take the document down, please.

These documents seem to perplex this panel, which that is a whole different subject for preparations for this question.

Did you offer the Government to repay the loan and forego the production of your automobile?

Mr. FISKER. Congressman, I was not involved in those discussions. I am not aware.

Mr. MCHENRY. So you are familiar with the discussions?

Mr. FISKER. No, that is what I am saying. I was not involved in such discussions.

Mr. MCHENRY. So you never offered to repay $23 million back to the Government?

Mr. FISKER. I was not involved in any such discussions.

Mr. MCHENRY. Okay.

Mr. FISKER. If there were any.

Mr. MCHENRY. Do you know of any discussions to repay the Government and pursue a sale of your company?

Mr. FISKER. Not in the way you mention.

Mr. MCHENRY. Okay, then in what way?

Mr. FISKER. No, I know of ongoing discussions about investors and different opportunities.

Mr. MCHENRY. So tell me about those opportunities.

Mr. FISKER. Well, we have always been raising money, but I don't think it is appropriate to sit here and talk about the private financial institutions we are working with as a private fund.

Mr. MCHENRY. So how much taxpayer dollars have you lost, American taxpayer money have you lost?

Mr. FISKER. I am assuming you are talking about Fisker Automotive. At this point in time, I do not believe that any taxpayer dollars have been lost.

Mr. MCHENRY. None. Okay. So you plan to repay the loans and the money you have already received from the taxpayer.

Mr. FISKER. Congressman, I am no longer with the company, so I am not familiar with that.

Mr. MCHENRY. Oh, fantastic. So let me ask you, Mr. Koehler, since Mr. Fisker said we haven't lost any money with the company that bears his name. Does Fisker plan to repay the Government?

Mr. KOEHLER. Well, right now, as we speak here, we have our management team and I am working on potential solutions.

Mr. MCHENRY. Okay, is one of those solutions pursuing a sale?

Mr. KOEHLER. Strategic investment, new capital from investors, and then to continue to repay the Department of Energy loan.

Mr. MCHENRY. Okay. In January of 2012, were there discussions about getting added investment or pursuing a sale?

Mr. KOEHLER. We talk about additional capital all the time, but I am not aware of a sale.

Mr. MCHENRY. Okay. Well, what we have here is a Department of Energy Loan Program Office document that actually went before the Credit Committee.

Mr. Whitcombe, have you seen this slide before?

Mr. WHITCOMBE. I have not seen this document. I have not had a chance to review it.

Mr. MCHENRY. Okay. This was before the Credit Committee and they discussed forgoing the Nina. DOE refused to resume advances until September time frame. Fisker and Kleiner Perkins said they would forego the Nina, repay the $20 million already advanced for Nina, and pursue sale or move company to China or Russia, either of which would require first repaying the DOE loan.

Mr. Fisker, are you familiar with anything that this slide has outlined for your company?

Mr. FISKER. Congressman, no.

Mr. MCHENRY. Okay. Were you with the company in January of 2012?

Mr. FISKER. Yes.

Mr. MCHENRY. Okay. And what was your role then?

Mr. FISKER. I was executive chairman.

Mr. MCHENRY. Okay. So perhaps if you are pursuing a sale of your company, proposed it, or had the idea to, to a major creditor, you might be involved with it.

Mr. FISKER. I probably would, but I did not see this document.

Mr. MCHENRY. Okay.

Mr. Koehler?

Mr. KOEHLER. No, I haven't seen that and I haven't heard this.

Mr. MCHENRY. You have not heard of this scenario?

Mr. KOEHLER. No.

Mr. MCHENRY. Okay. Then we are going to move to another one, because this is fascinating because they were contemplating. Don't worry, they rejected it. They rejected what they thought was an offer of $23 million to repay back the taxpayer.

So let's go to the next slide.

[Slide.]

Mr. MCHENRY. An update on 5/1/12, so May 1st. The Risk Committee voted to decline Fisker's offer to prepay approximately half their outstanding loan amount and offer DOE a commercial high-yield note for the balance.

Mr. Fisker, were you with the company on May of 2012?

Mr. FISKER. May of 2012? Yes.

Mr. MCHENRY. Are you familiar with an offer to repay approximately half the outstanding loan amount to the Department of Energy?

Mr. FISKER. Congressman, there were several negotiations going on, usually led by the CFO in the company, and I was not part of most of these negotiations.

Mr. MCHENRY. But you are familiar with an offer to repay the loan?

Mr. FISKER. Not this offer. I do not recall that.

Mr. MCHENRY. What offer are you familiar with?

Mr. FISKER. Not an offer, no.

Mr. MCHENRY. Okay, you are not familiar with much, it sounds like, and that is fantastic. We understand your willingness to not provide this information.

Mr. Koehler, are you familiar with that offer? You are a chief operating officer of the company. Are you familiar with an offer to repay what appears to be about $93 million back to the Department of Energy?

Mr. KOEHLER. At the time I was chief business development officer, not chief operating officer any more, but I was not involved in these discussions, so I haven't heard any of it.

Mr. MCHENRY. None of it?

Mr. KOEHLER. No.

Mr. MCHENRY. Oh. Well, Mr. Whitcombe, we will go to you. We will see if you can enlighten us on any of this.

Mr. WHITCOMBE. Your question, sir?

Mr. MCHENRY. Sure. Are you familiar with either of these things I have asked your other panelists?

Mr. WHITCOMBE. I haven't seen this document before.

Mr. MCHENRY. Okay, I am not asking if you saw the document. I am asking you are you familiar with an offer to repay the Government by Fisker.

Mr. WHITCOMBE. I am not familiar of an offer by Fisker. As I understand, there were multiple discussions going on with respect to raising high-yield capital for dollar amounts that I don't know, of which would possibly be used to repay some loan amounts or to redeploy to the business.

Mr. MCHENRY. So at any time did the Department of Energy reject a repayment from Fisker?

Mr. WHITCOMBE. As I am aware, we made no rejection directly to Fisker for not repaying the loan.

Mr. MCHENRY. Okay. Well, we will provide you with the documents, Mr. Whitcombe. I will have extensive questions and I would expect that you would endeavor to answer. It is an inordinately frustrating when your delaying of these questions based on just trying to slow-play the answers. That is extraordinarily frustrating. But in written form we will provide you all these documents that I have referenced here today, and I would hope that you would have a better response than you have been able to provide this committee on this important issue of taxpayers losing money.

The real issue here, Mr. Chairman, is that the Government shouldn't be in this business of actually trying to be a venture capitalist. The Government is a very poor venture capitalist. And what I mean by that is we lose taxpayer dollars. And when we lose taxpayer dollars, it outrages the public that has to pay for salaries of Government workers, some that do a fantastic job. But when you are a senior secured lender, as you have testified, Mr. Whitcombe, you should actually have collateral. I have extensive slides from that. I am sure you will have no comment on it.

So, Mr. Chairman, I will be happy to yield back.

Mr. JORDAN. I appreciate the gentleman's questions, a great line of questioning. Here is what I don't get: someone is not being square with us. I mean, it was part of a presentation in front of the Risk Committee at Department of Energy, on Department of Energy letterhead, about a proposal to sell Fisker and recoup taxpayer money, and Mr. Whitcombe says he doesn't know anything about it and Mr. Fisker and Mr. Koehler, who run the company, don't know anything about the offer. So what gives? Was it made up, Mr. Whitcombe? Did someone just decide to put that together on a piece of Department of Energy stationery? What is the deal?

Mr. WHITCOMBE. I can't make any presumptions of what the Credit Risk Committee did.

Mr. JORDAN. Was there an offer or not? These are the guys who run the company who are saying we don't know anything about an offer to sell the company and recoup taxpayer dollars. But it is right there in front of us.

Mr. WHITCOMBE. I will have to take that for the record, sir, and get back to you on whether we received a formal offer from the company.

Mr. JORDAN. Mr. Fisker, you don't know anything about it? It is your company. No wonder you guys are in trouble if you don't know about a proposal to sell the company.

Mr. FISKER. Chairman, I was sitting on the board at that time and I know that there were ongoing discussions.

Mr. JORDAN. The company is Fisker. Your name is Fisker. You are chairman of the board and you don't know about a deal to sell the company to recoup taxpayer dollars?

Mr. FISKER. I know that there were ongoing discussions with the Department of Energy.

Mr. JORDAN. The question was real simple from Mr. McHenry about the deal. You don't know anything? You said, I don't know.

Mr. FISKER. I have not seen that particular paper.

Mr. JORDAN. So let me ask you this. Kleiner Perkins, were they representing you, proposing deals that you didn't know about?

Mr. FISKER. I don't know.

Mr. JORDAN. Yes or no?

Mr. FISKER. I don't know.

Mr. JORDAN. Do you think it might have happened?

Mr. FISKER. I can't answer that.

Mr. JORDAN. Mr. Whitcombe, did that proposal come from Kleiner Perkins and not from Fisker?

Mr. WHITCOMBE. We dealt with Fisker as the borrower directly. Kleiner Perkins was an equity investor in the company, but our loan was with Fisker, and that is who we had all discussions with, with Fisker senior executives and the board of directors.

Mr. JORDAN. All we want to know is if the offer was made. You can't tell if it was made; the head of the company can't tell if it was made. That is unbelievable. Unbelievable.

All right, I am going to recognize the other gentleman from North Carolina.

Mr. MEADOWS. Thank you, Mr. Chairman.

And thank you for your testimony here.

Mr. Fisker, if we could look at this slide they will be putting up, slide 13A, which is from the Department of Energy in October of 2011, it states that in April 2010 you expected to sell 14,000 Karmas in 2011. In reality, though, we know that production for the Karma did not start until September of that year. And as of this presentation, which is actually a presentation in October of 2011, it was estimated that you would sell 542 Karmas by the end of the year. So we go from 14,000 to 542 Karmas. Did you actually sell 542 Karmas in 2011?

Mr. FISKER. Congressman, let me clarify. In a ramp up in production, the production numbers are very low in the first several months. Then as the production moves to the end of the year, obviously we were looking at a very low production ramp, and I believe we sold about 280, between 250 to 300 cars by the end of 2011.

Mr. MEADOWS. So you went from 14,000 in the first part of the year, you ramped up and revised the estimate to 542, but then within a three-month time period you couldn't actually project how many cars you were going to do, and you ended up at half the number you projected in the fall of 2011, is that correct?

Mr. FISKER. Well, congressman, as our production was delayed, it was very hard to estimate before we had the final certification and everything was done, so it was literally week by week. Even if you miss a week, you miss, obviously, production.

Mr. MEADOWS. All right, so let's say we miss that.

Let's go on to the next slide.

[Slide.]

Mr. MEADOWS. Can you look at this slide, which is slide number 15? This is from the Department of Energy's review of the loan application from 2009, and it stated that you would sell over 7,000 Karmas in 2010, 15,000 between 2010 and 2013; you would come up with some 60,000 Atlantic, the new version, by that 2011 time frame; and another 60,000 by 2012. My question is how in the world did you convince anybody that you could do this kind of production, when you didn't even produce 1 percent of that?

Mr. FISKER. Congressman, could I have a copy of that?

Mr. MEADOWS. Sure. We will be glad to provide that for you. But we had unbelievable estimates of over 120,000 vehicles. I would say that we misnamed the car. It shouldn't be the Karma, it should be the Karnac. And that is how we come up with these numbers.

Mr. FISKER. Congressman, as I look at these numbers from far away, I would like to just double-check the document.

Mr. MEADOWS. I mean, this was part of the review process for the loan that we were going through with Mr. Whitcombe and his agency. So you were coming up with all these numbers based on what?

Mr. FISKER. Congressman, this is not numbers from the final business plan submitted to the DOE. This is not the correct document.

Mr. MEADOWS. Okay. Well, how many did you estimate? Because we have a number of documents we will be glad to provide, and maybe these are some that you can answer directly. How many did you estimate that you would build?

Mr. FISKER. So when we were working on due diligence in 2009 for the Department of Energy loan and for the business plan, we invited all our dealers in the U.S., our importers worldwide to help us confirm the numbers. We also had, through the DOE due diligence, A.T. Kearney come out and verify our projected sales numbers, and everybody were verifying the numbers that we submitted to DOE in the final form.

Mr. MEADOWS. So you are saying these are incorrect. What are the correct numbers? How many did you estimate that you would build, of the new car that was supposed to be built in the United States, not the one in Finland?

Mr. FISKER. These ones here are incorrect. I don't have the final numbers in my head of all the different years, but this is incorrect.

Mr. MEADOWS. I would assume that you lived, breathed, and ate automobile for a long period of time, so you know what the expectation was. How many, just very simply? We will let you be plus or minus 1,000. What was the number?

Mr. FISKER. So when we submitted the final plan and we had already worked on the vehicle for two years and invited dealers out, as I said, and built up our dealer network, we projected the initial Karma volume I believe about 11,000 for the first year.

Mr. MEADOWS. Okay. So you didn't do anywhere close to 11,000 the first year. Was it 200? What was your testimony?

Mr. FISKER. Well, as I said before, there was a ramp up, so you cannot really count that as a first year.

Mr. MEADOWS. Okay, well, to date how many have you produced, 2,000?

Mr. FISKER. Well, as I mentioned in my statement, we came into several unfortunate events that hit us like a domino effect.

Mr. MEADOWS. So you are saying that you didn't produce enough cars because of Hurricane Sandy? Is that your testimony today?

Mr. FISKER. My testimony is that we hit several unfortunate events such as the bankruptcy of our battery supplier, such as recalls from a faulty battery; and obviously that had a very strong impact on consumer confidence. It takes one day to take down consumer confidence, but several months to build it back up.

Mr. MEADOWS. So your failure is not based on any negligence or lack of due diligence on your part, it is all these external factors, is that correct?

Mr. FISKER. We did, as I said, a lot of due diligence back in 2009; not only us internally, but with our recognized dealer body here in the U.S., as well as international importers, A.T. Kearney, which is a recognized marketing firm.

Mr. MEADOWS. All right, so when you got approved for the loan, from this taxpayer funded loan, how many cars had you built at that particular time?

Mr. FISKER. When we got the initial approval, the Karma was still under development.

Mr. MEADOWS. So you had zero cars that had been produced when you got the loan.

Mr. FISKER. The car was still in development.

Mr. MEADOWS. So that is zero, is that correct?

Mr. FISKER. Yes, sir.

Mr. MEADOWS. Yes or no?

Mr. FISKER. That is correct.

Mr. MEADOWS. Okay. All right, so let's go a little bit further.

Slide 17. This is from March 3rd of 2010. It is an email where it talks about that Fisker was originally rejected by the CRB since the manufacturing was to be outsourced to Finland, okay? So no U.S. jobs. The deal was amended to pull in the next stage of Fisker cars, that never got built, by the way, to be manufactured in the United States. Since Fisker had yet to build the first generation model, I thought it was very risky to lend against a second generation, which I would agree with, but that was what was required to "meet the policy requirement."

Mr. CARTWRIGHT. Mr. Chairman, I have a point of order. I think in fairness to the witnesses they should have these documents in front of them, instead of having to try to squint and read them off.

Mr. MEADOWS. We will be glad to do that, Mr. Chairman.

Can I get them copies, please?

Mr. JORDAN. The staff will take documents to them.

Mr. MEADOWS. All right, but meeting the policy requirement. So that policy requirement, I guess, would be that we would want to create American jobs. Is that correct? Is that the policy we are talking about?

Mr. FISKER. We had, in fact, up to 600 jobs at Fisker Automotive at one point in time here in the U.S., and every money we spent from the Department of Energy loan was spent here in the U.S.; no money went to Finland whatsoever.

Mr. MEADOWS. All right, so out of all the money that we spent, you spent it all here in the United States. But that allowed you to take private equity and spend on the production of the cars in Finland, is that correct?

Mr. FISKER. The money that was spent in the U.S. was basically receipts that were given to the DOE to make sure that this money was spent here, that the money was already spent in the U.S., and we then got compensated from the DOE on that particular amount that was spent here in the U.S. developing advanced technology and creating jobs here in the U.S.

Mr. MEADOWS. All right, so as we start to look at this, let me go a little bit further. Based on this email, can you explain this to me? It appears that they made the loan based on faith, not on any real due diligence, because their comment is that it is very risky to loan on a second generation car when the first generation car, as your testimony just admitted, had never been produced. So we have no cars and yet we are loaning on a second, better improved car.

Mr. FISKER. Well, first of all, I can't speak on behalf of the DOE.

Mr. MEADOWS. Would you have made the same kind of loan?

Mr. FISKER. Well, yes, at that time I would say that we had a very good development process already, we had already gotten very far with development on the powertrain. We had already spent two years developing the powertrain and the car by the time we got the Department of Energy loan. In fact, we had already started the second generation car before we were awarded the Department of Energy loan in April.

Mr. MEADOWS. But according to some of the documents I have read, there is only 60 percent of that that actually translated over to that second generation car. So the work you do on the first generation, there is only 60 percent that would translate over.

Mr. FISKER. Well, the important part that would translate over was the powertrain, the technology is very important. It was second generation technology that was lower cost, higher volume. That is really the important part in this whole process. To start out with a technology that is expensive, just like when the flat screen TV was $20,000; today it is $500. That, I think, is a recognized model. In any new technology you start out with expensive.

Mr. MEADOWS. But most of the time we were already producing TVs when we do that.

I can see I am out of time. I have several other questions that I will submit for the record. What happens is we started here with Vice President Biden. He was talking about billions and billions and billions of jobs; he says we are going to write a new chapter. Then he came back to say, again, we are going to rewrite a new chapter. And I think he is probably right, but the chapter is chapter 7, it is not a new chapter in automobile history.

I yield back.

Mr. JORDAN. We will have a second round.

Mr. ISSA. Mr. Chairman?

Mr. JORDAN. The gentleman of the full committee is recognized.

Mr. ISSA. I appreciate that. I will use the time but, actually, I was asking unanimous consent that the documents referred at this time be placed into the record and also distributed to both sides of the dais and to our witnesses. And I have asked them to do that, if there is no objection.

Mr. JORDAN. Without objection.

I would point out the documents are coming up on the screen right in front of Mr. Whitcombe; it is not like they can't see them. But we will do that as well, and I think it is a great idea.

Mr. ISSA. Thank you.

Mr. JORDAN. So ordered.

The gentleman from Georgia, then we will move to a second round.

Mr. COLLINS. Thank you, Mr. Chairman.

As we have discussed chapters, as we have discussed grand visions and plans, this is just, again, more and more amazing as I sit and I look at the discussions that are going on not just here today and the money that is lost here, or, as you have testified, which amazingly so has not been lost, undoubtedly is going to be repaid. Is there a time frame that you believe that the Fisker company is going to be paying this loan back?

Mr. FISKER. Congressman, I am no longer with the company, so I can't speak for the company.

Mr. COLLINS. But when you were, were there any plans to be paying it back?

Mr. FISKER. Yes.

Mr. COLLINS. You made a statement that the American taxpayer had not lost any money.

Mr. FISKER. At the time I was with the company, the plan was to follow the Department of Energy payment plan.

Mr. COLLINS. Okay. And there was a plan in place to actually pay that money back?

Mr. FISKER. The official plan, correct.

Mr. COLLINS. And considering where the company is right now, is that a viable plan?

Mr. FISKER. I cannot speak to that.

Mr. COLLINS. Was it when you left?

Mr. FISKER. I believe that the company has developed a tremendous value and I believe that the company, if it does get investors into the company, has the possibility of a path forward.

Mr. COLLINS. And then if we hope real hard and squint real hard, this might actually happen. Is that what the company is sort of basing it on? Because right now it shows no ability to do that.

Mr. FISKER. Like I said, I can't answer for the company's current financial.

Mr. COLLINS. Okay, we will give you a break for a second.

Mr. Whitcombe, in documents, again, obtained, and to save us some time here, if you need to see these, we will put them up. Instead of having to say that they are not up, I am going to read part of it. It appears that the Department of Energy tightened the standards on these loans after the loans were given to Fisker. In fact, there was a number of companies in the cue, if you would, startup electric car companies who were in the pipeline that expressed frustration at not meeting swift approval.

On March 2nd, 2010, which this will be number 20 on the slide, and all I am going to focus on, and I will read it for you, it says, As I mentioned to Jason earlier in an email, the credit standards have indeed become a bit more stringent since Tesla and Fisker deals went through. So I just want to be sure we have all our issues nicely boxed before we head to the committee.

So you can take that down.

At this point in time, the question I have is, Mr. Whitcombe, it appears from this email between Ms. Cleghorn and Sandy here, and these that are listed, it appears that the credit standards afterwards were made more stringent at the Department of Energy. I have a question about that because you made the statement in your opening that you do more than even private enterprise looking at this. My question is how did the credit process get more stringent? Did the Department of Energy decide to stop giving loans to companies with CCC+ junk status credit?

Mr. WHITCOMBE. Give me a moment, I will finish up reading this question here. This is the first time I have seen this document here, and I understand in this series of time, March 2nd, 2010, they were looking at a particular credit, not Fisker.

Mr. COLLINS. Okay, let me just stop right here, then. I am going to help out. And I understand. I will give you just a second as you are reading. Let's just go yes, no. Would it be safe to say that after the Fisker deal that the credit standards were made more stringent, yes or no?

Mr. WHITCOMBE. Each application has its own——

Mr. COLLINS. Yes or no? Because I am not asking about other applications.

Mr. WHITCOMBE. This email from an outside consultant implies that credit standards were made more stringent after Fisker.

Mr. COLLINS. Right. Because there were others in the pipeline wanting to know why the process was not moving along. If it was made more stringent, which it appears it was being made more stringent with the company that was dealing with this all the time, what was made more stringent?

Mr. WHITCOMBE. Any number of factors could have been made more stringent, which could be the product; the product market; the source of capital; the particular product line; the market to which they would sell, whether it is a $30,000 car or a $100,000 car; concentration of risk. It could be any number of factors.

Mr. COLLINS. So maybe this discussion of how well it is vetted, and these companies were vetted before Fisker, was not as well vetted as we were led to believe, since now, after this loan was made, we needed to tighten this up and it wasn't as strong as being portrayed here.

Mr. WHITCOMBE. I don't believe the quality was any less earlier on, sir.

Mr. COLLINS. So it was just an interesting thing that after Fisker these became a different standard?

Mr. WHITCOMBE. I don't believe the quality of the credit analysis was any less, sir. There is a high quality of credit professionals working in the DOE who are dedicated employees, along with the credit advisors they have. If you notice Grant Thornton on here with Fisker. Also we had Booz Allen Hamilton, A.T. Kearney. We had, as a legal advisor, Debra Wasson Clinton. We had a great team in place.

Mr. COLLINS. And at this point I believe there is also a policy issue that we are looking at here. And after it became evident that we had these billions and billions coming through anyway, we will just leave that for its own statement, they decided, well, maybe we shouldn't be letting these loans go to junk status companies on a CCC+ rating.

Mr. WHITCOMBE. There was a large credit subsidy set aside to account for innovative manufacturing companies.

Mr. COLLINS. Read that in your letter. Basically you are new, we are going to lose money.

Mr. WHITCOMBE. In this case, sir, Fisker is a startup company. We had many startup companies within the portfolio of applications.

Mr. COLLINS. Moving right along.

Slide 19.

[Slide.]

Mr. COLLINS. This is interesting, and we are going to continue this line, Mr. Whitcombe. This email specifically states that Fisker made the loans more difficult only a few months after the DOE started giving money to Fisker, and it says this, and there was a statement from the email that said this is incredibly important, and especially with AT&B, as they have not been through the approval process since Fisker and have no real sense of how much tougher things are. That is a definitive statement in there saying that things are harder, that there is something else in there that is making it more difficult. Again, I want to go back to this. What was it specifically about the Fisker loan that required making the application process more difficult? This is sort of a follow-on of the previous question.

Mr. WHITCOMBE. Sir, lending to a high-tech company in the automotive industry is——

Mr. COLLINS. So we have no clue?

Mr. WHITCOMBE. Excuse me?

Mr. COLLINS. So we just don't know? It is just being perceived as harder?

Mr. WHITCOMBE. I wouldn't say we know. Look at the title of the program: Advanced Technology Vehicle Manufacturing Program. Each one of those words implies it is very difficult in this sector to lend. It is on an ongoing basis. The people who worked on this program, including these two people, who are consultants.

Mr. COLLINS. But, sir, with respect, that is not my question. That is not my question. My question is what was made tougher. Or what was the perceived difference after Fisker? It is not how you do it, and it is not the quality of people doing it, and it is not questioning the character of them wanting to come to work and do a good job. The question specifically is if the perception is it is harder, what made it harder?

Mr. WHITCOMBE. As I am aware, at the time, the ATVM credit guidebook, which was for the group, had not changed. There is no specific evidence that I can imply that credit standards had gotten tighter.

Mr. COLLINS. So this was an unwarranted assessment? This email is an unwarranted assessment?

Mr. WHITCOMBE. This email is from Jim Cray, a third-party consultant, to Sandy Cleghorn's Hotmail address.

Mr. COLLINS. Would you not say that they have dealings with your loan program?

Mr. WHITCOMBE. They are advisors.

Mr. COLLINS. Are they familiar with the loan program?

Mr. WHITCOMBE. They are advisors and they are familiar with the loan program.

Mr. COLLINS. And they have watched how it goes by and their perception is, who deal with this regularly, that it became tougher after Fisker and, in fact, actually seemed to end after Fisker, because none were ever sent forward since then. Would that not be a fair assessment of what is being said here?

Mr. WHITCOMBE. This is their opinion, a third-party's opinion in an email together with each other. As you know, we make our advisements to the Secretary based on the merits of the transaction, based on the information that we have at the time.

Mr. COLLINS. Yes or no, do you feel this is a fair assessment? Do you feel it is a fair assessment that the standards were made tougher after the Fisker sale, yes or no? Not how they did it, but is that the perception being said here in this email?

Mr. WHITCOMBE. I can't answer that question, but I will tell you I have been lending for 21 years and I have a very high sense of the credit conservatism. Loans in this sector involve significant amounts of capital. The capital-intensive projects up-front costs, it is very difficult to analyze this, and the credit professionals at the time did their very best to understand all the risks, described those risks, structured a loan, and advised the secretary accordingly.

Mr. COLLINS. I appreciate that, because, again, I am going to re-ask the question I just asked after I ask this question. Will you answer my question, yes or no?

Mr. WHITCOMBE. Yes, sir.

Mr. COLLINS. Okay. Is it a fair perception that the standards got tougher after Fisker, yes or no?

Mr. Chairman, I yield back. This is getting us nowhere.

Mr. JORDAN. Appreciate this. It just confirms why we need to have more hearings and have someone from the Department who is will in fact answer the questions.

Let me do this. Mr. Fisker, Mr. Koehler, let's assume you guys are smart business people. Would you invest your money, your capital in a company with a CCC rating; a company that would be under-collateralized, collateralized to half the value of the loan; a company that couldn't meet payroll, as evidenced by what Mr. Koehler sent.

You have a different company, but the company that sends an email similar to what Mr. Koehler sent to the Department of Energy. Would you put your own private money in a company with those characteristics, CCC credit rating, under-collateralized to half the value of the loan, couldn't meet payroll; give me the money, look the other way, give me the money, I need to meet payroll? Would you give your private money to a company like that?

Mr. FISKER. Mr. Chairman?

Mr. JORDAN. Not Fisker. Let's just say some company has that characteristic out there. Would you give your money to a company like that?

Mr. JORDAN. Mr. Chairman, I put my last money in this company during such a time, in 2009.

Mr. JORDAN. Mr. Koehler?

Mr. KOEHLER. My answer is when you look at the Department of Energy——

Mr. JORDAN. No, the question is would you put your own money, not taxpayer money, would you put your money at risk.

Mr. KOEHLER. The risk was greatly minimized with additional private equity we had to bring in from the outside.

Mr. JORDAN. Well, to me, that explains why you guys lost $200 million of taxpayers' money. If you put your money in a company with those characteristics, that makes no sense to me at all.

Let's go to this. Mr. Fisker, is Kleiner Perkins a major investor in Fisker company?

Mr. FISKER. I prefer not to discuss individual investors.

Mr. JORDAN. Mr. Fisker, let me tell you something. Here is the way it works: you take taxpayer money, you are supposed to answer the questions. That is why we called you here. You can't just say, oh, I don't want to answer the questions, I don't know about any loan. You took $200 million of taxpayer money. I would prefer not to have to ask these questions to any private company but you know what, you signed up for the deal. When you take taxpayer money and you lose $200 million, that is the risk you take. That is why you are in front of this committee having to answer questions. So the question is was Kleiner Perkins an investor in your company.

Mr. FISKER. Mr. Chairman, I think, first of all, as a private company, we like to treat our investors privately as they make these investments.

Mr. JORDAN. You forego that when you sign up and take the deal, Mr. Fisker. Were they an investor in your company?

Mr. FISKER. Well, as I said before, I prefer not to talk about individual investors.

Mr. JORDAN. It has been widely reported that Kleiner Perkins is an investor in your company. Are those news reports accurate?

Mr. FISKER. We have read the reports of that news and Kleiner Perkins——

Mr. JORDAN. Is the news right or wrong?

Mr. FISKER. Kleiner Perkins has a board member and a board seat at Fisker Automotive and an investment.

Mr. JORDAN. Okay. And is it true that Mr. Gore, Al Gore, is a partner at Kleiner Perkins and John Doerr is a partner at Kleiner Perkins? It has been widely reported in the news that that is the case. I am asking you have you read those same reports and are they accurate.

Mr. FISKER. Yes, I read those reports.

Mr. JORDAN. Okay. And the fact is Kleiner Perkins has given over $2 million in political contributions in the 2008 election cycle, most of which went to Democrats, including President Obama. Did that in any way, in your judgment, influence the ability for Fisker to get a loan, get taxpayer money from the Department of Energy?

Mr. FISKER. As I stated earlier, Fisker has not exercised any undue political favors or anything like that, and I am not aware of any.

Mr. JORDAN. Did Al Gore have any influence on Fisker getting a loan from the Department of Energy?

Mr. FISKER. Not that I am aware of.

Mr. JORDAN. So you are telling me these guys were investors, widely reported in the news, they were big investors in Fisker and they didn't have any influence on the process at all?

Mr. FISKER. Not that I am aware of, no.

Mr. JORDAN. Okay. John Doerr is the general partner at Kleiner Perkins, was an outside advisor to President Obama and met with him and key advisors many times to provide advice on the Administration's green energy agenda. Again, widely reported in the press. Did John Doerr influence your ability to get a loan or the status of your loan after it was already given?

Mr. FISKER. The designated board member at Fisker Automotive was Ray Lane, so I am not aware of what John Doerr did or did not do.

Mr. JORDAN. Did Ray Lane have any influence?

Mr. FISKER. Not that I am aware of.

Mr. JORDAN. Well, we understand that on May 24th, 2011, John Doerr, Ray Lane, of Kleiner Perkins, widely reported to be an investor in Fisker, had a meeting with Jonathan Silver, who was the director of this ATVM program at the time, and others at the Loan Program Office. To your knowledge, was Fisker discussed at this meeting?

Mr. FISKER. I am not aware of that.

Mr. JORDAN. They didn't tell you? They are big investors.

Mr. FISKER. I do not recall this meeting.

Mr. JORDAN. Well, that is actually the month before the loan was frozen. You don't know if it was talked about? One month before it is frozen, these guys, big investors in your company, meet with Jonathan Silver, the guy who runs the program, and you don't know if they talked about Fisker?

Mr. FISKER. Like I said, I do not recall this meeting.

Mr. JORDAN. Mr. Whitcombe, do you know if they talked about Fisker at that meeting?

Mr. WHITCOMBE. I don't know if they talked about Fisker. Mr. Silver was not on the Credit Committee, not on the Credit Review Board, and did not make any offers of conditional commitments.

Mr. JORDAN. He runs the program, right?

Mr. WHITCOMBE. Excuse me?

Mr. JORDAN. He is the boss of the program, right?

Mr. WHITCOMBE. He is the executive director of the program, but he doesn't sit on those committees and he doesn't make the offers.

Mr. JORDAN. He is ultimately responsible, right? That is how I view executive director. And he met with two guys who were part of Kleiner Perkins, a major investor in the company. I am just asking do you think they might have talked about Fisker?

Mr. WHITCOMBE. He could have.

Mr. JORDAN. All right.

Mr. Fisker, you guys bought a GM plant in Delaware as part of your loan agreement with the Department of Energy. Did the fact that Vice President Biden was from Delaware have anything to do with your decision to build a plant there?

Mr. FISKER. No, we did not build a plant, we bought a plant, but had no decision.

Mr. JORDAN. Okay. Was there any talk of you locating in Delaware because it was not a right-to-work State?

Mr. FISKER. No. We chose Delaware because of a great paint facility close to the port because we were planning to export more than 50 percent of the cars there, and there was a skilled labor force there as well.

Mr. JORDAN. All right.

I am going to yield to the chairman. Oh, excuse me, I have to yield to the ranking member. You have been waiting patiently. The gentleman from Pennsylvania.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

First, Mr. Chairman, I would like to first mention I would like the public journalists and the public reporting the proceedings today to know that every question asked today by the majority which referred to emails or perceptions of two individuals whose names we have heard, Ms. Cleghorn and Mr. McRay, were unfortunately individuals who were not informed by any conversation, interview, or request to those individuals about what the context was for these exhibits. In my opinion, the majority really has established no significance whatsoever, the emails entered into evidence today, and, in fact, we have good indication that they are being taken out of context.

For example, when we talk about emails form 2012, Mr. Whitcombe, is it not true that Federal funding, Federal loan guarantees for Fisker ended in 2011? Is that true?

Mr. WHITCOMBE. The last draw for Fisker was in early 2011.

Mr. CARTWRIGHT. So they got no further draws after that, am I correct in that?

Mr. WHITCOMBE. No, they didn't receive any more advances under the loan agreement.

Mr. CARTWRIGHT. All right.

Now, Mr. Fisker, your testimony includes statements that there is hope yet for this company, am I correct in that?

Mr. FISKER. I believe that the company has tremendous value. An amazing powertrain, developed another product for the future, which is to 90 percent engineered and 100 percent design; and all this IP lies within Fisker Automotive.

Mr. CARTWRIGHT. Now, I do believe it is a fair question on behalf of the American taxpayers for us to know is there a possibility that we can yet be repaid the loan money that the Federal Government has paid out.

Mr. FISKER. Congressman, I am no longer with the company, so I cannot state on behalf of the company, but I do believe there is a lot of value in this company and I do believe that there is a possibility, but I cannot state on behalf of the company.

Mr. CARTWRIGHT. Well, let me go at it this way. A hearing like this, does it make it easier or harder for a company like Fisker to move forward and attract private financing, including new investors?

Mr. FISKER. Well, obviously, a company in distress, it is very tough to go through events that amplify that distress, where it really should be concentrating on capitalizing on the value within the company, concentrating on dealing with potential investors, choosing investors; and obviously, as we can see, the company has a lot to deal with, so it is probably very tough to be in the situation right now.

Mr. CARTWRIGHT. And I am going to extend that question to Mr. Koehler. You are still with the company. The American taxpayers would like to get some or all of their money back from the Fisker company. A hearing like this, does that make it more or less likely that we will get our money back?

Mr. KOEHLER. Well, it highlights the situation, of course. The media effect plays another role. We the company, we are working on this right now. We understand our responsibility to our investors as well, so we work day and night in finding a solution, and hopefully we will.

Mr. CARTWRIGHT. Okay.

Now, Mr. Whitcombe, you have heard out loud charges that political cronyism resulted in this loan guarantee to the Fisker company. My question is are you aware of any truth to that statement whatsoever?

Mr. WHITCOMBE. Sir, I am not aware of any truth to that statement at all. We make our loans based on the merits of the transaction. I will also add if there was political cronyism and did affect the staff of the office of the loan guarantee program, you wouldn't have much of a staff after that. There would be no compelling reason to be a professional there.

Mr. CARTWRIGHT. Well, now, you have due diligence procedures to check out a company before loans like this are approved, am I correct in that?

Mr. WHITCOMBE. We conduct extensive due diligence for all our loan program applicants for 1705, 1703, ATVM to the extent that those applicants are eligible and provide sufficient information to us, and then when we decide actually to enter into any kind of negotiation with them.

Mr. CARTWRIGHT. Have you seen any evidence that the due diligence procedures that the Fisker company was subjected to are any different from th due diligence procedures that Ford, Nissan, or Tesla were subjected to?

Mr. WHITCOMBE. The due diligence procedures that Fisker experienced, based on the credit documents that I read, were robust, solid, detailed, and time-consuming as well. I think we spent over

9 months in due diligence before the offer of conditional commitment was made to the company.

Mr. CARTWRIGHT. Thank you. Finally, Mr. Whitcombe, you are familiar with the Energy Independence and Security Act of 2007. Is there anything in that Act that requires a guarantee of 100 percent success and 100 percent return on the American taxpayers' investments in these types of new technology.

Mr. WHITCOMBE. I am sorry, could you repeat the question again, sir?

Mr. CARTWRIGHT. Under the Act, is there something that says we are guaranteed to get 100 percent back of every loan guarantee we issue?

Mr. WHITCOMBE. It doesn't provide for that at all. It states the eligibility requirements, the fact we have to have sufficient information, maximum leverage ratios, the types of vehicles and automobiles that we could potentially make loans to.

Mr. CARTWRIGHT. I thank you for that. I also appreciate Mr. McHenry's statement about slow-playing answers, and I assure you that I speak on behalf of this entire panel that we are way more interested in true answers than fast answers, and I thank you for your participation today.

I yield back.

Mr. JORDAN. Yes, we are interested in the facts, and I keep coming back to CCC credit rating, under-collateralized, half the value of the loan, couldn't meet payroll prior to getting the loan, indicated that in an email sent to the Department of Energy. Still got the loan, yet there was no political influence. So it is always the way these are, it is either incompetence or political influence. And you are telling me, no, it wasn't political influence, so it has to be incompetence. How do you give money to a company with those facts? That is what the American taxpayers want to know.

Recognize the chairman of the full committee.

Mr. ISSA. Thank you. I want to clear the record up a little bit. The ranking member seemed to imply that these documents weren't good and they were incomplete. Isn't it true that the minority has received every document we received through outside sources, which is basically every document we received, hundreds of thousands of documents, but they are not from DOE, they are from private sources like the ones we have been using here today? Is there some problem with the ranking member being able to have his staff prepared for today's hearing?

Mr. CARTWRIGHT. We think it is probably improper that we read about them in the press before we get them.

Mr. ISSA. Didn't you receive them? I think if you will check with your staff you will find out that these documents were secured by the committee through outside sources because DOE is stonewalling discovery, these were in fact delivered to the minority.

Mr. CARTWRIGHT. Mr. Chairman, the answer is we got the documents, but we got them from outside sources, instead of the majority.

Mr. ISSA. I am shocked that this committee would use whistleblowers or outside sources when we are getting stonewalled by an Administration that lies through their teeth, violates the Records Act, uses non-government emails to circumvent loan guarantee programs and their wrongful acts. I am shocked that we would go to other sources to find out we have been lied to. Are you?

Mr. CARTWRIGHT. Mr. Chairman, if I may respond to that.

Mr. ISSA. Of course.

Mr. CARTWRIGHT. I think the American public expects more of us than this. They expect this panel to investigate inappropriate behavior together, as a panel. They expect us to investigate things in an intelligent and rational fashion, one where we share the documents and the information ahead of time; where the witnesses who authored documents are actually brought here to comment on the actual context in which they were written. We ought to make this panel a panel that is a truth-seeking enterprise.

Mr. ISSA. Oh, yeah, it would be really good to have all the consultants here that were warning of these problems while DOE ignored it. We should have them up here so you can ask them questions as to why they did that.

Mr. Whitcombe, you made a statement that just simply is not supported by the truth. You said that the John Doerr meeting wasn't really important, so to speak, I am paraphrasing you, because it was with Jonathan Silver and he wasn't on the loan committee. Isn't it true that Jonathan Silver in fact was the barbarian at the gate; you had to get through him before you got to the loan committee, isn't that true, he was the first point of contact and the person who ultimately saw whether it got to the loan committee?

Mr. WHITCOMBE. Not true at all.

Mr. ISSA. Okay. Well, let me ask a second question.

Mr. WHITCOMBE. Applications are made through a portal; you can mail them in.

Mr. ISSA. Yes, you can mail them.

Mr. WHITCOMBE. You can get the application in any way you want to.

Mr. ISSA. Okay, but he is in charge of the program, but you are not going to hold him accountable for any factor, and certainly he couldn't influence the decision of the loan committee, is that right?

Mr. WHITCOMBE. The credit committee acts independent of Mr. Silver.

Mr. ISSA. If the credit committee acts independently, then why is it that Jonathan Silver circumvented the Federal Records Act deliberately and in a conspiratorial fashion in which he says do not communicate because it might allow these to be traced, and then he contacts all the individuals, including individuals on the credit committee, including the chief of staff who sits on the credit committee, lobbying on behalf of activities? Are you aware of these emails?

Mr. WHITCOMBE. I can't speak for Mr. Silver.

Mr. ISSA. Are you aware of these emails?

Mr. WHITCOMBE. I can speak for myself.

Mr. ISSA. Are you aware of these emails?

Mr. WHITCOMBE. Third-party emails from non-DOE accounts? I have not had the chance to review those.

Mr. ISSA. Okay, so you are not aware that Jonathan Silver violated the Federal Records Act?

Mr. WHITCOMBE. If he violated any acts, that is unfortunate.

Mr. ISSA. Unfortunately, DOE has been made aware of it and doesn't seem to do much about it. As a matter of fact, if you are not aware, let me make you aware. The Department of Energy has tried to say that we cannot have those records because, in fact, they are Federal records and, thus, they are not going to give them. When we discovered them, they said, well, they are really our records. But, of course, you claim not to have them.

So before you come before this committee again, I would hope you would be prepared to realize that Jonathan Silver circumvented the Federal Records Act, lobbied individuals, and met with what I believe to be an investor in this company.

Mr. Fisker, I am going to make you aware of something. If you do not answer here today a question which I believe is appropriate, I will have you back here. Now, to the best of your knowledge, and I will ask both of you, in 2011, March through May of 2011, was Kleiner Perkins an investor in your company?

Mr. FISKER. Yes, they were.

Mr. ISSA. For how much?

Mr. FISKER. That, I do not recall at that point in time.

Mr. ISSA. Mr. Koehler, how much?

Mr. KOEHLER. Oh, at the time? I couldn't answer that, between March and May.

Mr. ISSA. More than a dollar?

Mr. KOEHLER. Yes, sir.

Mr. ISSA. More than $1 million?

Mr. KOEHLER. Yes, sir.

Mr. ISSA. More than $10 million?

Mr. KOEHLER. I believe so, yes.

Mr. ISSA. More than $100 million?

Mr. KOEHLER. No, sir. I don't think at the time, no.

Mr. ISSA. Okay. So between $10 million and $100 million.

Mr. KOEHLER. I couldn't really speculate how much money it was at the time, but they were a significant investor.

Mr. ISSA. Okay. So at a time in which a principal founder, one of the founders, John Doerr, has a $10 million to $100 million worth of investment, risk in your company, he meets with Jonathan Silver, the head of this program, who has regular communications with the credit committee and others. My question to you is were you aware of his ability to have these kinds of meetings, either of you?

Mr. KOEHLER. I was not aware of the meeting, no, sir.

Mr. ISSA. Were you aware of his ability to have these kinds of meetings, in other words, his access to the White House, his access to the President, his access to DOE?

Mr. KOEHLER. No, I was not aware of that, sir.

Mr. ISSA. Would it surprise you to know that on March 24th, 2010, April 16th, 2010, October 4th, 2010, May 14th and 15th, again, 2011, and May 24th, 2011 he had these kinds of meetings regularly? So were you aware that he was a close advisor to the President on these kinds of matters?

Mr. KOEHLER. No, I was not, sir.

Mr. ISSA. Do you believe that he put a board member onto your board to keep him informed and his firm informed as to the fiscal condition of your firm?

Mr. KOEHLER. I do not believe so because Ray Lane was the first contact within Kleiner Perkins when we discussed the first small investment into the company.

Mr. ISSA. But when did a board member come from Kleiner Perkins?

Mr. KOEHLER. It was Ray Lane, basically at the beginning, when we discussed the program.

Mr. ISSA. So the point is that Ray was on the board and knew the financial condition of the company and the need for additional capital and the possibility that you were going to get a loan from DOE.

Mr. KOEHLER. Like other board members too.

Mr. ISSA. Okay. So you have a direct representative of Kleiner Perkins, partner or involved directly with the principal partner, John Doerr, who is sitting on your board, knows you need the money, goes back to Kleiner Perkins and presumably informs them that their $10 million to $100 million investment is at risk; that in fact they need a new source of money. Then you steadily get a source of money, is that right?

Mr. KOEHLER. I have to speculate based on that. I don't know the answer to that.

Mr. ISSA. You know that in fact John Doerr is a principal and that you had a representative of the company, and that they had between $10 million and $100 million, in your estimation, of risk. And you have already said that the company's condition was risky at that point.

Mr. KOEHLER. That is correct, sir.

Mr. ISSA. Okay, probably the final point, Mr. Fisker, we brought you here for a reason, and I am going to close my questioning very briefly. We didn't bring you here because your car company is in trouble. We didn't bring you here to, in fact, question any aspect of your aspiration for a car. As a matter of fact, we didn't bring you here to denounce the fact that you asked for this loan. Lots of companies throughout America asked for the loan. I supported in a letter a company that had an innovative electric hybrid car that had low drag. They didn't get a loan, but I certainly supported their application or their aspiration for that.

What we have questioned here today is how DOE failed to administer over this program, missed connections, and failed to do their job. And I hope the record is very clear. We don't blame anybody for trying to get a loan. Programs are there; Congress votes on them. Partisan or nonpartisan, from the point that they are signed by the President, you have every right to try to get that. This committee looks at waste, fraud, and abuse, and we have been stymied by this Administration's stonewalling and refusal to provide any level of transparency. The documents you have seen today, for the most part, are documents we got around the Department of Energy, and for that reason you found yourself here today.

I want to thank you and your COO for being here today. It is not an easy job to come before Congress. We make it a point to get all the information we can from the branch we oversee, the executive branch. When we can't get it, these kinds of hearings can be particularly painful.

Mr. Whitcombe, I hope today you will go home a little bit different than you came in. I didn't sense it in your combative answers and so on, but I hope you will become familiar with Jonathan Silver's activities and, for that matter, many other individuals at DOE who routinely circumvent the Federal Records Act and, in fact, are part of a pattern of when they want to say something they don't want to have seen in the future, they use their private emails. Under the law, they are not private emails, they are public documents; and I would hope you take that back with you.

Mr. Chairman and ranking member, I thank you for your indulgence and yield back.

Mr. JORDAN. I thank the gentleman.

I would ask unanimous consent to enter into the record an email from John Doerr to Jonathan Silver dated June 23rd, 2011. Without objection.

Mr. CARTWRIGHT. Mr. Chairman, I would ask that The Washington Post fact checker article, referring to the four Pinocchios.

Mr. ISSA. I object. I object. That is overtly political and doesn't go to any substantive substantiation of fact.

Mr. JORDAN. Objection heard. The document will not be entered. Anything further?

Mr. CARTWRIGHT. I would just like to finish by saying, on behalf of the minority, we are not averse, Mr. Chairman, to having any DOE employee, any consultant with any company, any witness with actual knowledge of the controversies before us testify before this committee. What we think is wrong is putting witnesses under oath and forcing them to comment about what other people wrote at other times, without knowing the context or having a chance to really go through the documents.

Thank you, Mr. Chairman.

Mr. JORDAN. The gentleman from North Carolina, Mr. Meadows, is recognized.

Mr. MEADOWS. Thank you, Mr. Chairman.

In light of that comment, let me go ahead and ask that slide 18 be put up, because, Mr. Koehler, this is actually an email from you to the Department of Energy's employee. In this email you stated that you mentioned that the board might consider to combine both programs and "I am really nervous that this could create a delay for the Karma program." Then you go on to say that this potential delay would put the Karma program on hold and you would lose valuable time.

It sounds like, to me, that the DOE was asking you to make a decision about your business that you were not comfortable with. Is that true?

Mr. KOEHLER. Well, I was nervous that the Karma could experience a delay because we have to answer more questions for the Atlantic program, correct.

Mr. MEADOWS. All right, so you were not comfortable with that decision, is that correct?

Mr. KOEHLER. I didn't know the outcome. I was basically investigating what does it mean for the Karma program. We want to continue, not to lose any time.

Mr. MEADOWS. All right. So you are the COO and so if you get this and you say that you are concerned about the delay, how did that affect your projections in terms of the number of cars that you said that you could get done by the particular time?

Mr. KOEHLER. Well, at the time there was no delay, there was a possibility for a delay; and I tried to find out if there is truth behind that.

Mr. MEADOWS. So did it affect your projections?

Mr. KOEHLER. No, it did not.

Mr. MEADOWS. All right. So you are saying that you just sent this email and you said you sounded like you were concerned, but it really didn't prove, as a matter of fact, that it would change your projections?

Mr. KOEHLER. At this point in time, this was a point of discussion if any delay could impact the Karma program, and we discussed it with the Department of Energy like we discussed many other things.

Mr. MEADOWS. All right. So you were talking about combining these two loans, is that what you were talking about at that time, that you were concerned about?

Mr. KOEHLER. Well, the loans were still two separate loans, but if the second loan needs to approve at the same time the first loan needs to be approved, the question I had at the time——

Mr. MEADOWS. Why is that? Why would they have to be approved at the same time? Because that is my next question. Let's look at this. Did the DOE indicate that they would not approve the $169.3 million loan without also approving the $359 million-plus loan? So they tied them together, DOE did that?

Mr. KOEHLER. They weren't tied together. We had to basically show——

Mr. MEADOWS. Well, then why would they be two separate loans? You just said that one was conditioned on the other.

Mr. KOEHLER. If we had waited for an approval, to get an approval for the second loan at the same time the first loan is approved, then the work is duplicated.

Mr. MEADOWS. Okay, but I thought that in earlier testimony, in earlier evidence, did it not say that you were first denied for this first loan? The CRB said that they would not approve it because it did not meet their policy requirements?

Mr. KOEHLER. I saw the email. That is an internal Department of Energy email.

Mr. MEADOWS. So that was the first that you have ever heard of the fact that your first loan would be denied, was today?

Mr. KOEHLER. No, that is not true. That is not what I said, sir. What I said is the email is what I saw for the first time.

Mr. MEADOWS. It is amazing how the recall that we have. When we ask the questions, we have very ambiguous answers that say I didn't see that email, I didn't know this. I think you understand the intent of the question. Did you know that the first loan had been——

Mr. KOEHLER. And I would like to help, sir.

Mr. MEADOWS. Okay.

Mr. KOEHLER. The loan for the Karma program included financial due diligence, due diligence on the marketing side, on the sales side. The same work has to be done on the KX, on the Atlantic program, because of the KX at the time. But the Karma was much further along, so we had much more information already, which the Department of Energy investigated, and the second loan was basically getting started, the investigation and the marketing initiatives and everything else. And I knew from A.T. Kearney, for example, that a marketing study cannot be done overnight, so my concern here was how much more work do we have to put into this before we can move forward on the Karma program.

Mr. MEADOWS. All right. But you had been told that the $169 million loan would be turned down by itself, is that correct?

Mr. KOEHLER. I was told by the Department of Energy that the approval for both programs would be easier made as basically——

Mr. MEADOWS. So you were not told that it was turned down by itself. I thought you just said that you knew that it had been turned down by itself.

Mr. KOEHLER. The Department of Energy came back to us and told us that we have to go through the KX development, KX approval, we have to explain how we do it, then both programs together could be approved.

Mr. MEADOWS. So the DOE said that you had to combine these two, is that what you are saying?

Mr. KOEHLER. It was still two separate programs.

Mr. MEADOWS. But they said in order to be approved you had to approve both of them, is that correct, Mr. Whitcombe? Is that true?

Mr. WHITCOMBE. It would make sense that you would make a loan approval, even for two separate programs, at the same time, because you are providing a consolidated outlook of the company. It would make it much more streamlined to present to credit committee, credit review board, and the secretary so everyone understands what the business plan is.

Mr. MEADOWS. All right, so did you or did you not turn down the $169 million loan originally asked for? Was it turned down?

Mr. WHITCOMBE. What you mentioned, we turned it down on policy considerations, as I believe the request for finance manufacturing in Finland, and by law we couldn't manufacture in Finland, so it isn't even turned down; we couldn't even have proceeded on that course at all.

Mr. MEADOWS. So you are saying that it was illegal to do that. Then how did we reconfigure it and then somehow make it legal?

Mr. WHITCOMBE. We can only make loans against eligible expenses for costs in the United States.

Mr. MEADOWS. So you told them to go back and get their pen and paper out and try to figure out a way to combine these where we could possibly make it legal, because the first request was not legal? Is that what you are saying?

Mr. WHITCOMBE. No, I am not saying that at all, sir. We advised them on their first request that was for overseas operations and that it would be better for you to make an application, we would go to credit committee to approve, if it was so approved, for eligible expenses to be deployed in the United States. As simple as that.

Mr. MEADOWS. So yes or no, was the first loan turned down? Yes or no? Or do you not know? You are under oath.

Mr. WHITCOMBE. I understand that, sir.

Mr. MEADOWS. Just yes or no, was it turned down?

Mr. WHITCOMBE. It wasn't turned down; it never went to credit committee.

Mr. MEADOWS. All right. So then what is the basis for combining the two loans? So we don't turn it down and now we say you have to go $169 million is not enough to risk of the taxpayers' money, let's make it a little bit more riskier and let's go with over $500 million and make it really risky. Is that what you are saying?

Mr. WHITCOMBE. This is for the two different vehicles, correct?

Mr. MEADOWS. Right. One vehicle that had not been even built at the time that the loan was approved and one that was futuristic.

Mr. WHITCOMBE. Fisker running the business. The Fisker is going to run the business for two different vehicles and, as you noted, there is carryover parts, they are tied together.

Mr. MEADOWS. Sixty percent.

Mr. WHITCOMBE. Sure.

Mr. MEADOWS. Well aware of it.

Mr. WHITCOMBE. It makes much more sense.

Mr. MEADOWS. So it would make much more sense on a risky venture that is a risky technology to risk more taxpayer dollars. You are a credit guy and you have been in it a long time. How could that make more financial sense?

Mr. WHITCOMBE. I made no comment about risk. What I said is in terms of understanding the entire business related to the Nina and the Karma, as far as making its loan application, because all the employees of a company, all the designers, all the engineers, all the potential sales force, are focusing on both issues. So it would be very difficult to make a loan approval based on just one part of the business, it wouldn't make any sense.

Mr. MEADOWS. So your decision was to make it bigger would make it better, is that correct?

Mr. WHITCOMBE. No, I didn't say to make it bigger would make it better.

Mr. MEADOWS. I know you didn't say that. I am saying is that your decision?

Mr. WHITCOMBE. Ultimately, it would as a larger loan application.

Mr. MEADOWS. Last question, Mr. Chairman.

It appears that the White House and the DOE were more interested in making this move for a second loan because it reopened an automobile plant in Delaware. Do you feel like the DOE did that, entered into any of the decision at all in terms of overemphasizing the requirement to have this second loan approved, Mr. Fisker?

Mr. FISKER. No.

Mr. MEADOWS. All right, so you know that that had nothing to do with it?

Mr. FISKER. I don't believe it did.

Mr. MEADOWS. Okay.

You, Mr. Koehler?

Mr. KOEHLER. It was never a discussion we had with the Department of Energy, no.

Mr. MEADOWS. All right, so when you went to get a plant in Delaware, it had nothing to do with any funds that you were about to receive.

Mr. KOEHLER. No, because the plan we had already, before we talked to the Department of Energy, was that our second car should be built in the U.S.; and the fact that we couldn't build the Karma in the U.S. was simply based on we couldn't find a manufacturer for this car in the U.S. at the time.

Mr. MEADOWS. All right. So I know you looked at more than one location. Why did you do it in Delaware and not in Michigan? You were the COO.

Mr. KOEHLER. Correct. We looked at several plants. We looked even at the West Coast plant Tesla is using right now. The main focus for us was 40 percent of the production was for the U.S. and 60 percent for export. So having a plant closer to a port was much better for us. At the same time I was looking for a plant that was not shut down for some period because the equipment is in better use and the workers are still available.

Mr. MEADOWS. Okay. And how many of these vehicles were ever produced in the United States?

Mr. KOEHLER. The Atlantic is in development right now and no cars have been produced.

Mr. MEADOWS. So zero? Zero?

Mr. KOEHLER. Correct.

Mr. MEADOWS. How many of the Karmas were produced here?

Mr. KOEHLER. The Karma is produced in Finland.

Mr. MEADOWS. So zero? So there has been no American car built with this DOE money, is that correct?

Mr. KOEHLER. The Finland operation is assembling of the car, but the parts and components, to a large stake, come from the U.S. and are shipped to Finland.

Mr. MEADOWS. Mr. Chairman, I thank you for your indulgence. I yield back.

Mr. JORDAN. I thank the gentleman.

Just a couple quick questions. I appreciate the gentlemen's patience; you have been here a long time and we will get to the second panel here rather shortly.

Mr. Whitcombe, have you ever done official Department of Energy business, any type of business on your private email account?

Mr. WHITCOMBE. No, sir.

Mr. JORDAN. Okay. Thank you.

Mr. Koehler, did the fact that the Department of Energy insist that you take loans for both cars, did that hamper your business at all?

Mr. KOEHLER. No, because what we had to do, we went through the kind of due diligence with the Department of Energy and parallel, at the same time, we raised money for the Karma so we were able to continue with the Karma program.

Mr. JORDAN. Okay.

Mr. Whitcombe, I am going to have you look at just a couple more documents, if you could. First is just the minutes. So, to the minority, this is just the minutes of the meeting of the Department of Energy Credit Review Board. So pretty basic. The very name at the top is Mr. Poneman, Deputy Secretary of Energy. My understanding is he is currently the acting secretary. Is that accurate, Mr. Whitcombe.

Mr. WHITCOMBE. I believe he was just sworn in, sir.

Mr. JORDAN. Okay. So he is, right?

Mr. WHITCOMBE. I believe so, sir.

Mr. JORDAN. Okay. If he was sworn in, he is the acting secretary.

Turn to the second page here. We have some statements from the minutes or some pullouts from the minutes talking about the involvement of Mr. Poneman. Now, again, this is April 11th, 2012. Deputy secretary asks if the company was adhering to its business plan; the company had been revising the plan, lowering the targets, equity. Deputy secretary indicated the loan loss reserve credit subsidy, deputy secretary asks if there was a scenario that would lead to DOE's resuming the disbursements. So obviously the minutes report Mr. Poneman was actively involved.

Then I want to put up, a month later, actually six weeks later we have a communication from Department of Energy lawyers, Ms. Beard and Ms. Richardson, it looks like, and it now says the deputy secretary should be recused from loan program deals and specifically lists because he has an interest in the following companies, Fisker being one of those.

So, again, you can comment on it if you want, but it seems like we have the guy who is the deputy secretary at the Department of Energy engaging in discussions regarding loans of taxpayer money when he has a financial interest in those companies. We have lawyers communicating Department of Energy lawyers, not some outside consultant, Department of Energy lawyers communicating that he should not be engaged in this conversation.

Any comment, Mr. Whitcombe?

Mr. WHITCOMBE. I am sorry, sir, I can't comment to the acting secretary's personal business.

Mr. JORDAN. Were you aware of the recusal?

Mr. WHITCOMBE. I was aware, yesterday, of the recusal.

Mr. JORDAN. Okay. All right.

Just one last thing I want to do with Mr. Fisker, if I could. So, Mr. Fisker, again, back to where we left off, it has been widely reported that Kleiner Perkins has an interest in your company. Some of the principal players there are John Doerr, Ray Lane, Al Gore. We know that, it has been widely reported in the news that Mr. Doerr is involved in President Obama's Economic Recovery and Advisory Board. So here is what I am trying to figure out and here is what the question the American taxpayers would ask. So you have these individuals without dispute, widely reported in the press, very connected politically with the Administration, who also happen to have a financial interest in Fisker, who were at the White House multiple times, and yet you say they didn't do anything to help you secure the loan.

Mr. FISKER. Chairman, I would like to set the record straight. The only representative from Kleiner Perkins that was involved with Fisker is Mr. Ray Lane. He is the only representative that is involved with Fisker.

Mr. JORDAN. But it is accurate, I mean it has been widely reported in the press, Mr. Fisker, there was a big article in Time magazine a few years ago about the influence Mr. Doerr has with this Administration relative to the green energy industry, and he is a principal in Kleiner Perkins. Is that accurate?

Mr. FISKER. Yes, but I am not aware of what Mr. Doerr does in his spare time or elsewhere.

Mr. JORDAN. All I am suggesting is, I am just pointing out the facts. He is a principal at Kleiner Perkins; they have a major investment in your company; he is part of the Economic Recovery and Advisory Board; he has had meetings with Jonathan Silver about the same time that there was a hold put on your loan; and yet you say there was no political influence at all.

Mr. FISKER. Not that I am aware of.

Mr. JORDAN. Okay. So do you think it is fair, then, for the American taxpayers to ask the question? Okay, no political influence involved getting this loan, and yet you lost $200 million of taxpayer dollars, you were under-collateralized, you couldn't meet payroll, you had a CCC rating, and you got taxpayer money. So again I always come back to this basic question: It has to be one or the other. It is either complete incompetence from the Department of Energy, and that may in fact be the case. Mr. Whitcombe hasn't given us a whole lot of answers. He couldn't tell me, of the other four companies, what their credit ratings were. There were only five companies that got your money. He couldn't tell me what the other credit ratings were. We know what Fisker was; it was bad. So it may be complete incompetence. But it has to be one or the other. I am just asking you, as a guy who is no longer involved in Fisker, even though it has your name, you are no longer involved, you are out. Which do you think it is, incompetence on their part? That is the question the American taxpayers are asking.

Mr. FISKER. Mr. Chairman, I do believe that, first of all, we followed all the procedures in applying for the loan. I think Fisker Automotive has contributed in a huge way to develop new technology that is recognized to be part of the future. Whether we want to develop here in the U.S. or whether we want to buy it from somewhere else, it is going to be part of the future, and I think it is extraordinary what the people here in America have done at Fisker Automotive in developing this automotive technology.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Chairman, earlier this afternoon the chair took the extraordinary step of disallowing a piece of evidence to come into the record. This was a Washington Post article entitled, Four Pinocchios for an Unproven Romney Claim of Crony Capitalism. Now, rather than burden this panel with an insistence on a vote of the full panel on a challenge to this ruling on the admissibility of this article, I would propose to read briefly from it.

The Washington Post wrote this. This was in the Fact Checker: Hoping to turn attention away from questions about his departure from Bain Capital a decade ago, Mitt Romney, this week, has sought to focus attention on what he calls President Obama's crony capitalism. We have dealt with this charge before, but this week it seems the Romney campaign has upped the ante, trying to make a connection between the President's contributors and the President's policies. We will deal with some of these claims in more detail at a later date, but today we will look at the question of Fisker Automotive. This case keeps coming up, and it really feels like whack-a-mole. Romney now has raised the stakes by asserting a connection between the loan and campaign contributors, and his campaign was sufficiently proud of his statement that he emailed it to reporters. The facts: Fisker has developed a luxury plug-in electric sedan called the Karma that retails for $108,000, currently manufactured in Finland. It hopes to develop a $50,000 sedan named the Atlantic that would be manufactured in Delaware. Earlier this week Romney aides held a briefing for reporters. Senior Advisor Ed Gillespie singled out John Doerr, a wealthy venture capitalist at Kleiner Perkins Caufield & Byers, who was instrumental in funding Netscape, Amazon, Google, and other Internet companies. "You know, you have John Doerr who raised a lot of money for President Obama, you know, got appointed to an economic recovery advisory board," Gillespie said, "and then his firm had a big investment in Fisker Automotive, which got over half a billion dollars in loan guarantees from the Department of Energy, which did not result in jobs being created in America but actually jobs being created overseas in Finland, but Kleiner Perkins did quite well." Gillespie appears to be suggesting that because Doerr raised money for Obama, he was rewarded with a big loan for a company in which his firm invested. But the logic is more the political equivalent of bank shot in pool and the ball doesn't quite get in the pocket. First of all, the Kleiner partner most closely associated with the Fisker investment is Ray Lane, who features the Fisker logo on his Kleiner Web page. There is even a You Tube clip of him getting into his Karma sedan. The contributions database at OpenSecrets.org shows that Lane contributes to some Democrats, but mostly Republicans; and he gave money to Rudolph Giuliani and John McCain in 2008, not Barack Obama or other Democrats running for president. He also contributed to George W. Bush in 2008 and Bob Dole in 1995. However, he has praised the Obama Administration for its willingness to back alternative energy ventures, saying it would be silly to think an automobile company could be created without Government help. And speaking of Kleiner, a regular contributor to Romney and a $100,000 contributor to Romney's super PAC, Restore our Future, is Meg Whitman, the database shows. Whitman, now chief executive of Hewlett Packard, was a strategic advisor to Kleiner in 2011.

And I will stop there, Mr. Chairman. That is The Washington Post article to which objection was raised. And rather than demand a vote of the committee, I read that into the record. Thank you, Mr. Chairman.

Mr. JORDAN. I thank the gentleman. I would just point out that maybe The Washington Post would change its decision based on today's hearing, the evidence we have brought forward. Time magazine had a story like this. Your March 15th, 2010 quote from the President of the United States when John Doerr was at the White House, it said, John, before a group that included Treasury Secretary Geithner, Economic Advisor Larry Summers, Chief of Staff Rahm Emmanuel, you've got the floor. Second paragraph: In the past few years, however, Doerr's interest in Beltway policies deepened as he bet hundreds of millions of dollars in private capital on green energy startups, many of which were seeking Federal subsidies and regulatory aid.

So, again, you are asking the taxpayers to not assume Mr. Doerr cared about it, Mr. Lane cared about it when they were investors in the company and they meet with the White House and are on the President's Economic Advisory and Review Board. I just don't think that stands up to common sense that the American people have.

I would also point out, when you are talking about Pinocchios, Mr. Romney holds no office. The Washington Post, just six weeks ago, gave the Secretary of Education four Pinocchios out of four Pinocchios for lying to the American people when he stated 40,000 teachers were going to lose their job because of sequester. There is a public official a cabinet secretary getting four Pinocchios. This is a candidate from last year's campaign.

With that, we want to thank our witnesses on the first panel. I appreciate your patience and time. You all are dismissed. Thank you.

We will quickly move to our second panel and we will take testimony from our second witnesses.

[Pause.]

Mr. JORDAN. It is going to be sparse, as you can imagine. Thanks for sticking around. I know it was difficult. Mr. Cartwright just stepped out, but he will be right back in. I can swear you in, though. We will swear you in, then as soon as Mr. Cartwright comes back in, we will get right to testimony. So if you would stand up, raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses respond in the affirmative.]

Mr. JORDAN. Let the record show both answered in the affirmative.

Okay, we have Mr. Nicolas Loris, who is the Herbert and Joyce Morgan Fellow at The Heritage Foundation, and Ms. Zoe Lipman, who is an independent consultant focused on issues related to fuel economy and advanced vehicles.

You know the deal, you have five minutes, more or less. We will wait for Mr. Cartwright, then we will start with Ms. Lipman and then Mr. Loris.

Ms. Lipman, thank you. You are up.

STATEMENT OF ZOE LIPMAN

Ms. LIPMAN. Good evening, Chairman Jordan and Ranking Member Cartwright. Thank you very much for inviting me to give some context around the Advanced Technology Vehicle Manufacturing Loan Program.

I am Zoe Lipman. I am a consultant focusing on policy and projects that connect clean energy and transportation innovation with economic recovery. But previously I spent 10 years at the National Wildlife Federation, where I headed our advanced automotive and fuel economy work, and before that our climate policy in the Midwest; and in both of those contexts the question of how clean energy and advanced technology progress go forward, we innovate in our core industries and we rebuild the economy at the same time is absolutely critical.

I wanted to talk a little bit about where the ATVM came from, because it originated from the same kind of interest in seeing us lead in the next generation of advanced energy and efficiency technologies, but at the same time rebuild the American economy.

Others have talked about how this program was part of the 2007 energy bill, a bipartisan program signed into law by President Bush. I would add that it is something that had the consistent support not just of labor, of environmental groups, but also of the Chamber of Commerce. It really is something that brings together the interests in this Country around how we go forward as a Nation.

In the 2007 energy bill, it did two things that affected the auto industry. One was it authorized a large increase in the fuel economy standards, the first in decades, that did so under a new attribute-based system that was both more competitively fair and ensured that consumers, no matter what kind of vehicle they drove, saw improvements in fuel economy. But at the same time it recognized that making that kind of big step forward, a next generation of vehicles, requires very significant investment, tens of billions of dollars annually in the industry; and that investment could come from anywhere and it could be made anywhere.

Today, not just companies, but countries are competing aggressively to see who will lead in the next generation of technology. In a global economy, we have a global economy, we don't have to be the only manufacturer of the next generation of vehicle technology, but we need to be one of the leaders if our economy is going to be strong going into the future. Effective market-based public-private partnerships like the ATVM make it more attractive to invest in U.S. facilities and that spur and attract business innovation are critical to this process.

Now, I want to stress that the ATVM program are loans. As we have talked today, where companies are successful, they will be paid back with interest, and the vast majority are.

Second, the program does not pick technologies; it sets a standard, a criteria, and the portfolio of loans that it has considered support the full range of technologies, from innovations that improve the fuel economy of the Ford F–150 without impacting horsepower to new made-in-America electric batteries in Tennessee.

Now, we have seen a rundown of the programs and the funding in previous testimony. As people know, the bulk of the funding went to Ford for numerous projects, as well as to other startups such as VPG, building an innovative six-passenger van accessible to wheelchairs and fueled with natural gas. So Fisker is just one of a rather impressive portfolio of loans that have been, as people have said, up to now 98 percent successful.

The taxpayer is doing well with this program, and communities and businesses are doing even better. I want to create just a quick picture of some of those loans.

We have everything from loans where, if we look at the Ford manufacturing facilities in Michigan, that they are flexible facilities bringing hybrid powertrains back to the U.S. that were previously made in Japan; we see electric vehicles and batteries being made for the first time in the U.S. in Tennessee; and we see innovations that flow not just to the big auto companies and the assemblers here, but to the ecosystem of suppliers across the Country that are supported by these.

Finally, I want to say that investment in manufacturing here is not just an investment in jobs today, but in innovation for tomorrow. And I am happy to take further questions about how that has worked with this program, but it has been highly successful.

[Prepared statement of Ms. Lipman follows:]

Testimony of Zoe Lipman

U.S. House of Representatives
Committee on Oversight & Government Reform
Subcommittee on Economic Growth, Job Creation & Regulatory Affairs

"Green Energy Oversight: Examining the Department of Energy's Bad Bet on Fisker Automotive"

April 24, 2013

Good morning, Chairman Jordan, Ranking Member Cartwright. Thank you for inviting me to give some background on the Advanced Technology Vehicle Manufacturing Loan program.

I am Zoe Lipman, a consultant focusing on policy and projects that connect clean energy and transportation innovation with economic recovery. Previously I spent ten years with the National Wildlife Federation where I led NWF's work on fuel economy and advanced and electric vehicles, and before that NWF's climate policy program in the Midwest. In all of these areas, determining how we meet our energy and climate challenges, innovate in core industries, and rebuild our economy at the same time is a central question.

The ATVM was born out of just this kind of understanding – and out of pragmatic bipartisan compromise. The ATVM is not new – it was created as s136 of the bipartisan 2007 Energy Independence and Security Act – the 2007 Energy Bill - signed into law by President Bush. That bill did two major things in that affect the auto industry: It required the first major increase in fuel economy in decades, and did so under a new attribute-based structure that put full-line manufactures like Ford, General Motors and Toyota on a more competitively equal and consumer friendly footing

And it recognized that retooling factories to meet this challenge was a significant undertaking, and one that it was critical to do in this country if we were going to capture the full economic benefits of a new generation of vehicles. The engineering and retooling costs associated with meeting the new fuel-economy standards and consumers desire for more efficiency run to the tens of billions of dollars year across the entire industry. This money might be invested anywhere.

Today, not just companies, but countries, are competing aggressively to lead in the next generation of advanced energy and transportation technology. In a global economy we don't need to be the only player in these rapidly growing industries but we need to be one of the leaders if our economy is to remain strong into the future. Effective, market based, public private partnerships like the ATVM which make it less expensive to invest in U.S. facilities, and spur and attract business innovation are critical.

Section 136 authorized up to $7.5B in potential spending to enable up to $25B in loans. These loans were to retool or build factories in the US to manufacture vehicles that achieved greater than 25% higher fuel economy than a like vehicle.

These are loans. Where companies are successful (and the vast majority are) those funds will be paid back to the treasury. The $7.5B authorized presumed a significant default rate – far higher than what has been experienced even with the current problems faced by Fisker.

Second, the program does NOT pick technologies – it sets a performance target and the portfolio of loans support the full range of fuel saving technologies – from advanced internal combustion engines that are transforming fuel economy – without sacrificing horsepower! – in the new Ford F150 pickup, to US made electric vehicles and batteries manufactured by Nissan in Tennessee.

Starting in 2009, EPA and DOT, working together, extended these fuel-economy and carbon pollution standards, providing a clear globally competitive regulatory framework through 2025. This framework not only provides the certainty companies need for large scale investment but facilitates cost effective investment across global markets.

At the same time – in the midst of a downturn in which few in the private sector were aggressively investing -- Congress appropriated the funds to implement the s136 or ATVM loans and made $8B in loans to five companies across the full advanced vehicle technology spectrum. In addition to Fisker, which recieved $193Mof a potential $529M loan, these include loans to major automakers and start-ups, across technologies and the nation. They include:

- $5.9B to Ford which received loans to innovate, upgrade, and retool to build far more efficient gasoline, hybrid and electric vehicles and their powertrains in 11 plants across the country:
    - engine plants in Dearborn, Michigan; Cleveland, Ohio; and Lima, Ohio
    - transmission plants in Livonia, Michigan; Sterling Heights, Michigan; and Sharonville, Ohio
    - assembly plants in Chicago, Illinois; Louisville, Kentucky; Dearborn, Michigan; Wayne, Michigan; and Kansas City, Missouri
- $1.45B to Nissan to retool their factory in Smyrna, Tennessee to bring production of their electric vehicle - and at an adjacent facility, its battery - to the United States.
- $465M to Tesla– who has said it will repay its loans early - to retool the former NUMMI facility in Fremont, CA to build its second generation all electric sedan
- $50M to the Vehicle Production Group to produce a 6 passenger, wheelchair accessible vehicle in Indiana that runs on Compressed Natural Gas

As this committee has heard before, the success rate of DOE's larger loan portfolio is extremely high, but even the ATVM portfolio with a much smaller number of projects looks very good. Even if the full $193M to Fisker must be written off, that loss is less than 2.4%of the funds loaned and less than 3% of the budget authority for this program. The taxpayer is doing well, and communities and businesses are doing even better.

Rolling up the projects I mentioned, the program has spurred and speeded reinvestment in hard-hit manufacturing communities across the nation and retained, brought back and/or added more than 35,000 direct jobs .These loans have gone primarily major automaker facilities , which in turn support dozens or hundreds of supplier locations. Each of these plants depends on an ecosystem of suppliers of not just parts , but also of machine tools, steel, glass, rubber , advanced materials and electronics just to name a few. As the assemblers reinvest, it means new markets, innovation and investment in suppliers as well. And, importantly, all these things mean jobs for American workers

Back in 2010 the UAW, NRDC and others authored a report that found that increasing fuel economy to 40mpg by 2020 would add up to 150,000 jobs above business as usual - but with a significantly greater proportion of those jobs in the US if fuel economy improvement was coupled with programs like the ATVM. A year later another study, Supplying Ingenuity found 150,000 workers in 47 states currently building components that improve fuel efficiency. It is these hundreds of companies that also stand to gain where policies like the ATVM encourage local advanced manufacturing investment. Building a robust, innovative supply base not only makes it easier for companies to manufacture here for global platforms, but more attractive for foreign companies to reinvest here to supply the American market.

In other words, innovation to improve fuel economy means added content on every vehicle, and added content means more jobs. Programs that encourage investment in domestic manufacturing like ATVM mean more of those jobs HERE.

Investing in manufacturing the next generation of vehicle technology in America is not just about more jobs today – it's about the competitiveness of our economy for tomorrow. Manufacturing is a critical component of our innovation policy.

Domestic advanced manufacturing is essential to ensure that investments in science and R&D here don't end up building new companies abroad but provide the engine of business and job growth at home in the critical emerging industries. What's more, we increasingly see that if we do not continue to manufacture advanced technology we fail to generate the critical next generation innovation.

Is it the ATVM perfect? No, but many have suggested that there should be more of it, not less. For example, several legislators, as well as labor and environmental organizations have urged that the program be broadened to make it easier for automotive suppliers and for medium and heavy duty and transit vehicle manufacturers be able to access the loans. Others have raised concerns that the program has become so cautious that valuable projects in the pipeline could not be funded. Some additional risk is inevitable in order for our economy is to move faster, further and over the long term to lead.

Now clearly, when we are dealing with taxpayer money we need to have sound oversight and be mindful of risk, but we need to balance the risk in individual projects with the bigger risk for our economy if we fail to move quickly to compete with other nations in the next generation of clean energy and fuel saving technology.

It's important to note that the transformation in automotive technology we're talking about here, isn't just building jobs and businesses. New more fuel efficient vehicles are also achieving the biggest single step forward in energy security and in cutting carbon pollution that we have ever made as nation, while saving consumers hundreds of billions of dollars and bringing them great new products. It underscores that aggressively inventing and making next generation advanced energy and transportation products and sustaining growth in a competitive global economy naturally run together.

The ATVM has helped do that, it has done that by setting leading performance standards, leveraging the ingenuity of the private sector to take diverse business and technological approaches to meeting that challenge. It has done that in states and communities across the nation. There is nothing wrong with making it easier to create jobs building advanced technology in America, and there is a lot right with it. The ATVM program is one example of what it takes to keep the United States competitive with other nations that have set their sights on capturing the next generation of auto-industry jobs and all the economic benefits that go with those jobs. Taking a step back, that is a success.

I thank the committee for this opportunity to testify and I'm happy to answer any questions.

Mr. JORDAN. Thank you, Ms. Lipman.

Mr. Loris.

STATEMENT OF NICOLAS LORIS

Mr. LORIS. Chairman Jordan and Ranking Member Cartwright, thank you for giving me this opportunity to discuss the Department of Energy's bad bet on Fisker Automotive. My name is Nicolas Loris, and I am the Herbert and Joyce Morgan Fellow at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Investigating any potential cronyism between Fisker's investors and its Federal supporters, and investigating any negligence on the DOE's part throughout the loan process are worthwhile and necessary actions to protect American taxpayers and promote transparency in the Federal Government. But I would like to take my time to discuss the underlying cause of these problems, and that is the Federal Government's involvement with investment decisions that are better left for the private sector.

The Department of Energy's Advanced Technology Vehicles Manufacturing Loan Program, as well as its loan guarantee programs, create a mechanism that reward special interest politics over market viability. The result is a systematic economic damage inflicted well beyond any loss the taxpayers may incur.

When we politicize the economic process by allowing the Federal Government to highly influence decisions and investments, the incentive to lobby for those handouts is greater and the incentive to innovative lower cost and rely fully on private investment is substantially weakened. Such a process skews the rules of free enterprise.

A dollar invested in a Government-backed project cannot simultaneously be invested into another company. DOE loans and loan guarantees pull capital out of the market and dictate who should receive it. This crowds out opportunities for new ideas and innovative technologies that may not reach the market because capital is diverted to projects that have higher political rates of return rather than economic ones. These programs are not jobs creators, but merely shifting labor and capital to where the Government wants.

And to be clear, there is nothing wrong with more renewable energy or alternative fuels replacing conventional sources of energy. But that shift will be more effective when driven by market forces, not dictated through Government policy.

And the market incentive for alternative fuels and technologies already exists. We have a robust demand for transportation and fuel. In fact, Americans spent $480 billion on gasoline and bought nearly 13 million new vehicles in 2011 alone. Globally, the transportation fuels market is a multi-trillion dollar one. If any alternative fuel technology captures a mere slice of that market, they will make billions of dollars in profit annually.

And this is precisely why we don't need the Department of Energy's ATVM loan program, as well as the loan guarantee programs. Markets make these investments and take risks all the time. But rather than privatizing the gains and socializing the losses, risk and reward are properly aligned.

It is also important to stress that whether a loan or a loan guarantee recipient is profitable or bankrupt, the policy is a failure. Any success of a loan is not the same as success of a policy. First, there are companies like Fisker, where the DOE loan artificially made this dubious investment appear more attractive and lowered the risk of private investment. Private investors sunk over $1 billion into Fisker, but much of that private financing came after the Department of Energy approved and closed the loan for Fisker. These investors look at Government loans as a way to substantially reduce their exposure.

A project may be an economic loser, but can attract private investment when the Government covers a substantial portion of the downside with guaranteed loans. It essentially becomes heads, the investor wins, and tails, the taxpayer loses. These bad gambles turn into good ones when Federal Government money is involved, and now taxpayers are potentially on the hook for the $170 million of loans Fisker drew down.

Supporters of these DOE programs argue a few failures are worth the risk and the number of success stories far outweigh bankrupt companies or ones that are facing difficult financial times. But the fact is that even if a project receives a DOE loan or loan guarantee, it is a mistake to attribute that company's success to the Federal Government's investment. Many companies receive investments from the private sector because their technology is promising and worth the risk. In these cases, especially when the Government handouts go to more established companies like Ford, the DOE's loan partially offsets private sector investments that would have been made without the Federal backing.

Layering on additional subsidies further misallocates labor and capital to promote politically favored technologies and diminishes the role of market signals that truly drive innovation and economic activity. More stringent Government oversight and risk assessment may marginally improve the protection of the taxpayers' money, but the best option is to get rid of the loan program altogether and allow competition to drive investment. This protects the taxpayer and will ensure that only the most promising new energy technologies move forward.

Thank you, and I look forward to your questions.

[Prepared statement of Mr. Loris follows:]

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CONGRESSIONAL TESTIMONY

Green Energy Oversight: Examining the Department of Energy's Bad Bet on Fisker Automotive

Committee on Oversight and Government Reform Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

April 24, 2013

Nicolas Loris
Herbert & Joyce Morgan Fellow
The Heritage Foundation

My name is Nicolas Loris. I am an energy policy analyst and the Herbert & Joyce Morgan Fellow at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

I want to thank the members of the Oversight and Government Reform Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs for this opportunity address you concerning the Department of Energy's Bad Bet on Fisker Automotive.

For decades the federal government has taken choice away from the individual and overridden preferences by mandating more stringent fuel efficiency in place of power, weight, and safety. Over the years the federal government has intervened even more in the automobile market by subsidizing the production and consumption of alternative vehicles and fuels with tax credits, mandates, grants, loan guarantees and loans. More specifically, the Department of Energy's Advanced Technology Vehicles Manufacturing (ATVM) loan program awarded $8.4 billion in loans to five companies from September 2009 to March 2011.[1]

Fisker Automotive, the recipient of a $529 million loan from the Department of Energy (DOE) has come under dire financial straits. Investigating any potential cronyism between Fisker's investors and its relationship with the federal government and any negligence on the part of the DOE in underwriting and approving the loan are worthwhile and necessary actions to protect American taxpayers and promote transparency in the federal government – a goal championed by President Obama since he first ran for president in 2008.

What is equally if not more important, however, is to emphasize what led to these problems in the first place and that is the federal government's involvement with investment decisions that are better left for the private sector. The government's intervention in the market decreases the incentive to innovate and increases the incentive to use the political process and lobby for handouts. Federal loans and loan guarantees promote cronyism that rewards political connectedness over market viability. Market viable technologies should not need financial support from the taxpayer. Whether a company that receives a Department of Energy loan is profitable or not, the program is misguided. Rather than seek to improve and reform DOE loan and loan guarantee programs, policymakers should eliminate them.

Economic and Environmental Realities of the Electric Vehicle

When President Obama took office, he touted an ambitious goal of putting one million electric vehicles on American roads by 2015. The Department of Energy recently lowered that projection to 250,000 electric vehicles, about .1 percent of all vehicles in the

[1] U.S. Department of Energy Loan Programs Office, The Financing Force Behind America's Clean Energy Economy, accessible at https://lpo.energy.gov/?page_id=45 (accessed April 22, 2013).

United States.[2] The economic and technological challenges of electric vehicles are large and the environmental benefits are dubious, at best.

While consumers have concerns about electric vehicles' battery range, battery life expectancy and replacement costs, the primary reason for low electric vehicle demand is cost. Consumers must pay a premium for electric vehicles with the expectation that the savings in fuel costs will negate the higher sticker price and the electric vehicle purchase will eventually be a money-saver. But consumers are reluctant to pay that premium and are rightly skeptical that the fuel savings will make up the difference. One way of doing the comparison is to calculate how much more a new car buyer could afford in car payments with the monthly fuel savings. Using a 5 percent interest rate over 10 years (similar to new-car finance rates), The Heritage Foundation calculated that the additional financing available from monthly fuel savings would come nowhere close to the premium paid for an electric vehicle.[3]

A September 2012 Congressional Budget Office report affirmed this. The CBO analysis found that plug-in hybrid electric vehicles will cost $12,000 more over the lifetime of the vehicle than a similar-sized gas-powered vehicle, even after factoring in fuel savings using a 10 percent discount rate.[4] Even a generous tax-payer funded $7,500 credit does not make up the difference. CBO also concluded that "All-electric vehicles are closer to being cost competitive with conventional vehicles than are plug-in hybrids with the same size battery, but the tax credits would still need to be about 50 percent higher than they are now to fully offset the higher lifetime costs of an all-electric vehicle."[5]

Fisker is in a category of its own when it comes to economic challenges. Fisker's luxury Karma was priced at $103,000. PrivCo, a research analysis firm focusing on privately-held companies, calculated that Fisker spent an astounding $660,000 on each vehicle produced.[6] Three important questions must be answered. 1.) Why are taxpayers helping to foot the bill with a $7,500 tax credit for a vehicle that costs over $100,000? 2.) Is this the type of risk we want to take with taxpayer-loaned money? 3.) Did the ATVM loan significantly hedge the risk of investors and would have they obtained that much private financing without the federal government's loan?

Furthermore, the environmental benefits from going electric are questionable. If reducing greenhouse gas emissions is a goal, subsidizing the production and consumption of electric vehicles is one of the least effective tools to combat climate change. A 2012

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[2] Bjørn Lomborg, "The Electric Car's Short Circuit," Project Syndicate, April 11, 201, accessible at http://www.project-syndicate.org/commentary/the-false-promise-of-electric-cars-by-bj-rn-lomborg

[3] By Nicolas Loris and David W. Kreutzer, Ph.D., "Economic Realities of the Electric Car, Heritage Foundation WebMemo No 3116, January 24, 2011, accessible at http://www.heritage.org/research/reports/2011/01/economic-realities-of-the-electric-car

[4] Congressional Budget Office, "The Effects of the Federal Tax Credit for the Purchase of Electric Vehicles," September 2012, accessible at http://www.cbo.gov/sites/default/files/cbofiles/attachments/09-20-12-ElectricVehicles_0.pdf

[5] Ibid.

[6] PrivCo, "FISKER AUTOMOTIVE'S ROAD TO RUIN: How a "Billion-Dollar Startup Became a Billion-Dollar Disaster" http://www.privco.com/fisker-automotives-road-to-ruin (accessed April 22, 2013).

report from the Journal of Industrial Ecology found that the manufacturing of electric vehicles produces over double the carbon dioxide emissions than that of a conventional car.[7] Further, if the car charges with electricity powered by coal and the battery needs replacement, the greenhouse gas reductions are marginal, at best.

Profitable or Not, DOE's ATVM is a Failure

In October of 2011, DOE's Director of Public Affairs Dan Leistikow wrote on the Department of Energy's webpage, "Two years ago, critics said we shouldn't be investing in American auto manufacturing because the industry wouldn't survive. They were wrong then and they're wrong today. From well established names like Ford to innovative startups like Tesla and Fisker, America's auto industry is being reinvented, and the Department's loan program is helping play an important role."[8]

Three years after the DOE closed its ATVM loan for Fisker Automotive, the company is on the verge of bankruptcy. The DOE loan artificially made this dubious investment appear more attractive and lowered the risk of private investment. For instance, private investors sunk $1.1 billion into Fisker but much of the private financing came after the Department of Energy approved and closed the loan for Fisker. Fisker, formed in August 2007, raised $94 million before the DOE approved the loan in September 2009.[9] Fisker raised another $57 million between the time DOE approved and closed the loan in April 2010. After DOE closed the loan, Fisker raised over $1 billion in various rounds of venture capital funding.[10]

Private investors look at government loans a way to substantially reduce their risk. Even if a project may be an economic loser but has a huge upside, private companies can invest a smaller amount if the government provides a loan. Those investments are especially attractive if the federal government complements loans with other policies like targeted tax credits, DOE research dollars, and fuel efficiency standards that allow electric vehicles to accumulate credits and then trade them with non-compliant manufacturers. If the project fails, private investors still lose money, but the risk was artificially distorted. Now taxpayers are potentially on the hook for the nearly $200 million of loans Fisker drew down. When economically uncompetitive technologies and companies cannot survive without the taxpayer's crutch, there is a good reason these companies cannot fully attract private financing. These investors are using political calculus to hedge their bets.

Success Stories are not a Result of the Program

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[7] Troy R. Hawkins, Bhawna Singh, Guillaume Majeau-Bettez and Anders Hammer Strømman, "Comparative Environmental Life Cycle Assessment of Conventional and Electric Vehicles," Journal of Industrial Ecology Volume 17, Issue 1, pages 53–64, February 2013

[8] Dan Leistikow, "Fisker, Tesla, and American Auto Innovation," U.S. Department of Energy, October 20, 2011, accessible at http://energy.gov/articles/fisker-tesla-and-american-auto-innovation (accessed April 22, 2013).

[9] Fisker raised $68 million of the $94 million after submitting the loan application.

[10] PrivCo, "FISKER AUTOMOTIVE'S ROAD TO RUIN: How a "Billion-Dollar Startup Became a Billion-Dollar Disaster" http://www.privco.com/fisker-automotives-road-to-ruin (accessed April 22, 2013).

Whether it is the Department of Energy's ATVM loan program or its 1703 and 1705 loan guarantee programs, supporters argue a few failures are worth the risk and the number of success stories far outweigh bankrupt companies or ones facing difficult financial times. But even if a project receives a DOE loan or loan guarantee, it is a mistake to attribute that company's success to the federal government's investment.

There are companies that would, and often do, receive investment from the private sector because their technology is profitable or because investors find their technology promising and want to pursue the risk. In these cases, the DOE's loan partially offsets private-sector investments that would have been made without the federal backing. Tesla, the recipient of a $465 million loan through the ATVM program, had its initial public offering in June 2010. Although the car manufacturer reported $75 million in losses over the final three quarters in 2012, Tesla expects to report its first ever quarterly profit.[11]

Whether Tesla remains profitable remains to be seen. And because many of the projects for both DOE ATVM and loan guarantees are in relatively early stages of development, labeling them successes is premature—and if they do go bankrupt, the taxpayer funds are merely providing a lifeline. However, if Tesla's electric vehicles are the wave of the future, they should have secured investment and loans through the private sector. Similarly, Ford and Nissan North America ATVM loans to retool their factories to produce more fuel efficient and electric vehicles should have been completely privately financed outside of DOE. Having the federal government provide the loan privatizes the benefits and distributes any potential losses among the taxpayers.

Furthermore, a successful federally-backed company does not mean it is a good deal for energy consumers. Representative Paul Ryan (R–WI) recently received criticism for including two solar-generation projects that received loan guarantees in his budget plan as "failed" projects despite the fact that Mesquite Solar 1's project in Phoenix is generating electricity and SolarReserve's project is under construction and recently entered a contract to sell power to California's largest utility.

Both companies are selling to California's Pacific Gas and Electric Company (PG&E). In fact, in Mesquite Solar 1's case, they entered into a contract with PG&E before receiving the loan guarantee.

California law mandates that the utility must purchase 25 percent of its electricity from renewable sources by 2016 and 33 percent by 2020. With respect to SolarReserve entering into a contract with utility PG&E, the state utility commissioner acknowledged, "This is expensive, there's no getting around it, but I think this technology is something that's worth investing in." Those investments should be determined in the free market not artificially skewed by using the political process to pick one technology over another.

[11] Jose Pagliery, "Tesla expects its first-ever profit," CNNMoney, April 1, 2013, accessible at http://money.cnn.com/2013/04/01/news/companies/tesla-profit/index.html (April 22, 2013).

If electricity generated by these projects were competitive with other sources of energy, there wouldn't be a law mandating its use. Instead, families are forced into buying pricier electricity and taxpayers are on the hook if the project fails.

One of the conditions of the ATVM program is that the applicant must be "financially viable without the receipt of additional federal funding for the proposed project other than the ATVM loan."[12] If that is the case, then these companies should seek private capital, not government capital. The demand for the vehicle will determine whether that company or technology is financially viable. A truly financially viable company should not have a problem securing private investments.

The Incentive for Alternative Fuel Technology Already Exists

Oil's dominance as a transportation fuel is not because a government program is lacking or because more taxpayer investments are needed to jumpstart a transformation in the fuel industry. At present, even with consistently higher prices, oil is the most efficient and economic source of transportation fuel.

Americans spent $481 billion on gasoline in 2011.[13] Globally, the transportation fuels market is a multi-trillion-dollar one. If any alternative fuel technology captured a mere slice of that market, it would capture billions of dollars in profit annually. The market demand for transportation fuel is incentive enough to spur competition in the industry. Breaking into this market is not a problem of the so-called valley of death where good ideas are not able to attract substantial investment. It is a valley of wealth waiting to be had.

Markets adapt to changes in resource demand and supply through the price mechanism. If vehicles powered by natural gas, electricity, or biofuel became economically competitive consumers would respond, and alternative-fuel vehicle and necessary supporting infrastructure would be built. A common argument for federal support of alternative-fuel vehicles is that consumers will not buy the cars if they have no place to re-charge or re-fuel them thus creating a chicken-and-egg problem, but markets overcome the chicken-and-egg problem all the time. Diesel cars and diesel pumps and cellular telephones and cellular towers are just two examples of investments that expanded rapidly. Good economic ideas will do that but it will not be as the result of a government program or a politician in Washington thinking he knows which is the most promising alternative to a gas-powered car.

The Fundamental Problems with DOE Loans and Loan Guarantees

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[12] United States Department of Energy, ATVM, https://lpo.energy.gov/?page_id=43 (accessed April 22, 2013).

[13] Janice Podsada, "Americans Spent Record Sum on Gasoline in 2011," January 3, 2012, http://articles.courant.com/2012-01-03/business/hc-gasoline-record-spending-2011-20111230_1_tom-kloza-oil-price-information-service-crude (accessed April 22, 2013).

Fisker Automotive provides another critical piece of evidence as to why the Department of Energy should not be attempting to serve as a venture capitalist. Both the loan and loan guarantee programs are some of the most pernicious ways that governments distort markets and harm American families and businesses alike. DOE loans and loan guarantees:

- **Reduce Capital Availability for Less Politically Favored Companies:** As anyone looking to start a business or buy a home in recent years can attest, acquiring a loan can be very difficult. DOE loans and loan guarantees make that process even more difficult because the government essentially pulls capital out of those limited reserves and dictates who should receive it. While sure-bet companies can still get a loan, those that are more on the margin may lose that opportunity.

- **Reduce Americans' Access to Technologies and Services**: Capital is in limited supply. A dollar loaned to a government-backed project will not be available for some other project. This means that the higher-risk, higher-reward companies that drive innovation and bring new services and technologies into the marketplace may not get support, while companies with strong political connections or those that produce something that politicians want do.

- **Skew the Rules of Free Enterprise:** The more government participates in the market as an investor, the greater its temptation to shape the rules to advance its own interests. Further, because they are not risking their own money, politicians and bureaucrats will bear almost no responsibility for the outcome of the investment. This allows them to take credit when an investment succeeds and deny blame when it fails.

- **Beget Corruption and Cronyism:** Programs such as loan guarantees create a symbiotic relationship between government officials and specific businesses. In essence, both have very strong incentives for the other to be successful. In this relationship, the politician helps the business gain market advantage, and the successful business helps the politician advance his political agenda. The result is, at best, a brand of cronyism where businesses develop strong relationships with public officials to ensure that public policies support their economic interests.

By attempting to force government-developed technologies into the market, the government diminishes the role of the entrepreneur and crowds out private-sector investment. This practice of the government picking winners and losers denies energy technologies the opportunity to compete in the marketplace, which is the only proven way to develop market-viable products. When the government attempts to drive technological commercialization, it circumvents this critical process.

Fisker is not the first Department of Energy investment failure and it very likely that it will not be the last. More stringent oversight and risk assessment may marginally improve the protection of the taxpayers' money, but the best option is to get rid of the loan program altogether and allow free-market competition to drive energy investment. This protects taxpayer money and will ensure that only the most promising new energy technologies move forward.

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Mr. JORDAN. Thank you both.

Ms. Lipman, right to Mr. Loris's point, look, we want all the great things you were talking about, we want this technology, we want advanced new things happening. We are America, a Country of innovation and entrepreneurs and everything else. But Mr. Loris makes a perfect point. Not only in this situation with Fisker did taxpayers lose $200 million, but the fact that we have the program jeopardizes all those, if you heard Mr. Whitcombe, 150 other applicants who didn't get the dollars, and now the investment capital, the private investment capital that is out there, they are saying, you know what, I think it is better to put my money behind some company that has the implicit, well, not implicit in this case, the formal backing of the taxpayer, of the United States Government.

So of those 150 companies, and a whole bunch of others who didn't apply who are out there, they may get crowded out, they may not get the investment they need where that next big idea is just waiting to bloom if they can just get the help. So not only do we have taxpayer money getting wasted, we, I think, very logically have a bunch of companies who might otherwise get investment from the private sector but don't.

Ms. LIPMAN. Well, I think there are a number of responses to that. One is I agree with Mr. Loris that it is not the success of individual projects; it is the success of the policy. And I think while, clearly, the program is not perfect, no program would be; it is in the process of evolution always, as all of our Government programs should be, the question is not what is the risk to individual projects, but what is the risk to the Nation if we fail to move faster, further, for the longer term.

Mr. JORDAN. Well, you are making my point. There might be one of those 150 companies who didn't get help who, if the Government is not involved in this, some private investors say, you know what, I like that idea. That is the next Thomas Edison there; I am going to put private money there. But you know what? Think about it, Nissan got money. Nissan is a successful company. So there are investors out there saying I can put my money with this entrepreneur, it looks good, but maybe I will go with the big company that has Government backing; I will put money there and get the return. You understand?

Ms. LIPMAN. I do. The question isn't whether or not we are going to move into these next technologies. And the question isn't whether or not there is going to be investment. The question is whether there is going to be investment in American manufactured technology; whether that investment is going to be made here, whether the innovation that comes out of our labs and out of our private companies is going to turn into jobs in America.

And we have tested not doing anything on that. We have tested it for the last three decades in which we have seen a decline in America's manufacturing share in this critical engine of innovation and growth, and what we have seen in the converse in the last few years, and the ATVM has been one of the key pieces there, there has been a lot of talk today, if I could finish for a moment.

Mr. JORDAN. I just have a minute.

Ms. LIPMAN. About the creditworthiness of these loans. When the ATVM was, not when it was originally authorized, but when the money was, I guess the money was actually authorized by Congress the end of 2008, that was a time in which no auto company, let alone an innovative one, could have gotten money from anywhere in the private sector. It was very dark times for investment in advanced technology. And these are precisely the times and the places and, going forward, the technologies we need to attract investment here.

Mr. JORDAN. I want to get Mr. Loris's comment because, frankly, my understanding, in Ohio manufacturing jobs are starting to come back.

Ms. LIPMAN. Absolutely.

Mr. JORDAN. Particularly in the energy area. We just added steel jobs in Youngstown, Ohio, and that hasn't happened in 50 years because of technology developed in the private sector, particularly in the energy business, that is being used on private land all over the State, the eastern part of our State.

Mr. Loris, I will give you a last time to comment, then I will go to our ranking member.

Mr. LORIS. And there is a success story where we see the market is working, that we have access to our energy resources and, as a result, you have chemical companies wanting to come back to the U.S., you have manufacturers who want to rebuild old shuttered steel towns, and you are saving consumers a lot of money through lower energy prices.

But I would like to rebut that last point. Fisker was formed in August 2007 and it raised $94 million before DOE even got into the loan process. If they thought this was a profitable company or successful, they could continue to go through rounds of venture capitalism. But Fisker raised another $57 million between the time DOE approved the loan and closed the loan in April of 2010. After DOE closed the loan, Fisker raised over $1 billion in various rounds of VC funding, so this just speaks to my point that investors can significantly hedge their bets once the Department of Energy gets involved, and if private investors and VCs think this is such a good idea, they should be able to take that risk and reap the reward on their own.

Mr. JORDAN. Great point.

The gentleman from Pennsylvania is recognized.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Loris, I have some questions for you. Thank you for coming here today and expressing your opinions. Now, you have said your opinions are not necessarily those of The Heritage Foundation, is that correct?

Mr. LORIS. That is correct.

Mr. CARTWRIGHT. You are currently the Herbert and Joyce Morgan Fellow at The Heritage Foundation?

Mr. LORIS. Yes.

Mr. CARTWRIGHT. Does that make you an employee there?

Mr. LORIS. It does.

Mr. CARTWRIGHT. Okay. But my impression is that you are saying that your opinions are not those of The Heritage Foundation?

Mr. LORIS. That is correct.

Mr. CARTWRIGHT. Now, my copy of your opinions is printed on Heritage Foundation stationery. Is that what you meant to do?

Mr. LORIS. That I did mean to do, yes.

Mr. CARTWRIGHT. Okay. And just so we are clear, did you get anybody at The Heritage Foundation, your employer, to review your opinions before you expressed them here today?

Mr. LORIS. I did.

Mr. CARTWRIGHT. Okay. So they are aware that you are here giving your opinions before this panel, are they?

Mr. LORIS. They are.

Mr. CARTWRIGHT. Okay. Now, my question is about the Energy Independence and Security Act of 2007.

Mr. JORDAN. Would the gentleman yield for one second?

Mr. CARTWRIGHT. Certainly.

Mr. JORDAN. I just want to make a point. It shouldn't be a surprise that The Heritage Foundation is supporting free market principles.

Mr. CARTWRIGHT. We are not sure what they are supporting here today. We only have Mr. Loris.

Mr. Loris, I read your testimony and you spend a considerable amount of ink on the Fisker company. You mention Tesla, but you don't mention Ford anywhere in your testimony, do you?

Mr. LORIS. No, I do not.

Mr. CARTWRIGHT. Okay. And then you move from an examination of Fisker and then you move into a criticism that basically says DOE loans and loan guarantees reduce capital available, reduce Americans' access to technology, skew the rules of free enterprise, beget corruption and cronyism. It seems to me you sort of morph into a general attack on the Energy Independence and Security Act of 2007 creation of these loan guarantee programs, correct?

Mr. LORIS. That is correct.

Mr. CARTWRIGHT. Okay. At the time, in 2007, when they were signed into law by our President of the United States, George W. Bush, did you express your displeasure or your disagreement with President George W. Bush at the time?

Mr. LORIS. I was not working for Heritage Foundation at the time, but there is past research that we heavily criticized that bill and thought it would be bad for consumers and energy consumers.

Mr. CARTWRIGHT. You have correctly anticipated my next question. Even though you were not yet employed by The Heritage Foundation in 2007, it is the case that The Heritage Foundation itself was critical of this bill that President Bush signed into law in 2007.

Mr. LORIS. That is correct.

Mr. CARTWRIGHT. So it might be a fair assumption to say that they agree with your testimony here today, the opinions you have expressed in front of this panel, is that right?

Mr. LORIS. That is correct.

Mr. CARTWRIGHT. So my question is if what you do is you examine the experience at Fisker and then you ramp that into your general opinions and conclusions about the validity and the appropriateness of the Energy Independence and Security Act of 2007 and these loan program guarantees, why didn't you include Ford Motor Company, why didn't you include Nissan? We have seen today, in the hearing before this panel, that the vast, the vast majority of the money that was invested by the American public in this alternative energy endeavor went to those other companies; not to this Fisker company, but to the other companies that are actually making a go of it and it is a 98 percent, were you in the room when we talked about the 98 percent?

Mr. LORIS. I was.

Mr. CARTWRIGHT. A 98 percent successful enterprise, these Federally guaranteed loans, so that we could bring our United States up to speed with modern technology in the automotive industry. You were in the room when we heard the 98 percent figure?

Mr. LORIS. Yes, sir.

Mr. CARTWRIGHT. You don't mention that anywhere in your testimony, either in writing on The Heritage Foundation stationery or verbally here in the hearing room, am I correct in that?

Mr. LORIS. I did broadly speak about whether or not these programs or these projects are successful. That doesn't make the policy a success. You have companies like Ford and Nissan; they are huge companies, they are big boys. They should be able to make these investments on their own; they should be able to take out loans from banks and do it that way, rather than relying on the Government's crutch. It is not the ATVM program.

Mr. CARTWRIGHT. Mr. Loris, is it your opinion that the Federal Government must now go back and confiscate and take back the DOE money from the Ford plant in Lima, Ohio right now, irrespective of how well Ford is doing with the program?

Mr. LORIS. No. I think they should remove the loans going forward on any availability of that ATVM program to administer the loans.

Mr. CARTWRIGHT. Again, I thank you for coming here with your opinions, Mr. Loris.

Mr. LORIS. Thank you.

Mr. JORDAN. You get off easy.

We want to thank you both for being here. I appreciate you staying around for the first panel and your willingness to testify here on our second panel.

We are adjourned.

[Whereupon, at 5:56 p.m., the subcommittee was adjourned.]

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April 17, 2013

VIA ELECTRONIC MAIL

The Honorable Jim Jordan
Chairman
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: *Subcommittee Letter of April 9, 2013*

Dear Chairman Jordan:

I represent Fisker Automotive and write in response to your April 9, 2013 letters to Mr. Tony Posawatz and Mr. Bernhard Koehler requesting the testimony of both senior executives at a Subcommittee hearing on April 24, 2013.

Fisker Automotive appreciates the Subcommittee's interest in examining the support offered to the company in the form of loans from the Department of Energy through the Department's Advanced Technology Vehicles Manufacturing (ATVM) loan program. The company has cooperated with the Oversight and Government Reform Committee's investigation of this matter since it began last summer — when it produced more than 1,500 pages of documents and other materials pursuant to the Committee's request — and it intends to continue to cooperate with you.

Unfortunately, neither Mr. Posawatz — the current Chief Executive Officer of the company, nor Mr. Koehler — the Chief Executive Officer for Europe and the Middle East, are available to testify on April 24th. Both are intimately involved in critical day-to-day efforts to find a path forward for the company in the United States and Europe. Appearing at an April 24th hearing, with only two weeks notice and at such a critical time for the company, would substantially hinder its ongoing efforts to obtain financing, to continue negotiations with stakeholders and other interested parties, and to address the challenges arising from the company's current financial position. All of these efforts are intended to maximize value for stakeholders such as the Department of Energy and, of critical importance, the American taxpayer.

KIRKLAND & ELLIS LLP

The Honorable Jim Jordan
April 17, 2013
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If the Subcommittee is willing to undertake a reasonable delay of the hearing currently scheduled for April 24th, Fisker Automotive commits to work with you and provide an appropriate witness for a hearing on a new date chosen by the Subcommittee. Thank you for your consideration of this request.

Please do not hesitate to contact me at (202) 879-5260 if I can be of further assistance.

Sincerely,

Brian A. Benczkowski

cc: The Honorable Matthew Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

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Evans, Denise

From:	Shikany, Ann [Ann.Shikany@Hq.Doe.Gov] on behalf of Silver, Jonathan [Jonathan.Silver@hq.doe.gov]
Sent:	Thursday, June 23, 2011 1:53 PM
To:	'jonathan@jonathansilver.net'
Subject:	FW: back?

-----Original Message-----
From: John Doerr [mailto:jdoerr@kpcb.com]
Sent: Thursday, June 23, 2011 8:51 AM
To: Silver, Jonathan
Subject: back?

Are you back in office? Please suggest a time to talk.

John