From: George Kaiser
Sent: Friday, October 22, 2010 1:25 PM
To: Steve Mitchell
Subject: RE: RE: Key Speaking Points

I'm sorry I asked. I'll come up with something. I wanted the most important sound byte, not a Swiss Watch factory design. This is a social dinner with the President and Majority Leader, not a business meeting with staff. I'll probably get the opportunity for two questions (unless they seat me next to him) - one on Early Childhood Education and I'll come up with one on Chinese competition and green jobs or preferential government purchasing for companies whose products have majority local content.

From: Steve Mitchell
Sent: Thursday, October 21, 2010 5:20 PM
To: George Kaiser
Subject: FW: Key Speaking Points

George,

Set forth below are sounds bytes and the detail supporting those sound bytes that would be very helpful for US solar manufacturers – not just Solyndra.

Please let me know if you have any more questions.

Steve

From: John Gaffney [redacted]
Sent: Thursday, October 21, 2010 4:58 PM
To: Steve Mitchell
Cc: Brian Harrison; Thomas Spirgi; Joe Pasetti
Subject: FW: Key Speaking Points

Steve,

Thomas mentioned the POTUS meeting to me this am. This is what we prepared.

John

From: John Gaffney
Sent: Thursday, October 21, 2010 2:05 PM
To: Thomas Spirgi
Cc: Brian Harrison; Joe Pasetti
Subject: Key Speaking Points

Key Speaking Points:
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Extension of the grant program, or some other de facto refundability for solar tax credits

The grant program will expire for projects that do not commence construction (reach 5% completion) by Dec 31, 2010. There are multiple bills introduced in the House and Senate to extend the program for another year, and Senate skeptics like Sen. Bingaman have privately indicated that they would not oppose an extension. The House Ways and Means (tax) committee chairman has issued a discussion draft that creates a direct payment tax credit, which is a de facto refundable credit. A recent study concluded that there will be roughly $9 billion of tax equity transactions (demand) chasing $3 billion of tax equity financing (supply) in 2011, if some form of refundable credit does not exist next year. This would cause a large contraction in industry growth as fewer projects pencil because the losses incurred by the developing party to enter into a tax equity transaction will be very high with demand for tax equity exceeding supply by a factor of three. Furthermore, with Republicans pledging to let all Recovery Act programs expire if they take control, the lame duck session may be the only opportunity to address this enormous problem. Extension of this program is of the highest priority to continue progress deploying solar in the U.S.

Manufacturing tax credit for solar

The preferred bills are HR 4085 in the House and S 2755 in the Senate. Both have bipartisan support among members of the tax committee (Sens. Crapo and Risch in the Senate, 3 Republican House tax committee members including the Ranking Member, Dave Camp). These bills would add solar mfg equipment to the list of eligible property for the commercial solar ITC (Section 48 of the Code), By doing this, if some form of refundability for Section 48 is enacted, the new credit for solar mfg equipment would also be refundable. This is a critical component since most, if not all, domestic solar manufacturers do not have sufficient tax liability to utilize the credits that would accrue based on the capital intensive/expensive solar manufacturing equipment. Furthermore, this would unlock hundreds of millions in 48C credits that were issued to solar manufacturers who cannot use them because they have never reached a level of profitability to allow the use of credits from $5 to $90 million that were issued. In the extremely competitive environment for domestic solar manufacturers that exists today, these companies are more likely to fail than they are to reach the level of profitability required for them to utilize these large tax credits. With the market for tax equity derived from solar panels extremely tight, the tax equity market for solar manufacturing equipment is simply nonexistent. Skeptical tax equity investors have no interest in a specialized piece of manufacturing equipment that is installed in someone's factory. 48C applicants without sufficient tax liability to use their credits have NO recourse but to hope they reach a level of profitability (after likely burning off hundreds of millions in NOL's) that they could use those credits. The House tax committee has adopted this approach and included HR 4085 nearly whole-cloth in its draft green energy tax bill, as both the Chairman and Ranking Member of the committee are cosponsors of the bill. The Administration has pledged to add $5 billion to 48C, and Sen. Bingaman has introduced legislation to add $2.5 billion. This would cover manufacturing of every form of renewable energy, including clean coal and nuclear at every level of the manufacturing process from inputs to final goods. $2.5 billion of credits would give an incentive to nearly $9 billion of manufacturing investments. This compares (laughably) to the nearly $9 billion in low interest loans that one Chinese company (LDK) received from the Chinese government.

Green Bank/Clean Energy Development Authority (CEDA)

With over $30 billion in low interest loans provided from the Chinese government to its solar manufacturers, those Chinese manufacturers are now offering robust financing arrangements to prospective customers in connection with module sales. The current loan guarantee program cannot come close to matching those incentives. There have been multiple proposals for a Green Bank in the House, most notably by Rep. Inslee, and in the Senate Sen. Bingaman has offered the creation of CEDA. Although these are improvements and expansions to the current loan guarantee program, they do not go far enough to create readily available clean energy financing to compete with what is now being offered by Chinese manufacturers. The U.S. must put its manufacturers on a more level playing field by creating a generally available financing mechanism for renewable energy, particularly solar, projects. The Export-Import Bank structure is a helpful example of easily accessible, better-than-market financing that would significantly level the playing field between the current financing options available to purchasers of Chinese and U.S. solar products.

Buy American application to military power purchase agreements (PPA's)

PPA's are the preferred deployment method for government use of solar technology because it removes the up-front cost to the government and allows a private entity to take advantage of tax incentives not available to government purchasers. However, when PPA's are used the private entity is the purchaser of the solar technology and the Buy American Act does not apply. This is despite the fact that the solar technology is nearly always deployed on government property and all the energy is purchased by the government facility. This is a de facto loophole in the Buy American Act that foreign manufacturers have quickly exploited to deploy foreign-made solar technology on U.S. government property. The House-passed National Defense Authorization bill includes language that would apply the Buy American Act to PV energy generation technology used by the Defense Department in PPA's and the Administration should strongly support inclusion of this language in the Senate bill and final conference report. There is more than enough domestic manufacturing capacity to meet demand created by military PPA's and all the Buy American exceptions, most notably the application of the Trade Agreements Act, would still apply.

Long-term PPA contracting authority for civilian agencies

With the increasing use of PPA's to develop renewable energy projects for the military, the urgent need to reduce federal budget outlays, and aggressive goals to increase renewable energy use by federal agencies, civilian agencies need to be authorized to enter into long-term (20 years or more) energy supply contracts (PPA's). The Defense Department already has this authority and has led all cabinet agencies in deploying solar and other renewable technology. Only through a long-term PPA does solar deployment save the government money, without it government agencies will be forced to buy the technology directly, thereby losing the availability of tax credits to lessen costs, and taking a budget hit in the early years. Both the House and Senate energy bills included long-term energy contracting authority for civilian agencies and this authority should be enacted into law as soon as possible. If legislation is not possible, the Administration should use all regulatory authority at its disposal to allow agencies greater latitude to enter into PPA's of 20 or more years.