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RPTS MERCHANT

DCMN SECKMAN

MARKUP OF DISCUSSION DRAFT OF H.R.____,

NO MORE SOLYNDRAS ACT

TUESDAY, JULY 24, 2012

House of Representatives,

Subcommittee on Energy and Power,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 4:07 p.m., in Room 2123, Rayburn House Office Building, Hon. Ed Whitfield [chairman of the subcommittee] presiding.

Present: Representatives Whitfield, Burgess, Olson, Rush, Dingell, Green, and Waxman (ex officio).

Staff Present: Anita Bradley, Sr. Policy Advisor to Chairman Emeritus; Allison Busbee, Legislative Clerk; Patrick Currier, Counsel, Energy & Power; Heidi King, Chief Economist; Katie Novaria, Legislative Clerk; Jeff Baran, Minority Senior Counsel; Phil Barnett, Minority

Staff Director; Jen Berenholz, Minority Chief Clerk; Elizabeth Letter, Minority Assistant Press Secretary; and Roger Sherman, Minority Chief Counsel.

Mr. Whitfield. Good afternoon.

The subcommittee will come to order for this markup of the No More Solyndras Act. And the chair will recognize himself for an opening statement. I am delighted that we are here today for the markup of the No More Solyndras Act.

Section 1703 program, which was created by Title XVII of the Energy Policy Act of 2005, there were no loan guarantees issued under President Bush. Section 1705 was created by President Obama's 2009 Recovery Act. And Section 1705 was limited to renewable energy technologies, electric transmission systems and biofuels projects. Fossil fuel and nuclear projects were not eligible.

The Recovery Act also provided $6 billion to cover credit subsidy costs for the 1705 projects. Subsequent appropriations provided DOE with $47 billion in loan guarantee authority. At this time Obama's Department of Energy has issued $15.1 billion in loan guarantees since 2009 -- President Obama's DOE has issued $15.1 billion in loan guarantees since 2009 for 28 projects; $15 billion in conditional commitments are pending.

The first five loan guarantee recipients have either gone bankrupt or they are struggling. Abound Energy is in bankruptcy. Beacon Power is in bankruptcy. Solyndra is in bankruptcy. Nevada Geothermal does not have a positive cash flow. And First Wind has withdrawn its initial public offering and does have substantial debt. So far, the program has either saved or created 1,175 permanent jobs, which amounts to $12,850,000 per job. In my opinion, this does not

provide a good return for taxpayers, and it is not a productive use of taxpayer dollars.

And this legislation would simply terminate these programs, except for the 50 existing applications that remain in the cue.

I would also ask unanimous consent to enclose in the record letters of support for our legislation.

[The letters follow:]

******** COMMITTEE INSERT ********

Mr. Whitfield. The American Energy Alliance wrote a letter saying No More Solyndras Act is one of the most commonsense pieces of legislation to come from this Congress. The Americans for Tax Reform and the Cost of Government Center endorsed it. The American Conservative Union endorsed it. The American Commitment endorses it. The Heritage Foundation endorses it. The Let Freedom Ring organization endorses it. Americans for Prosperity endorse it. The Citizens Against Government Waste endorse it. So I hope that in tomorrow's markup our members will be able to support this legislation and help protect the taxpayer dollars.

And with that, I would yield back the balance of my time.

And at this time, I would recognize the gentleman from Illinois, Mr. Rush, for a 5-minute opening statement.

[The prepared statement of Mr. Whitfield follows:]

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Mr. Rush. Well, thank you, Mr. Chairman.

We are here today to continue the political theater, or should I say political satire, that has become the hallmark of the Energy and Commerce Subcommittee under the Republican party's leadership. Today we are here to mark up the so-called No More Solyndra bill, but a better, more fitting title would be the No More Innovation bill.

Mr. Chairman, this bill creates a winners list of DOE projects that was submitted before December 31, 2011, but would withhold valuable funding for projects submitted after that date. Under this ridiculous bill, any new potential technological advances or important new energy innovation would be absolutely shut out of critical DOE funding, which is in fact a lose-lose for those searching for new technologies for the future.

Last week the majority released a report which highlighted what they deemed, and I quote, "a tremendously productive and successful year," end of quote, in the Energy and Commerce Committee.

Mr. Chairman, if I am not mistaken the E&C Subcommittee alone has held up to 24 hearings under what my Republican colleagues have termed the American energy initiative. Unfortunately, I would also like to submit that this subcommittee has only been extremely productive and successful in holding political messaging votes that attack the Clean Air Act and the EPA.

And yes, my friend, Mr. Chairman, while my Republican colleagues have been extremely productive, extremely successful at registering their dislike of the Obama administration, vote after vote, there has

been virtually no significant energy related policies that have become law that have originated out of this subcommittee all this year; I repeat, nada, none.

Mr. Chairman, while the rest of the country is experiencing record crop loss, severe heat wave, rising sea levels, record drops, intense forest fires and other acute weather events, this subcommittee, which has jurisdiction over some of these matters, should be steering the Nation toward policies to combat these extreme weather patterns, but instead, we focus all of our attention on voting for partisan unconstructive and in many cases outright environmentally damaging bills that do nothing to address the serious issues that the American people are facing.

And in keeping with that philosophy, here we are once again today, same old stuff, only yet another doomed to fail unconstructive bill so that my Republican colleagues can go and try for political points. So be it, as the rest of the country is literally burning all around us.

Mr. Chairman, we can't afford these kinds of nonproductive activities inaction and energies. At some point, we have to move away from simply holding political discourses and political messaging protest votes against the Obama administration and get down to the serious business of actually governing by working together to enact energy and policy that can move this Nation forward.

I thank you, Mr. Chairman. I yield back whatever time I may or may not have.

Mr. Whitfield. Thank you, Mr. Rush.

[The prepared statement of Mr. Rush follows:]

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Mr. Whitfield. At this time, I recognize for 3 minutes the gentleman from Texas Dr. Burgess.

Dr. Burgess. I thank the chairman for the recognition. Mr. Chairman, for my opening statement, I would like to read into the record a letter that I sent to the editorial board of the Wall Street Journal today:

Dear sirs, last week the Journal published an editorial entitled the "GOP Solyndra Wing," in which you provided the impression that I am not in favor of ending the Department of Energy's Loan Guarantee Program. This could not be further from the truth. When we learned of the abuses which occurred during the approval process for the Solyndra loan guarantee, I was at the forefront of that issue.

In July of 2011, after the Office of Management of the Budget refused to appear before our investigative subcommittee, I introduced the resolution that authorized Chairman Upton to issue a subpoena to compel OMB to testify and produce the documents the administration was withholding. This was necessary so that the Energy and Commerce Committee could further investigate how Solyndra was selected to receive funding.

In September of 2011, I worked directly with Speaker Boehner to rescind $100 million in Solyndra funding in the continuing resolution. In addition, last November, I called for Secretary Chu's resignation after he testified before our committee that it became apparent that he was violating the Loan Guarantee Program subordination provision.

Earlier this year I drafted legislation, H.R. 5863, to impose

civil penalties on any executive branch official who violates the terms of the loan guarantee as set forth in the legislation signed into law in 2005. My legislation was based on decades of precedent in the Federal Government where the Antideficiency Act imposes administrative, civil and even criminal penalties on those executive branch officials who violate the terms of appropriations bills.

This concept in both instances is the same when a Federal employee breaks the law and loses taxpayer dollars, he or she should be held accountable. Based on this legislation, I have worked with Chairman Upton to draft penalty language to be included in the No More Solyndras Act to impose administrative penalties for such violations.

While the White House has refused to hold Solyndra accountable and has even blocked the committee from investigating the program, I have done everything in my power to aggressively pursue answers from the administration. I supported rescinding as much money as we could from the Loan Guarantee Program to ensure taxpayer dollars would never again be used to further these types of projects.

To say that I am to blame for the next Solyndra is absurd, insulting and not accurate. I have worked with Chairman Upton on this important issue, and I have made it clear to the committee that I am supporting the No More Solyndras Act.

Sincerely yours, Michael C. Burgess, MD. I yield back the balance of my time.

Mr. Whitfield. Thank you.

[The prepared statement of Dr. Burgess follows:]

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Mr. Whitfield. At this time, I recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. Waxman. Thank you, Mr. Chairman.

Today the subcommittee is considering the so-called No More Solyndras Act. This is not serious legislation. It is a political bill that is designed to keep Solyndra in the news. In fact, most of the bill is composed of inaccurate and misleading congressional findings.

The American people are entitled to an honest debate about the purpose and effect of this bill, but the Republican rhetoric about what this bill does is completely divorced from reality, the reality of what the bill actually does.

Last week when Chairman Whitfield postponed the markup of this bill until today, he said, quote, "we are totally committed to ending the 1704-1705 program," end quote. He emphasized that House Republicans intend to terminate the Loan Guarantee Program with this bill.

Well, let's be clear, this Republican bill does not terminate the Loan Guarantee Program. It does not end, phase out or sunset the Loan Guarantee Program. Under this legislation, tens of billions of dollars of loan guarantees will be issued in the years to come. However, those guarantees may not be used to support the best technology. That is because the primary effect of the bill is to create a winners list of about 50 projects that are eligible for loan guarantees.

The bill picks winners and losers by prohibiting DOE from considering any application for loan guarantees submitted after December 31, 2011. The Loan Guarantee Program is supposed to support innovative technologies, but under this approach, new breakthrough technologies need not apply. Even the technologies that the Republicans claim to support are abandoned. If a new application for a coal plant with carbon capture and storage comes in, DOE can't consider it. And if an application for a small modular nuclear reactor or a next-generation nuclear plant is submitted, DOE is required to reject it. This approach doesn't move us forward on clean energy in this country. We shouldn't create a list of winners and then ignore all other potential clean energy projects.

Mr. Chairman, I am receptive to any approach that will help us deploy clean energy in this country and reduce our carbon pollution. Families across America are suffering from record droughts, wildfires, storms and floods that had been linked to climate change. And it is our responsibility to develop responsible policies to reduce the carbon emissions that are causing these woes, but we are failing miserably at these responsibilities. We need to act to reduce our carbon pollution, and there are a range of options for doing that, from putting a price on carbon pollution to sensible regulations to incentives for clean energy.

But House Republicans oppose every potential solution. They say no to market-based solutions like cap and trade; no to cost-effective regulations; no to financial incentives for clean energy, even if it

would improve our Nation's global competitiveness. Saying no to every possible solution is completely irresponsible. It shows a bankruptcy of thought and ideas. But this bill is just more of the same, more political rhetoric, more bad policy, but no real solutions to the problems we face. We should reject this flawed legislation.

And I yield back the balance of my time.

Mr. Whitfield. Thank you.

[The prepared statement of Mr. Waxman follows:]

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Mr. Whitfield. At this time, the chair recognizes the gentleman from Texas, Mr. Olson for three minutes.

Mr. Olson. Thank you, Mr. Chairman, for bringing the No More Solyndras Act before this subcommittee so that we can keep the promise we made to the American people. That promise is to put an end to the reckless spending the failed Solyndra loan guarantee project represents.

The government's role is to create the environment where people have the confidence to take a financial risk, to invest in ideas they believe in. That is the American dream. My colleagues on the other side of the aisle talk about government loan guarantee programs like Solyndra as being necessary because of innovation. It is only a risk that the government can afford.

The No More Solyndras Act is not about risk; it is about failure, certain failure, $535 million of certain failure. And it is about politics, politics that led the administration to double down in the face of certain failure and putting the political donors ahead of the American taxpayer in recovering funds after Solyndra's inevitable collapse. This legislation will ensure that another Solyndra does not happen again.

I yield back.

Mr. Whitfield. I thank the gentleman.

[The prepared statement of Mr. Olson follows:]

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Mr. Whitfield. At this time, I will recognize the gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. Dingell. Mr. Chairman, I thank you for your courtesy and express for you my great affection and general respect and good will.

What a difference a little time makes. In 2005, the distinguished former chairman of this committee, Mr. Barton, and I, Mr. Green, you, Mr. Whitfield, Mr. Upton, Mr. Shimkus, Mrs. Bono Mack and Mr. Pitts all voted for in support of legislation which created the opportunity for us to make green power easier and quicker to get.

This bill now repeals all of that, does nothing more than stifle innovation, prevent job creation and subverts what was created through bipartisan legislation signed by a Republican President.

I hope that my dear friends on the Republican side will not throw the baby out with the bath water, but I have small expectations of that.

We have under invested in energy for decades, and commercial development with U.S. investments will actually make our companies more competitive in the global marketplace. By freezing this loan program, the Republicans will not only stifle another opportunity to put our economy back on the right path but also to create new jobs.

There are two news articles in the paper this morning about the solar industry. The first highlighted a law signed by New Jersey Governor Chris Christie to protect his State's solar industry. The article quoted Governor Christie as saying, renewable energy not only helps meet our goals of increasing sustainability and protecting the environment but can also be an engine for economic growth and creation

of good-paying jobs for the people of our State.

That was what we said when we passed the legislation that we are now out to repeal.

The other article quoted the Chinese trade minister as being ready to investigate U.S. trade practices regarding irresponsible practices by the Chinese on solar panels. Interestingly enough, it was those efforts by the Chinese which destroyed Solyndra and caused the rather fruitless, empty and wasteful investigation which we had on that particular matter.

The article makes it clear that the Chinese heavily subsidizes its solar manufacturers, and I think it is worth reading. The article, which is this morning in The Hill, says this, the Chinese government heavily subsidizes solar panel makers through cheap credit under a state-centric economic policy that picks winners, Western solar companies have charged. And that by the way is not done by the United States companies but by every Western company that I can think of.

This bill does not allow the loan funds to do anything except stagnate, and it does not permit investments in our economy. We must make these investments so as to bring about innovation and innovative companies and technologies. This simply cannot and should not be the committee of no if we intend to do something that is going to benefit American industry, American opportunity and the American ability to produce jobs growth and to get us out of the economic recession in that which we now find ourselves.

One of the interesting things that I note is that when the new

Volt was driven out of the factory, it was American technology that produced that automobile. It was also American technology that produced the batteries and all of the things that went under the hood and the drive train. And lo and behold, we found that the batteries were designed in America but made in Korea. Why? Because the Korean government subsidized the creation of a battery industry over there. These are the things that we are straggling as we go about our business today.

We are simply saying that we are not going to allow the new innovation to be American but to see to it that the Chinese, with great pleasure, the Koreans and others are going to enjoy mightily the fact that we have rejected the opportunity for our people to go forward in the development of industries which will take us into the later parts of the 21st century.

This should not be the committee of no. We can and we must do better for the sake of our country and to see to it that we remain competitive. We are going to make mistakes as we go forward. So will the Chinese, so will the Koreans, so will the Japanese. But they are smart enough to know that if they persist, they are going to hit some winners and those winners are going to make them the successful economies of the 21st century.

I yield back the balance of my time.

Mr. Whitfield. Thank you, Mr. Dingell.

[The prepared statement of Mr. Dingell follows:]

******** COMMITTEE INSERT ********

Mr. Whitfield. At this time, I recognize the gentleman from Texas, Mr. Green, for 3 minutes.

Mr. Green. Thank you, Mr. Chairman, for time to speak.

My constituents want Congress to fix the problems that led to Solyndra. They want us to make sure it doesn't happen again. This bill does that in name only.

If this messaging bill is a proposal that comes out of the House of Representatives, what do we have to show for our months of work on this? Virtually it guarantees that problems at the Loan Guarantee Program will exist going forward. Nothing will be fixed, and this committee will have wasted this opportunity.

I do not believe the 2005 energy law permits subrogation of taxpayer funds, and I think we should put the nail in the coffin that is seeking inhouse legal counsel to circumvent the law. But instead, we are doing a messaging bill. Instead, we could have seized opportunity to write a bill that fixes problems and comes out of this committee on a bipartisan basis and can pass the House with a strong majority. This will send a message to our constituents that are more serious about fixing what is wrong with the program than we are about partisan fights.

On the Loan Guarantee Program, I believe there is more on which we agree on than we disagree. I am disappointed in the majority's insistence on including inflammatory and partisan findings. Additionally, if we are going to allow the program to go forward, the Loan Guarantee Program must use money more efficiently. The bill, as

written, keeps the program alive for awhile but mandates that the Department of Energy use money inefficiently. Future oil and gas programs from Texas or other States will not get funded. Innovation in clean coal, nuclear power will not be funded. Promising technology that needs a chance to succeed will never get off the ground. We will be putting in the statute that the Department of Energy must find programs that may not be the best use of the taxpayers' money. This will mean the program is either fatally dysfunctional or will die from neglect.

Mr. Chairman, let's put partisan aside and amend this program, not end it.

I yield back my time.

Mr. Whitfield. Thank you Mr. Green.

[The prepared statement of Mr. Green follows:]

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Mr. Whitfield. I believe that concludes the opening statements.

And I would like to ask unanimous consent that we enter into the record the letter from Dr. Burgess to the Wall Street editorial board.

Without objection.

[The letter follows:]

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Mr. Whitfield. And then the chair would now call up the discussion draft of the No More Solyndras Act and ask the clerk to report.

The Clerk. Discussion draft to limit further taxpayer exposure from the Loan Guarantee Program established under Title XVII of the Energy Policy Act of 2005.

Mr. Whitfield. Without objection, the first reading of the discussion draft is dispensed with and the draft will be open for amendment at any point.

So ordered.

[The discussion draft follows:]

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Mr. Whitfield. For the information of members, we are now on the No More Solyndras Act.

The subcommittee will reconvene tomorrow morning at 10:00 a.m., and I would remind members that the chair will give priority to recognition amendments offered on a bipartisan basis, and I look forward to seeing all of you tomorrow.

And without objection, the committee stands in recess.

[Whereupon, at 4:32 p.m., the subcommittee was adjourned.]