Footnote 437

From: George Kaiser [redacted]
Sent: Friday, October 08, 2010 12:58 PM
To: Steve Mitchell; Ken Levit
Cc: [redacted]
Adamson
Subject: RE: Solyndra Update

As we discussed briefly, I think the same political calculus holds for the DOD. Why don't you pursue your contacts in the WH to follow up on the casual comment during the plant visit and we can possibly reinforce the effort so long as it is in the form of "I thought you should know, in case it comes up" rather than "can you help with this."

Keep us up to speed.

From: Steve Mitchell
Sent: Wednesday, October 06, 2010 3:07 PM
To: George Kaiser; [redacted]
Cc: [redacted]
Subject: RE: Solyndra Update

Understood. The WH meeting is more about assistance in selling panels to the government than it is about getting the DOE loan revised. The WH has offered to help in the past and we do have a contact within the WH that we are working with. I think the company is hoping that we have some unnatural relationship that can open bigger doors – I've cautioned them that no one really has those relationships anymore.

From: George Kaiser
Sent: Wednesday, October 06, 2010 3:04 PM
To: Steve Mitchell; 'ken[redacted]
Cc: [redacted]
Subject: RE: Solyndra Update

I question the assumption that WH is the path to pursue when both of your issues are with DOE. I doubt whether Rouse/Browner would intervene and, if they did, I am concerned that DOE/Chu would resent the intervention and your problem could get more difficult. I would see an appeal as only a last resort and, even then, questionable. We need to discuss.

From: Steve Mitchell
Sent: Wednesday, October 06, 2010 1:15 PM
To: 'ken[redacted] George Kaiser
Cc: [redacted]
Subject: Re: Solyndra Update

Ken,

I will get you the lobbyist information. I know nothing about Washington politics but the WH probably gets hundreds if not thousands of requests a week. I think they were just hoping that George may have a more direct pathway for getting a meeting set up. I've warned them that we probably don't and that all of our Washington efforts have always been around philanthropy but that I would ask.

From: Ken Levit [redacted]
Sent: Wednesday, October 06, 2010 12:27 PM
To: Steve Mitchell; George Kaiser
Cc: [redacted]
Subject: Re: Solyndra Update

Sorry to jump in... But what's the story w Solyndra lobbyists? Who are they again? Can they not get a DoE meeting or reach out to WH? I'd rather consult with them for them to do this than have this come from us. It's really quite hard to engineer an ask like that to WH Chief of Staff from GKFF or GBK. Our relationship is based on completely different issues. George may feel differently but I think it's real tricky.

From: Steve Mitchell [redacted]
To: Steve Mitchell [redacted] George Kaiser [redacted]
Cc: [redacted] Ken Levit
Sent: Wed Oct 06 12:17:34 2010
Subject: RE: Solyndra Update

George,

We had another call last night and we continue to eliminate Plan B options that we don't beleive the DOE will support (we need the DOE to continue funding draws on the loan or Solyndra's issues are accelerated). To be clear, Goldman is still marching forward and following today's board call they will start approaching financials and strategics this week. [redacted] is apparently teed up to call [redacted] this week or next [redacted] However, the company and shareholders feel it is necessary to have a plan B mapped out if we cannot find an outside investor to provide capital for the fully funded plan. In addition, in light of the circumstances and the revised business plan that was adopted last week, we are obligated (and should anyway) to communicate the revised circumstances with the DOE.

The most viable Plan B option is shaping up to be a plan in which Solydnra shuts down Fab 1 and uses the Fab 1 equipment to finish lines 2 & 3 of Fab 2. Line 1 is complete and the company will conserve capital by not paying for the additional equipment. DOE ends up with a finished Fab 2 for the same capital. This pushes Solyndra's ramp out for about 6 months and gives us much needed time to continue to develop the market channels that we need to develop (Brian is in Europe and he continues to believe that we have a product that customers want - we just need to partner better with the appropriate partners).

This plan is still shaping up but it appears to push off the need for any additioanal capital until March (they cautioned this could be Feb or April as this firms up) and that the additional capital for this plan would be approximately $100 to $125 million. This capital would enable us to reach cash flow break even and the 2013 ebitda run rate would be in the range of $200 million. I should have much better numbers later today but I wanted to give you the headline numbers we were looking at last night. We have significant asks of the DOE (continue to fund under the current funding schedule, push off payment for another year (May 2013 instead of May 2012, pay for any additional credit subsidy, change amortization from 5 years to 7 years, do not hold $30 million in completion reserves). In exchange, Solyndra will contribute Fab 1 equipment to Fab 2, provide a full corporate guaranty and give the DOE a security in the intellectual property as well.

[redacted] is spending the week in Fremont assisting the finanacial team in all modelling - this gives us complete access to all of the assumptions that are being made as we underwrite the vaibiity of any new plans. I will attend all negotiations and meetings with the DOE and any other government agencies. We are trying to schedule a meeitng with the DOE next Thursday. In addition, the consensus is that a meeting with the new White House Chief of Staff is the best avenue to approach the administration for support on the DOE front and for assistance in securing any type of procurement committments form the government or the military. Both [redacted] and [redacted] mentioned that you and or Ken Levit may have a fairly good relationship there. Are you open to helping Solyndra secure a meeting - the desired date would be next Friday if at all possible but I will firm that up as we hear from the DOE.

We have a board meeting today and another run through the various scenarios as the numbers are firmed up. I will provide another update and we should probably sit down for an hour later this week if you can. If not, I will give you all the details you need via emails.

Steve

From: Steve Mitchell
Sent: Mon 10/4/2010 10:05 PM
To: George Kaiser
Cc: [redacted] ken[redacted]
Subject: RE: Solyndra Update

George,

Jamie McJunkin from Madrone and I had our call with management today to go over plans that would be an alternative option for the company in the event Goldman Sachs is not successful in securing an outside investment [redacted] participated as well). These plans are very much a work in process and we are still largely eliminating various options that would not work. In every case Solyndra needs a plan that will garner the support of the DOE as any diversion from the current business plan would be in violation of the debt covenants.

The leading option appears to a plan in which Solyndra uses the Fab 1 equipment to finish the final two lines of Fab 2 (the first line of Fab 2 is complete). The company would then ramp up Fab 2 over 2011 with production heavily weighted to the 2nd half of 2011. This gives them time to develop the appropriate sales and marketing channels to justify the ramped production and greatly reduces the overhead required to operate two facilities. This also gives the DOE the same security they would have if we completed Fab 2 with new equipment, however, under a slower ramp - in exchange we would be requesting a deferred and longer amortization schedule and that they continue to fund under the current funding schedule. The downside is that on a fully ramped basis the company has app. 80 to 100MW less of production capacity - but a much more efficient overhead structure as Fab 1 is too small to reach the appropriate efficiencies. We don't know the capital need that this plan requires, nor do we have a clear picture of the financial projections of such a plan.

We have another call at 4pm tomorrow and I will update you again as this starts to shape up but I don't see a reason to meet until we have something more definitive to discuss.

Steve

From: George Kaiser
Sent: Mon 10/4/2010 7:05 AM
To: Steve Mitchell
Cc: [redacted] ken[redacted]
Subject: RE: Solyndra Update

Let's set up a meeting after the board meeting unless you feel it should be between the call and the board meeting.

From: Steve Mitchell
Sent: Sunday, October 03, 2010 11:27 PM
To: George Kaiser
Cc: [redacted]; Steve Mitchell
Subject: Fw: Solyndra Update

From: Steve Mitchell
Sent: Sunday, October 03, 2010 11:24 PM
To: Steve Mitchell
Subject: Solyndra Update

George,

I spent a day with management and Goldman Sachs last week to discuss Solyndra, get a better understanding of the state of the business right now, hear Brian Harrison's down load after almost 2 months on the job and I then attended the full board meeting the following day. Unfortunately the update was not encouraging. As you know, the current shareholders bridged the company with $175 million early this summer with an understanding that Solyndra needed an additional $175 to $225 million to reach cash flow break even and that this money would need to be raised by the end of the year. This was based on a base case revised business plan that the company (along with the investors) set out in early spring when we were reacting to the dramatic decline in ASP as China started to dominate the solar market. Last week we were presented an updated business plan that still shows the company running out of money by the end of the year; however, it requires an additional $300 million for Solyndra to reach cash flow breakeven.

This is driven by several issues, including the company's failure to meet the spring projections in each of the last two quarters, but the primary driver is a revised working capital assumption. The other plan adjustments are ASP reduction of 5%, slower Fab 2 ramp, bill of materials and R&D reduced and sales and marketing increased. Brian has imposed several cost cutting measures that early indications had Solyndra stretching its cash into February, however, the reality of our unsold inventory this quarter (we sold [redacted] out of [redacted] and our AR collection period has pulled the cash need back to the end of the year. The new plan leaves all other production parameters the same and Brian is quick to point out that he is still getting his head around these assumptions and cannot with certainty underwrite these.

Brian has visited all of our major US customers and has reached the same conclusion that I reached last spring which is that our customers who understand Solyndra's product and the rooftop market love the product – typically they lead with a Solyndra only solution. However, we have done such a poor job developing our markets and we don't have channels robust enough to absorb all of our current production (much less all of the Fab 2 output which is the basis for slowing down Fab 2's ramp).

Instead of appropriately developing the sales channels for our specific markets (low load, low slope highly engineered rooftops – which is a very big market and no one else can be on these rooftops), Gronet and his team relied heavily on the European distributors to absorb our panels – and we were deeply discounting the panels at the end of each quarter to sell out. The distributors are the worst customer for Solyndra as they take our panels in inventory and do not develop the appropriate end users (this was driving some of the customer satisfaction issues earlier in the year). This channel stuffing started in 2010 as we were responding (poorly) to the Chinese pricing (China went from 10% to 50% of the worldwide solar market in an 18 month period). This quarter management realized that our distributor partners had [redacted] of unsold inventory in the channel and they made the decision to start letting this inventory sell through – [redacted]

Goldman does not believe that a financial investor with make an investment in Solyndra without seeing two good quarters of performance – pricing strength was a nice surprise but missing both sales and production targets is a bad fact pattern. Q4 and Q1 are the seasonal low period for solar installations as snow and weather prevent projects from being installed in some of the biggest solar markets in the world (Germany, New Jersey, Canada, and Belgium). We are gaining traction in southern Europe, however, the sales cycle in Italy, Greece, Spain and France is 9 to 18 months versus 3 to 6 months in the more mature solar markets. Accordingly, a financial investor will be very hard to attract in Q4.

Bridging the company through Q1 or Q2 is a dangerous prospect as well as it takes $100 million to get the company through Q1 and over $150 million (in total) to get through the first 6 months of 2011 and the company will likely have a tough Q1. Goldman is going to go out to the bigger financial investors who can write a significant check and the current investors (primarily Argonaut and Madrone) have indicated that we would most likely participate in a fully funded plan (so Goldman is looking for an investor to write a $150 to $200 million check). The revised plan requires $200 million to reach ebitda positive (but peak cash need is $300 million).

Goldman is more hopeful that a strategic or large industrial will be interested in making an investment. They are adamant that any of these groups would want this to be a control transaction (i.e. either buy out the current investors – which would not get everyone whole; or invest directly in the company for at least 51%). Goldman has about 20 industrial strategics and 6 solar strategics they are going out to. They consider [redacted] as the most likely investor, however, there have been several investments made by strategics in struggling clean energy companies and they have been surprised by the ultimate investor each time [redacted]

Obviously this is very disappointing news and not what I want to be reporting back to you – for that I am sorry. It is incredibly frustrating as Solyndra does have a differentiated product and our customers that understand its differentiation are big fans. As mentioned above, the company failed to develop the appropriate market channels in 2009 and the "going concern" statement that was issued by E&Y in connection with the S-1 clearly spooked the market and got the rumors going. We fought the S-1 filing but ultimately caved as we were the only hold out against going public – what happened with the Chinese manufacturers would have occurred anyway – but we did ourselves no favors by putting out very confusing cost information with no ability to refute the bloggers.

We are not just sitting back and hoping that Goldman can pull a rabbit out of the hat. Management has been working on several different scenarios over the weekend and we have a call at 2pm tomorrow to discuss these and start to formulate a strategy. The leading thought is too dramatically slow down Fab 2, essentially finish it and put it on ice for a year, skinny down our funding requirement (I don't know those figures yet) and spend 2011 further developing our market channels and bring Fab 2 online one year late. This requires a concession from the DOE – which they should do as it protects jobs and is a far better solution than handing them the keys in January. However, it is the federal government and this could become politically charged very quickly. We are also planning to ask the DOD to execute a purchase order to buy our panels – DOD has 3X the rooftops of Wal-mart and is the biggest consumer of electricity in the US (and wants to buy solar panels). We are still exploring the right way to approach this without getting bogged down in all of the government pitfalls (the US needs a Premier for just one day). The current thinking is that the White House chief of staff is the right person to approach – obviously big changes in that role and they have asked who has strong connections there.

This is obviously still very half baked but we are trying to act with a sense of urgency and I want to be as transparent to you as possible and get your feedback, thoughts and direction as well. I will update you after tomorrow's call and we have a full board meeting on Wednesday (phone) to hopefully set a back up course if Goldman fails.

Two things to note, the DOD has the capacity to easily sign a 300MW three year purchase order for our panels – this would have to be through a "carve out" that occurs outside of the traditional RFP process through GSA. This would be incredibly difficult to pull off but we are preparing the proposal (no special pricing high or low, just market pricing and the DOD is expected to buy more solar panels than this over the next 3 years – that is not confirmed). Second, we are going to have to update the DOE within the next 10 days as this plan is materially different than our loan agreement contemplates and we require a variance. If DOE decides to withhold funding on the Fab 2 loan this would bring all of this too a head much sooner as the DOE draws cover a good portion of our overhead as well.

Steve

Footnote 438

[redacted]

From: Bill Stover [redacted]
Sent: Tuesday, October 12, 2010 2:27 AM
To: Nwachuku, Frances; Silver, Jonathan; [redacted]
Cc: Brian Harrison; [redacted]
Subject: Solyndra advance materials
Attachments: Solyndra Fab 2 Consolidation Plan 10112010.pdf

Frances,

Consistent with your discussion with Brian Harrison last Friday, I am enclosing various materials that summarize the revised business plan Solyndra recommended to its Board of Directors late last week. As Brian indicated on the phone call, our situation has changed quite dramatically. There are essential matters of assistance that we will be discussing with your team in person this coming Friday. As background for the materials and our discussions, I thought it appropriate to provide an overview of the situation, what's changed, and essential governmental assistance.

<u>Situation</u> – With the arrival of Brian Harrison, newly-appointed President and CEO, the company undertook a comprehensive review of all elements of operations, industry conditions, and the state of our market development. The assessment largely concluded that manufacturing operations and the build out of Fab 2 were proceeding consistent with plan. However, industry competition was acknowledged to be as severe as presumed and demand creation for Solyndra's unique photovoltaic solution was deemed to be proceeding noticeably behind plan.

In the last weeks of the company's 3rd fiscal quarter (ended Oct 2nd), management determined that sales were likely to fall meaningfully short of forecast and that finished goods inventory would accumulate. The implications of lack of sell-through are quite significant, most directly on liquidity, but also as it relates to completing the company's private capital raise. We notified our investment bank of the 3rd quarter results, and received a quick determination that we would <u>not</u> be able to complete our private raise prior to year end as we had previously anticipated. The immediate implication of slower demand creation for our panels, and the inability to tap private capital-markets is that the company will run out of the cash necessary to sustain operations in the first quarter of 2011. *Without access to FFB loan funds in October, November and December for work that has been completed, Solyndra would run out of cash in November.*

Our last business plan projected a very rapid build out of Fab 2; essentially tripling capacity in a year. Without assurance of demand for the rapidly scaling production capacity, and without firm commitments for an incremental $300 Million of capital, the company was forced to consider various adjusted business plans. The objectives of these alternative analysis were to 1) minimize cash required while allowing time to stimulate demand, 2) accomplish the build out of Fab 2 Phase 1 and ensure debt service, and 3) position the company for longer term growth and value creation for all stakeholders. We will be prepared to discuss other plans with you, but believe the plan with a high confidence for success is the "Consolidation Plan" noted below. Two additional alternatives for which the Board was briefed were the continued rapid growth plan which required more capital than is readily accessible in the short term, and a liquidation path should the company be unable to timely secure necessary partnering with multiple constituents, including DOE.

<u>Consolidation Plan</u> – The accompanying plan fundamentally changes the course of completing the Fab 2 Phase 1 capacity by redeploying existing Solyndra Fab 1 tools. Instead of Solyndra spending incremental capital to finish the tool build of certain of the remaining tools for lines 2 and 3, Solyndra will physically shut down manufacturing in Fab 1 over the course of several months, and move production tools into Fab 2. Such consolidation of operations allows Solyndra to most efficiently operate manufacturing. For the next two quarters, total production is lower which better matches near term production with market demand. Solyndra's cash requirements for labor and materials are meaningfully reduced. Under the Consolidation Plan, Solyndra will employ approximately 200 fewer people than we do today.

<u>Assistance</u> – We expect that the Consolidation Plan will allow us to optimize operations, raise additional capital, service our debt and successfully build our business, albeit at a more moderate scale. Detailed in the attached materials are two slides describing specific loan accommodations which are essential to making this Consolidation Plan work. For clarity, I note several:

- Continued access to the remaining FFB loan funds and restricted cash account in concert with completion of the full Phase 1 production capacity
- Delay in principal and interest payment schedule by one year
- No further interest payments until commencement of principal repayment
- Extension of the loan maturity to December 2019 (increase loan from 7 to 10 years)
- Removal of the requirement for $30 Million cost overrun reserve account
- To the extent changes alter the credit subsidy cost, such incremental costs are satisfied through DOE budget

We have briefed our Board of Directors, key shareholders and noteholders regarding concessions that may be required by DOE to secure DOE's commitment to support the Consolidation Plan, including:

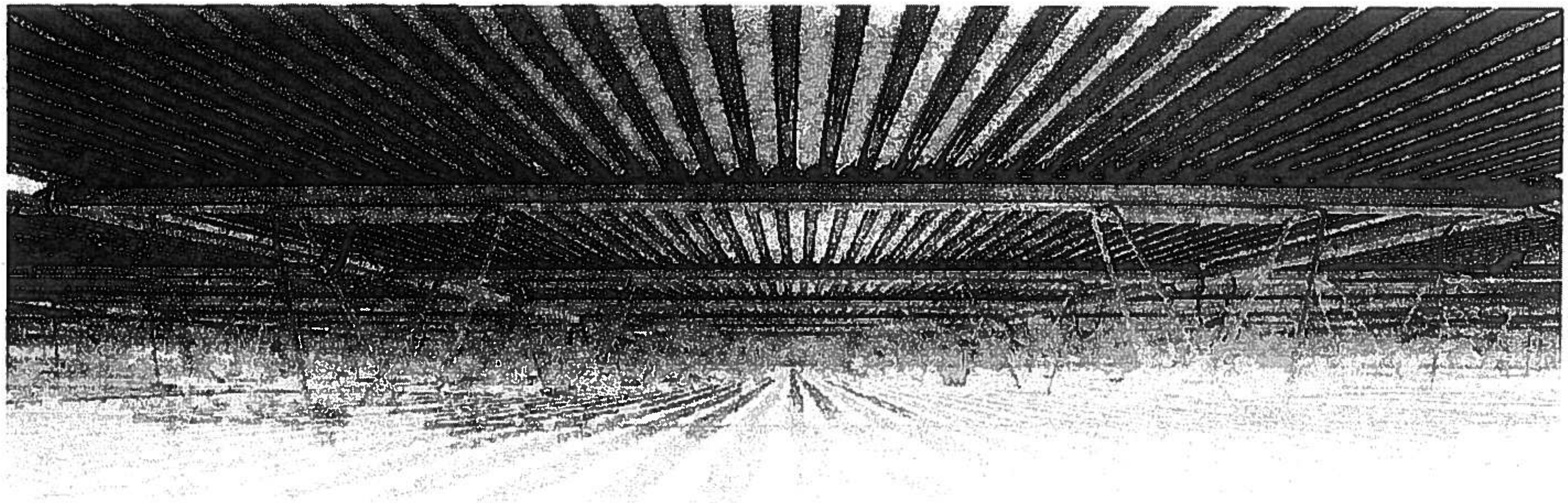
- Commitment to a fully-funded plan [$150 Million]
- First priority security interest in all Solyndra, Inc. assets, including intellectual property
- Solyndra, Inc. guarantee of Fab 2 indebtedness

Please find attached a .pdf summary of the Consolidation Plan which incorporates all of the loan modifications proposed above.

Thank you tremendously for your investment of time and resources on these matters. Our team is available Tuesday between 12:00 pm - 2:00 pm Eastern time to brief you further on the materials. Additionally, we've set aside all of Wednesday to be responsive to your queries once you have had an opportunity to review the materials. Thursday will be a travel day for meetings in your offices on Friday.

Bill Stover
SVP, CFO

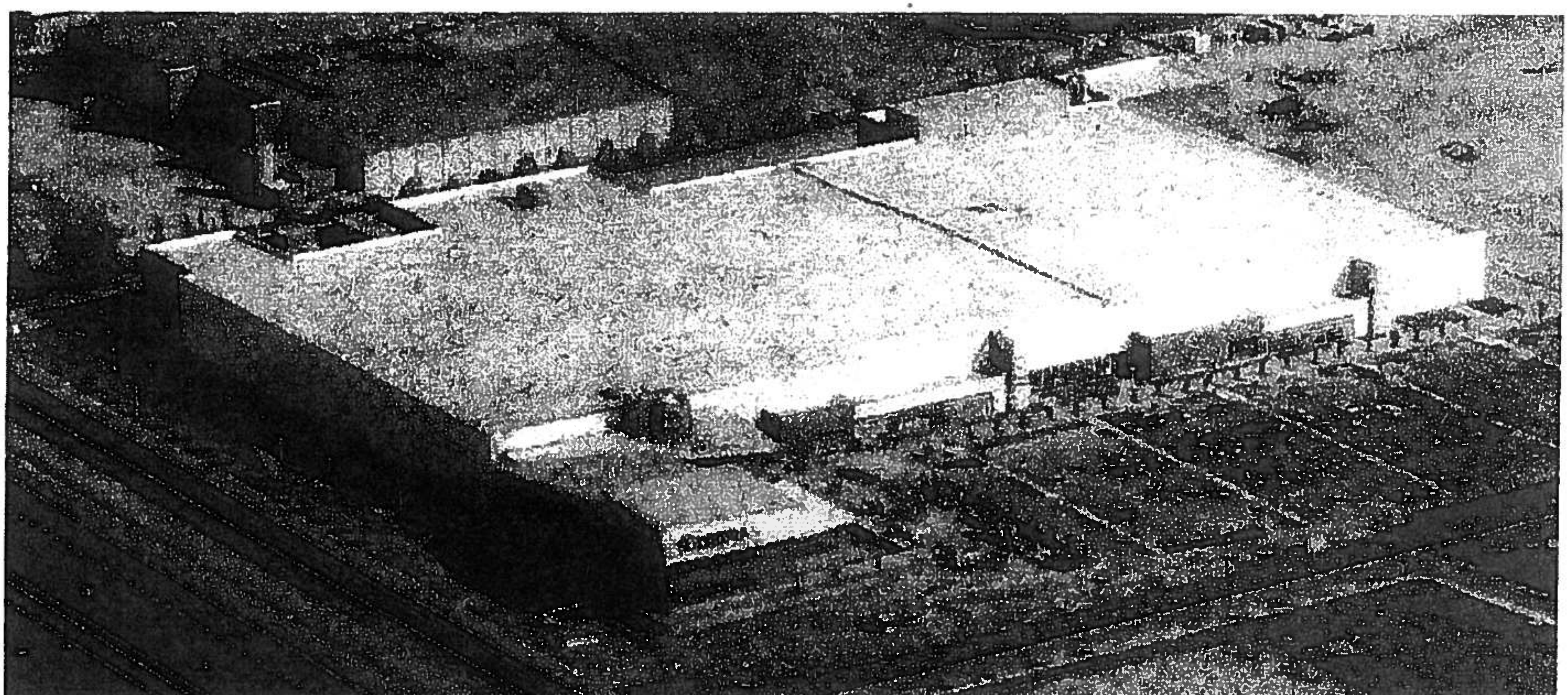
[redacted]



Solyndra Fab 2 Consolidation Plan

October 11, 2010

Fab 2 Front End – October 10, 2010



Consolidation Plan – Annual Financial Metrics

[redacted]

Consolidation Plan – Annual Financial Metrics

[redacted]

Consolidation Plan – Monthly Draw Schedule

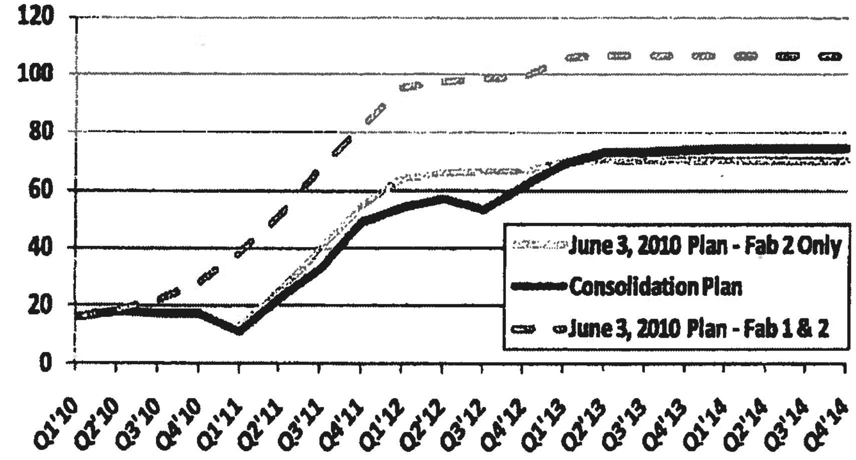
[redacted]

Fab 1 Tool Contribution to Fab 2

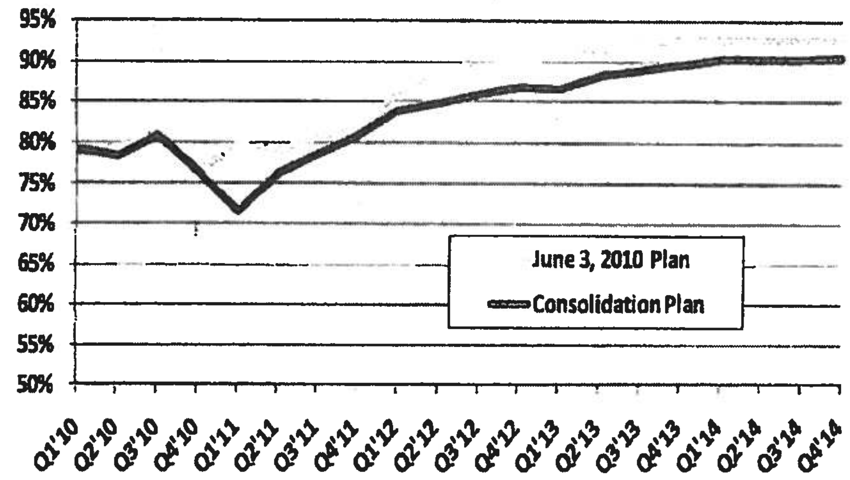
[redacted]

Plan Comparisons

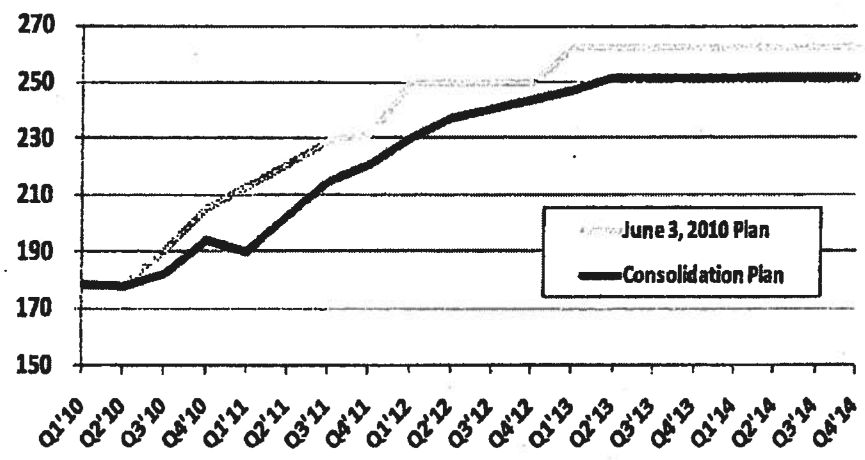
QuarterlyOutput - MW



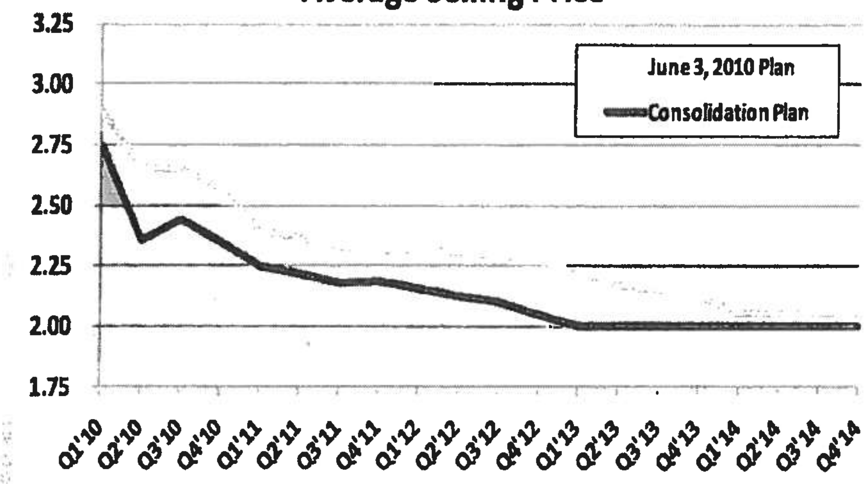
Cumulative Yield



Watts per Panel



Average Selling Price



Proposed DOE Loan Modifications

- ***Loan Maturity:*** Extended to December 15, 2019
- ***First Principal Payment Date:*** Extended to May 15, 2013 (currently May 15, 2012)
- ***Interest***: Forbearance on further interest payments from November 2010 until May 2013
  - Interest during that period would continue be added to the total loan amount; an increase of approximately $30 Million to the loan amount
- ***Pre-Funding of Cost Overrun Account:*** Removal of obligation to pre-fund $30 Million for cost overruns
- ***Consolidation of Operations in Fab 2 :*** Solyndra to consolidate its operations in Fab 2
  - Includes shutdown of Fab 1 operation and contribution of certain Fab 1 tools to Fab 2
- ***Fab 1 Performance Target***: Adjustment of Fab 1 performance target to allow for ramp of Fab 2 factory and CIGS line speed of 30 cm/minute

DOE Loan Modifications, cont.

Credit Subsidy Cost Payments: To the extent that the modifications to the DOE guaranteed loan results in an additional Credit Subsidy Cost payment, DOE will use funds allocated under Section 1705 of Title XVII to fund those payments

Guaranty: Complete and unconditional guarantee by Solyndra, Inc. of all Fab 2 obligations, including the indebtedness under the DOE guaranteed loan

Security Interest: Expanded to include a first priority security interest in all assets of Solyndra, Inc. including intellectual property and all assets of Fab 1

Phase II Application: Deferral of any decision on Phase II application

Consolidation Plan – Quarterly Financial Metrics

[redacted]

Consolidation Plan – Quarterly Financial Metrics

[redacted]

Footnote 441

TO: **Files**

FROM: **Portfolio Management**

SUBJECT: **Solyndra Fab 2 LLC – Update to Annual Loan Review**

DATE: October 15, 2010

This serves as an update to the Annual Review completed on September 17, 2010.

Following discussions with Solyndra, Inc.'s senior management, it is clear that the company will be unable to raise the amount of equity capital required to fund planned growth. According to management, Q3 numbers were substantially under budget (volume and inventory-on-hand) resulting in guidance from Goldman Sachs that there are no prospects of raising additional equity capital in a tight market of the size required by Solyndra, Inc. ($300 million).

The impact of this development is that, while construction on FAB 2 continues to proceed slightly ahead of budget, the company will effectively run out of cash late November (if the DOE refuses to continue funding construction costs) or by the end of Q1 2011 (if the company is unable to raise any equity capital).

Solyndra has undertaken certain activities including scaling down its growth objectives, proposing to shut down FAB 1 and move needed tools and equipment into FAB 2, developing a targeted marketing and sales strategy, and tapping existing and new investors for additional $150 million. In addition, the DOE has been requested to make adjustments to certain of the loan terms.

In light of these development, Portfolio Management is recommending a further downgrade in Solyndra's credit rating to CCC.

Footnote 442, 443, 444

[redacted]

From: OConnor, Rod
Sent: Tuesday, October 26, 2010 6:20 PM
To: 'Browner, Carol M.'; 'Klain, Ronald A.'; Zichal, Heather
Subject: FW: Internal announcement

Let me know if you want to discuss.

From: Silver, Jonathan
Sent: Monday, October 25, 2010 10:01 PM
To: OConnor, Rod; Hurlbut, Brandon
Subject: Fw: Internal announcement

Fyi
We should discuss in the morning.

Jonathan Silver
Executive Director
Loan Programs
U.S. Department of Energy

[redacted]

From: Nwachuku, Frances
To: Silver, Jonathan
Sent: Mon Oct 25 21:38:49 2010
Subject: Fw: Internal announcement

FYI.

Frances

From: Brian Harrison [redacted]
To: Nwachuku, Frances
Sent: Mon Oct 25 21:28:59 2010
Subject: Internal announcement

Frances

I hope that your meeting preparation with your inter-agency colleagues and Goldman is going well. The reason for this note is to make you aware that Solyndra has received some press inquiries about rumors of problems (one of them with quite accurate information) and we have received in bound calls from potential financial investors. Both of these data points indicate the story is starting to leak outside Solyndra. It is our view inside Solyndra that while not desirable from DOE perspective we need to internally announce to employees and with one selected press member on Thursday of this week, October 28. It is our belief that it is better for all parties to get in front of the story and control the messaging rather than get behind the story and on the defensive. So, I would like to go forward with the internal communication on Thursday, October 28. There will be no mention of the DOE.

Additionally, the meeting with Secretary Chu was a very good one. I did not have an opportunity to speak with him privately.

Regards, Brian

Footnote 445

[redacted]

From: OConnor, Rod
Sent: Tuesday, October 26, 2010 5:32 PM
To: 'Browner, Carol M.'
Subject: RE: Internal announcement

Left you a VM on your cell

From: Browner, Carol M. [redacted]
Sent: Tuesday, October 26, 2010 5:30 PM
To: OConnor, Rod
Subject: Re: Internal announcement

What is the announcement?

From: OConnor, Rod [redacted]
To: Browner, Carol M.; Klain, Ron; Zichal, Heather R.
Sent: Tue Oct 26 17:19:59 2010
Subject: FW: Internal announcement

Let me know if you want to discuss.

From: Silver, Jonathan
Sent: Monday, October 25, 2010 10:01 PM
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Regards, Brian

Footnote 446

[redacted]

From: OConnor, Rod
Sent: Tuesday, October 26, 2010 8:00 PM
To: OConnor, Rod; 'Browner, Carol M.'; 'Klain, Ronald A.'; Zichal, Heather
Subject: RE: Internal announcement

We have been told the announcement has been delayed a week.

From: OConnor, Rod
Sent: Tuesday, October 26, 2010 5:20 PM
To: 'Browner, Carol M.'; 'Klain, Ronald A.'; 'Zichal, Heather R.'
Subject: FW: Internal announcement

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Additionally, the meeting with Secretary Chu was a very good one. I did not have an opportunity to speak with him privately.

Regards, Brian

Footnote 447

[redacted]

From: Zichal, Heather R. [redacted]
Sent: Wednesday, October 27, 2010 10:11 AM
To: OConnor, Rod
Subject: RE: Internal announcement

Meant to ask you about this. You have time to talk?

From: OConnor, Rod [redacted]
Sent: Tuesday, October 26, 2010 8:00 PM
To: OConnor, Rod; Browner, Carol M.; Klain, Ron; Zichal, Heather R.
Subject: RE: Internal announcement

We have been told the announcement has been delayed a week.

From: OConnor, Rod
Sent: Tuesday, October 26, 2010 5:20 PM
To: 'Browner, Carol M.'; 'Klain, Ronald A.'; 'Zichal, Heather R.'
Subject: FW: Internal announcement

Let me know if you want to discuss.

From: Silver, Jonathan
Sent: Monday, October 25, 2010 10:01 PM
To: OConnor, Rod; Hurlbut, Brandon
Subject: Fw: Internal announcement

Fyi
We should discuss in the morning.

Jonathan Silver
Executive Director
Loan Programs
U.S. Department of Energy

[redacted]

From: Nwachuku, Frances
To: Silver, Jonathan
Sent: Mon Oct 25 21:38:49 2010
Subject: Fw: Internal announcement

FYI.

Frances

From: Brian Harrison [redacted]
To: Nwachuku, Frances
Sent: Mon Oct 25 21:28:59 2010
Subject: Internal announcement

Frances

I hope that your meeting preparation with your inter-agency colleagues and Goldman is going well. The reason for this note is to make you aware that Solyndra has received some press inquiries about rumors of problems (one of them with quite accurate information) and we have received in bound calls from potential financial investors. Both of these data points indicate the story is starting to leak outside Solyndra.. It is our view inside Solyndra that while not desirable from DOE perspective we need to internally announce to employees and with one selected press member on Thursday of this week, October 28. It is our belief that it is better for all parties to get in front of the story and control the messaging rather than get behind the story and on the defensive. So, I would like to go forward with the internal communication on Thursday, October 28. There will be no mention of the DOE.

Additionally, the meeting with Secretary Chu was a very good one. I did not have an opportunity to speak with him privately.

Regards, Brian

If you are not the intended recipient, please notify us immediately by returning this message to the sender and delete all copies.

Thank you for your cooperation.

Footnote 448

Microsoft Outlook

From: Zichal, Heather R.

Sent: Wednesday, October 27, 2010 10:23 AM

To: Browner, Carol M.; Aldy, Joseph E.; Utech, Dan G.

Subject: Solyndra

Spoke with Rod to follow up on last night's email. Here's the deal - - Solyndra is going to announce that they are laying off 200 of their 1200 workers. No es bueno. Sounds like they will now make this announcement next week but press is sniffing around so it could come out sooner.

Footnote 449

Microsoft Outlook

From: Zichal, Heather R.

Sent: Wednesday, October 27, 2010 10:21 AM

To: Kumar, Aditya

Subject: here's the deal

They are going to announce they are laying off 200 workers.

Footnote 450

Microsoft Outlook

From: Klain, Ron
Sent: Wednesday, October 27, 2010 9:50 AM
To: Kumar, Aditya
Subject: FW: Internal announcement

From: OConnor, Rod [mailto:[redacted]
Sent: Tuesday, October 26, 2010 5:20 PM
To: Browner, Carol M.; Klain, Ron; Zichal, Heather R.
Subject: FW: Internal announcement

Let me know if you want to discuss.

From: Silver, Jonathan
Sent: Monday, October 25, 2010 10:01 PM
To: OConnor, Rod; Hurlbut, Brandon
Subject: Fw: Internal announcement

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Jonathan Silver
Executive Director
Loan Programs
U.S. Department of Energy

[redacted]

From: Nwachuku, Frances
To: Silver, Jonathan
Sent: Mon Oct 25 21:38:49 2010
Subject: Fw: Internal announcement

FYI,

Frances

From: Brian Harrison [redacted]
To: Nwachuku, Frances
Sent: Mon Oct 25 21:28:59 2010
Subject: Internal announcement

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Regards, Brian

Footnote 451

Microsoft Outlook

From: Kumar, Aditya
Sent: Wednesday, October 27, 2010 10:15 AM
To: Klain, Ron
Subject: RE: Internal announcement

Will talk to Rod and Jonathan at 4pm when they are here for the Loan Guarantee Benchmark setting / process issue. I hear from H2 that whatever announcement of "problems" they are considering has been delayed a week.

From: Klain, Ron
Sent: Wednesday, October 27, 2010 9:50 AM
To: Kumar, Aditya
Subject: FW: Internal announcement

From: OConnor, Rod [mailto:[redacted]
Sent: Tuesday, October 26, 2010 5:20 PM
To: Browner, Carol M.; Klain, Ron; Zichal, Heather R.
Subject: FW: Internal announcement

Let me know if you want to discuss.

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Jonathan Silver
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Loan Programs
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[redacted]

From: Nwachuku, Frances
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Sent: Mon Oct 25 21:38:49 2010
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To: Nwachuku, Frances
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Additionally, the meeting with Secretary Chu was a very good one. I did not have an opportunity to speak with him privately.

Regards, Brian

Footnote 452

From: [redacted]

Sent: Wednesday, October 27, 2010 7:26 AM

To: [redacted] Ken Levit

Cc: [redacted]

Subject: Solyndra Conference Call

[redacted] and Ken,

held a conference call this morning with existing investors to provide an update on discussions with the DOE and the fundraise process. Below is a summary of my notes from the call:

with DOE

officials visited Solyndra's facilities last week as part of their diligence in connection with restructuring the loan terms. The officials toured the production facilities and conducted meetings with Solyndra's management team. 80% of the discussion was focused on Solyndra's sales and marketing plan and how the DOE could underwrite Solyndra's projected sales volume. The DOE originally asked to see signed purchase orders, but management explained that there is nothing concrete - just a compilation of anecdotal evidence that Solyndra will be able to increase sales volumes through its new sales methods/channels.

is planning to draw on the DOE loan in November and December. Management stated that DOE officials have indicated the November draw should be approved, but it is likely they will need to see equity committed to the company prior to the December draw. It sounds like the DOE is primarily focused on not looking bad, and if they continue to fund while equity holders are unwilling to commit, they could look bad.

Process

DOE has a meeting with Goldman Sachs tomorrow to discuss the probability of fundraise success. Management thinks GS will tell the DOE that most the industrial companies are not interested (aside from [redacted] which has requested more information), and they are just beginning to contact financial investors. I think this meeting could potentially prompt the DOE to ask for some commitment from investors prior to the November funding.

Layoffs

discussed their timeline for announcing layoffs. They currently expect to tell suppliers/customers/potential investors on Oct 27 and employees/press on Oct 28 (this Thursday). The DOE has requested a delay until after the election (without mentioning the election), but management believes they need to communicate as quickly as possible as rumors are rampant and many employees have left (Sept'10 employee churn was equal to total 2009 employee churn).

Footnote 453

From: Ken Levit
Sent: Saturday, October 30, 2010 8:58 PM
To: [redacted]
Subject: RE: GKFF Portfolio Update 10/29/10

Kind of a big bummer.

From: [redacted]
Sent: October 30, 2010 3:43 PM
To: [redacted] Fred Dorwart; Ken Levit
Cc: [redacted]
Subject: GKFF Portfolio Update 10/29/10

Gentlemen - attached is the usual balance sheet for GKFF through the end of the day Friday. The email body below runs through a number of update items for your review. As always, [redacted] and I are happy to answer any further questions on any of these topics.

Portfolio Valuation Summary [redacted]

Solyndra

Fundraise Update - Solyndra is still in need of approximately $150mm of outside equity capital by the end of the year. To date, the general level of interest from outside investors has been low which is signaling that raising outside funds by the end of the year will be tough. Goldman has been unsuccessful gaining traction with large industrial companies (with the exception of [redacted] who have requested more information but do not appear overly serious). Goldman began discussions with traditional private equity funds earlier this week and three firms, [redacted], have indicated interest. Solyndra also intends to contact other solar companies in the near future, but we cannot say with confidence that they will show any more interest than the investors contacted to date.

DOE Loan Restructuring - Solyndra management has had a series of meetings with the DOE over the past couple of weeks to discuss restructuring the existing DOE loan agreement. It appears that the DOE is willing to accommodate Solyndra's asks, but they appear to be concerned about "looking bad" if they continue to fund Solyndra while (1) equity owners don't support the company or (2) Solyndra fails to execute on their business plan. Solyndra plans to draw additional funds from the DOE in November and December, so it is critical to have their approval to maintain adequate liquidity. With respect to additional loan draws, management believes the November funding is effectively approved, but the December funding could be held up if the DOE feels uncomfortable about the prospects of additional capital. The DOE is also holding meetings with Goldman in order to understand the probabilities of a successful fundraise. This meeting could potentially impact the DOE's decision to allow the November or December fundings.

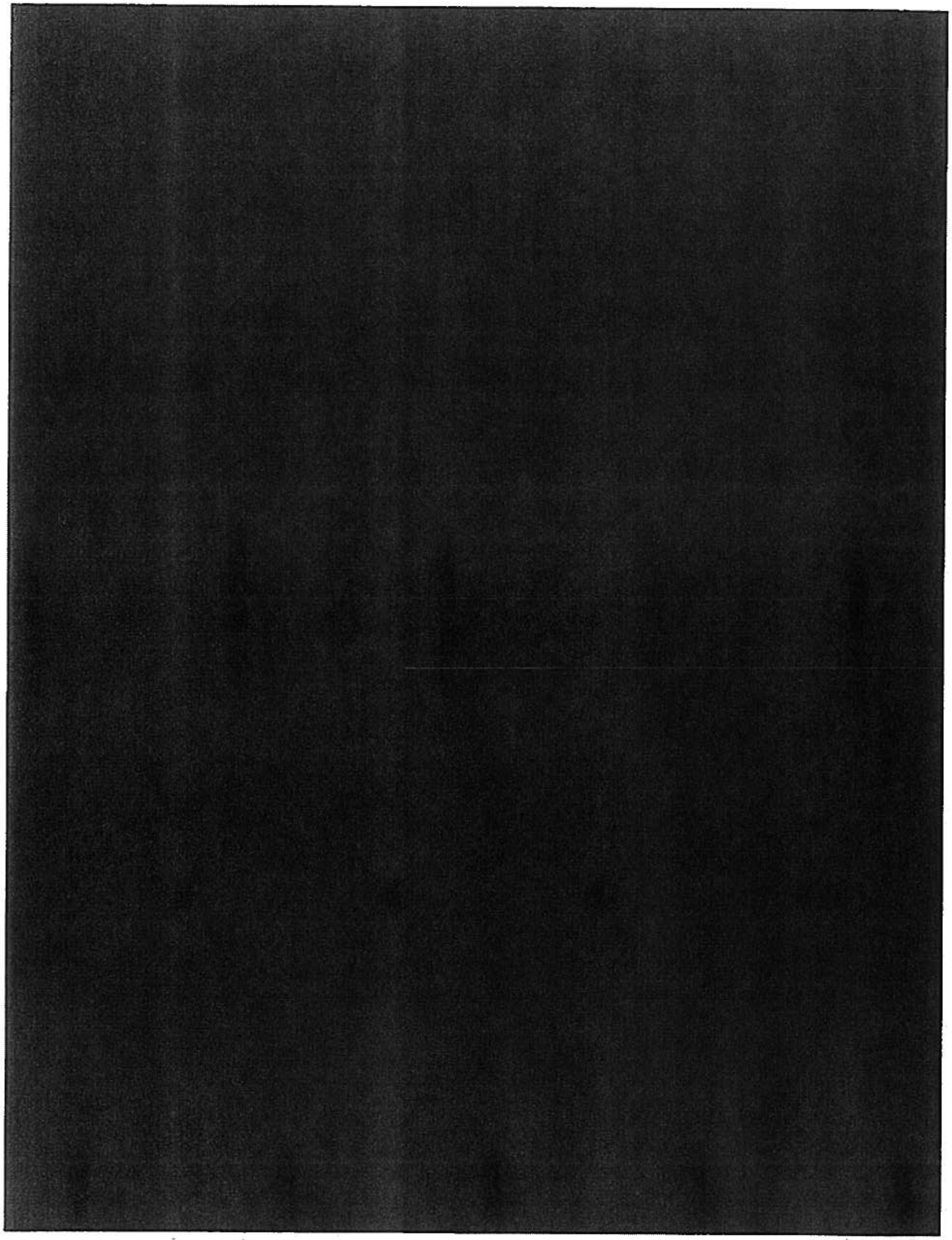
DOE officials visited Solyndra's facilities last week as part of their diligence in connection with restructuring the loan terms. The officials toured the production facilities and conducted meetings with Solyndra's management team. 80% of the discussion was focused on Solyndra's sales and marketing plan and how the DOE could underwrite Solyndra's projected sales volume. The DOE originally asked to see signed purchase orders, but management explained that there is nothing concrete - just a compilation of anecdotal evidence that Solyndra will be able to increase sales volumes through its new sales methods/channels.

Layoff Announcement - Management discussed their timeline for announcing layoffs. They recently decided to delay the announcement date from 10/28 until 11/3 per the DOE's request. Management is eager to announce the company's revised plans because rumors are rampant and employee churn is increasing substantially (Sept'10 employee churn was equal to total 2009 employee churn). The current plan is to lay off about 100 part-time factory workers and 50 full time factory workers (in connection with the consolidation of Fab 1 into Fab 2). In approximately 6 months, management plans to lay-off another 50-100 R&D focused employees.

Next week we will send an update on the fundraising progress with the financial sponsors mentioned.

[redacted]

[redacted]



4

Footnote 457

[redacted]

From: [redacted]
Sent: Tuesday, April 17, 2012 8:03 AM
To: Christian, Karen
Subject: RE: Solyndra

Karen,

Any issues involving Solyndra that might warrant investigation are discussed with DOJ upon receipt. This occurred when the OIG learned about the layoff issue and a decision was made to incorporate the issue into the larger investigation.

If you have further questions, let me know.

[redacted]

From: Christian, Karen [redacted]
Sent: Monday, April 16, 2012 4:14 PM
To: [redacted]
Subject: Re: Solyndra

Can you tell me when that happened and why?

Sent from my BlackBerry Wireless Handheld

From: [redacted]
Sent: Monday, April 16, 2012 03:32 PM
To: Christian, Karen
Subject: RE: Solyndra

Karen,

In your earlier email, you asked whether the issue that came out of the November 2011 hearing (whether DOE played a role in Solyndra postponing its announcement of layoffs) is now a DOJ matter as well. Yes, this issue has been incorporated into the larger investigation into Solyndra. The DOJ congressional contact should be able to address further questions on the Solyndra investigation.

If you need anything further, please contact me.

[redacted]

From: Christian, Karen [redacted]
Sent: Monday, April 16, 2012 3:24 PM
To: [redacted]
Subject: RE: Solyndra

[redacted] - Mr. Friedman just left me a message around 3pm, but I think he has left for the day. He said in his voicemail that you might have an electronic response for me (I think I understood him correctly). Do you have any other info on the layoffs issue?

From: [redacted]
Sent: Monday, April 16, 2012 2:25 PM
To: Christian, Karen
Subject: FW: Solyndra

Karen,

I'm just resending to make sure you received the point-of-contact information at DOJ for your inquiry. If there is anything else you need, please let me know.

[redacted]

From: [redacted]
Sent: Friday, April 13, 2012 7:49 AM
To: 'Christian, Karen'
Subject: RE: Solyndra

Hi Karen,

I apologize for the delay in getting back to you. I have been informed by our investigators that DOJ HQ Trial Attorney [redacted] is the congressional DOJ POC for this matter. Her number is [redacted] and her e-mail address is [redacted] She should be able to address your questions regarding the Solyndra investigation.

If there is anything else that we can assist with, please contact me.

[redacted]

From: Christian, Karen [redacted]
Sent: Thursday, April 12, 2012 11:48 AM
To: [redacted]
Subject: Solyndra

Hi [redacted]

Secretary Chu informed the Committee that he referred the matter regarding the delay of Solyndra's layoff announcement in October 2010, and whether DOE directed the company to delay that announcement, to the IG's office for review.

It has been about 5 months since DOE told the Committee about the referral. Do you all have anything you can share with us about this – or when you expect the investigation to conclude?

I am available and happy to chat over the phone. Just let me know.

Thanks so much-
Karen

Karen Christian
Deputy Chief Counsel
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
Majority Staff

[redacted]

Footnote 458

[redacted]

From: Silver, Jonathan
Sent: Friday, October 29, 2010 10:29 AM
To: Hurlbut, Brandon; OConnor, Rod
Subject: Fw:
Attachments: Solyndra - Presentation A.pptx

We are meeting with omb today at noon to discuss solyndra. This is the document we will be using and describes the issues.

Jonathan Silver
Executive Director
Loan Programs
U.S. Department of Energy

[redacted]

----- Original Message -----
From: Nwachuku, Frances
To: Silver, Jonathan
Sent: Fri Oct 29 10:03:04 2010
Subject: RE:

Here it is.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[redacted]

-----Original Message-----
From: Silver, Jonathan
Sent: Friday, October 29, 2010 9:03 AM
To: Nwachuku, Frances
Subject:

Can you send me the updated deck on Solyndra.
Thanks,
J

Jonathan Silver
Executive Director
Loan Programs
US Department of Energy

1000 Independence Avenue, S.W.
Washington, DC 20585
[redacted]

CONFIDENTIAL

Loan Programs Office

U.S. Department of Energy

OCTOBER 29, 2010

Briefing Agenda - Solyndra

- Update on Solyndra Fab 2 Project
- Current Financial Condition
- Overview of Proposed Consolidation Plan
- Rationale for Consolidation Plan
- Elements of New Sales & Marketing Plan
- Challenges to Consolidation Plan
- Impact of Consolidation Plan on DOE Loan Facility
- Next Steps

Update on Solyndra Fab 2 Project

- Construction of FAB 2 is proceeding 8-10 weeks ahead of schedule
- The facility is on track to produce an annual volume of panels capable of delivering an aggregate of 299MW compared to 210MW estimated at inception
- New product released in October 2010, the Solyndra 200 series, which is optimized for a lower cost of electricity than the 100 series due to higher-power panels, lower installation costs, and a 30+ year life – expected to enhance Solyndra's profitability by commanding a higher market price and margin
- As of October 21, 2010, Solyndra had drawn down approximately $414 million on the DOE guaranteed facility, leaving approximately $121 million undisbursed

Current Financial Condition

- Solyndra, Inc.'s financial condition has deteriorated as a result of:
  - Intense competition from Chinese PV manufacturers, which has depressed prices materially from 2009 (28% drop in ASP to $2.35/Watt with an expected drop to $2.00/Watt by 2013)
  - Limited historical investment in marketing and sales infrastructure resulting in significantly lower demand creation going into FY 2010
  - Relatively higher cost structure compared to peers, a large allocation of cash resources to R&D, and lack of new equity to fund operations during ramp-up period

- Actions taken to improve financial condition to-date:
  - Hiring of Brian Harrison as President/CEO in July 2010 (See attached CV)
  - Hiring of [redacted] as SVP Marketing (See attached CV)
  - Development of a Consolidation Plan in response to market challenges

Overview of Proposed Consolidation Plan

- The Consolidation Plan would result in:
  - Shut down of FAB 1
  - Transfer of specific equipment from FAB 1 to FAB 2 through an arms-length sale/purchase arrangement
  - Layoff of approximately 150 personnel (12.5% of the workforce), primarily in R&D areas
  - Adjustment in marketing and sales activity and increase in sales/marketing personnel
- The Plan assumes: i) continued funding under the DOE Guarantee Facility; ii) $150 million of additional equity capital; and iii) adjustments to the DOE Guarantee Terms

Rationale for Consolidation Plan

➤ Solyndra believes the Consolidation Plan will:

- Optimize operations by consolidating production in FAB 2, a more cost effective plant compared to FAB 1 (Cash inflow of $85 million estimated in FY 2011);
- Better match near-term production levels with market demand;
- Reduce the Company's cash burn rate by reducing labor and material costs and significantly reducing investment in R&D (Savings of $20 million estimated in Q2 2011 following the release of 150 temporary and permanent employees);
- Facilitate the raising of additional capital in a tight equity market because of the lower amount required ($150 million estimated compared to $300 million for the Growth Plan);
- Enable the company to execute on a targeted marketing and sales plan; and
- Support the company's plan to service the DOE Guarantee Facility while continuing to build its business at a more moderate scale.

Elements of New Sales & Marketing Plan

- Deploy competitive forward-looking project pricing to motivate long-term pipeline development
- Adjust distribution model from a focus on 2-Stage Distribution and Roofing Material Manufacturers to Integrators, Power Developers, ESCOs, and Solyndra Direct (Strategic Accounts, Real Estate, Utilities, Public Sector and Agriculture)
- Increase visibility through increased local market presence and refocus of trade show participation towards end-user events
- Expand Utility sales program following success with SCE and PSE&G
- Hire additional sales and marketing staff to execute on this targeted approach

Challenges to Consolidation Plan

- Potential difficulty selling the "story" to potential equity players (strategic and financial investors)
- Ongoing concerns regarding cost and pricing competitiveness given the current PV market landscape
- Potential long lead time for sustainable demand creation following execution on the new sales and marketing plan

Impact of Consolidation Plan on DOE Facility

- ***Loan Maturity:*** Extend by 3 years to December 15, 2019
- ***First Principal Payment Date:*** Extend to May 15, 2013 (currently May 15, 2012)
- ***Interest:*** Forbearance on further interest payments from November 2010 until May 2013
- ***Pre-Funding of Cost Overrun Account:*** Removal of obligation to pre-fund $30 million for cost overruns
- ***Guarantee:*** Unconditional guarantee of FAB 2 obligations by Solyndra, Inc.
- ***Security Interest:*** Expand to include first priority security interest in all assets of Solyndra, Inc. including intellectual property

Anticipated Impact of Loan Modifications

- Provide opportunity for equity raise and implementation of new sales and marketing program
- Positive contribution to Solyndra's liquidity by:
  - Conserving cash payable on interest on DOE facility ($30 million)
  - Release of restricted cash ($23 million – start-up costs on FAB 2)
  - Removal of obligation to pre-fund Cost Overrun Account ($30 million)
  - Extending first principal repayment date by 1 year ($53 million)
- Potential improvement of DOE's recovery prospects by delivery of:
  - A completed project;
  - Associated intellectual property; and
  - Waiver of any existing non-competes for essential Solyndra employees

Next Steps

- Complete due diligence activity with the objective of developing a response to the Solyndra, Inc. debt restructuring request – 2 weeks
  - Technical review will focus on Solyndra's ability to meet COGS reduction and efficiency milestones
  - Financial review will focus on Solyndra's ability to meet sales targets and raise the capital required to ensure execution on the Consolidation Plan
- In the interim, manage completion of FAB 2 facility to ensure the highest recovery possible in the event of the company's failure to meet the objectives of its Consolidation Plan - *approximately 77.4% of DOE exposure to the company is funded*

CURRICULUM VITAE

Brian Harrison, President/CEO

Brian joined Solyndra as President and CEO in July, 2010. Previously, he served as President and CEO of Numonyx, B.V, and Numonyx, Inc. from 2008. Prior to Numonyx, he served as Vice President and General Manager of the Flash Memory Group of Intel Corporation, where he managed all flash memory businesses. His career at Intel included roles as Vice President and General Manager of Intel Europe, Middle East, and Africa, where he was responsible for regional product sales and marketing, and General Manager of Fab/Sort Manufacturing, where he managed worldwide wafer production facilities. Brian has a bachelor's degree in chemical engineering from Stanford University, and an MBA from Santa Clara University

[redacted]

[redacted]

From: OConnor, Rod
Sent: Friday, October 29, 2010 2:13 PM
To: Zichal, Heather
Subject: FW:
Attachments: Solyndra - Presentation A.pptx

More than you need

-----Original Message-----
From: Silver, Jonathan
Sent: Friday, October 29, 2010 10:29 AM
To: Hurlbut, Brandon; OConnor, Rod
Subject: Fw:

We are meeting with omb today at noon to discuss solyndra. This is the document we will be using and describes the issues.

Jonathan Silver
Executive Director
Loan Programs
U.S. Department of Energy
[redacted]

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Subject: RE:

Here it is.

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Director
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US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585
[redacted]

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From: Silver, Jonathan
Sent: Friday, October 29, 2010 9:03 AM
To: Nwachuku, Frances
Subject:

Can you send me the updated deck on Solyndra.

Thanks,
J

Jonathan Silver
Executive Director
Loan Programs
US Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585
[redacted]

Footnote 460

Stone, Carla

From: Colyar, Kelly T.
Sent: Friday, October 29, 2010 8:08 PM
To: Carroll, J. Kevin; Saad, Fouad P.
Subject: Re: Solyndra

I have not seen the numbers, but based on what DOE said today, it looks like the company is conceding that it cannot improve the efficiency of the technology itself much beyond where they are today (hence they are cutting R&D). However, the plan said they are relying on scale to reduce manufacturing costs. This is very true and a common theme in the industry generally. But, DOE did not mention any expansion plans as an immediate part of that plan. In fact, expansion plans have slowed since they were relying on a second DOE loan. Rather, they are focusing on sales and marketing. I agree the previous sales and marketing plan was under funded and not well thought out. (Sort of if you build it, they will come). This focus on sales may be fine and necessary in the immediate future. My concern is that Solyndra has requested an extension of the loan by three years (among other things like interest forebearance). Solyndra requested this extension in their original application which DOE rejected due to uncertainty of pricing pressure the further out you go. (The shorter the tenor the less exposure to price volatility especially for a high cost product in a commodity industry.) If the company is only focusing on the revenue side (now already reduced prices) and not reducing cost, this exposure in the last three years makes me more concerned. Pricing in the solar industry has come down much more than we even anticipated in 2009 and Solyndra had solid expansion plans to get costs down.

In short, sure they can continue to sell things but prices will continue to go down as competition increases. At some point, Solyndra's cost has to come down as well or the product has to get more efficient. Solyndra seems to be backing away from strategies to accomplish both of these which makes me more nervous the longer the loan is. I'm hoping DOE does not accept that part of the request.

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From: Mertens, Richard A.
To: Ericsson, Sally C.; [redacted]
Cc: Carroll, J. Kevin; Colyar, Kelly T.; Saad, Fouad P.
Sent: Fri Oct 29 18:47:02 2010
Subject: FW: Solyndra

DO NOT COPY

From: Carroll, J. Kevin
Sent: Friday, October 29, 2010 5:39 PM
To: Mertens, Richard A.
Subject: FW: Solyndra

Per Sally's request

From: Colyar, Kelly T.
Sent: Friday, October 29, 2010 3:27 PM
To: Carroll, J. Kevin; Saad, Fouad P.
Subject: RE: Solyndra

Kevin,

Per your request, below is a summary of the discussion with DOE regarding Solyndra. Please let me know if you have any questions.

Thanks.

DOE briefed OMB staff on the Solyndra loan guarantee earlier today. Although construction of the project that DOE is financing (Fab 2) is on time and under budget, the parent company's financial condition has deteriorated substantially due to rapid cash burn and lower sales than anticipated. Solyndra plans to consolidate operations to conserve cash including shutting down one of its facilities (Fab 1) and laying off approximately 150 personnel primarily in R&D. <u>The company plans to announce these layoffs between Tuesday and Thursday of next week</u>. The company plans to hire additional sales and marketing staff going forward.

Solyndra's plan also requires the company to raise additional equity and to <u>restructure the DOE loan guarantee</u>. DOE has not completed its evaluation of Solyndra or the requested loan changes. However, DOE's preliminary assessment indicates a restructuring is likely. DOE anticipates it will complete its review in about two weeks. At that point, DOE will engage with Solyndra on potential restructuring of the loan or alternative paths forward. OMB and DOE staff agreed to discuss the status of Solyndra again once DOE has made a determination on how to proceed.

From: Carroll, J. Kevin
Sent: Friday, October 29, 2010 1:30 PM
To: [redacted] Aldy, Joseph E.
Cc: Ericsson, Sally C.; Colyar, Kelly T.; Saad, Fouad P.; Mertens, Richard A.; [redacted]
Subject: Solyndra

We should chat about the news we got from DOE that we just got on Solyndra that will result in layoffs next week and probable restructuring of the loan as best possible outcome, sometime in Nov.

Footnote 461

From: Ken Levit
Sent: Saturday, October 30, 2010 8:58 PM
To: [redacted]
Subject: RE: GKFF Portfolio Update 10/29/10

Kind of a big bummer.

From: [redacted]
Sent: October 30, 2010 3:43 PM
To: [redacted] Fred Dorwart; Ken Levit
Cc: [redacted]
Subject: GKFF Portfolio Update 10/29/10

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Portfolio Valuation Summary [redacted]

[redacted]

Solyndra

Fundraise Update - Solyndra is still in need of approximately $150mm of outside equity capital by the end of the year. To date, the general level of interest from outside investors has been low which is signaling that raising outside funds by the end of the year will be tough. Goldman has been unsuccessful gaining traction with large industrial companies (with the exception of [redacted] who have requested more information but do not appear overly serious). Goldman began discussions with traditional private equity funds earlier this week and three firms, [redacted], have indicated interest. Solyndra also intends to contact other solar companies in the near future, but we cannot say with confidence that they will show any more interest than the investors contacted to date.

DOE Loan Restructuring - Solyndra management has had a series of meetings with the DOE over the past couple of weeks to discuss restructuring the existing DOE loan agreement. It appears that the DOE is willing to accommodate Solyndra's asks, but they appear to be concerned about "looking bad" if they continue to fund Solyndra while (1) equity owners don't support the company or (2) Solyndra fails to execute on their business plan. Solyndra plans to draw additional funds from the DOE in November and December, so it is critical to have their approval to maintain adequate liquidity. With respect to additional loan draws, management believes the November funding is effectively approved, but the December funding could be held up if the DOE feels uncomfortable about the prospects of additional capital. The DOE is also holding meetings with Goldman in order to understand the probabilities of a successful fundraise. This meeting could potentially impact the DOE's decision to allow the November or December fundings.

DOE officials visited Solyndra's facilities last week as part of their diligence in connection with restructuring the loan terms. The officials toured the production facilities and conducted meetings with Solyndra's management team. 80% of the discussion was focused on Solyndra's sales and marketing plan and how the DOE could underwrite Solyndra's projected sales volume. The DOE originally asked to see signed purchase orders, but management explained that there is nothing concrete - just a compilation of anecdotal evidence that Solyndra will be able to increase sales volumes through its new sales methods/channels.

Layoff Announcement - Management discussed their timeline for announcing layoffs. They recently decided to delay the announcement date from 10/28 until 11/3 per the DOE's request. Management is eager to announce the company's revised plans because rumors are rampant and employee churn is increasing substantially (Sept'10 employee churn was equal to total 2009 employee churn). The current plan is to lay off about 100 part-time factory workers and 50 full time factory workers (in connection with the consolidation of Fab 1 into Fab 2). In approximately 6 months, management plans to lay-off another 50-100 R&D focused employees.

Next week we will send an update on the fundraising progress with the financial sponsors mentioned.

[redacted]

[redacted]

[redacted]

Footnote 462

[redacted]

From: Nwachuku, Frances
Sent: Friday, November 12, 2010 1:17 PM
To: 'Bill Stover'
Cc: Brian Harrison; [redacted]
Subject: RE: Solyndra weekly performance dashboard

Bill,

Thanks for your prompt request.

I would suggest a call at 4pm Washington time.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[redacted]

From: Bill Stover [redacted]
Sent: Friday, November 12, 2010 1:13 PM
To: Nwachuku, Frances
Cc: Brian Harrison; [redacted]
Subject: RE: Solyndra weekly performance dashboard

Frances,

We've received your message and are confirming the team members that will join you in Wash. D.C. next Tuesday & Wednesday. As you've noted, it would be useful to touch bases with your team yet today to confirm that we have the right resources and materials for next week. Could you suggest a time for a short call?

W. G. "Bill" Stover, Jr.
CFO

[redacted]

From: Nwachuku, Frances [redacted]
Sent: Friday, November 12, 2010 8:40 AM
To: Bill Stover

Cc: Brian Harrison; [redacted]
Subject: RE: Solyndra weekly performance dashboard

Bill,

We continue to go through our review and due diligence process. As we indicated during our call earlier this week, we are focusing on the four factors critical to Solyndra's success: i) cost reduction; ii) increase in sales; iii) infusion of additional equity; and iv) continued involvement of the DOE.

However, the depth of information that we have received to-date and its related analysis has not been sufficient to allow us to come to any definitive conclusion as to the level of our participation in crafting a solution. This is largely because we are still unable to access the reasonableness of your projections related to both the cost reductions and sales. To that end, I want to suggest a working session here in Washington Tuesday and Wednesday of next week with a view to providing us with greater clarity on the drivers impacting the projected cash flow outcome.

I would suggest that your team should include Shig and any other individual with access to and understanding of the model from which the weekly performance dashboard is generated. At the end of the two days, I would like to clearly understand all of the details underlying your current business operations and near term outcome.

In advance of the meeting, we would be happy to discuss with you what we need in order to ensure that the meetings result in the desired outcome.

Regards,

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[redacted]

From: Bill Stover [redacted]
Sent: Thursday, November 04, 2010 10:31 AM
To: [redacted]; Nwachuku, Frances; [redacted]
Cc: [redacted]
Subject: RE: Solyndra weekly performance dashboard

[redacted] & team,

I've attached the Excel file. Please confirm that it makes it through ok.

All the best,

W. G. "Bill" Stover, Jr.
CFO

[redacted]

[redacted]

From: [redacted]
Sent: Thursday, November 04, 2010 6:54 AM
To: Nwachuku, Frances; [redacted]
Cc: [redacted]
Subject: RE: Solyndra weekly performace dashboard

[redacted]

Could you please re-send the attachment? Did not seem to come through on our end.

Thanks.

[redacted]

From: Nwachuku, Frances
Sent: Wednesday, November 03, 2010 4:35 PM
To: [redacted]
Cc: 'bill.stover[redacted]
Subject: Re: Solyndra weekly performace dashboard

Thanks, [redacted]

We would like to discuss. I will get back to you with a few day and time options.

Frances

From: [redacted]
To: Nwachuku, Frances
Cc: Bill Stover [redacted]
Sent: Wed Nov 03 15:59:28 2010
Subject: Solyndra weekly performace dashboard

Frances,

Attached please find a copy of our weekly performance dashboard for fiscal fourth quarter. Please note that the second tab of the attached file shows the detailed forecast of our fourth quarter sales as it stands today. The summary shows that we currently have high confidence around 9.5MW of shipments for the quarter, which is short of 16.7MW in the plan. Our sales team is working to close the gap vs. the plan by working on 12MW of identified opportunities that are not reflected in the attached schedule. In addition, we made significant progress in reducing the channel inventory at our distributors during October, which should further enhance our ability to close the gap vs. the plan in the next two months.

Please let us know if you would like to schedule a call to discuss our quarter-to-date performance further.

Best regards,
[redacted]

[redacted]
VP, Finance
Solyndra, Inc.
[redacted]

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Thank you for your cooperation.

Footnote 464

Stone, Carla

From: Colyar, Kelly T.
Sent: Thursday, November 04, 2010 2:24 PM
To: Carroll, J. Kevin
Subject: RE: Early Solyndra Press

True, but the problem here is that there is vast oversupply. I haven't seen recent data, but I recall industry-average inventory levels were up around 120 days several months ago. Solyndra believes they can command a 60 to 70 cent/watt premium based on their installation cost/ease of installation. This is down from about a $1.50/watt they thought they could command by this stage. It will also be interesting to see if they can get their cost down. Their last S-1 *filing (granted it was late 2009) indicated over $6/watt.* They have a lot of progress to make to get that down to a profitable level.

The good news for them is that silicon prices have been creeping up.

From: Carroll, J. Kevin
Sent: Thursday, November 04, 2010 1:49 PM
To: Colyar, Kelly T.
Subject: RE: Early Solyndra Press

"In a commodity market, only the lowest cost producers will survive and the only way to get there is through scale (absent game changing technology)."

This statement is not entirely true. All the producers whose marginal cost is below the market clearing price will produce in the short run, and those whose total cost is below the market clearing price will produce over the longer run. So if I can produce corn for $2 per bushel and you can produce it for $1.75, and the market clearing price is $2.50, we both produce and you make more money than me.

From: Colyar, Kelly T.
Sent: Wednesday, November 03, 2010 10:47 AM
To: Mertens, Richard A.; Carroll, J. Kevin; Saab, Fouad P.
Subject: Early Solyndra Press

Looks like the total jobs are 40 permanent 150 temporary rather than 50 permanent 100 temporary.

Also note that the media has picked up on my biggest concern. Solyndra appears to be giving up on any plans to chase down the cost curve. Layoffs are primarily in the R&D area which reduces ability to make the technology more efficient and the company is delaying expansion plans which would reduce manufacturing costs through economies of scale. When this is compared with the specific requests Solyndra made on their loan guarantee (extend the tenor by three years, interest forebearance until May 2013, and extending the first principal payment from May 2012 to May 2013), this seems like the exact opposite direction to go. I also note that the requested loan changes are very similar to the original application Solyndra submitted which DOE did not accept for the same concerns. The pv solar industry is in the middle of a massive consolidation and prices have dropped dramatically due to competitive pressures (mostly from China). *In a commodity market, only the lowest cost producers will survive and the only way to get there is through scale (absent game changing technology).* Solyndra is already the high cost producer and they appear to be abandoning plans to get cost down. From my perspective, pushing any payments off into the future only increases the risk that the company will ultimately be unable to repay the loan. At this point, I would feel much more comfortable if Solyndra were positioning itself to be bought out by one of the bigger players. However, DOE will need to make this determination. DOE indicated they would have a view as to Solyndra's viability and potential loan modifications in the next two weeks.

http://www.nytimes.com/2010/11/03/business/energy-environment/03solar.html?src=busln

Solar-Panel Maker to Close a Factory and Delay Expansion

By TODD WOODY

Published: November 3, 2010

SAN FRANCISCO — Solyndra, a Silicon Valley solar-panel maker that won half a billion dollars in federal aid to build a state-of-the-art robotic factory, plans to announce on Wednesday that it will shut down an older plant and lay off workers.

Go to Blog

The cost-cutting move, which will reduce the company's previously announced production capacity, is a sign of the notable shift in the prospects for cutting-edge American solar companies, which now face intense price competition from Chinese manufacturers that use more established photovoltaic technologies.

Just seven weeks ago, Solyndra opened Fab 2, a $733 million factory in Fremont, Calif., to make its high-tech solar panels. The new plant was supposed to be the first phase of a rapid expansion of the company.

Instead, Solyndra has decided to shutter the old plant and postpone plans to expand Fab 2, which was built with a $535 million federal loan guarantee.

"Fab 2 is much more efficient and cost-effective than our existing facility," Brian Harrison, Solyndra's chief executive, said in an interview. "We're adjusting our plans to be more in line with where the market is and where our business is at the moment."

When Solyndra filed for an initial public stock offering in December, it estimated it would have a total production capacity of 610 megawatts by 2013 if its two plants were fully built out. The company now expects to have capacity of 285 to 300 megawatts by 2013.

Solyndra abandoned plans for the stock offering in June, citing market conditions.

The company is the most prominent of a wave of Silicon Valley solar start-ups that hoped to transform the economics of the industry. Gov. Arnold Schwarzenegger of California and Energy Secretary Steven Chu helped break ground on Fab 2 last year, and President Obama made an appearance at the unfinished factory in May to extol Solyndra's innovative technology.

Mr. Harrison noted that the market had undergone a significant shift since Solyndra filed for the stock offering, with solar module prices plummeting as low-cost Chinese manufacturers like Suntech and Yingli ramped up production.

That has put pressure on companies like Solyndra, which makes advanced thin-film solar modules that are less efficient than conventional photovoltaic modules but had been cheaper to install until prices began to fall sharply last year.

Solyndra said it would lay off around 40 employees and not renew contracts for about 150 temporary workers as a result of the consolidation. The closing of the old factory, called Fab 1, will save the company more than $60 million in capital expenditures, executives said.

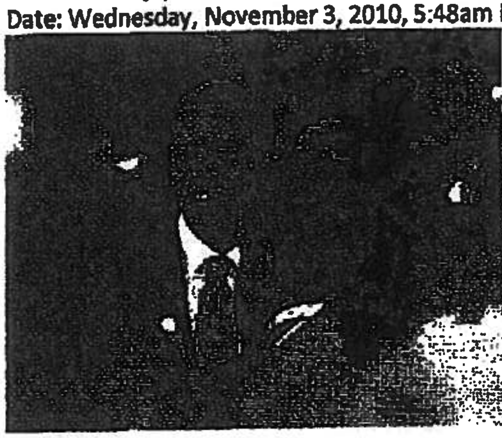
Mr. Harrison, who became Solyndra's chief executive in July, said that despite the cutbacks, the company's production of solar panels for commercial rooftops would double in 2011 from the previous year. He said Solyndra continued to receive large orders from customers.

Depending on how the market evolves, Solyndra could reopen Fab 1 or expand its new factory, Mr. Harrison said.

http://www.bizjournals.com/sanjose/news/2010/11/03/solyndra-cuts-back-as-future-clouds.html

Cloudy outlook forces Solyndra cutback

Silicon Valley / San Jose Business Journal
Date: Wednesday, November 3, 2010, 5:48am PDT - Last Modified: Wednesday, November 3, 2010, 6:05am PDT



When President Obama visited Solyndra in May it expected to have 610 megawatts in capacity by 2013 at its two Fremont plants. Now expects to only have capacity of 285 to 300 megawatts by 2013.

Solar panel maker Solyndra Corp. will reportedly announce steps Wednesday to shut down its first factory and cut workers in the face of tough competition from China.

A half billion in federal aid apparently hasn't been enough to help the Fremont company that President Barack Obama visited in May, touting a green policy agenda.

Instead of having two plants with a production capacity of 610 megawatts by 2013, the company now will have only between 285 to 300 megawatts of capacity by that time, The New York Times reported.

Signs of trouble had already appeared at Solyndra before the presidential visit when the company's auditor , PriceWaterhouseCoopers, raised doubts in April about its ability to compete in the face of mounting loses and mountainous debt.

An initial public offering that was announced in December was canceled in June.

Wednesday's expected cutbacks come just seven weeks ago after Solyndra opened Fab 2, a $733 million factory that had been expected to propel its expansion.

The company will now close its first factory, lay off 40 permanent workers and 150 temporary workers, the Times reported.

CEO **Brian Harrison** is quoted as saying, "Fab 2 is much more efficient and cost-effective than our existing facility. We're adjusting our plans to be more in line with where the market is and where our business is at the moment."

Footnote 466

From: Steve Mitchell [redacted]
Sent: Wednesday, November 24, 2010 2:19 AM
To: George Kaiser
Cc: [redacted] Ken Levit; Steve Mitchell
Subject: Solyndra Update
Attachments: Solyndra-DOE extract for Argonaut 112310.pdf

George,

I had a good call with Brian Harrison and Bill Stover yesterday and wanted to send an update on the company's current situation.

Sales & Marketing: The company should sell between [redacted] would be below plan but would occur by choice as Brian has refused to sell into German distribution at low ball prices (if we don't sell it this quarter he believes we can move it next quarter). The dormant inventory in distributors hands has been worked down by Solyndra's sales team – this was app. [redacted] last quarter and this quarter which gives us a market run rate of between [redacted] Pricing has held up and should be around [redacted] The most dramatic change is Brian's growing confidence that we can meet the capacity ramp in 2011. He and [redacted] (our new head of marketing) indicated that the change in market dynamics for our product over the last 3 months has been significant – he attributes this to the integrators understanding our product's application better (and valuing it) and the implementation of forward pricing so the integrator and end user feel they can design in a Solyndra solution to be installed 6 to 9 months out. The communication around shutting Fab 1 and consolidating operations into Fab 2 was apparently handled very well with customers and suppliers and the fall out there has been negligible. I asked Brian the direct question on his belief that the company can drive demand to meet the Q3 capacity step up to [redacted] and he did not guaranty it but he does believe it is achievable. [redacted]

We have had a few good wins that Brian believes are indicative of our value proposition starting to resonate – under the CA renewable energy standards utilities must develop owned renewable energy production as well as buy power from 3rd party producers (requirements are for 50/50 self-generated to purchased energy production). So-Cal Edison had committed to bring online a 7MW installation to be installed on one of its own distribution centers (ProLogis owns the building – you may recall we have a 16MW installation with them next year). So-Cal Edison was installing crystalline silicon panels until they realized the roof was more load challenged than it had original thought – turns out Solyndra panels are the only panel that can go on this roof. [redacted]

Wal-Mart asked to come out to Fremont to see our facilities as more integrators were starting to pitch Solyndra products as Wal-Mart has highly engineered rooftops with sky lights. This is years in the making unfortunately, but the meeting went very well and Wal-Mart officials spent about 3.5 hours with Brian. There were some early discussions about Wal-Mart buying from Solyndra directly and then outsourcing the installation.

I realize much of the sales report is anecdotal. The key question that outside investors, the DOE and current investors are asking is can Solyndra develop the channels and create demand to meet the ramp up in capacity that occurs in 2011. I, and others, are talking to the company weekly to try and gauge this and will start speaking with customers again soon – but the inputs are primarily anecdotal sales evidence – the size of transactions, where they are occurring, new customers designing us in (for instance [redacted] was refusing to quote Solyndra panels in September and through Brian and [redacted] efforts they look to be a significant partner going forward) and forward looking orders. Brian assured me that we would not know factually significantly more in November or December than we did in September or October about Solyndra's ability to move 2011 output, but that the company would have a much better "feel" for it. He asserts that moving the capacity will not be without its challenges but that he is feeling much better about our prospects.

[redacted]

Although the consolidation message went well with customers and suppliers, the consolidation is just one more event of volatility that is unnerving Solyndra's employees and attrition is becoming an issue. The company has lost an average of 30 employees each of the last 4 months. Some of these would have been lost to the RIF anyway, however, several of them were employees that are part of the long term success of the technology. Apparently the job market in Silicon Valley is very hot right now and the employees we are losing are the primary bread winner in their household and the uncertainty of Solyndra's viability is forcing the decision to move on. The company is implementing a retention package for app. 100 key employees that will incent them to stay through the next 6 to 9 months which is a critical transition period – if the company fails to secure financing this is moot.

Financing: As you know, Goldman Sachs originally approached about 30 strategic investors to lead the app. $150 million of equity capital that Brian's revised plan calls for to reach cash flow breakeven (this requires not only the $150 million but the requested concessions from the DOE as well). The strategic investors have all passed. This was not surprising and beyond [redacted] none of the strategic investors engaged in any meaningful way – this is just way outside of the risk/return parameters for these investors.

We have now reached out to financial investors and we have had a better response from this group. Eight financial groups have opted to take meetings. [redacted] is the only one to pass after the initial meeting – they were initially very excited about the opportunity, however, they passed for the following stated reasons 1) they already have a failed CIGS investment in their fund and there is an emotional/mental block to investing in another CIGS player, 2) concern over future pricing declines beyond $2.00 per watt which would require an additional capital raise and 3) fear that the brand is hampered by the pulled IPO and negative press which will be a drag on the company's ability to meet its sales targets. Tough but honest feedback.

The company has met with [redacted] and has meetings scheduled with [redacted] reached back out to Solyndra to reengage on the opportunity. Goldman and management describe [redacted] as actively engaged in diligence – apparently [redacted] is hammering on capex costs for future growth (a valid concern) and to what extent can the capex per watt be reduced in future fabrication facilities [redacted]

The three primary questions that are being asked are 1) can the company drive demand to meet 2nd half of 2011 capacity expansion, 2) can the company continue to cut costs (this is getting the most favorable results) and 3) how does a new investor make the economics work. The first two issues are apparently fairly understood by the potential investors as their interest level has increased the 3rd question is receiving more focus. Basically they are indicating that with $535 million of DOE debt and $175 million of convertible debt (the june loan) even assuming the prior rounds of A through F are wiped out it is tough for them to see the types of returns they want to see on this type of investment. Assuming Solyndra hits its plan of $194 million of Ebitda in 2014 and assuming it trades at 8X Ebitda like its peers than the company has an enterprise value of $1.552 billion - $535 million of DOE debt leaves $1.017 billion of equity value. If the new money converts on an equal basis with our convertible debt it will own app. 46% of the equity X $1.017 billion equates to $469 million of equity value for the new investors or 3.12 MOIC. However, Solyndra will have reached its full manufacturing capacity by 2014 and a valid argument can be made that without growth prospects the company will be valued at 5X to 6X Ebitda or will have to raise additional capital (i.e. dilution) to reach a greater valuation multiple. At a 5.5X Ebitda multiple the enterprise value is $1.067 billion minus $535 million in debt resulting in a $532 million equity value – this results in $245 million in equity value for new investors and 1.6X invested capital. With the execution risk, historical failure to hit plans on budget and the reality of Chinese competition the interested investors are making the argument that they need better economics. Nobody has submitted a term sheet or detailed an outline of a deal, however, Goldman is telling us that interested investors are making the case that the DOE is going to have to equitize a portion of its debt or more likely need to haircut the debt by 40% or 50% and that the subordinated debt will need to take a haircut or sit behind liquidation preferences. Goldman and management continue to work with all parties and hopefully we will receive some indications of interest soon.

DOE: As you know, we reached out to the DOE in late September early October to discuss our revised business plan that included consolidating Fab 1 and Fab 2 operations, the need to raise an additional $150 million and the need to alter the terms of our loan agreement with the DOE. DOE funded the company's October draw of app. $10 million prior to our meeting in DC and following that meeting funded another $41 million for November. Key to the company's viability and assumption underlying the $150 million need is that DOE will continue to fund under the funding schedule outlined in the loan agreement. Our concern has been that they will withhold funding to try and force investors to contribute additional capital now. In our meeting in DC the DOE asked specifically to Argonaut's willingness to fund additional equity capital. I made it very clear that although we believe in the technology and have been incredibly supportive to date, the company needs a new investor with a strong balance sheet for it to effectively move forward. In the event that we are able to see real progress in cost cutting and demand creation and the company secures a strong lead investor that we are very open to making an additional investment (but I was very clear that we were not intending to save the day or underwrite the entire amount). At the time the DOE officials seemed okay with that response, however, as fund raising has been slow (in their minds, not mine as I never thought anyone would make an investment decision until January/February as the more time that passes the more vision they have as it relates to Fab 2 ramp up risk and demand creation) they seem to be getting increasingly nervous about continuing to fund the loan.

The DOE has had discussions with Goldman, Madrone and myself over the past two days. They directly asked Argonaut if we would fund a portion of their loan in December which I declined to do. They indicated that since this "crisis" occurred they are the only group funding the company and that they needed to be able to show their superiors and the OMB that the DOE is not the only group supporting Solyndra. I very politely pointed out that the crisis occurred with a 50% price decline from foreign competition and that we reached out to the DOE in April/May as soon as we learned of the revenue deficiencies facing the company and that the current investor group made a $175 million loan/equity contribution to the company over the past 6 months (the last payment of which was made on Oct. 1st) and that those dollars are behind the DOE's in the capital stack. This point seemed to very much resonate with them and in some ways they appear to be looking to us to give them the arguments to make so they could continue funding the loan. To reiterate the point, it is critical to Solyndra's survival that the DOE continue to fund the loan – if the DOE choses to withhold a draw on Dec 10th or Jan 10th it will shut the company down without financial intervention.

I spent a good amount of time with Goldman, Madrone and Bill Stover today discussing the possibility that DOE would elect not to continue funding under the loan agreement. None of them see that as a realistic outcome over the next two or three months (I'm less optimistic as I have no faith in my understanding (or anyone's for that matter) of the pushes and pulls driving decision making in Washington (i.e. do it now during a lame duck congress, do it now and have two years behind them before a new presidential election, get it funded and keep it alive past the next election, etc.). The DOE has funded app. $450 million of a $535 million and to pull the plug without us being materially outside of our covenants and effectively shut the company down while we are in the middle of fund raising, in Goldman's belief, causes more problems than it solves. In any event, the 10th of each month will be critical through February – the funding amounts fall off dramatically at that point. Assuming the DOE continues to fund loan draws the company has until February before it needs to raise capital (there is a lot of sensitivity around receivables and payables that could make this late January or early March). This could be extended by 30 to 60 days if Solyndra qualifies for the full $40 million manufacturing tax credits.

It isn't really an issue to be fleshed out in this email but under the terms of our subordinated debt we have a first lien security interest in everything Solyndra owns including Fab 1 and the intellectual property (excluding Fab 2). We are taking the time to understand the ramifications of an event in which the DOE decides to stop funding and what a Fab 1 only business plan would look like. This is obviously not an option we would want to pursue unless forced into it but I've asked the questions as to how much capital it would take to reach cash flow positive and what is expected Ebitda and cash flow at full capacity (which is approximately 135MW and $270 million in revenues). This route would only be taken if we were left with no other option (and it penciled out as an option we would want to pursue versus liquidation) and it would require a pre-packaged bankruptcy.

I've attached the financial metrics to the consolidation plan that was presented to the DOE. The password is sunshine (no caps). Please note the SG&A and Depreciation in 2011 are inflated by $126 million as a result of the write off of Fab 1 facilities – they negate each other in the Ebitda line.

Please let us know if what questions or comments you may have.

Steve

Footnote 475, 478, 479

From: Steve Mitchell [redacted]
Sent: Wednesday, November 24, 2010 3:02 PM
To: [redacted] George Kaiser
Cc: [redacted] Ken Levit
Subject: Re: Solyndra Update

Frances, who is our day to day below Jonathan Silver, believes she can do everything we have asked of her without Chu's signature. We have yet to directly ask for a haircut on the debt. When I discussed that the concept was coming up with this concept she said it was something she could not do, but she didn't say if Chu or some other organization (congress, etc) would be required for such a change. We have been working with management to draw up strawman structures that may work - we have tried all sorts of variations that didn't discount he debt but bifurcated a portion behind a new investment liquidation preference. Goldman's indication is that would probably not be enough for a new investor and that they would require a haircut on the senior debt.

From: [redacted]
Sent: Wednesday, November 24, 2010 08:51 AM
To: George Kaiser; Steve Mitchell
Cc: [redacted] Ken Levit
[redacted]
Subject: RE: Solyndra Update

And have we gotten any clarity on what the DOE is "allowed" to do without significant additional govt approvals? Last time we talked about this I thought they were not allowed to reduce the debt outstanding or accept equity for debt outstanding without a lot of hoops and hearings?

From: George Kaiser [redacted]
Sent: Wednesday, November 24, 2010 8:45 AM
To: Steve Mitchell
Cc: [redacted]; Ken Levit
Subject: RE: Solyndra Update

What about DOD (and other governmental entity) sales efforts? Do the DOE people focus at all on how a Buy American plan could be a win win win for them and do they have any influence?

From: Steve Mitchell
Sent: Tuesday, November 23, 2010 8:27 PM
To: George Kaiser
Cc: [redacted]; 'Ken Levit'
Subject: RE: Solyndra Update

Here is a reply all without the attachment if your email was blocked since the attachment is password protected.

From: Steve Mitchell
Sent: Tuesday, November 23, 2010 8:19 PM
To: George Kaiser
Cc: [redacted] 'Ken Levit';

Steve Mitchell
Subject: Solyndra Update

George,

I had a good call with Brian Harrison and Bill Stover yesterday and wanted to send an update on the company's current situation.

Sales & Marketing: The company should sell between [redacted] would be below plan but would occur by choice as Brian has refused to sell into German distribution at low ball prices (if we don't sell it this quarter he believes we can move it next quarter). The dormant inventory in distributors hands has been worked down by Solyndra's sales team – this was app[redacted]which gives us a market run rate of between [redacted] Pricing has held up and should be around [redacted] The most dramatic change is Brian's growing confidence that we can meet the capacity ramp in 2011. He and Karen Alter (our new head of marketing) indicated that the change in market dynamics for our product over the last 3 months has been significant – he attributes this to the integrators understanding our product's application better (and valuing it) and the implementation of forward pricing so the integrator and end user feel they can design in a Solyndra solution to be installed 6 to 9 months out. The communication around shutting Fab 1 and consolidating operations into Fab 2 was apparently handled very well with customers and suppliers and the fall out there has been negligible. I asked Brian the direct question on his belief that the company can drive demand to meet the Q3 capacity step up to [redacted] and he did not guaranty it but he does believe it is achievable. [redacted]

We have had a few good wins that Brian believes are indicative of our value proposition starting to resonate – under the CA renewable energy standards utilities must develop owned renewable energy production as well as buy power from 3rd party producers (requirements are for 50/50 self-generated to purchased energy production). So-Cal Edison had committed to bring online a 7MW installation to be installed on one of its own distribution centers (ProLogis owns the building – you may recall we have a 16MW installation with them next year). So-Cal Edison was installing crystalline silicon panels until they realized the roof was more load challenged than it had original thought – turns out Solyndra panels are the only panel that can go on this roof. [redacted]

Wal-Mart asked to come out to Fremont to see our facilities as more integrators were starting to pitch Solyndra products as Wal-Mart has highly engineered rooftops with sky lights. This is years in the making unfortunately, but the meeting went very well and Wal-Mart officials spent about 3.5 hours with Brian. There were some early discussions about Wal-Mart buying from Solyndra directly and then outsourcing the installation.

I realize much of the sales report is anecdotal. The key question that outside investors, the DOE and current investors are asking is can Solyndra develop the channels and create demand to meet the ramp up in capacity that occurs in 2011. I, and others, are talking to the company weekly to try and gauge this and will start speaking with customers again soon – but the inputs are primarily anecdotal sales evidence – the size of transactions, where they are occurring, new customers designing us in (for instance [redacted] was refusing to quote Solyndra panels in September and through Brian and Karen's efforts they look to be a significant partner going forward) and forward looking orders. Brian assured me that we would not know factually significantly more in November or December than we did in September or October about Solyndra's ability to move 2011 output, but that the company would have a much better "feel" for it. He asserts that moving the capacity will not be without its challenges but that he is feeling much better about our prospects.

[redacted]

[redacted]

Although the consolidation message went well with customers and suppliers, the consolidation is just one more event of volatility that is unnerving Solyndra's employees and attrition is becoming an issue. The company has lost an average of 30 employees each of the last 4 months. Some of these would have been lost to the RIF anyway, however, several of them were employees that are part of the long term success of the technology. Apparently the job market in Silicon Valley is very hot right now and the employees we are losing are the primary bread winner in their household and the uncertainty of Solyndra's viability is forcing the decision to move on. The company is implementing a retention package for app. 100 key employees that will incent them to stay through the next 6 to 9 months which is a critical transition period – if the company fails to secure financing this is moot.

Financing: As you know, Goldman Sachs originally approached about 30 strategic investors to lead the app. $150 million of equity capital that Brian's revised plan calls for to reach cash flow breakeven (this requires not only the $150 million but the requested concessions from the DOE as well). The strategic investors have all passed. This was not surprising and beyond GE none of the strategic investors engaged in any meaningful way – this is just way outside of the risk/return parameters for these investors.

We have now reached out to financial investors and we have had a better response from this group. Eight financial groups have opted to take meetings. [redacted] is the only one to pass after the initial meeting – they were initially very excited about the opportunity, however, they passed for the following stated reasons 1) they already have a failed CIGS investment in their fund and there is an emotional/mental block to investing in another CIGS player, 2) concern over future pricing declines beyond $2.00 per watt which would require an additional capital raise and 3) fear that the brand is hampered by the pulled IPO and negative press which will be a drag on the company's ability to meet its sales targets. Tough but honest feedback.

The company has met with [redacted] and has meetings scheduled with [redacted] reached back out to Solyndra to reengage on the opportunity. Goldman and management describe [redacted] as actively engaged in diligence – apparently [redacted] is hammering on capex costs for future growth (a valid concern) and to what extent can the capex per watt be reduced in future fabrication facilities [redacted]

The three primary questions that are being asked are 1) can the company drive demand to meet 2nd half of 2011 capacity expansion, 2) can the company continue to cut costs (this is getting the most favorable results) and 3) how does a new investor make the economics work. The first two issues are apparently fairly understood by the potential investors as their interest level has increased the 3rd question is receiving more focus. Basically they are indicating that with $535 million of DOE debt and $175 million of convertible debt (the june loan) even assuming the prior rounds of A through F are wiped out it is tough for them to see the types of returns they want to see on this type of investment. Assuming Solyndra hits its plan of $194 million of Ebitda in 2014 and assuming it trades at 8X Ebitda like its peers than the company has an enterprise value of $1.552 billion - $535 million of DOE debt leaves $1.017 billion of equity value. If the new money converts on an equal basis with our convertible debt it will own app. 46% of the equity X $1.017 billion equates to $469 million of equity value for the new investors or 3.12 MOIC. However, Solyndra will have reached its full manufacturing capacity by 2014 and a valid argument can be made that without growth prospects the company will be valued at 5X to 6X Ebitda or will have to raise additional capital (i.e. dilution) to reach a greater valuation multiple. At a 5.5X Ebitda multiple the enterprise value is $1.067 billion minus $535 million in debt resulting in a $532 million equity value – this results in $245 million in equity value for new investors and 1.6X invested capital. With the execution risk, historical failure to hit plans on budget and the reality of Chinese competition the interested investors are making the argument that they need better economics. Nobody has submitted a term sheet or detailed an outline of a deal, however, Goldman is telling us that interested investors are making the case that the DOE is going to have to equitize a portion of its debt or more likely need to haircut the debt by 40% or 50% and that the subordinated debt will need to take a haircut or sit behind liquidation preferences. Goldman and management continue to work with all parties and hopefully we will receive some indications of interest soon.

DOE: As you know, we reached out to the DOE in late September early October to discuss our revised business plan that included consolidating Fab 1 and Fab 2 operations, the need to raise an additional $150 million and the need to alter the terms of our loan agreement with the DOE. DOE funded the company's October draw of app. $10 million prior to our meeting in DC and following that meeting funded another $41 million for November. Key to the company's viability and assumption underlying the $150 million need is that DOE will continue to fund under the funding schedule outlined in the loan agreement. Our concern has been that they will withhold funding to try and force investors to contribute additional capital now. In our meeting in DC the DOE asked specifically to Argonaut's willingness to fund additional equity capital. I made it very clear that although we believe in the technology and have been incredibly supportive to date, the company needs a new investor with a strong balance sheet for it to effectively move forward. In the event that we are able to see real progress in cost cutting and demand creation and the company secures a strong lead investor that we are very open to making an additional investment (but I was very clear that we were not intending to save the day or underwrite the entire amount). At the time the DOE officials seemed okay with that response, however, as fund raising has been slow (in their minds, not mine as I never thought anyone would make an investment decision until January/February as the more time that passes the more vision they have as it relates to Fab 2 ramp up risk and demand creation) they seem to be getting increasingly nervous about continuing to fund the loan.

The DOE has had discussions with Goldman, Madrone and myself over the past two days. They directly asked Argonaut if we would fund a portion of their loan in December which I declined to do. They indicated that since this "crisis" occurred they are the only group funding the company and that they needed to be able to show their superiors and the OMB that the DOE is not the only group supporting Solyndra. I very politely pointed out that the crisis occurred with a 50% price decline from foreign competition and that we reached out to the DOE in April/May as soon as we learned of the revenue deficiencies facing the company and that the current investor group made a $175 million loan/equity contribution to the company over the past 6 months (the last payment of which was made on Oct. 1st) and that those dollars are behind the DOE's in the capital stack. This point seemed to very much resonate with them and in some ways they appear to be looking to us to give them the arguments to make so they could continue funding the loan. To reiterate the point, it is critical to Solyndra's survival that the DOE continue to fund the loan – If the DOE choses to withhold a draw on Dec 10th or Jan 10th it will shut the company down without financial intervention.

I spent a good amount of time with Goldman, Madrone and Bill Stover today discussing the possibility that DOE would elect not to continue funding under the loan agreement. None of them see that as a realistic outcome over the next two or three months (I'm less optimistic as I have no faith in my understanding (or anyone's for that matter) of the pushes and pulls driving decision making in Washington (i.e. do it now during a lame duck congress, do it now and have two years behind them before a new presidential election, get it funded and keep it alive past the next election, etc.). The DOE has funded app. $450 million of a $535 million and to pull the plug without us being materially outside of our covenants and effectively shut the company down while we are in the middle of fund raising, in Goldman's belief, causes more problems than it solves. In any event, the 10th of each month will be critical through February – the funding amounts fall off dramatically at that point. Assuming the DOE continues to fund loan draws the company has until February before it needs to raise capital (there is a lot of sensitivity around receivables and payables that could make this late January or early March). This could be extended by 30 to 60 days if Solyndra qualifies for the full $40 million manufacturing tax credits.

It isn't really an issue to be fleshed out in this email but under the terms of our subordinated debt we have a first lien security interest in everything Solyndra owns including Fab 1 and the intellectual property (excluding Fab 2). We are taking the time to understand the ramifications of an event in which the DOE decides to stop funding and what a Fab 1 only business plan would look like. This is obviously not an option we would want to pursue unless forced into it but I've asked the questions as to how much capital it would take to reach cash flow positive and what is expected Ebitda and cash flow at full capacity (which is approximately 135MW and $270 million in revenues). This route would only be taken if we were left with no other option (and it penciled out as an option we would want to pursue versus liquidation) and it would require a pre-packaged bankruptcy.

I've attached the financial metrics to the consolidation plan that was presented to the DOE. The password is sunshine (no caps). Please note the SG&A and Depreciation in 2011 are inflated by $126 million as a result of the write off of Fab 1 facilities – they negate each other in the Ebitda line.

Please let us know if what questions or comments you may have.

Steve

Footnote 480

[redacted]

From: [redacted]
Sent: Wednesday, November 24, 2010 12:14 PM
To: [redacted]
Cc: [redacted]
Subject: FW: Solyndra
Attachments: Key Business Terms 11-12-10.docx; Proposed Rescheduling Schedule.docx

[redacted] - Please forward the attached to [redacted] Thanks. [redacted]

[redacted]
Loan Guarantee Program
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585
[redacted]

From: Nwachuku, Frances
Sent: Wednesday, November 24, 2010 12:06 PM
To: [redacted]
Subject: RE: Solyndra

[redacted]

Attached is the draft Term Sheet and proposed schedule. [redacted] and I are still working of fine tuning the schedule.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[redacted]

From: [redacted]
Sent: Wednesday, November 24, 2010 11:51 AM
To: Nwachuku, Frances
Cc: [redacted]
Subject: Solyndra

Frances – Just a reminder for you to send me the current proposed workout term sheet and proposed schedule.
Thanks. [redacted]

[redacted]
Loan Guarantee Program
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585
[redacted]

Solyndra
Proposed Key Business Terms and Conditions

This document is for discussion purposes only and has not been approved by DOE or FFB. This document does not constitute a term sheet or an agreement by DOE or FFB or a commitment by DOE or FFB to enter into an agreement and is subject to review and change in all respects.

Background: The proposed key business terms summarized below have been designed to facilitate continued extension of the loan guarantee to Solyndra pursuant to the proposed "Consolidation Plan". We see that plan as incorporating four primary components, specifically:

- An improvement in sales performance over the disappointing levels in Q3 and Q4, 2010.
- A significant reduction in spending
- The investment of at least $150 million in new equity to be provided in the very near term
- The continued funding of the DOE-guaranteed loan, along with an extended interest and principal holiday that will add approximately $30 million to the guaranteed loan amount.

Achieving all of these components are integral to bridging the company to a point where it may become cash flow positive. Even if they are all accomplished, this remain a risky investment as the company must compete in the volatile PV market. The key terms below are designed to address both the short-term liquidity situation as well as the longer-term business and financial risks. Please note that these preliminary proposals have not been reviewed within DOE or with other agencies that are in involved with loan guarantee program. It is not a commitment to amend the current agreement or offer a new guarantee and any such guarantee offered may differ substantially from these initial ideas.

Borrowers: Solyndra, Inc. and Fab 2 LLC (*insert correct name*), jointly and severally liable

Facility: Up to $[*], disbursements to continue monthly based on original schedule, subject to the achievement of existing conditions precedent discussed below – Ken, I am also considering rescheduling what has already been disbursed and structuring the remainder under the existing facility as new debt (DIP financing). Can I do that?

Term:

- Funds availability period of up to [*] months during which time advances may be made subject to compliance with all conditions
- First mandatory principal payment date [June, 2013]
- Mandatory principal payments: [24] equal quarterly principal payments/tailored amortization schedule as evidenced in Exhibit A

Funding:

- Monthly funding according to Schedule 1, attached, subject to CPs. [*need to define after completion of due diligence.*]

Equity requirements:

- $[50] million in new externally-raised funds to be funded in the Liquidity Account prior to the December __, 2010 advance.
- $[50/$100] million to be funded prior to the January, 2011 advance.
- Additional commitments from investor group of $[50] million to be funded at any time that the balance in the Liquidity Account falls below $[15] million.

Borrower Restrictions:

- No investment in business activities outside of those directly in support of Fab 2 production and sales
- No dividends to shareholders
- No use of IP outside of the current project

CPs for Advance: Usual and customary, plus the following:

- Required funding of the Liquidity Account as noted above
- Technical performance demonstrated by Fab1 production at minimum levels consistent with assumptions in the financial projections (to be agreed upon)
- Minimum shipment, revenue and receipt levels in Q4, 2010, consistent with those contained in the financial projections
- Construction and equipment supply plan consistent with projections acceptable to DOE and the IE
- Acceptable appraisal supporting the fair market value of the equipment being transferred from Fab 1 to Fab 2.

CPs to Further Advances:

- Construction progress consistent with the construction plan
- Achievement of reduced spending levels consistent with the baseline Consolidation Plan, supported by financial records
- Shipment, sales and receipts consistent with agreed upon levels, consistent with those contained in the financial projections
- Achievement of increasingly stringent financial metrics (operating and/or gross margin), indicating the improving profitability of the manufacturing process
- Achievement of increasingly stringent technical performance targets for each in commercial operation, including measures such as :
  - Module efficiency
  - Yield
  - Throughput and capacity utilization
  - Total production
- Fully funded Liquidity Reserve and Equity Contribution Account to cover all lines being financed
- No MAE
- Other usual and customary

Cashflow Waterfall:

- All revenues paid to Borrowers into a Revenue Account held by a Collateral Agent. All cash to be held in accounts noted below by the Collateral Agent
- O&M Account for payment of operating expenses
- Debt Service Account for payment of mandatory interest and principal

- Debt Service Reserve Account (to be funded at COD and replenished, if necessary), equal to 6 months of highest scheduled interest and principal payments
- Liquidity Reserve Account to be funded prior to December advance as noted in Equity Requirements above. After completion of construction, balance to be maintained equal to a minimum of 2 months O&M expenses, up to a maximum of $[*] million. To be funded from operating cash flows after COD
- CapEx Reserve Account, post-construction completion to be funded from operation cash flows as required to finance capital expenditures approved by the IE
- 50% of remaining cash as a mandatory debt prepayment (cash sweep), beginning 3 months after COD
- Remaining 50% to be retained in an Excess Cash Retention Account. No distributions outside of the project allowed without DOE consent.

Other Indebtedness

- None

We look forward to discussing our thoughts with you further.

Solyndra FAB II

Restructuring Schedule

Week of November 30th

- Meeting with Legal team re proposed Indicative Terms
- Meeting with Jonathan re proposed Indicative Terms
- Completion of Credit Paper
- Completion of Recommendation/Presentation Paper

Week of December 6th:

- Meeting with Brian Harrison and the Solyndra Team (legal counsel required)
- Update to Term Sheet (if required)

Week of December 13th

- CRB
- Beginning of closing process for the Term Sheet (to be signed December 31st)

Footnote 483, 484, 485

From: Steve Mitchell
Sent: Friday, December 03, 2010 10:06 PM
To: George Kaiser
Cc: [redacted]
[redacted]'ken[redacted]Steve Mitchell
Subject: RE: RE: Soly

George,

Thursday's board meeting was interesting but essentially a re-hash of my meetings with Brian and Bill on Wednesday. As a result I don't really have much to update beyond what I described in my email below. We are meeting with the DOE on Monday to discuss parameters under which the company can raise capital (internally and/or 3rd party) within the timeframe that the DOE has requested (before the end of the year). Our ask is largely what I described below - essentially we are asking DOE to increase their loan by $100 million and the company will raise an additional $50 million - the entire $150 million would have a liquidation preference ahead of the current $535 million. We have made it clear that the current investors will not invest into a partially funded plan and we are not committing to invest if these changes are made - we are committing to consider the investment. These will be tough conversations and the DOE is indicating that we are far apart from where they want to be (they basically just want us to fund the business). There continues to be a risk that the DOE will not fund on Dec. 10th which would effectively shut down the business.

Please let me know if you have any questions or comments. I will forward the DOE request in a separate email. I will update you Monday or Tuesday after we wrap up with the DOE.

Steve

-----Original Message-----
From: Steve Mitchell
Sent: Wednesday, December 01, 2010 10:28 PM
To: George Kaiser
Cc: [redacted]'ken[redacted]
Subject: Soly

George,

I will send a more detailed update after tmrw's board meeting or Friday morning but I wanted to give you a quick overview of what is happening real time. Sorry if it is choppy - I'm drafting from blackberry.

I had a good meeting today with Brian, Bill (CEO, CFO) and Jamie (Madrone). Short note on operations is that Brian is continuing to feel better about demand creation and he is starting to focus more on costs as well (low hanging fruit already pulled out of costs - now engineering, streamlining, etc.).

They had a long call with DOE yesterday and DOE is increasingly worried that they continue to fund the loan without any new equity capital. Several investors are still interested but they want to either haircut the DOE loan or be ahead of it in a liquidation scenario. DOE is stating they won't continue funding if the company has not raised some amount of equity before the end of the year (looks like they will fund on Dec 10th but trying to draw a line in the sand on the $25 million on Jan 10th). The DOE claims it wants to avoid a game of chicken but that it needs some indication of investor interest.

Jonathan Silver, head of the DOE program and former VC himself, realizes the best chance of new capital is an inside round or a pre-agreed to set of terms that are palpable to a new investor. They asked us to give them concepts under which we could raise money or would invest ourselves with the caveat that hair cutting or equitizing the loan isn't an option (but they can be very flexible with the loan including balloon payments or maybe increasing the loan amount). And they have asked that Brian, Bill, Jamie and I be in DC on Monday to discuss different investment scenarios (recognizing that ultimate decision makers aren't in the room from either side but to discuss what is possible).

You may recall the total capital need is $150 million. Our caveats are that we won't fund into an unfunded plan and we won't/can't fund the entire amount with existing investors (we have made this clear to the DOE since discussions started).

We are thinking we should ask for the best case scenario (I.e. Not negotiate against ourselves ahead of time) and if they say it is within the realm of possibly we will discuss internally whether we should consider making the investment.

Our current thought on an ask is as follows (please feel free to chime in with other ideas - we will lay this out in a much clearer manner later this week): the DOE increase the loan by $100 to 110 million and current or new investors provide $50 to 40 million of equity (this gets the company $150 million and is within the original 73/27 debt to equity split). In a liquidation scenario the entire $150 million is ahead of the DOE loan and our $175 million of convertible debt (we may ask for the new debt and equity to be pari passu but the key is that it is ahead of the original $535 million). We would like our convertible loan and the DOE loan to be pari passu (our loan is secured by solyndra corporate, Fab 1 and IP which we will give up to stay side by side) - this would only be in a downside case as we would convert our loan to equity in an upside case. I doubt we get our loan side by side with the DOE but it is something to give up in a negotiation. The series A - F would then have 100% of the common equity subject to massive dilution if the $175 million convertible debt converts (into app. 80% of the equity) and further dilution by the $40 to $50 million of new equity (which would be a participating preferred with strong liquidation preferences in front of all current equity holders). We will ask for 70% of the DOE loan to accrue interest at 2.5% with a balloon payment in 2020 and 30% to start amortizing in 2013.

Although these terms may sound odd, it was apparently clear that the DOE wasn't making an economic decision about the debt, but was wanting the face value and chance for full repayment to be a viable option regardless of the term.

Sorry this isn't more fleshed out but I wanted to get this is front of you as we are thinking about it.

Steve

Steve

Footnote 486

Franklin, Monekia

From:	Bill Stover [redacted]
Sent:	Friday, December 03, 2010 8:16 AM
To:	Nwachuku, Frances
Cc:	Brian Harrison; Steve Mitchell; [redacted] jamie [redacted]
Subject:	Dept of Energy Meeting Monday, December 6
Attachments:	DOE Mtg Dec 6.pdf

Good Morning Frances,

Thank you for making your team available for our meeting on Monday. Our gathering on Monday, and subsequent days as necessary, is a critical opportunity to forge a common ground for structuring a solution that works for the Dept of Energy, the Company, and our investors.

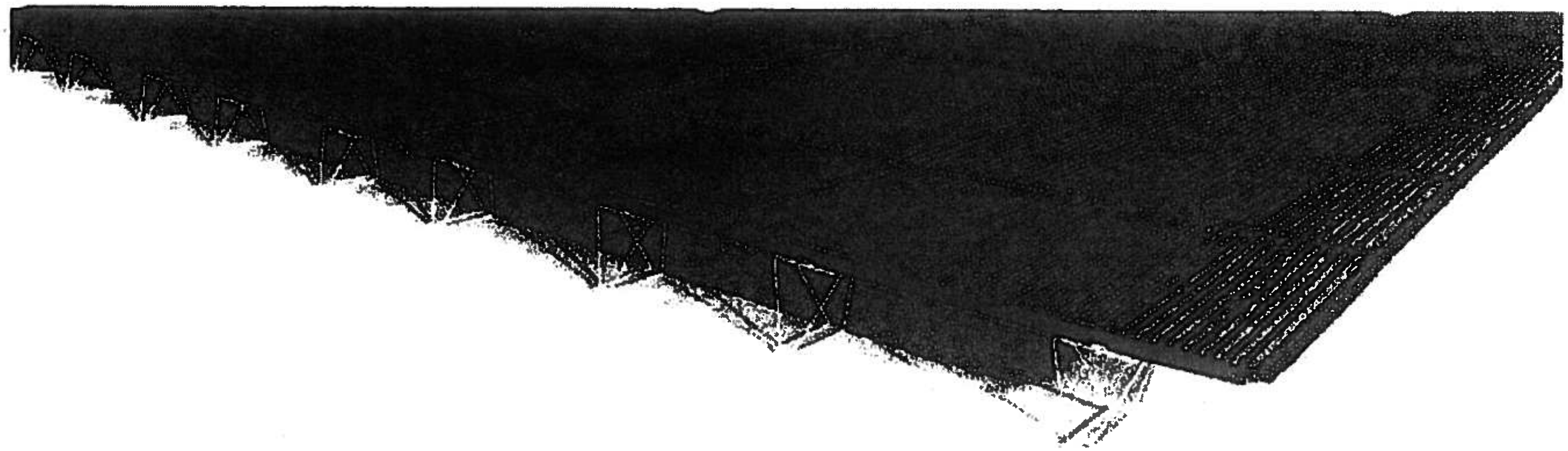
As indicated previously, Brian Harrison, myself, Steve Mitchell and [redacted] will be in attendance. Mr. [redacted], one of Steve's senior analysts, will also be joining. Given the nature of our deliberations and the urgency of moving forward timely, Jonathan Silver's availability to join discussions is essential.

As requested, I've attached an outline reflecting the Company's and our existing investors' perspective. We recognize there are very tough challenges noted therein for all constituents, but are optimistic that we can find common ground to move forward.

I will give you a call this morning.

W. G. "Bill" Stover, Jr.
CFO

[redacted]

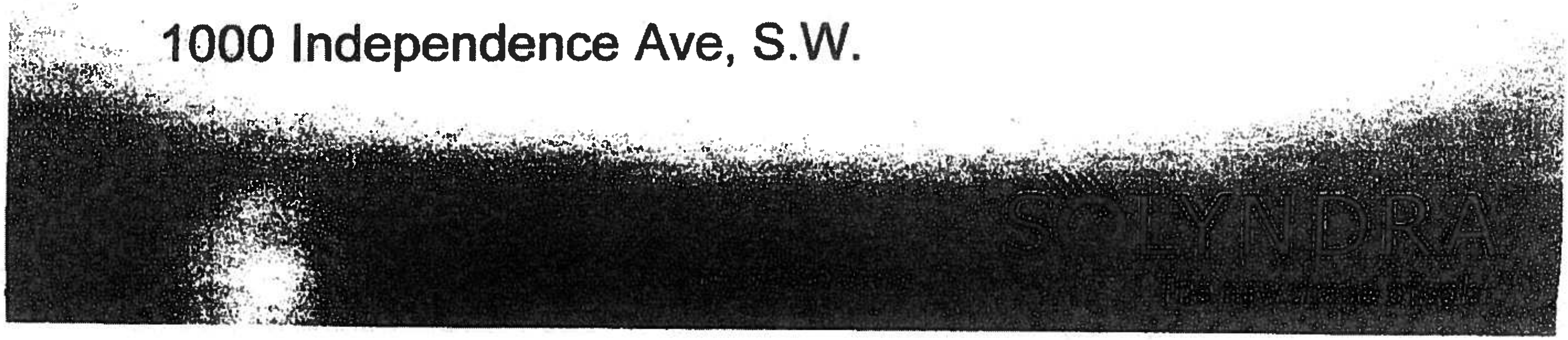


Dept. of Energy Meeting

December 6, 2010 – 9:00 am

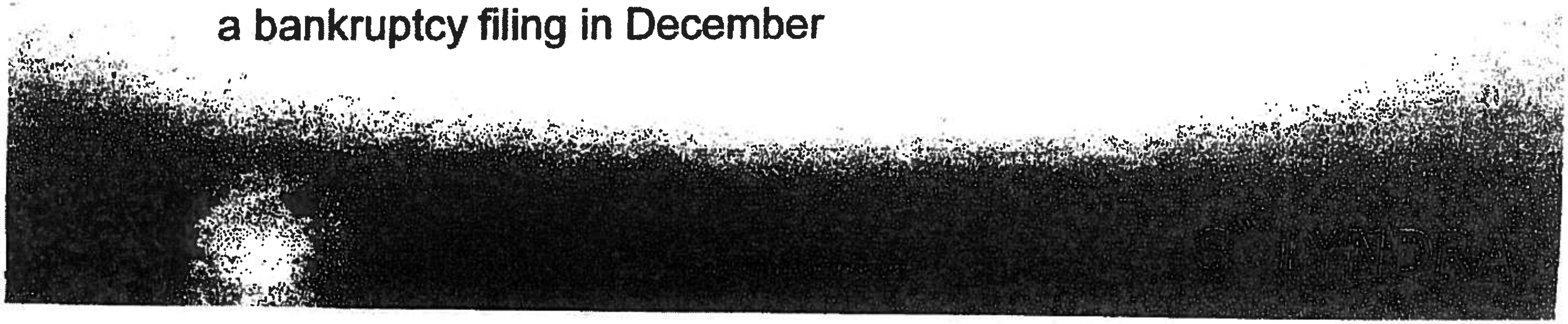
Forrestal Building

1000 Independence Ave, S.W.



Why are we here?

- Desired Outcome
  - —Come to agreement on structural path forward to secure incremental funding
- Timing/Urgency
  - —Without access to FFB loan, the Company will be unable to pay its obligations in December
- Preserve 1,000 Solyndra jobs and U.S. supplier infrastructure spending of $150 Million annually
- Avoid the Alternative
  - —Absent a viable funding path, the Company must move forward with a bankruptcy filing in December



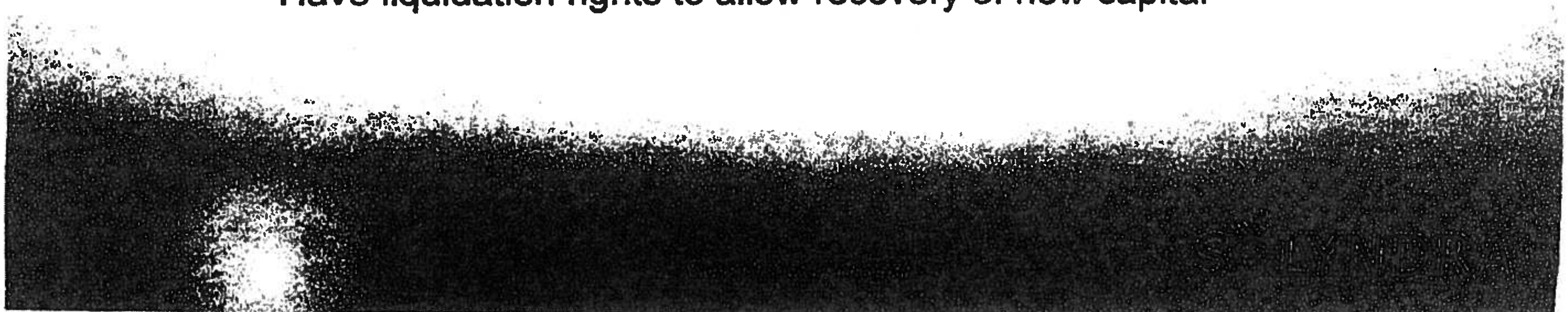
Situation Assessment

- Company's perspective:
  - –Ensure continued access to FFB loan draws
  - –Obtain incremental capital to achieve positive cash flow from operations ($150 Million per plan)
  - –Securing capital from <u>new</u> investors is not possible within the relevant time horizon

- Dept. of Energy's perspective:
  - –Complete Fab 2
  - –Achieve sustainable operating state; fully service FFB loan
  - –Debt to equity conversion is not possible
  - –Incremental investor capital must be committed as a condition for continued FFB/DOE loan draws

Situation Assessment

- Existing Investors' perspective:
  - –Have demonstrated commitment to the business through most recent $175 Million convertible debt infusion ($50 Million funded as recently as Sept 23)
  - –$970 Million equity invested is gone; equity investors resigned to <u>zero</u> recovery
  - –Each existing investor will evaluate incremental funding as a fresh investment decision wholly on its merits
  - –Terms of any new investment must:
    - Be in context of fully funded plan
    - Have liquidation rights to allow recovery of new capital



Potential Solution in Summary

- $150 Million of incremental capital to be secured through a combination of increasing the FFB loan size and existing investor funding; i.e. fully-funded plan
  - –$100 Million increase to FFB loan
  - –$50 Million investor funding (convertible debt pari passu with FFB loan increase)
  - –Senior liquidation position over $535 Million existing FFB loan and $175 Million existing convertible notes

- $535 Million FFB loan and $175 Million existing convertible notes have pari passu rights in all security

Summary of Revised Proposal

- ***Loan Amount:*** increase loan amount by $100,000,000 ($635 Million in total)
- ***Convertible Debt:*** $50,000,000 new debt from existing investors
- ***Seniority:*** Increased loan amount and new convertible debt pari passu, and senior to all other indebtedness
- ***Security Interest:*** expanded to include a first priority security interest in all assets of Solyndra, Inc. including intellectual property
- ***Guarantee***: Complete and unconditional guarantee of all Fab 2 obligations including the Indebtedness by Solyndra, Inc.
- ***Loan Maturity:*** extended to December 15, 2020
- ***Amortization Schedule:*** ***Tranche 1*** - $200,000,000 amortizing over term through December 2020
  - Interest forbearance until December 15, 2013; beginning of principal & interest amortization schedule
- ***Balloon Payment:*** ***Tranche 2*** - $435,000,000 and its related interest accumulation due December 2020

Summary of Revised Proposal, cont.

- ***Pre-Funding of Cost Overrun Account:*** Removal of obligation to pre-fund $30,000,000 for cost overruns
- ***Advance Schedule:*** Continued draws to full extent of loan total
- ***Credit Subsidy Cost Payments:*** To the extent that the modifications set out in this Term Sheet result in an additional Credit Subsidy Cost payment, DOE will use funds allocated under Section 1705 of Title XVII to fund those payments
- ***Anticipated Physical and Operational Completion:*** extended to December 31, 2013
- ***Debt Service Reserve Ratio:*** needs to be modified in concert with adjusted business plan

Summary of New Convertible Debt

- ***Amount:*** $50,000,000
- ***Option:*** Right, at the election of the Company and new investors, to increase convertible debt financing by $50,000,000 (aggregate $100 Million) on same terms
- ***Interest Rate:*** 2.5 % accruing through maturity
- ***Conversion:*** Optional at holders discretion; conversion ratio and/or pre-money valuation to be determined
- ***Maturity:*** December 15, 2015
- ***Liquidation Preference:*** Pari passu with incremental $100 Million of FFB loan funding, and senior to existing $535 Million FFB loan and existing $175 Million convertible notes

Footnote 487

From: George Kaiser [redacted]
Sent: Tuesday, December 07, 2010 4:10 PM
To: Steve Mitchell
Cc: [redacted] Ken Levit
Subject: RE: DOE negotiatons regarding solyndra

Yeah, I realized that. I'd go in pari pasu but that is probably not a deal killer. They would have no ability to create another funding crisis on the rest of the loan because of covenant violations? This would get both of us through deadlines until June 30? What chance is there to realize cash breakeven by then? Can they help on the manufacturing tax definition, now that they have a vested interest?

From: Steve Mitchell
Sent: Tuesday, December 07, 2010 10:06 AM
To: George Kaiser
Cc: [redacted] 'ken[redacted]
Subject: Re: DOE negotiatons regarding solyndra

As currently described - yes. But we have not communicated this to the DOE yet so we could ask for pari passu with their 75 and 95. We would be taking equity upside with our 75 that they would not receive - which was the rational for being junior to their new capital. We would still amortize ahead of their already funded debt.

From: George Kaiser
Sent: Tuesday, December 07, 2010 10:03 AM
To: Steve Mitchell
Cc: [redacted] 'ken[redacted]
Subject: RE: DOE negotiatons regarding solyndra

So, the new $75MM on our side would be subordinate to the new $75MM on the DOE side?

From: Steve Mitchell
Sent: Tuesday, December 07, 2010 9:59 AM
To: George Kaiser
Cc: [redacted] 'ken[redacted]
Subject: Re: DOE negotiatons regarding solyndra

George,

We've had quite a bit of internal discussions and some back and forth with the DOE since last night. My prior email was more of an update and I would like to request authority to make an offer to the DOE today that would fully fund Solyndra's go forward plan and revise the DOE loan. I don't think providing $25 million now to keep the DOE funding makes sense at this hour. This amount only gets us through February and we won't raise additional capital in that time period. It also enforces the DOE's thought that we will continue to fund the company.

We would like to propose that the DOE increase its loan by $75 million (we asked for this late last night and don't know

if it is possible at this hour) and Argonaut and Madrone will underwrite a $75 million commitment (50/50) to fully fund the business on a go forward basis. We have consistently told the DOE we don't have the entire $150 million to fund the business and we won't invest in anything short of a fully funded plan. The DOE's $75 million plus the additional $95 million will be the senior secured debt of Solyndra. The argonaut/madrone $75 million will be subordinated to the senior loan but senior to the remaining $440 million of DOE loan (which will have the discounted 15 year term characteristics I described last night). The convertible debt will convert into equity and our new $75 will have equity purchase rights in some form for a large share of the ownership as well.
This gives the company the best opportunity to execute on its business plan as they can stop fundraising and communicate to the marketplace that they are fully funded. I expect our commitment of $37.5 million could be lowered by other investor's participation should we choose to do so. Jamie and the Madrone group have approved this plan. I have talked with [redacted] and he is okay to move forward subject to my discussion with you for your feedback one way or another.

I don't know the odds of the DOE agreeing to do this - I put them around 50 / 50. If we make this proposal the best case scenario for this week is that the DOE's agrees to try and get the loan increase approved, funds Thursday's loan draw and we wait to hear in December whether they can increase the loan. If they don't increase the loan we would not be obligated to fund any additional capital. Please let me know if you are okay with us making this proposal.

Thanks

Steve

From: Steve Mitchell
Sent: Monday, December 06, 2010 08:26 PM
To: George Kaiser
Cc: [redacted]; Steve Mitchell; ken[redacted]
Subject: DOE negotiatons regarding solyndra

George,

As you know, [redacted] and I are in DC along with the Solyndra management team trying to work out terms to the DOE loan that would enable the company to raise money (internally or externally) and also keep the DOE on its current funding schedule. Last week we requested that the DOE increase the size of its loan by $100 million and current investors would potentially provide an additional $50 million of equity to fully fund the anticipated $150 million to reach cash flow break even. The DOE has been adamant that they cannot statutorily amend the loan to provide additional capital and a new loan would be completed by June at the earliest and would not occur in the current DC environment. With that framework we sat down today to try and find some common ground. I have been very upfront that the likelihood of reaching a deal this week was low and that if the DOE decides not to fund on Friday that we understand the ramifications (i.e. we move toward a liquidation scenario). We have also consistently stated that we would not fund into a plan that was not fully funded.

One of the primary concerns that potential investors have cited when passing on Solyndra has been that they would be investing behind $535 million of the DOE loan. To be clear, they are also very concerned about the company's capacity ramp in the second half of 2011 (and the channel development that needs to occur to meet this increase in output), the cost reduction roadmap for the product, the Chinese competition remaining rational actors regarding pricing (i.e. maintaining a gross margin) and that additional capacity expansion would need to be based on a lower cap-ex model than we currently have for growth. To the extent we can work out terms with the DOE (which will require some additional capital commitment by Argonaut and Madrone), it is my opinion that it will be very difficult to attract a new investor in the timeframe in which the capital needs to be raised and we will face letting the company go under or funding it ourselves along with Madrone.

As mentioned above, the DOE can not fund more capital than the original loan called for ($95 million remains to be drawn), however, as of today they have shown a willingness to be very creative to incent additional capital investment. However, their opening requirement for funding any incremental loan draws was that current investors commit an additional $75 million this week (funded pro rata with the future loan draws). This is something I have pushed back on but it is clear that if we want to receive additional capital from the DOE that we will need to make a commitment of some amount of capital - I have discussed $25 million with Jamie McJunkin of Madrone and this is a number he is comfortable committing to on a 50/50 basis with Argonaut at this time but no more (the unfortunate reality is that none of the other investment groups can make a commitment in any way close to this schedule so any new dollars should end up owning the company).

We were far apart from the DOE on our asks - I have been pushing them to haircut their loan by $335 million which they will not (cannot) politically get done and they would rather have the fallout from a bankrupt investment than appear to enrich others by discounting the loan to its potentially current value and let us make outsized returns in an upside scenario - Frances (the lead negotiator for the DOE) understands she should discount the loan to increase the odds of a return of some portion of capital and her response is in the US government environment it is impossible for her to accomplish this. She has engaged with me on a discount to a greater extent than on an increase in the loan amount (which is consistently dead on arrival), however, she states that it is not a possibility (though it could be a walk away request in my mind).

In light of the distance between our respective positions we agreed to work on a framework of terms that could potentially get done recognizing that I would have to secure a committment from you, [redacted] GKFF board, Madrone and other investors. I have attached the framework that was distributed tonight to the DOE and our group. The terms are basically as follows: Current investors would commit to an additional $25 million of capital this week and would contribute an additional $50 million into a fully funded plan (in other words, the company would only have to raise $75 million of outside capital to have a fully funded plan); the DOE would committ to funding its remaining $95 million of loan draws; the $150 million of new investor capital and the to be funded $95 million would make up the senior secured debt of Solyndra (secured by Fab 1, Fab 2, IP and corporate); the remaining $440 million would be subordinated to the newly funded $245 million senior debt and would be discounted to app. $250 million and would accrete back up to $440 million over a 15 year term. The $175 million convertible debt contributed this summer would be converted into app. 80% ownership of the common equity. For making the new senior loan ($150 million) new investors would receive warrants in the common (or some form of preferred) for a majority of the company (not sure what this should be yet but not a large concern for the DOE as it is behind their loans (but to be clear, the $150 million amortizes pro rata along with the remaining $95 million of DOE loan draws - this is designed to de-risk this capital as much as possible). In the event the company qualifies for the manufacturing tax credit this would reduce the amount of the $150 million dollar for dollar by app. $40 to $45 million.

Please note that we have some open points on this - we proposed a balloon payment on the $440 million subordinated note and the DOE is asking for some amortization - $6.25 million per quarter beginning in 2016 with a $190 million balloon payment was inserted but not agreed to. The DOE indicated that they would need an additional firm commitment of $50 million or they would not pay the January or February draws - I was adamant that this was a non-starter and that we would only commit to funding the additional committment into a fully funded plan. The $25 million will get the company through the end of February and $75 million gets the company through the end of the 2nd quarter. At that time we should have a good idea on sales traction and could possibly raise outside capital, however, I put very little faith on raising additional capital in 2011 from outside investors and I put no faith in raising outside capital prior to February. Goldman Sachs shares my concerns that it will be very difficult to bring in additional equity capital as the company has just been out in the marketplace too long (pre-IPO convert, IPO filing, current raise) and it has gotten long in the tooth for potential investors.

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If the DOE requires more than an additional $25 million committment to continue funding through February I would not recommend moving forward. However, with the senior loan position alongside the DOE it is getting more interesting to give the company the additional runway to play out its channel devlopment and grow under Brian's leadership. I know this is a short time frame and we don't necesarily have to reach an agreement with the DOE tmrw but we definitely need some fairly concrete direction within a couple of days. I wish you had met Brian and had a direct update on Solyndra's operations from management as they can do a much better job conveying where the company is (as you know it is a big ship that is turning slowly but they do feel it is getting turned around in the right direction). Please let me know if you have any questions, comments or suggestions or if you would like to have a call with me and management at around 8am or 8:30am CST prior to our meeting with the DOE. At a minimum I will step out of the DOE meeting and update you on their feedback. At some point our negotiations will break down or I will request authorization of some amount of capital to commit (most likely $12.5 million) to be funded in January. Obviously this is a moving process and I will keep you and the rest of the team in the loop as much as possible.

Steve

From: [redacted]
Sent: Mon 12/6/2010 5:26 PM
To: Nwachuku, Frances; [redacted]
Cc: Steve Mitchell; Brian Harrison; [redacted]; Bill Stover; [redacted]
Subject: Solyndra Response

Attached is our response, can you please circulate to the rest of your team.

Thanks.

[redacted]
VP, Deputy General Counsel
Solyndra, Inc.
[redacted]

Footnote 493

From: Steve Mitchell [redacted]
Sent: Tuesday, December 07, 2010 3:40 AM
To: Ken Levit
Subject: Re: DOE negotiatons regarding solyndra

Thank you sir. It is an incredibly odd set of negotiations. Appearances are far more important than economics

From: Ken Levit [redacted]
Sent: Monday, December 06, 2010 09:36 PM
To: Steve Mitchell
Subject: Re: DOE negotiatons regarding solyndra

Appreciate your valiant efforts. Good luck tomorrow.

From: Steve Mitchell [redacted]
Sent: Monday, December 06, 2010 08:26 PM
To: George Kaiser [redacted]
Cc: [redacted]; Steve Mitchell [redacted]; Ken Levit
Subject: DOE negotiatons regarding solyndra

George,

As you know, [redacted] and I are in DC along with the Solyndra management team trying to work out terms to the DOE loan that would enable the company to raise money (internally or externally) and also keep the DOE on its current funding schedule. Last week we requested that the DOE increase the size of its loan by $100 million and current investors would potentially provide an additional $50 million of equity to fully fund the anticipated $150 million to reach cash flow break even. The DOE has been adamant that they cannot statutorily amend the loan to provide additional capital and a new loan would be completed by June at the earliest and would not occur in the current DC environment. With that framework we sat down today to try and find some common ground. I have been very upfront that the likelihood of reaching a deal this week was low and that if the DOE decides not to fund on Friday that we understand the ramifications (i.e. we move toward a liquidation scenario). We have also consistently stated that we would not fund into a plan that was not fully funded.

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Steve

From: [redacted]
Sent: Mon 12/6/2010 5:26 PM
To: Nwachuku, Frances; [redacted]
Cc: Steve Mitchell; Brian Harrison; [redacted]; Bill Stover; [redacted]
Subject: Solyndra Response

Attached is our response, can you please circulate to the rest of your team.

Thanks.

[redacted]
VP, Deputy General Counsel
Solyndra, Inc.
[redacted]

Footnote 494-507

From: Steve Mitchell [redacted]
Sent: Wednesday, December 08, 2010 5:02 AM
To: George Kaiser
Cc: [redacted] Ken Levit
Subject: Re: DOE negotiatons regarding solyndra

George,

Unfortunately our proposal with the DOE did not fly.

They acknowledge that they should be increasing the loan to provide additional capital or asking us to contribute to a fully funded plan in conjunction with the DOE loan being reduced to create incentive for new investment.

However, they also acknowledge that politically they have no will or ability to get this done.

The DOE really thinks politically before it thinks economically and in a conversation today with Joel J he confirmed this (he knows Jonathan Silver – head of the DOE loan program).

After the DOE summarily shot down our proposal, we politely moved the conversation toward how we should use the time to start discussing the bankruptcy process since all of the relevant parties were in the room (by relevant I mean – the DOE as senior secured lender for fab 2; Argonaut as the majority holder of the convertible debt which is the senior secured loan relating to Fab 1, the intellectual property and all company assets excluding Fab 2 and Solyndra management).

To me it was clear that the DOE folks were somewhat caught off guard that we weren't going to bail out the company.

We broke from this meeting and Frances, the lead decision maker for the DOE at this week's negotiations (Jonathan Silver did not attend the meetings), grabbed me and wanted to discuss one final proposal from the DOE.

She suggested that we (current investors) commit to fund $75 million now and in exchange the DOE would fund the remaining $95 million (all of the variables described in the transaction last night would apply lower in the capital stack).

Under her new proposal, in a downside situation – i.e. a liquidation scenario – our $75 million would receive 100% of the liquidation proceeds until we were made whole and her $95 million would stand behind us. However, in an upside situation where the company can amortize the loan out of cash flow the DOE's capital would flip up to the senior position and our $75 million would be subordinated to the DOE's $95 million.

She acknowledged that this still required us to fund into an unfunded plan, however, in May/June timeframe if we did not feel good about the business then we could choose to liquidate at that time and in her mind we should be made whole on the entire amount of the $75 million (she is probably within reason on this statement as the land and building should fetch something around that number – it is a specialized building so access to the right buyer will drive value higher or lack of the right buyer could lead it lower).

I pushed Frances if the DOE would also haircut a portion of its loan and she again reiterated that they could not (please recall the currently funded portion of the DOE loan is to be discounted to app. $250 million and then accretes back to

$440 million over a 15 year term - so at some level they are discounting the loan or foregoing true interest for the next 15 years).

I agreed to discuss it internally and with Madrone as well.

We had a great deal of discussion regarding this proposal today and I struggle to recommend making the additional investment.

One open question was where in the capital stack would the additional $75 million come in (i.e. the second $75 million tranche of the $150 million total).

We asked for clarification stating our assumption was that if it had to be provided by insiders than it should be pari passu with the first $75 million as the company was not significantly de-risked by the time the capital was needed to attract outside investors.

Frances was adamant that this was unacceptable and the second $75 million would be pari passu with the $440 million or junior to the $95 million at best.

She seemed open to leaving the question of the second $75 million undetermined as well and dealing with it at the time the capital was actually needed [redacted] (Solyndra general counsel) and [redacted] both acknowledged that the pressure on the DOE, for a variety of reasons, would be much greater in May/June when their loan was fully funded, they are behind our $75 million and the company is progressing on its plan and that we would have more leverage at that time).

The most compelling part of the DOE proposal is it arguably gives us a free look into May/June timeframe to see if the company has executed on its plan.

The most significant thing we will be able to tell at that time period is whether the company has been successful in its channel and market development strategies (the current thinking is that this effort is on the right track and there are good indicators of better traction every day).

We will not, by this time period, have very good clarity into Solyndra's ability to pull costs out of the process as Q1 will have COGS as we transition over from Fab 1 to Fab 2.

We won't really know about costs savings until Q3 and Q4.

I bring these items up as this request does reduce our risk in the downside scenario (versus pari passu or behind the DOE loan), however, it does require us to fund into an unfunded business plan.

My primary concern is that at the time we will need to make a funding decision on the next $75 million prior to a time in which the company will be able to attract 3

rd party capital and we will be forced to make a decision to fund additional capital or liquidate the company at a time when it will be difficult to have real conviction around the ultimate success of the business.

To say this another way, it is somewhat implicit in funding the senior secured $75 million today that we will fund the additional $75 million (and we won't know dramatically more at the time we are forced to make that decision).

Madrone is inclined to participate in the DOE proposal as they value the optionality that the senior secured position provides, however, they don't really have an appetite to provide a portion of the next $75 million (i.e. if Solyndra cannot raise the capital from outsider investors in the next round than we would liquidate the business (regardless of how well the company has progressed)).

This is a simplification of Madrone's position but I wanted to note that they are leaning more positively than I am to fund the first $75 million, but they don't share my fear that we get stuck in a very difficult decision regarding the following $75 million (the company can either raise outside capital or it cannot).

I also question the upside opportunity on an additional $150 million equity investment.

The current plan projects a 2014 Ebitda of $190 million.

[redacted]

These valuations assume the company does not require additional capital and it achieves the full potential of the plan.

Obviously the company has a history of missing its plans which is a primary reason for our concern (this is somewhat abated by the plan's author – Brian Harrison - the new CEO).

However, a good portion of the prior misses were poor assumptions on outside factors (pricing, sales costs) that Brian doesn't have better clarity on than prior management.

This plan is far more conservative on line speed (no increases in the plan) and panel pricing but it does underwrite to a continued increase in panel power which is a variable we have missed on in the past.

I realize the above is a bit all over the map.

To restate my point: I do believe we (along with Madrone and smaller current investors) can fund the first $75 million and ultimately recover that capital if we don't like the company's progress.

However, I think it will be incredibly tough to have the conviction in any situation but a disaster scenario to pull the rip cord and liquidate the company (not to mention it won't be our decision alone to make).

For this reason I do not feel comfortable recommending moving forward.

I have follow up discussions with Goldman Sachs (they are reaching back out to financial investors to test their appetite for this structure), the DOE and management prior to our Argonaut review meeting tmrw afternoon.

I also have a board call after our Argonaut meeting to update the board and gauge other investor's interest in the DOE proposal.

I will continue to update you if any additional information arises.

Don is in the thick of getting his head around the NOL situation (in both a bankruptcy and non-bankruptcy setting) and I continue to ask straw man scenarios that make no sense (I'm clearly no tax guy).

We hope to have some solid sense of the opportunity by Thursday's meeting.

Please let me know if you have any additional questions, comments or suggestions.

Steve

From: George Kaiser
Sent: Tuesday, December 07, 2010 10:09 AM
To: Steve Mitchell
Cc: [redacted]'ken[redacted]
Subject: RE: DOE negotiatons regarding solyndra

Yeah, I realized that. I'd go in pari pasu but that is probably not a deal killer. They would have no ability to create another funding crisis on the rest of the loan because of covenant violations? This would get both of us through deadlines until June 30? What chance is there to realize cash breakeven by then? Can they help on the manufacturing tax definition, now that they have a vested interest?

From: Steve Mitchell
Sent: Tuesday, December 07, 2010 10:06 AM
To: George Kaiser
Cc: [redacted]'ken[redacted]
Subject: Re: DOE negotiatons regarding solyndra

As currently described - yes. But we have not communicated this to the DOE yet so we could ask for pari passu with their 75 and 95. We would be taking equity upside with our 75 that they would not receive - which was the rational for being junior to their new capital. We would still amortize ahead of their already funded debt.

From: George Kaiser
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To: Steve Mitchell
Cc: [redacted]ken[redacted]
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Subject: DOE negotiatons regarding solyndra

George,

As you know, [redacted] and I are in DC along with the Solyndra management team trying to work out terms to the DOE loan that would enable the company to raise money (internally or externally) and also keep the DOE on its current funding schedule. Last week we requested that the DOE increase the size of its loan by $100 million and current investors would potentially provide an additional $50 million of equity to fully fund the anticipated $150 million to reach cash flow break even. The DOE has been adamant that they cannot statutorily amend the loan to provide additional capital and a new loan would be completed by June at the earliest and would not occur in the current DC environment. With that framework we sat down today to try and find some common ground. I have been very upfront that the likelihood of reaching a deal this week was low and that if the DOE decides not to fund on Friday that we understand the ramifications (i.e. we move toward a liquidation scenario). We have also consistently stated that we would not fund into a plan that was not fully funded.

One of the primary concerns that potential investors have cited when passing on Solyndra has been that they would be investing behind $535 million of the DOE loan. To be clear, they are also very concerned about the company's

capacity ramp in the second half of 2011 (and the channel development that needs to occur to meet this increase in output), the cost reduction roadmap for the product, the Chinese competition remaining rational actors regarding pricing (i.e. maintaining a gross margin) and that additional capacity expansion would need to be based on a lower cap-ex model than we currently have for growth. To the extent we can work out terms with the DOE (which will require some additional capital commitment by Argonaut and Madrone), it is my opinion that it will be very difficult to attract a new investor in the timeframe in which the capital needs to be raised and we will face letting the company go under or funding it ourselves along with Madrone.

As mentioned above, the DOE can not fund more capital than the original loan called for ($95 million remains to be drawn), however, as of today they have shown a willingness to be very creative to incent additional capital investment. However, their opening requirement for funding any incremental loan draws was that current investors commit an additional $75 million this week (funded pro rata with the future loan draws). This is something I have pushed back on but it is clear that if we want to receive additional capital from the DOE that we will need to make a commitment of some amount of capital - I have discussed $25 million with Jamie McJunkin of Madrone and this is a number he is comfortable committing to on a 50/50 basis with Argonaut at this time but no more (the unfortunate reality is that none of the other investment groups can make a commitment in any way close to this schedule so any new dollars should end up owning the company).

We were far apart from the DOE on our asks - I have been pushing them to haircut their loan by $335 million which they will not (cannot) politically get done and they would rather have the fallout from a bankrupt investment than appear to enrich others by discounting the loan to its potentially current value and let us make outsized returns in an upside scenario - Frances (the lead negotiator for the DOE) understands she should discount the loan to increase the odds of a return of some portion of capital and her response is in the US government environment it is impossible for her to accomplish this. She has engaged with me on a discount to a greater extent than on an increase in the loan amount (which is consistently dead on arrival), however, she states that it is not a possibility (though it could be a walk away request in my mind).

In light of the distance between our respective positions we agreed to work on a framework of terms that could potentially get done recognizing that I would have to secure a committment from you, [redacted] GKFF board, Madrone and other investors. I have attached the framework that was distributed tonight to the DOE and our group. The terms are basically as follows: Current investors would commit to an additional $25 million of capital this week and would contribute an additional $50 million into a fully funded plan (in other words, the company would only have to raise $75 million of outside capital to have a fully funded plan); the DOE would committ to funding its remaining $95 million of loan draws; the $150 million of new investor capital and the to be funded $95 million would make up the senior secured debt of Solyndra (secured by Fab 1, Fab 2, IP and corporate); the remaining $440 million would be subordinated to the newly funded $245 million senior debt and would be discounted to app. $250 million and would accrete back up to $440 million over a 15 year term. The $175 million convertible debt contributed this summer would be converted into app. 80% ownership of the common equity. For making the new senior loan ($150 million) new investors would receive warrants in the common (or some form of preferred) for a majority of the company (not sure what this should be yet but not a large concern for the DOE as it is behind their loans (but to be clear, the $150 million amortizes pro rata along with the remaining $95 million of DOE loan draws - this is designed to de-risk this capital as much as possible). In the event the company qualifies for the manufacturing tax credit this would reduce the amount of the $150 million dollar for dollar by app. $40 to $45 million.

Please note that we have some open points on this - we proposed a balloon payment on the $440 million subordinated note and the DOE is asking for some amortization - $6.25 million per quarter beginning in 2016 with a $190 million balloon payment was inserted but not agreed to. The DOE indicated that they would need an additional firm commitment of $50 million or they would not pay the January or February draws - I was adamant that this was a non-starter and that we would only commit to funding the additional committment into a fully funded plan. The $25 million will get the company through the end of February and $75 million gets the company through the end of the 2nd quarter. At that time we should have a good idea on sales traction and could possibly raise outside capital, however, I put very little faith on raising additional capital in 2011 from outside investors and I put no faith in raising outside capital prior to February. Goldman Sachs shares my concerns that it will be very difficult to bring in additional equity capital as the company has just been out in the marketplace too long (pre-IPO convert, IPO filing, current raise) and it has gotten long in the tooth for potential investors.

We are expected to meet with the DOE again at 10am tmrw morning. Each group is going back to superiors / investment committee, etc to determine if these terms are even in the realm of possibility for getting a deal done. To be clear, the $25 million would need to be split 50/50 from Argonaut and Madrone but would not get the company far enough along to have a serious chance of raising additional capital (i.e. unless the tax credit comes through we will need to contribute additional capital or let the company go and be $12.5 million deeper in the hole). However, the new capital is at a much more secure level in terms of return in a liquidation scenario (I don't think in a disaster the entire $245 million of proposed senior debt gets paid back, but at the end of February it would be app. an incremental $60 million of DOE capital and our $25 million and this would most likely be recovered in a liqudation scenario).

If the DOE requires more than an additional $25 million committment to continue funding through February I would not recommend moving forward. However, with the senior loan position alongside the DOE it is getting more interesting to give the company the additional runway to play out its channel devlopment and grow under Brian's leadership. I know this is a short time frame and we don't necesarily have to reach an agreement with the DOE tmrw but we definitely need some fairly concrete direction within a couple of days. I wish you had met Brian and had a direct update on Solyndra's operations from management as they can do a much better job conveying where the company is (as you know it is a big ship that is turning slowly but they do feel it is getting turned around in the right direction). Please let me know if you have any questions, comments or suggestions or if you would like to have a call with me and management at around 8am or 8:30am CST prior to our meeting with the DOE. At a minimum I will step out of the DOE meeting and update you on their feedback. At some point our negotiations will break down or I will request authorization of some amount of capital to commit (most likely $12.5 million) to be funded in January. Obviously this is a moving process and I will keep you and the rest of the team in the loop as much as possible.

Steve

From: [redacted]
Sent: Mon 12/6/2010 5:26 PM
To: Nwachuku, Frances; [redacted]
Cc: Steve Mitchell; Brian Harrison; [redacted] Bill Stover; [redacted]
Subject: Solyndra Response

Attached is our response, can you please circulate to the rest of your team.

Thanks.

[redacted]
VP, Deputy General Counsel
Solyndra, Inc.
[redacted]

Footnote 508

From: [redacted]
Sent: Friday, December 10, 2010 8:23 PM
To: [redacted]
Subject: Fw: Loan Overview

From: Steve Mitchell [redacted]
Sent: Friday, December 10, 2010 02:16 PM
To: Robert Thomas
Cc: [redacted]
Subject: Re: Loan Overview

From: Steve Mitchell
Sent: Friday, December 10, 2010 02:15 PM
To[redacted]
Cc[redacted]
Subject: Loan Overview

[redacted]

The following is an overview of the transaction Argonaut and Madrone ("Argonaut") are contemplating in connection with Solyndra and the Department of Energy.

Argonaut will underwrite a commitment to loan Solyndra $75 million. Argonaut will then offer participation in the loan to current investors, holders of the $175 convertible debt and select outside investors. The loan will be senior to all other Solyndra debt and will be secured by 100% of the assets in the company. The actual lenders will receive warrants exercisable into 99.9% to 100% of Solyndra. In exchange for underwriting the commitment to make the loan all of the warrants will revert back to Argonaut in the event Solyndra liquidates or files bankruptcy (this is done to clean up the ownership so Argonaut can control the process around the NOL utilization – beyond that there will be no value to the warrants in a liquidation scenario). The loan will by funded pro-rata along with the remaining $95 million of the DOE loan – first funding will be on January 10, 2011 and will be pro-rata with the December and January DOE loan draw amounts. The $75 million loan will PIK interest (6.5%) until 2013 and will then amortize over a four year period.

Solyndra will drop all of its operating assets into the single member LLC that it owns and that holds Fab 2 and has the DOE loan as well. The Solyndra parent will then be a holding company for the Fab 2 LLC and will retain the NOLs. The convertible debt and the DOE loan will be amended to accommodate the $75 million loan. The $75 million loan will be secured by 100% of the assets – the current liquidation projection of these assets is $78 million to $162 million. We will start working immediately to have a liquidation plan if that is the ultimate scenario.

The DOE will bi-furcate its $535 million loan – currently $440 million has been funded and $95 million remains to be funded. $150 million of the DOE loan ($55 currently funded and $95 million to be funded) will be senior to all other debt but the $75 million loan – this debt will amortize as the senior loan but will be junior to the $75 million loan in a liquidation scenario. This loan PIKs interest until 2013 and then amortizes over a 4 year period – the interest rate is 2.5%.

The remaining $385 million will be reduced to $270 million and will accrete back to $385 million over a 12 year period. This loan will start to amortize in 2015 with a 12 year amortization with a potential balloon payment due at the end of the term (there will be an excess cash sweep that may reduce the balloon payment to zero). This loan cannot be pre-paid at a discount.

The convertible debt will be exchanged for a new note that will not have an equity component. The $175 million amount will be reduced to $70 million and will accrete back to $175 million over a 15 year period. This loan will start to amortize in 2015 with a 15 year amortization with a potential balloon payment due at the end of the term (there will be an excess cash sweep that may reduce the balloon payment to zero). This loan cannot be pre-paid at a discount.

The current series A through F preferred would be converted to common and be worthless but outstanding as we would not want to exercise our warrants to avoid a change in control for NOL purposes. We would reduce the board to 5 to 7 members.

Please let me know if you have any questions or comments.

Footnote 509, 510

From: [redacted]
Sent: Saturday, December 11, 2010 4:01 AM
To: [redacted]
Subject: Re: Not done yet

Don't think I haven't spent the last 3 hours contemplating how to bring [redacted] back in the fold. Maddening.

From: [redacted]
Sent: Friday, December 10, 2010 09:59 PM
To: [redacted]
Subject: Re: Not done yet

At least this retrade stems from logic

From: [redacted]
Sent: Friday, December 10, 2010 09:58 PM
To: [redacted]
Subject: Re: Not done yet

Haven't got any clarity. I think steve said they we're crazy and must give up and we quit for the night. Tomorrow

Today I am 2 for 2 on being retraded.

From: [redacted]
Sent: Friday, December 10, 2010 09:55 PM
To: [redacted]
Subject: Re: Not done yet

Crazy - So possible bk if not resolved soon?

From: [redacted]
Sent: Friday, December 10, 2010 09:53 PM
To: [redacted]
Subject: RE: Not done yet

at the last second they asked for the ability to change the terms however they wanted on their end and force us to fund either way on ours.

um no

From: [redacted]
Sent: Fri 12/10/2010 9:47 PM
To: [redacted]
Subject: Re: Not done yet

What happened

----- Original Message -----

From: [redacted]
Sent: Friday, December 10, 2010 08:46 PM
To: [redacted]
Subject: Fw: Not done yet

----- Original Message -----
From: Robert Thomas
Sent: Friday, December 10, 2010 08:45 PM
To: 'SteveM [redacted]
Subject: Re: Not done yet

[redacted]

----- Original Message -----
From: Steve Mitchell [redacted]
Sent: Friday, December 10, 2010 08:46 PM
To: [redacted]
Subject: Re: Not done yet

[redacted]

----- Original Message -----
From: [redacted]
Sent: Friday, December 10, 2010 08:43 PM
To: Steve Mitchell; [redacted]
Subject: Re: Not done yet

Free if you need. Don't let me interrupt otherwise

----- Original Message -----
From: Steve Mitchell [redacted]
Sent: Friday, December 10, 2010 08:44 PM
To: [redacted]
Subject: Re: Not done yet

Just got off with Goldman. Crazy

----- Original Message -----
From: Robert Thomas
Sent: Friday, December 10, 2010 08:41 PM
To: Steve Mitchell; Robert Waldo; Jonathan Adamson
Subject: Re: Not done yet

Stay strong

----- Original Message -----
From: Steve Mitchell [redacted]
Sent: Friday, December 10, 2010 08:42 PM
To: [redacted]
Subject: Re: Not done yet

Haggling like a fool.

----- Original Message -----
From: [redacted]
Sent: Friday, December 10, 2010 08:27 PM
To: Steve Mitchell [redacted]
Subject: Re: Not done yet

Still haggling?

----- Original Message -----
From: Steve Mitchell [redacted]
Sent: Friday, December 10, 2010 05:58 PM
To: [redacted]
Subject: Re: Not done yet

If they don't give. essentially they said - by the way, you have to guaranty to fund even if we don't give you our side if the bargain. I said "uh, no"

----- Original Message -----
From: [redacted]
Sent: Friday. December 10, 2010 05:42 PM
To: Steve Mitchell; [redacted]
Subject: Re: Not done yet

Deal killer?

----- Original Message -----
From: Steve Mitchell [redacted]
Sent: Friday. December 10, 2010 05:40 PM
To: [redacted]
Subject: Not done yet

DOE came out with a ridiculous last second ask. I will explain

Footnote 511

From: [redacted]
Sent: Tuesday, December 14, 2010 1:45 AM
To: [redacted] Fred Dorwart; Ken Levit
Cc: [redacted]
Subject: Two short updates - [redacted] and Solyndra

Gentlemen - a couple of short updates.

[redacted]

Second, after several days of back and forth with the DOE they agreed to fund, and did fund; our December draw based on the terms we discussed in the meeting last Thursday and over email on Friday. On Friday night they tried to insert a clause at the last minute that said that the insiders were required to fund on the terms agreed, but that they could adjust the deal as they saw fit afterwards. Clearly this was a non-starter. The issue is their ability to get signature on the deal before our expected funding on January 10th. The solution arrived at was an escrow, that we control, that aligns our equity funding with their delivering signatures on the amended loan deal and funding the January draw (also on the 10th). It took all weekend and today to work this out, hence the delay in getting the funding from Friday to Monday. In addition, several of the Round A-F investors have expressed interest in investing in this round. [redacted] We have arranged it that for underwriting the deal both GKFF and Madrone (Walton family) will get all the warrants to control the company in a liquidation scenario irrespective of who invests $'s. If any other investors come in it will reduce our total commitment from the $37.5mm discussed. We expect to give insiders until year end to confirm their ability to participate.

As always, [redacted] and I are happy to answer any questions.

[redacted]

Footnote 513-518

From: [redacted]
Sent: Friday, December 31, 2010 9:21 PM
To: Steve Mitchell; [redacted]
Cc: [redacted]
Subject: RE: RE: Intercreditor Issues -- call today?
Attachments: #100997564v6_AL_ - Solyndra - Intercreditor Agreement Term Sheet - GDC comments 12-31a.DOC; DVComparison_#100997564v1_AL_ - Solyndra - Intercreditor Agreement Term Sheet -#100997564v6_AL_ - Solyndra - Intercreditor Agreement Term Sheet .doc

Steve,

Please find attached our proposed revisions to the Intercreditor Agreement term sheet, in clean copy and blackline.

Please note that the DOE have asked that Fab 2 have two independent directors acceptable to the DOE, and that those independent directors have a veto over voluntary liquidation. This would impede your ability to initiate a Ch. 11 filing, and therefore places relatively more stress on the standstill mechanics for out-of-bankruptcy exercise of remedies (mainly, Section 3 of the term sheet).

We look forward to discussing these issues, and some other aspects of this term sheet, with you this weekend. Please let us know what times would be convenient (perhaps Sunday midday / afternoon?), and we'll circulate dial-in details.

Thanks,
[redacted]
Attorney at Law

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York, NY 10166-0193
[redacted]

From: [redacted]
Sent: Friday, December 31, 2010 2:47 PM
To: Steve Mitchell
Cc: [redacted]
Subject: RE: Intercreditor Issues -- call today?

Steve: As an update, [redacted] will be sending our draft markup of the Intercreditor Term Sheet to you this afternoon. We think it would then make sense for us to have a call on our side, including with our restructuring experts, to walk you through the material issues on this and advise you of risks, etc., and get your input. Would be great if we could do that this weekend, perhaps on Sunday if you're available? We could then turn a draft markup out to the DOE so they have it in hand Monday morning, then hopefully start discussing with them on Tuesday. Best regards. [redacted]

From: Steve Mitchell [redacted]
Sent: Wednesday, December 29, 2010 3:34 PM

To: [redacted] bill.stover[redacted]
Cc: jamie[redacted]
Subject: Re: Intercreditor Issues -- call today?

I just had a call with Frances from the DOE. [redacted] Bill and Jamie - can we do a quick call? Jamie if you are out I can update you later. I think we have boiled down the issue to one thing - a broad thing - the DOE needs to control the process of liquidation. Having said that they realize we need a say - they are just worried we will short sell everything for $76 million and be on our merry way. They are open to the concept of a creditors committee, process for picking liquidation firms, time periods in which things need to start occurring so we aren't in no man's land forever, recognize we can't let the DOE go out and wipe us out with a DIP financier, etc. She wants us to mark up their document with what we need out and work on a way that gives them a true say in driving to the highest liquidation sale possible while also requiring that the outcome of liquidation value is the outcome. She would like to be sitting across from each other in DC sometime next week as well to hash this out conceptually before the 10th.

[redacted] - please join this call as well.

[redacted] - can we have a call at 4pm eastern time to discuss?

From: [redacted]
Sent: Monday, December 27, 2010 09:50 AM
To: bill.stover[redacted]; Steve Mitchell; [redacted]
Cc: jamie[redacted]
Subject: Re: Intercreditor Issues -- call today?

FYI, we had a call with MoFo yesterday going through our issues, our client's initial reaction and our perspective on how the intercreditor should play out. [redacted] from MoFo was going to talk further with [redacted] at DOE today. but dealing with this on multiple levels would be helpful, as it seems like these are the biggest issues in our deal right now. Thanks all.

From: Bill Stover [redacted]
Sent: Monday, December 27, 2010 10:04 AM
To: Steve Mitchell [redacted]
Cc: [redacted] jamie [redacted]
Subject: Re: Intercreditor Issues -- call today?

I agree that placing this issue in the forefront with Frances is essential. Let me take that up today.

All the best,
Bill

On Dec 24, 2010, at 2:15 PM, "Steve Mitchell" [redacted] wrote:

> I agree. Bill?
>
> ---
>
> **From:** [redacted]
> **Sent:** Friday, December 24, 2010 04:13 PM
> **To:** [redacted] jamie[redacted]
> **Cc:** [redacted] <bill.stover[redacted]

Subject: RE: Intercreditor Issues -- call today?

Steve, I agree it is extremely over the top and won't work for us. I had wanted, however, to talk to MoFo today to get an understanding if they really think this all comes from their statutory requirements -- in other words, to understand what we may be able to move them off of and what we really think they will just stick on. The MoFo guy is not available until Sunday morning, so we will be talking to him then. My sense is #2 and #3 below are their big issues, because we are hearing they have legal requirements that they always have to be in control of foreclosing on collateral. Somehow I'm optimistic that some of these other points can go away more easily.

But I do think your and Jamie's views on this need to be communicated very clearly on the business person's level (i.e., Bill). And I don't think we need to wait for that conversation with MoFo to occur. Need to get the DOE biz person thinking hard about this, it seems.

From: Steve Mitchel[redacted]
Sent: Friday, December 24, 2010 4:58 PM
To: jamie[redacted]
Cc:[redacted] bill.stover[redacted]
Subject: Re: Intercreditor Issues -- call today?

[redacted]- I actually think Bill should lay this out but you guys let me know if Gibson Dunn should communicate to MoFo first?

From: Jamie McJunkin[redacted]
Sent: Friday, December 24, 2010 03:53 PM
To: Steve Mitchell; [redacted]
Cc: [redacted]
bill.stover[redacted]
Subject: Re: Intercreditor Issues -- call today?

I agree with Steve and am very disappointed that this is what we're seeing.

These terms are not at all consistent with our understanding. I believe it is important to signal right away that we have a number of significant issues with what is being proposed.

From: Steve Mitchell
To: [redacted]
Cc: [redacted]
[redacted]; Jamie McJunkin; bill.stover[redacted]
Sent: Fri Dec 24 13:46:46 2010
Subject: Re: Intercreditor Issues -- call today?

Guys,

This sounds ridiculous. Did we cut a deal to be the senior debt or not? If we can never force a bktcy, start a liquidation process, or wipe out the lower debt in a bktcy - what good is being senior? And if their debt can never be reduced and they can go get dip financing to crush us and our equity to keep things going we have no protection of avoiding a total wipe out of our $75 million. Unless I'm reading this wrong it appears to me that the DOE isn't at all prepared to live up to the deal we cut and I'm not about to fund under these debt terms. Am I missing something?

From: [redacted]
Sent: Friday, December 24, 2010 01:49 PM
To: Steve Mitchell
Cc: [redacted]
Subject: Intercreditor Issues -- call today?

Steve:

Below is a list of the largest issues on the Intercreditor Term Sheet proposed by DoE and MoFo. MoFo is not available today to walk through the questions that we had, but we thought it still made sense to talk with you about big picture issues. Are you available to get on the phone this afternoon to have a call on these items? Should not take too long. (If not this afternoon, then perhaps Sunday.) Let us know what time would work for you for a call, and we can send a dial-in; we are on East Coast.

Best regards,

[redacted]

ISSUES LIST

1. **Amendments, waivers, etc.:** DOE has the right to approve amendments/waivers to Loan Documents, without the consent of the other lender tranches, except there will be consent rights on fundamental payment, collateral and priority points and on changes to the most material covenant provisions (dividends, debt, change of control, liens, mergers, asset sales, funding CPs, long extensions on financial statement delivery requirements).

2. **Commencing acceleration/collateral remedies:** DOE has the sole right to initiate an acceleration of the debt and to direct foreclosure actions against the collateral after a default, except:

a. Upon a payment default, there are rights of the other tranches to force a consultation after 30 days if DOE has not accelerated and started exercising remedies; after [60] days there is a right of the other tranches to take action based on a [90]% vote; and after [90] days there is a right of other tranches to take action based on a 2/3rds vote.

b. Upon a default other than a payment default, there is a permanent standstill by the other tranches, subject to some right of the other tranches to force a consultation with DOE if they're not doing anything.

3. **Directing foreclosure remedies:** Generally, once liquidation remedies are commenced, DOE has the right to tell the Collateral Agent what to do (including what to sell, how much to sell for, etc.), except that it can't terminate remedies initiated by the other tranches (where permitted above) without the consent of the other tranches. Noteholders cannot contest or delay any enforcement actions (such as foreclosure) taken by the DOE.

4. **No bankruptcy filing:** Noteholders cannot initiate an involuntary filing against Solyndra.

5. **DIP financing:** The DOE can provide, or bring in a third party to provide, unlimited super-priority debtor-in-possession financing (potentially also rolling up some of its pre-existing debt into the super-priority position), without consent of the Noteholders and without the Noteholders' being able to contest in court.

6. **Reorganization:** The Noteholders cannot propose any cram-down plan of reorganization in bankruptcy that pays the DOE less than par (on both Tranche B and Tranche D), even if bankruptcy rules would otherwise permit such a cram-down.

[redacted]

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York, NY 10166-0193
[redacted]

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Footnote 519-522

From: George Kaiser
Sent: Monday, January 10, 2011 2:13 PM
To: Steve Mitchell
Cc: [redacted]
Subject: RE: RE: Solyndra financing

OK/GBK

From: Steve Mitchell
Sent: Sunday, January 09, 2011 2:18 PM
To: George Kaiser
Cc: [redacted]
Subject: Solyndra financing

George,

We continue to work out the terms of the senior secured loan that we agreed to with the DOE last month. The devil is certainly in the details with the DOE but it appears we have almost all of the terms finalized. We should know tonight or tomorrow if the DOE agrees to the final issues – essentially the DOE has to figure out what it can or can't do statutorily as we are working out the details.

As you know, the DOE went ahead and funded the loan draw on December 10 and the next draw is scheduled for tomorrow (January 10th). Assuming we work out the remaining details, Argonaut and Madrone will need to fund their respective pro-rata amounts of the December and January draws of our $75 million senior secured loan when the DOE funds the January draw on its loan. The Argonaut amount is approximately $6.82 million and would be funded on Tuesday or Wednesday. I apologize for not giving you the full week notice on this, I was focusing on the 31st which is when we are scheduled to finalize all legal documents and close the deal. The DOE is requiring that we fund into an escrow on their January funding just to see dollars moving on our part – if we ultimately do not close on the loan transaction then the escrowed dollars will be released back to Argonaut and Madrone.

The loan and our subsequent access to the NOLs is shaping up as we discussed last month. The company is also performing very well – they beat sales expectations by 50% and had the strongest quarter yet. We are tracking the company's progress weekly and will do so until such time in May/June that the company will need to either raise additional capital or liquidate.

Please let me know if it is okay to fund into escrow this week.

Thanks,

Steve

Footnote 523

From:	Steve Mitchell
Sent:	Tuesday, February 01, 2011 7:38 AM
To:	George Kaiser
Cc:	[redacted] 'ker [redacted] Fred Dorwart; Steve Mitchell
Subject:	Fw: Fw: Solyndra update

From: Steve Mitchell
Sent: Tuesday, February 01, 2011 01:21 AM
To: Steve Mitchell
Subject: Solyndra update

George,

I spent most of last week out at Solyndra and I wanted to send you a quick update. As you know the company is in a big state of transition from Fab 1 to Fab 2. As a result most company level financial numbers have very little meaning as costs and output are almost meaningless as the company is operating in a manner that will have no historical or future relevance (operating two manufacturing facilities at partial capacity). Accordingly this update will attempt to give you some context around where the company is and some specific numbers that should give some indication of performance within the transition.

As you know, the decision to close Fab 1 was driven by the need to conserve capital (move Fab 1 equipment to Fab 2 instead of building new equipment) and the company's failure to create demand in the near term for all of the capacity that Fab 1 and Fab 2 would have produced. The key factors for Solyndra to succeed are i) to drive demand through direct channel development to keep up with the Fab 2's capacity ramp; ii) get Fab 2 operational and drive costs lower through Fab 2's efficiencies and higher panel power and iii) finalize the restructuring of company's balance sheet (particularly the DOE debt) and raise the remaining $75 million of necessary capital.

Operations:

[redacted]

[redacted]

Sales:

Brian's initial focus was sales which had to be fixed or the company's ability to make the product would be irrelevant – he continues to spend considerable time on sales but the methodology is set and he is starting to spend considerably more time on operations. You may recall that although Brian ran EMEA sales for Intel for 4 or 5 years he is first and foremost an operations guy having worked his way up running Intel factories and eventually heading worldwide operations for all of Intel's fabrication facilities. His confidence on what he can achieve in operations appears much higher than what he could accomplish in sales, however, the impact of his efforts in sales has been noticeable. The key question is can the company ramp its sales fast enough to meet the ramping demand – if not, the company's cash needs will increase (i.e. inventory build will eat up more cash than is currently planned).

Solyndra originally sold everything it could make in 2009 and Q1 10 based on demand for the new product, a high price environment and limited manufacturing capacity. As solar pricing fell Solyndra continued to sell all or almost all of its production, however, to accomplish this end-of-the-quarter deals in Q2 (and probably Q1) were struck with distributors to move product. This had the effect of overloading the channel and much of this inventory was not selling through to the market. Notwithstanding the discounts given to move this product, the price of solar was falling so fast that the distributors were upside down in the product by the next quarter.

Brian arrived in July/August and recognized that standard distribution did not work for Solyndra's differentiated product, that we had to directly develop the market with end users and integrators and that the [redacted] sitting on distributor's shelves was a liability as they were starting to show signs that they would dump the product on the market to get it off of their shelves (and books). We met with the distributors and committed to moving the product for them. I'm giving you this history only because I enjoy reliving a painful past – just kidding – to give you the context that the company needed to move its manufacturing capacity in Q3 and Q4 but had to move the stalled inventory on distributor's shelves as well. Q3 and Q4 were record sales quarters and the company moved over [redacted] each quarter as well – the stalled inventory issue is no longer a problem.

The company shipped [redacted] They also turned two German distributors away at the end of the quarter that wanted deep discounted volume – essentially we have walked away from that channel.
It is too early in the quarter to really tell where it will turn out (solar deals are typically very end of the quarter driven), however, the company is ahead of the pace for the last two quarters. The financial plan calls for 17MWs to be sold this quarter, however, Brian has set a personal goal of 20MWs – which would leave the company completely sold out (and also assumes the company stays ahead of the production plan to even have 20MWs to sell). Pricing has held up primarily because the company has made a big push into North America

where pricing is dramatically better ($2 to $2.20 per watt in Europe versus $2.40 to $2.85 in the US - $2.24 per watt is the goal for Q1) – so mix matters.

Fab 2 is turning out to be an effective sales tool – operationally it is very impressive and the solar installation on the rooftop (along with the testimonial of the integrator that installed the system) is very compelling. I encourage you to spend the time to see the facility and operations on one of your trips to SF. I attended the first half of a day and a half sales event where the company invited 26 North America integrators who currently don't use our product – 19 attended. The response was incredible and 17 of the 19 committed to undertake an installation – the feedback was that there is still a lot of dis-information in the market place and once these guys understand the product they want it. Again, shame on us for relying too heavily on traditional distribution and not better developing the direct channel.

The head of GSA will be at the facility on February 26th and is planning a press conference and the whole works. More importantly the company is gaining traction with federal and state governments and the military. Indications last week were that we received a 2.2MW project in Kansas City on a very large IRS building. The government pipeline is accelerating at a dramatic rate but we need to see how much of this potential business actually converts to sales.

[redacted]

Surprisingly we are making ground based sales in Greece. The feed-in-tariff is such that it makes sense to grade non-agricultural land, coat it with a white reflective coating and install Solyndra panels.

I'm not conveying it well, but the sales momentum appears to be real. Repeat customers are accelerating and end users are starting to recommend Solyndra to other end users (great example – a 780kW system is being installed on the Seattle Seahawks stadium owned by Paul Allen – his group loves the technology and they have made the introduction to Microsoft and insisted that the Microsoft "green" guy take a meeting with Solyndra – which appears to have gone very well). I expect to have better clarity on sales with each coming month and will continue to send these updates with more actual numbers as the results are realized. Brian is optimistic on the pipeline however he is quick to point out that the company is a long way from the 120MW in sales planned for 2011.

As mentioned in November/December, under Brian's leadership I anticipate the company to continue to improve both operationally and with sales momentum, however, it will be difficult to really tell where we are in May / June when another investment decision will be facing insiders and the company.

Restructuring: This is an ongoing process with the DOE. The deal was cut last year but getting the DOE to engage has been like pulling teeth. The company, myself and attorneys are continually offering to be in DC but the DOE continues to put us off. They have all but admitted they are working in real time to figure our how to actually amend the loan guaranty. They have had some selective memory on the deal a time or two but we have so far been able to keep them honest (for example, they claimed that our $175 million loan was behind their loan, not pari passu, we cried foul and they backed off) and our assumption is that someone outside of direct negotiations is pushing for the DOE to cut a better deal than what they agreed to last year.

As you may recall, the DOE has continued to fund loan draws based upon our agreement in principle from last November. However, Argonaut and Madrone are funding our pro-rata monthly commitment into an escrow that only releases upon the final documentation being executed. The timing of this was never anticipated to be an issue as we had two months to finalize everything. Unfortunately timing is now becoming an issue. If the company didn't need any capital beyond the DOE's funding than timing would not be a problem, however, the company will need to have access to the equity capital by app. Feb 18th or it will start having cash issues. The Solyndra/legal team is in DC today and tmrw (after being put off for the past 10 days) and we are hoping that significant progress will be made. In many ways it just feels like the DOE cannot get out of their own way.

I will provide an update whenever anything meaningful happens, however week to week updates are not necessarily insightful right now as the company is in the process of driving sales and output but this is hard to reflect any real change over such a short period. I will give you a detailed update monthly and am obviously available for any questions you may have.

Steve

Footnote 524, 525

From: George Kaiser
Sent: Thursday, February 17, 2011 11:33 PM
To: Steve Mitchell
Cc: [redacted]
Subject: RE: RE: Solyndra capital calls

We have no choice, assuming Chu doesn't pull the plug on the payment, now that the Congressional investigation has begun.

From: Steve Mitchell
Sent: Thursday, February 17, 2011 5:09 PM
To: George Kaiser
Cc: [redacted]
Subject: Solyndra capital calls

George,

We are finally wrapping up the Solyndra loan transaction. The deal is set to close next Tuesday, however, the DOE has agreed to go ahead and fund February's loan payment tomorrow. As a result, Argonaut and Madrone are required to fund their pro rata portion of the $75 million loan into an escrow that will be released upon closing of the entire transaction (hopefully Tuesday). This amount is $4,540,636.41.

In addition, Argonaut and Madrone are required to fund the remaining portion of the $37,500,000 commitment upon closing. This amount is $19,316,249.83. Some of this capital will be returned in 20 days after the rights offering to other shareholders and noteholders is wrapped up, however, our ownership is over 40% so our pro rata will keep our investment above $30 million.

We have spent this week (and will spend next week) discussing with the rights offering with our co-investors. The company is doing well and I hope to have a detailed update to you again soon.

These are contractual commitments but please let me know if you approve to make these fundings.

Steve

Footnote 526

[redacted]

From: Nwachuku, Frances
Sent: Friday, December 10, 2010 3:48 PM
To: [redacted]
Cc:
Subject: RE: Solyndra.2010.12.10.1540.KCC.V.1
Attachments: Solyndra 2010 12 10 1540 KCC V 2.docx

Just a few minor edits.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[redacted]

From: [redacted]
Sent: Friday, December 10, 2010 3:42 PM
To: [redacted]
Cc: [redacted] Nwachuku, Frances
Subject: Solyndra.2010.12.10.1540.KCC.V.1

Attached is a revised term sheet which I believe reflects the agreement of the parties. Please review and then lets discuss. [redacted]

Solyndra
Proposed Key Business Terms and Conditions

Structural Consideration: All assets (including intellectual property) to be moved into Fab 2 LLC. Net ~~operating losses~~Operating Losses currently Solyndra, Inc. to remain at Solyndra, Inc. No Solyndra, Inc. guarantee of the Senior Debt or the Senior Second Position Debt upon entry into definitive documentation.

Senior Debt - $300 million:

Tranche A:

- $75 million at interest rate of 3-month LIBOR plus 600 basis points~~-Investor Debt~~ ("Tranche A") ~~(~~with warrant coverage pursuant to a to be determined ~~;~~structure acceptable to DOE~~-yet to be determined)~~ (reducing to 3-month LIBOR plus 200 basis points effective December 2012)
  - o To be underwritten by Argonaut/Madrone
    - Assumes DOE/FFB commits funding of remaining undisbursed amount of the DOE Guarantee Loan (approximately $95 million) subject to CP's noted below
      - o Pro-rata funding with the DOE from and after December 9, 2010 (provided, however, that fundings in December, 2010 may be deferred until date of January funding by DOE/FFB (which is anticipated to be January 10, 2011) upon a written commitment by Argonaut/Madrone to fund the full Tranche A)
- First out in the event of a liquidation event prior to initial scheduled principal payment date (March, 2013)
- Collateral:
  - o ~~100% of~~Equity interests in Fab 2 LLC and all assets of Fab 2 LLC, including IP, all equipment, agreements, etc. ("Operating Company Collateral")
  - o All assets of Solyndra, Inc. (i.e. NOL) ("Holding Company Collateral")
  - ~~o Equity interests in Fab 2 LLC~~

Tranche B:

- $150 million 2.5% DOE/FFB financing (includes approximately $95 million yet to be funded)
- Collateral:
  - o Equity interests in Fab 2 LLC and 100% of all assets of FAB 2 LLC, including IP, all equipment, agreements, etc. ("Operating Company Collateral")
  - ~~o Equity interests in Fab 2 LLC~~

Tranche C:

Up to an additional $75 million ~~investor~~senior debt financing permitted pari passu~~.~~ in payment with Tranche A and B. Collateral and terms as stated on Tranche A above (except ~~for~~Tranche C will not receive a first out position in the event of a liquidation event prior to initial scheduled principal payment date), or as to be negotiated by new lenders and acceptable to DOE/FFB.

Payment terms – Tranches A~~ & B:~~, B and C (if applicable):

- o Initial principal payment: March, 2013
- o Equal quarterly principal payments over 16 quarters
- o Final maturity: December, 2016
- o PIK interest period: Through December, 2012
- o Cash sweep as discussed below under Waterfall
- o All prepayments without penalty

Senior Second Position Debt:

- $385 million DOE/FFB financing (represents amounts previously funded)
  - OID to accomplish the following:
    - $270 million initial principal amount, accreting to $385 million evenly on a quarterly basis over a 12 year period
- $175 million existing Convertible Debt
  - OID to accomplish the following:
    - $80 million initial principal amount, accreting to $175 million evenly on a quarterly basis over a 15 year period
- $385 million DOE/FFB and $175 million existing Convertible Debt pari passu in payment and both secured on a pari passu basis in Operating Company Collateral

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- Payment terms
  - DOE/FFB OID
    - Principal payments: 24 quarters beginning March, 2017; sculpted so that there is no bullet payment due
    - Final maturity: December, 2022
    - PIK interest period: Through December, 2014
    - Mandatory redemption requirements:
      - Once total balances in Debt Service Reserve and the Excess Cash Retention Account exceeds 125% of outstanding balance of the DOE/FFB OID
    - Optional prepayment
      - Only with ~~settlement of original principal and accrued interest~~payment of fully accreted balance of the of the DOE/FFB OID
    - Upon an ~~uncured payment~~event of default, all future accretions will be brought forward (ie. The amount outstanding will be equal to the original face amount less all principal repayments up to the default date)

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- Existing ~~Investor~~Convertible Debt OID:
  - Principal payments: 36 quarters beginning March, 2017; sculpted so that there is no bullet payment due
  - Final maturity: December, 2025
  - PIK interest period: Through December, 2015
  - Mandatory redemption requirements:
    - Once total balances in Debt Service Reserve and Excess Cash Retention Account exceeds 125% of outstanding balance and only after the DOE/FFB OID facility is fully repaid
  - Optional prepayment
    - Only with settlement of ~~original principal and~~ payment of fully accreted balance of Convertible Debt and all accrued and unpaid interest

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~~Borrower~~
Restrictions on Solyndra, Inc. and Fab 2 LLC (without consent of DOE):

- No investment in business activities outside of those directly in support of Fab 2 production and sales
- No dividends to shareholders

- No use of IP outside of the current project
- No issuance of debt (except for Tranche C as provided for above)
- Other usual and customary restrictions

CPs for December Advance: Usual and customary, plus the following:

- Signed term sheet consistent with terms listed herein
- Signed guarantee agreement from Solyndra, Inc. covering all obligations of Fab 2, LLC (current borrower)
- Commitment to fund into the Liquidity Reserve Account equal to a pro-rata share of DOE/FFB December funding on January 10, 2010
- Construction and equipment supply plan consistent with projections acceptable to DOE and the IE

CPs to Further DOE Advances:

- Construction progress consistent with the construction plan
- Operational spending within a range (tbd) of agreed budget
- Progress on market development to be agreed upon consistent with plan
- Monthly funding into the Liquidity Reserve Account equal to a pro-rata share of each respective DOE/FFB funding to be funded contemporaneously with each such DOE/FFB funding
- No MAE (to be defined consistent with agreed upon operating plan)
- Other usual and customary

Events of Default for Senior Debt:

- Cash Balance of Borrower falls below $5,000,000
- Other usual and customary

Cashflow Waterfall:

All revenues paid to Borrower into a Revenue Account held by a Collateral Agent. All cash to be held in accounts noted below by the Collateral Agent (except for O&M account), with transfers pursuant to certificates reviewed and approved by DOE on a monthly basis into the following accounts in the following priority:

- First, an amount sufficient to pay budgeted operations and maintenance costs due or reasonably expected to become due within the next month funded into the O&M Account;
- Second, an amount equal to 1/3 of the amount necessary to fund the Debt Service due in the next quarterly period funded into the Debt Service Account;
- Third, an amount equal to the Debt Service Reserve requirement up to a maximum of the next six months of Debt Service (not covered by the Debt Service Account) into the Debt Service Reserve Account;
- Fourth, commencing upon Project Completion, an amount sufficient to replenish the Liquidity Reserve Account such that the account balance is maintained equal to a maximum of $40 million into the Liquidity Reserve Account
- Fifth, commencing upon Project Completion an amount equal to finance capital expenditures approved by the IE into the CapEx Reserve Account;
- Sixth, 60% of any excess amount to be used to reduce outstanding indebtedness beginning in March 2013 (pro rata among ~~first position~~ Senior Debt (Tranches A, B and C) for as long as any ~~first position~~such Senior Debt is outstanding)

- Seventh, all remaining cash into the Excess Cash Retention Account

Other Indebtedness

- None

Governance:

- DOE/FFB Board observation rights until full repayment of the OID facility
- Intercreditor Agreement: To be discussed

Solyndra.2010.12.10.1540~~0923~~.kcc.v.1

[redacted]

From: Nwachuku, Frances
Sent: Friday, December 10, 2010 4:02 PM
To: [redacted]
Subject: Summary of Key Business Terms
Attachments: Summary of Solyndra Key Business Terms and Conditions.docx

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[redacted]

Solyndra
Summary of Key Business Terms and Conditions

The restructuring will consist of Senior Debt of up to $300 million and Senior Second Position Debt of $560 million. The December Advance is contingent on:

i. Pro-rata funding by the current investors up to an aggregate of $75 million;
ii. A guarantee from Solyndra, Inc. covering all obligations of Fab 2; and
iii. A finalized term sheet executed by Solyndra and its Existing Investors.

The plan is to reach financial close in 4-6 weeks.

SENIOR DEBT: $300 million 6 year facility

Tranche A: $75 million of new investor Debt (Argonaut/Madrone/Existing Investors)
Interest: Libor plus 600 basis points reducing to 2.5% effective December 2012.

- Funding Date: Pro-rata with DOE debt beginning in January.
- Liquidity Rights: Payment priority from proceeds in event of liquidation before initial scheduled principal payment date (March, 2013).

Tranche B: $150 million of DOE/FFB financing (including $95 million yet to be funded)

Collateral (Tranche A and B): (1) all equity interests and assets in Fab 2 LLC (including IP, all equipment, agreements, etc.); and (2) all assets in Solyndra, Inc. (Tranche A only)

Payment Terms (Tranche A and B): (1) Initial principal payment: March, 2013; (2) Equal quarterly principal payments over 16 quarters; (3) Final maturity: December, 2016; (4) PIK interest period: through December, 2012; (5) Cash sweep as discussed below; and (6) All prepayments without penalty.

Tranche C: Up to an additional $75 million of new investor Debt

- Pari-passu and same collateral and terms as Tranche A, but no priority payment from proceeds in the event of liquidation before initial scheduled principal payment date, or as to be negotiated by new lenders and acceptable to DOE/FFB.

SENIOR SECOND POSITION DEBT: $560 million (DOE/FFB - $385 million/Existing Investors $175 million)

- Previously funded DOE/FFB debt ($385 million) and Existing Investor Convertible Debt ($175 million) will be discounted using an OID structure:
  - DOE/FFB Debt: $270 million initial principal amount (**30% discount**), accreting to $385 million evenly on a quarterly basis over a 12 year period.
  - Existing Investor Convertible Debt: $80 million initial principal amount (**55% discount**), accreting to $175 million evenly on a quarterly basis over a 15 year period.

Payment Terms	DOE/FFB OID	Existing Investor OID
Tenor	12 years	15 years
Principal payments	24 quarters beginning March, 2017	36 quarters beginning March, 2017
Final maturity	December, 2022	December, 2025
PIK interest period	Through December, 2014	Through December, 2015
Mandatory Redemption	Once total balances in certain accounts exceeds 125% of outstanding balance	None
Optional Prepayment	Original principal and accrued interest;	None
Payment Event of Default	All future accretions brought forward if uncured payment default	All future accretions brought forward if uncured payment default

Collateral Package:

Current Package	Proposed Package
• Building and land • Equipment • Leashold Interests • Limited use of license for Solyndra technology up to the production output of Fab 2	• Building and land • Equipment • Leashold Interests • Intellectual property • Fab 1 and associated equipment • Supply, sales, and other operating agreements • Personnel • Limited guarantee of Solyndra, Inc. All assets of Solyndra, Inc. have been transferred to Fab 2, LLC.

Footnote 528

[redacted]

From: Nwachuku, Frances
Sent: Wednesday, December 08, 2010 3:24 PM
To: Richardson, Susan; [redacted]
Cc: [redacted]
Subject: RE: Meeting with Scott/Solyndra

Yes.

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[redacted]

-----Original Message-----
From: Richardson, Susan
Sent: Wednesday, December 08, 2010 3:08 PM
To: [redacted]
Cc: [redacted] Nwachuku, Frances
Subject: RE: Meeting with Scott/Solyndra

Can you guys do this? If not I will go on my own and try to set up larger group later.

-----Original Message-----
From: [redacted]
Sent: Wednesday, December 08, 2010 3:06 PM
To: Richardson, Susan
Cc: [redacted] Nwachuku, Frances
Subject: RE: Meeting with Scott/Solyndra
Importance: High

Just talked to him. He can do it at 3:30.

-----Original Message-----
From: Richardson, Susan
Sent: Wednesday, December 08, 2010 2:51 PM
To: [redacted]
Cc: [redacted] Nwachuku, Frances
Subject: Meeting with Scott/Solyndra
Importance: High

[redacted] We have a serious problem at Solyndra and need to brief Scott as soon as possible. Could you set up a meeting with the folks on this e-mail (plus, I assume Scott would want [redacted] in the meeting). Thank you

Susan S Richardson
Chief Counsel, Office of Loan Programs

Footnote 535

[redacted]

From: Richardson, Susan
Sent: Wednesday, December 15, 2010 3:26 PM
To: [redacted]
Subject: RE: solyndra

Right. the rule pretty much just repeats what the statute says. But its placement in the Statute, and most of the provisions, seem to contemplate a work-out (and give comfort re separateness of work out obligations); but the ref to appropriated funds is odd. But for that ref, seems a lot like a non-Modification work out for FCRA/OMB circular purposes.

-----Original Message-----
From: [redacted]
Sent: Wednesday, December 15, 2010 3:20 PM
To: Richardson, Susan; [redacted]
Subject: RE: solyndra

At first blush, it seems related to 609.13 of the Final Rule (principal and interest assistance contract).

-----Original Message-----
From: Richardson, Susan
Sent: Wednesday, December 15, 2010 3:18 PM
To: [redacted]
Subject: RE: solyndra

On closer read, I'm not sure it applies; but pls look anyway. it is curious.

-----Original Message-----
From: [redacted]
Sent: Wednesday, December 15, 2010 9:47 AM
To: Richardson, Susan; [redacted]
Subject: Re: solyndra

I'm at [redacted] today, but will look into it in the afternoon.

Separately, [redacted] has proposed a change to the definition of Commencement of Construction - deleting Borrower has begun or resumed such physical work and replacing with "has issued a notice to commence construction under all construction contracts, subject only to the first Advance."

Answer is no, right?

----- Original Message -----
From: Richardson, Susan
To: [redacted]
Sent: Wed Dec 15 09:28:09 2010
Subject: solyndra

[redacted] When you have a chance, pls take a look at section 1702(g)(3). I think it helps with both work out authority, and the structure that we have been discussing.

Susan S Richardson
Chief Counsel, Office of Loan Programs

Footnote 536

[redacted]

From: Richardson, Susan
Sent: Thursday, December 16, 2010 10:12 AM
To: [redacted]
Subject: RE: Solyndra

Am at my station

-----Original Message-----
From: [redacted]
Sent: Thursday, December 16, 2010 9:57 AM
To: Richardson, Susan
Subject: Re: Solyndra

Can you email me when you are free and then we will give you call.

----- Original Message -----
From: Richardson, Susan
To: [redacted]
Sent: Thu Dec 16 08:54:07 2010
Subject: RE: Solyndra

I have 9 AM mtg, but it should be pretty quick. We need to be sure MoFo is thinking thru structure w/ our statute in mind.

-----Original Message-----
From: [redacted]
Sent: Thursday, December 16, 2010 8:52 AM
To: Richardson, Susan
Subject: Re: Solyndra

Am on my way to MoFo - can I call with [redacted] once I arrive - best to discuss before our solyndra discussions with other restructuring participants today.

----- Original Message -----
From: Richardson, Susan
To: [redacted]
Sent: Wed Dec 15 19:11:42 2010
Subject: Solyndra

[redacted] I would like to talk to you and MoFo about our approach to Solyndra tomorrow or Friday, to be sure we have a clear, defensible strategy that works with our authorities. Thnx

Susan S Richardson
Chief Counsel, Office of Loan Programs
U.S. Department of Energy
[redacted]

Footnote 537

Call w/ SSR

Th 12/16/10

SOLYNDRA / REG OVERVIEW

① Get Reg Lawyer involved ?

② Prohibition on subordination

- Needs to apply at origination
- Applies to GE'd obligation
- New Notes are not guaranteed
- Could forbear on remedies

- Back-to-back notes ?
- Obligation to DOE

③ OMB / $\boxed{\text{FICRA}}$ Concept of Workout

④ §1702 / §1651.2 (g) - Confirm N/A / For 90% cover

⑤ Coordination outside OMB - none
- UST consultation

⑥ Re-estimation / losses
- Additional reserves

Discomfiting ⑦ A11, A129 / www.omb.gov

⑧ Participation Structure ?

Footnote 539

Outlook E-mail

From: [redacted]
Sent: 1/3/2011 6:52:28 PM
To: [redacted]
Cc: [redacted]
Subject: Solyndra Restructuring/Contractual and Legal Analysis
Attachments RestructuringAnalysis Memo - 1.DOC; RestructuringAgmts, Statute & Regs - 2.DOC

<<...>> <<...>>
Greetings --
Here is a rough draft of this analysis, together with a compilation of source materials that might be useful.
Regards,
[redacted]
Morrison & Foerster LLP
2000 Pennsylvania Ave., N.W., Suite 5500
Washington, D.C. 20006
[redacted]

DOE/SOLYNDRA RESTRUCTURING

<u>Contractual and Legal Analysis</u>

[Rough Draft: 01-03-11]

(see Table of Contents at end)

I. BACKGROUND

[Briefly describe circumstances and need for restructuring]

II. EXISTING LOAN STRUCTURE

A. DOE-Guaranteed Loans and Advances

1. <u>DOE has guaranteed an FFB Loan in the principal amount of $535,000,000</u>

a. The DOE-Guaranteed Loan is from FFB to the Borrower (Fab 2) in the principal amount of up to $535,000,000.

b. The terms of the FFB loans (*i.e.*, the DOE-Guaranteed Loans) are set forth in a Note Purchase Agreement among the Borrower, DOE and FFB.

c. FFB also holds a single "grid-style" Promissory Note, which covers Advances made from time to time (generally monthly).

2. <u>Advances of the DOE-Guaranteed Loan are made monthly in accordance with the conditions precedent set forth in the Common Agreement</u>

a. Advances of the loan are made (generally monthly) in accordance with the provisions of the Note Purchase Agreement (which sets forth basic FFB funding mechanics).

b. Detailed conditions precedent to each Advance, designed to protect the DOE's credit exposure, are set forth in the Common Agreement.

B. Repayment of Principal and Interest

1. <u>Interest on the DOE-Guaranteed Loan is payable quarterly</u>

a. Interest is due and payable on the 15th day of each February, May, August and November (the "Quarterly Payment Dates"), beginning immediately on the first Quarterly Payment Date after an Advance is made, up through and including the Maturity Date. [FFB Promissory Note §__]

b. Interest is payable during the construction period by means of "Payment Borrowings", which are Advances of the DOE-Guaranteed Loans in the required amount of interest. [FFB Promissory Note §__]

c. On and after the First Principal Payment Date, interest is paid in cash from revenues generated from operations. [FFB Promissory Note §__]

2. *Principal of the DOE-Guaranteed Loan is payable quarterly, beginning May 15, 2012*

   a. Principal is payable in 18 equal quarterly payments on the Quarterly Payment Dates beginning on **May 15, 2012**, and thereafter on the 15th day of February, May, August and November of each year until **August 15, 2016**. [FFB Promissory Note §__]

C. Collateral Security Package

1. *All assets of the Borrower, as well as Solyndra, Inc.'s equity interests in the Borrower, are pledged as collateral security for the Borrower's payment obligations*

   a. All Borrower Assets Pledged. All assets of the Borrower are pledged as collateral security for the Guaranteed Loans.

   b. All Equity Interests Pledged. All Equity Interests in the Borrower (100% held directly by the Sponsor as the sole Equity Owner) are pledged as collateral security for the Guaranteed Loans.

2. *All security is pledged for DOE's benefit, not FFB's*

   a. The Note Purchase Agreement provides that "FFB acknowledges that the Borrower has, through the execution of the Security Instruments, pledged and granted a security interest to the "Collateral Agent," for the benefit of the "Secured Parties" (as those terms are defined in the Common Agreement) in certain property of the Borrower to secure the payment and performance of certain obligations owed to the Secretary under, *inter alia*, the Security Instruments." [Note Purchase Agreement, §11.1.2]

3. *FFB is not a Secured Party under the Loan Documents*

   a. The Common Agreement defines "Secured Parties" as DOE and the Collateral Agent, as their respective interests may appear.

4. *Upon a default by the Borrower under the FFB Promissory Note or an Event of Default under the Common Agreement and the Security Documents, DOE has the sole authority (vis-a-vis FFB) in respect of acceleration of the FFB Promissory Note and realization on collateral.*

   a. The Note Purchase Agreement provides

      "In consideration of the Secretary's Guarantee relating to the Note that has been purchased by FFB under this Agreement, the Secretary shall have the sole authority (vis-a-vis FFB), in the case of a default by the Borrower under such Note or the occurrence of an Event of Default under the Security Instruments, in respect of acceleration of such Note, the exercise of other available remedies, and the disposition of sums or property recovered. [Note Purchase Agreement" §11.1.1][1]

b. "Security Instruments" is defined to mean, "collectively, (i) the Common Agreement, and (ii) the "Security Documents" (as that term is defined in the Common Agreement), as such agreements and documents may be amended, supplemented, and restated from time to time in accordance with their respective terms." [Note Purchase Agreement Schedule I, Item 3]

D. DOE Guarantee

1. DOE's guarantee is issued under Title XVII and references the Federal Financing Bank Act

a. The DOE Guarantee provides that

"This Secretary's Guarantee is issued pursuant to Title XVII of the Energy Policy Act of 2005, as amended (42 U.S.C. § 16511 et seq.), section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. § 2285), and the Note Purchase Agreement dated as of September 2, 2009, among FFB, the Borrower, and the Secretary." [DOE Guarantee, paragraph 3]

b. The DOE Guarantee is a full faith & credit obligations of the U.S. government:

"The obligation of the United States of America to pay amounts due and payable under this Secretary's Guarantee when such amounts become due and payable in accordance with its terms, constitutes the absolute obligation of the United States of America, against which no offset may be made by the United States of America in discharge of its obligation to make these payments and for which the full faith and credit of the United States of America are pledged." [DOE Guarantee, paragraph 2]

2. DOE guarantees all payments of principal, interest, premium, and late charges, when and as due in accordance with the FFB Promissory Note

a. The DOE Guarantee guarantees

"all payments of principal, interest, premium (if any), and late charges (if any), when and as due in accordance with the terms of the note dated September 3, 2009, issued by **SOLYNDRA FAB 2 LLC** (the "Borrower") payable to FFB in the maximum principal amount of $535,000,000, to which this Secretary's Guarantee is attached (such note being the "Note"), with interest on the principal until paid, irrespective of (i) acceleration of such payments under the terms of the Note, or (ii) receipt by the Secretary of any sums or property from its enforcement of its remedies for the Borrower's default." [DOE Guarantee, paragraph 1]

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1 See similar language in Section 23(b) of the FFB Promissory Note

b. The FFB Promissory Note provides

> Upon execution of the guarantee set forth at the end of this Note (the "Guarantee"), the payment by the Borrower of all amounts due and payable under this Note, when and as due, shall be guaranteed by the United States of America, acting through the Secretary, pursuant to Title XVII of the Energy Policy Act of 2005, as amended (42 U.S.C. § 16511 et seq.). In consideration of the Guarantee, the Borrower promises to the Secretary to make all payments due under this Note when and as due. [FFB Promissory Note §20]

E. Guarantee Payments

1. Absent a payment default, FFB has no right to demand any action from DOE

a. The Applicable Regulations provide:

> "In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Loan Guarantee Agreement, note, mortgage, Loan Agreement, or other contractual obligations related to the transaction, other than the Borrower's obligation to pay principal or interest on the Guaranteed Obligation, as provided in paragraph (a) of this section, the Holder will not be entitled to make demand for payment pursuant to the Loan Guarantee Agreement, unless the Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the Holder should be entitled to receive payment pursuant to the Loan Guarantee Agreement." [Regulations §609.15(b)]

2. If the Borrower defaults, FFB's recourse is to demand payment under the DOE Guarantee

a. The Act provides:

> "(A) In general. If a borrower defaults on the obligation (as defined in regulations promulgated by the Secretary and specified in the guarantee contract), the holder of the guarantee shall have the right to demand payment of the unpaid amount from the Secretary."[2] [§1702(g)(1)(A)]

b. The Act provides:

> "(B) Payment required. Within such period as may be specified in the guarantee or related agreements, the Secretary shall pay to the holder of the guarantee the unpaid interest on, and unpaid principal of the obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower

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2 See also §§609.15(a)-(e) of Final Regulations.

in the payment of interest or principal or that the default has been remedied."[3] [§1702(g)(1)(B)]

c. The Applicable Regulations provide:

(a) In the event that the Borrower has defaulted in the making of required payments of principal or interest on any portion of a Guaranteed Obligation, and such default has not been cured within the period of grace provided in the Loan Guarantee Agreement and/or the Loan Agreement, the Eligible Lender or other Holder, or nominee or trustee empowered to act for the Eligible Lender or other Holder (referred to in this section collectively as "Holder"), may make written demand upon the Secretary for payment pursuant to the provisions of the Loan Guarantee Agreement. [Regulations §609.15(a)]

F. DOE's Rights Under the FFB Promissory Note

1. DOE has all of FFB's rights, powers, privileges, and remedies as Holder of the FFB Promissory Note

a. The FFB Promissory Note provides:

"This Note is ... entitled to the benefits and security of, the "Security Instruments" (as defined in the Note Purchase Agreement), whereby the Borrower pledged and granted a security interest in certain property of the Borrower, described therein, to secure the payment of and performance of certain obligations owed to the Secretary, as set forth in the Security Instruments. For purposes of the Security Instruments, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement, the Note Purchase Agreement, and the Guarantee, the Secretary shall be considered to be, and shall have the rights, powers, privileges, and remedies of, the Holder of this Note." [FFB Promissory Note §21]

b. The FFB Promissory Note provides:

"In case of a default by the Borrower under this Note or the occurrence of an "Event of Default" (as defined in the Security Instruments), then, in consideration of the obligation of the Secretary under the Guarantee, the Secretary, in the name of the Secretary or the United States of America, shall have all rights, powers, privileges, and remedies of the Holder of this Note, in accordance with the terms of this Note and the Security Instruments, including, without limitation, the right to (i) enforce or collect all or any part of the obligation of the Borrower under this Note or arising as a result of the Guarantee; (ii) accelerate (as provided in paragraph 24); (iii) compromise or otherwise negotiate with the Borrower; (iv) bring suit against or foreclose upon any or all of the security interests granted

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3 See also §609.15(f) of Final Regulations.

by the Borrower; and (v) to file proofs of claim or any other document in any bankruptcy, insolvency, or other judicial proceeding, and to vote such proofs of claim." [FFB Promissory Note §23(a)]

c. See definition of "Security Instruments", above

2. *DOE payments discharge FFB's rights, but not Borrower's, under the Promissory Note*

a. The FFB Promissory Note provides:

"If the Secretary makes any payment, pursuant to the Guarantee, of any amount due and payable under this Note, each and every such payment so made shall be deemed to be a payment hereunder; provided, however, that no payment by the Secretary pursuant to the Guarantee shall be considered a payment for purposes of determining the existence of a failure by the Borrower to perform its obligation to the Secretary to make all payments under this Note when and as due. [FFB Promissory Note §22]

G. Reimbursement Obligations

1. *The Borrower is currently contractually obligated to reimburse DOE with respect to DOE guarantee payments.*

a. The Common Agreement provides:

"The Borrower shall pay to DOE an amount (the "Borrower Reimbursement Obligations") equal to the sum of (i) the DOE Guarantee Payment Amount, and (ii) interest on DOE Guarantee Payment Amount . . . " [Common Agreement §10.2.1]

b. The FFB Promissory Note provides:

The Secretary shall have any rights by way of subrogation, agreement or otherwise which arise as a result of such payment pursuant to the Guarantee and as provided in the particular agreement specified on page 1 of this Note as the "Common Agreement" between the Borrower and the United States of America, acting through the Secretary, to evidence the Borrower's obligation to reimburse the Secretary for payment made by the Secretary pursuant to the Guarantee." [FFB Promissory Note §22]

2. *The Borrower's contractual reimbursement obligation is in addition to DOE's subrogation rights upon making DOE guarantee payments.*

a. The Applicable Regulations provide:

"The Loan Guarantee Agreement shall provide that, upon payment of the Guaranteed Obligations, the Secretary shall be subrogated to the rights of the Holders and shall have superior rights in and to the property acquired from the Holders. The Holder shall transfer and assign to the Secretary all rights held by the Holder of the Guaranteed Obligation. Such assignment shall include all related liens, security, and collateral rights to the extent held by the Holder."[4] [Regulations §609.15(g)]

b. The Common Agreement provides:

"DOE's right to reimbursement provided for in this Article 10 shall be in addition to, and not in limitation of, any other claims, rights or remedies of subrogation, reimbursement, contribution, exoneration or indemnification or similar claims, rights or remedies, whether arising under contract, by statute, or otherwise that DOE may have from time to time." [Common Agreement §10.5.1]

c. The Common Agreement provides:

"Without limiting the generality of Section 10.5.1, in accordance with Section 609.10(e)(2) of the Applicable Regulations, upon any DOE Guarantee Payment DOE shall be subrogated to the rights of FFB or any subsequent holder of the DOE-Guaranteed Loan, including all related Liens and Collateral, and has superior rights in and to the property acquired from the recipient of the payment as provided in §609.15 of the Applicable Regulations." [Common Agreement §10.5.2]

3. *The Collateral Security pledged under the Security Documents is pledged to secure the Borrower Reimbursement Obligations*

a. The Common Agreement provides that

"The parties expressly acknowledge that the Collateral Security pledged under the Security Documents is pledged to secure payment by the Borrower of the Borrower Reimbursement Obligations. [Common Agreement §10.4.1]"

4 See also 42 USCS §§16512(g)(2)(A)-(B).
DOE today adopts the same interpretation of Title XVII as it adopted in regard to nearly identical language in section 19(g)(2) of the Alternative Fuels Act. Thus, DOE interprets the language in Title XVII as requiring a first lien on all project assets, but as allowing DOE to treat assets pledged to secure a project loan that are not project assets the same as project assets. Consistent with the regulations concerning the disposition of proceeds from the sale of assets pursuant to the Alternative Fuels Act (section 796(f) and (k)), ... where DOE only guarantees a portion of a Guaranteed Obligation, the Secretary may enter into inter-creditor or other arrangements to share the proceeds from the sale of project collateral with lenders or other holders of the non-guaranteed portion of the Guaranteed Obligation. DOE may, at the discretion of the Secretary, share the proceeds from the sale of collateral. DOE is limited, however, to no greater than a pro rata share for the non-guaranteed Holder. However, in cases where DOE guarantees 100 percent of a loan, the loan must be issued to and funded by the Federal Financing Bank. In those circumstances, DOE will have a first lien priority on project assets pledged as collateral and all other debt for the project at issue must be subordinate to the Guaranteed Obligation. [DOE Response] [60124-5]

b. The Common Agreement defines

"Borrower Reimbursement Obligations" to be "the sum of (i) the DOE Guarantee Payment Amount, and (ii) interest on DOE Guarantee Payment Amount from the date the DOE Guarantee Payment was paid or incurred by DOE under the DOE Guarantee until payment in full by the Borrower to DOE of the DOE Guarantee Payment Amount, at a rate of interest equal to the rate of interest in effect under the FFB Note Purchase Agreement with respect to Overdue Amounts at the time of the payment default by the Borrower." [Common Agreement §10.2.1]

c. The Common Agreement defines

"DOE Guarantee Payment Amount" as an amount "equal to the sum of (i) all DOE Guarantee Payments paid by DOE to FFB, and (ii) all costs or expenses incurred by DOE in connection therewith, whether by payment to FFB or otherwise." [Common Agreement §10.1]

H. Administration of DOE-Guaranteed Loan

1. Billing by FFB

FFB prepares a billing statement for all amounts owed to FFB with respect to each Advance made under the Note and delivers each billing statement to the Borrower and DOE. [FFB Note Purchase Agreement, §9.1]

I. Agreed Funds Flow

[add]

J. Provision in Act for DOE Payment of Principal and Interest

1. The Act provides that DOE may enter into a contract to pay principal and interest to holders.

a. The Act provides:

" (3) Payment of principal and interest by Secretary. With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the borrower, from funds appropriated for that purpose, the principal and interest payments which become due and payable on the unpaid balance of the obligation if the Secretary finds that--

(A) (i) the borrower is unable to meet the payments and is not in default[5];

(ii) it is in the public interest to permit the borrower to continue to pursue

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5 See also §609.13(a)(1) of Final Regulations.

the purposes of the project;[6] and

(iii) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;[7]

(B) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the borrower is obligated to pay under the agreement being guaranteed;[8] and

(C) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary."[9] [§1702(g)(3)]

b. The Applicable Regulations provide:

[add later]

2. *There is no need for DOE to enter into such a contract, since DOE has already guaranteed 100% of the loan to FFB.*

   a. This provision was likely added to allow for 100% guarantee coverage of troubled loans originally structured as 80% or 90% coverage.

3. *As a fallback, this provision would allow DOE to make payments to the FFB in the current situation, if there were any doubt as to DOE's authority to do so.*

   a. These provisions by their terms apply to guaranteed obligations

[Discuss this]

K. DOE Right to Purchase Note from FFB

1. *The Note Purchase Agreement provides that DOE may purchase individual advances or the FFB Promissory Note from FFB.*

   a. the Note Purchase Agreement provides

"Notwithstanding the provisions of the Note, the Borrower acknowledges that, under the terms of the Program Financing Agreement, the Secretary may purchase from FFB all or any portion of any Advance that has been made under the Note, or may purchase from FFB the Note in its entirety, in the same manner, at the same price, and subject to the same limitations as shall be applicable, under the

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6 See also §609.13(b) of Final Regulations.

7 See also §609.13(c) of Final Regulations.

8 See also §609.13(d) of Final Regulations.

9 See also §609.13(e) of Final Regulations.

terms of the Note, to a prepayment by the Borrower of all or any portion of any Advance made under the Note, or a prepayment by the Borrower of the Note in its entirety, as the case may be." [Note Purchase Agreement, §11.2]

b. Note that this gives DOE a right to purchase amounts payment-by payment.

III. RESTRUCTURING GOALS AND ISSUES

A. Tranche A and Tranche C Loans are to be Senior to Tranche B and Tranche D

1. *Tranche A debt is to have a priority return for two years, and thereafter be pari passu with Tranche B, and senior to Tranche D*

   a. The Restructuring Term Sheet provides that Tranche A shall be

   "First out in the event of a liquidation event prior to initial scheduled principal payment date (March, 2013)"

2. *Tranche C debt is to be pari passu with Tranche B, and senior to Tranche D*

   a. The Restructuring Term Sheet provides that Tranche C shall be

   "[in an amount] up to an additional $75 million senior debt financing permitted pari passu with Tranche A and B. Collateral and terms as stated on Tranche A above (except Tranche C will not receive a first out position in the event of a liquidation event prior to initial scheduled principal payment date)"

3. *Tranche A and Tranche C debt is to have same collateral as Tranche B and Tranche D*

   a. The Restructuring Term Sheet provides that the collateral security for Tranche A is

   "Equity interests in Fab 2 LLC and all assets of Fab 2 LLC, including all intellectual property, equipment, agreements, etc.'"

B. Subordination of DOE-Guaranteed Loans is Prohibited

1. *The Act and the Applicable Regulations prohibit subordination of the DOE-Guaranteed Loans*

   a. The Act provides:

   "(d) Repayment. ... (3) Subordination. The obligation shall be subject to the condition that the obligation is not subordinate to other financing."[10] [Act §1702(d)(3)]

   b. The Applicable Regulations provide:

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10 See also §609.10(d)(13) of Final Regulations.

(d) Prior to the execution by DOE of a Loan Guarantee Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Loan Guarantee Agreement, are satisfied: ...
(13) Any Guaranteed Obligation is not subordinate to any loan or other debt obligation and is in a first lien position on all assets of the project and all additional collateral pledged as security for the Guaranteed Obligations and other project debt;[11] [Applicable Regulations §609.10(d)(3)]

2. *The definition of "obligations" is limited to the DOE-guaranteed obligations*

a. The Act provides:

In this *title [42 USCS §§16511* et seq.] ... (5) Obligation. The term "obligation" means the loan or other debt obligation that is guaranteed under this section.[12] [Act §1701(5)]

b. The Applicable Regulations provide:

Guaranteed Obligation[13] means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to the Act. [Applicable Regulations §609.2]

3. *There does not seem to be any restriction on subordination of Borrower reimbursement obligations to DOE*

[Discuss]

C. **Forbearance**

1. *The Act and the Applicable Regulations allow for forbearance for the benefit of the Borrower*

a. The Act provides:

(C) Forbearance. Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the obligation and approved by the Secretary.[14] [§1702(g)(1)(C)]

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11 See also 42 USCS §16512(d)(3).

12 See also definition of "Guaranteed Obligation" at §609.2 of Final Regulations.

13 See also 42 USCS §16511(5).

14 See also §609.15(d) of Final Regulations.

b. The Applicable Regulations provide:

> (d) No provision of this regulation shall be construed to preclude forbearance by the Holder with the consent of the Secretary for the benefit of the Borrower.[15] [Applicable Regulations §609.15(d)]

IV. Proposed New Structure

A. Borrower Payments to Collateral Agent

1. *Tranche A would be funded as, and Tranche E would be converted into, Fab 2 Indebtedness.*

   a. The Tranche A lenders (and, if they subscribe to the deal, the Tranche C lenders) would agree to fund their loan under the terms of the relevant Note Purchase Agreements and the Common Agreement.

   b. Fab 2 will become liable on the existing Tranche E debt

2. *The Tranche B & Tranche D payments will run directly to DOE, and will together embody the secured reimbursement obligations now in Article 10 of the Common Agreement*

3. *All Borrower payment priority would be addressed in the Intercreditor Agreement.*

   a. The priority of the payments to the lenders would be adjusted as per the terms of the Intercreditor Agreement.

   b. All Fab 2 payments will be run through the Collateral Agent to ensure proper allocation.

B. No Change to DOE Payments to FFB

1. *Existing Fab 2 Indebtedness payable to FFB (Tranche B and Tranche D) would be left undisturbed.*

   a. The Borrower will remain liable on the existing Tranche B and Tranche D indebtedness, and the contractual arrangements with FFB will be left undisturbed.

   b. However, Fab 2 will make all payments with respect to Tranche B and Tranche D to the Collateral Agent for payment to DOE, as described below.

2. *FFB would have no role in the restructuring, because the Borrower's and DOE's obligations would be unchanged.*

   a. FFB would not be a party to the Intercreditor Agreement and would otherwise not be a party to the restructuring documents.

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15 See also 42 USCS §16512(g)(2)(C).

b. DOE [would acknowledge that it will] make payments to FFB under the DOE guaranty in accordance with the terms of the existing amortization schedule under the FFB Promissory Note so that the expected payment stream to FFB would not be disturbed.

C. Effect of DOE Payments in advance of Borrower reimbursements

1. DOE payments will be made in advance of Borrower reimbursements

a. The total principal amount of DOE payments to FFB ("DOE Payments") will equal the total principal amount of the Borrower's payments to DOE ("Borrower Payments")

b. However, the principal portion of DOE Payments will be due in advance of the coresponding principal portion of Borrower Payments.

c. As a result of the timing difference, because a larger principal amount will be outstanding on the Borrower Payment than on the DOE Payments, it is likely that the total interest amount due to DOE will be greater than the interest paid by DOE to FFB

2. DOE is making debt service payments to FFB as Loan Servicer; to the extent the Borrower does not make a corresponding payment, those debt service payments become guarantee payments.

[Discuss]

3. Changes to reimbursement arrangements could be deemed to constitute forbearance by DOE.

a. Fab 2 would acknowledge its obligation to pay DOE (via the Collateral Agent) for its own account in respect of Tranche B & D payments made by DOE under the DOE Guarantee, and in exchange DOE would agree to accept repayment under the modified interest rate, amortization schedule and related terms of the restructured debt as per the term sheet.

b. This could be accomplished by either (i) entering into a Reimbursement Agreement, or (ii) amending the existing reimbursement obligations in the Common Agreement.

4. Borrower payments on Tranches B & D will be credited dollar-for-dollar to reduce the Borrower's obligations under the FFB Note.

a. The payments on Tranches B & D will be credited dollar-for-dollar to reduce the Borrower's obligations under the FFB Promissory Note.

D. Security Interests

1. Existing Security Agreements would not be substantially modified, and all collateral would remain pledged to DOE

a. The existing security agreements in favor of DOE (including both (x) the existing deeds of trust and the personal property security agreements, and (y) the pledge by Solyndra, Inc. of its membership interests in Fab 2) would not be substantially modified except:

(i) certain modifications to specific covenants, representations and remedies provisions will be made to take into account the new collateral that will be subject to the security interests in favor of DOE and all the other lenders in respect of the intellectual property, equipment and other assets being sold or contributed by Solyndra, Inc. to Fab 2; and

(ii) [to the extent that the granting clause in favor of DOE covers indebtedness in addition to the principal, interest and indemnity payments, etc. owing under the existing loan documents, the granting clause would be modified so that there would be no lien securing additional debt].

2. *Other Lenders would enter into new security agreements.*

The Tranche A lenders and the Tranche E lenders would enter into a new set of security documents (including new personal property security agreements, deeds of trust and membership pledges) to secure obligations owing to each of them by Fab 2. These would be substantially the same as the collateral documents running in favor of DOE, as amended.

3. *DOE and all other Lenders would be secured by the same collateral.*

As a result of the foregoing, all of the Tranche A, Tranche B, Tranche C (if funded), Tranche D and Tranche E Debt would be secured by a perfected security interest in and lien on the same collateral (being all the assets of and membership interests in Fab 2).

4. *The Collateral Agent would act as collateral agent for all of the lenders.*

Pursuant to the terms of the Intercreditor Agreement, U.S. Bank would agree to act as collateral agent for all of the lenders. In addition, U.S. Bank would agree that, notwithstanding the fact that under the terms of the existing deeds of trust and personal property security agreements in favor of DOE, U.S. Bank is acting as collateral agent solely for the benefit of DOE, the provisions of the Intercreditor Agreement would supersede those so that any exercise of remedies by U.S. Bank and any distribution of proceeds by U.S. Bank would always be consistent with the terms of the Intercreditor Agreement.

5. *All lien priority would be addressed in the Intercreditor Agreement.*

The priority of the liens of the lenders would be adjusted as per the terms of the Intercreditor Agreement.

E. Prepayments

[address prepayment mechanics]

V. TREATMENT OF NEW STRUCTURE UNDER OMB RULES

A. Modifications Under OMB FCRA Rules

1. *If the proposed changes to the transaction structure are deemed a "modification", additional budget authority must be provided.*

   a. OMB Circular A-11 provides:

   "An outstanding direct loan (or direct loan obligation) or loan guarantee (or loan guarantee commitment) cannot be modified in a manner that increases its cost, unless budget authority for the additional cost has been provided in advance in an appropriations act. If the modification is mandated in legislation, the legislation itself provides the budget authority to incur a subsidy cost obligation (whether explicitly stated or not)." [OMB Circular A-11, Section 185, Page 10]

   b. [Discuss implications]

2. *Changes in the terms of an existing loan, forbearance, interest rate reductions, and extensions of maturity all constitute modifications*

   a. OMB Circular A-11 provides:

   "(r) ***Modification*** means a Government action that (1) differs from actions assumed in the baseline estimate of cash flows and (2) changes the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment). ... A Government action may change the cost directly by altering the terms of existing contracts, selling loan assets (with or without recourse) or converting guaranteed loans to direct loans by purchasing them from a private lender. ... Examples of changes in the terms of existing loan contracts are forgiveness, forbearance, interest rate reductions, extensions of maturity, and prepayments without penalty. ... If the baseline cost estimate does not assume an action, and the cost would be increased or decreased as a result of that action, the action is a modification." [OMB Circular A-11, Section 185, Page 9-10]

   b. OMB Circular A-11 provides:

   "Modifications do not include a Government action that is assumed in the baseline cost estimate, as long as the assumption is documented and has been approved by OMB. For example, modifications would not include routine administrative workouts (see section 185.3(ab)) of troubled loans or loans in imminent default. ... The baseline subsidy estimate must include all anticipated actions by the Government, lenders, and borrowers that are permissible under current law and that affect the cash flow. Subsequently, if the cost estimate of an action by the borrower, lender, or the Government differs from what is anticipated in the documented baseline subsidy estimate, then the difference in cost is included in a reestimate. Assumptions underlying the subsidy estimates must be documented to assist in determining whether an action is a modification or a reestimate." [OMB Circular A-11, Section 185, Page 10]

c. OMB Circular A-11 provides:

"There are situations where it is not clear whether a Government action constitutes a modification or a reestimate. These situations should be judged on a case-by-case basis by OMB in consultation with the agency. They could include actions by the Government that are not addressed in existing contracts, management changes that are within an agency's existing specific authority for the loan program, and broad changes in agency policy (e.g., loan sale policy). In general, if the possibility of the action was explicitly included in the cash flows for the baseline subsidy estimate, and this can be documented, it would most likely be a reestimate. If not, it would most likely be a modification." [OMB Circular A-11, Section 185, Page 10]

d. OMB Circular A-11 provides:

"Modifications produce a one-time change in the subsidy cost of *outstanding* direct loans and loan guarantees. The effect of the Government action on the subsidy cost of direct loan obligations and loan guarantee commitments made after the date of the modification, if there is any effect, is not a modification. Instead, the effects are incorporated in the initial cost estimates for subsequent direct loan obligations and loan guarantee commitments." [OMB Circular A-11, Section 185, Page 10]

B. Workouts Under OMB Rules

1. If the proposed changes to the transaction structure are deemed to be a "Work-out", there is no change to subsidy cost.

a. OMB Circular A-11 provides:

"(ab) ***Work-outs*** mean plans that offer options short of default or foreclosure for resolving troubled loans or loans in imminent default, such as deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity, or postponing collection action. Work-outs are expected to minimize the cost to the Government of resolving troubled loans or loans in imminent default. They should only be utilized if it is likely that the borrower will be able to repay under the terms of the workout and if the cost of the work-out is less than the cost of default or foreclosure. For post--1991 direct loans and loan guarantees, the expected effects of work-outs on cash flow are included in the original estimate of the subsidy cost. Therefore, to the extent that the effects of work-outs on cash flow are the same as originally estimated, they do not alter the subsidy cost. If the effects on cash flow are more or less than the original estimate, the differences are included in reestimates of the subsidy and are not a modification." [OMB Circular A-11, Section 185, Page 12]

VI. [ADD]

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