

February 12, 2007

The Honorable Byron L. Dorgan
Chairman
Senate Energy and Water Appropriations Subcommittee
Dirksen SOB Room 188
Washington, DC 20510

Dear Chairman Dorgan:

The Secretary of Energy, in answering questions before the House Energy and Commerce Committee last week, acknowledged that language included in the House-passed Continuing Resolution (H.J. Res. 20) which requires the Department to issue final regulations before a Title XVII loan guarantee award can be issued, will effectively prevent the DOE from issuing any loan guarantees until sometime in 2008.

While Secretary Bodman observed that “we’ll be doing well” to issue guarantees one year from now (the date of his testimony, February 7, 2007) in reality, if the Department decides to wait until final regulations are promulgated, it is more than likely that this important program – one that the Senate characterized as among the most important and far reaching provisions in EPAct 2005 – will not be implemented and no loan guarantees will be issued until well into 2008, three years after enactment of the Energy Policy Act.

We are told that more than 140 projects, representing over \$20 billion in total project costs spent time, resources and money to apply for loan guarantees pursuant to a solicitation that DOE issued last August 8, 2006. Now, according to DOE representatives, those projects will have to wait until some time in calendar year 2008 but perhaps they can be “first in line” when regulations are promulgated.

In 2006, China constructed more than 90 gigawatts of new coal fired capacity; that burgeoning economy is projected to construct an equal number of gigawatts this year. The U.S. has a total coal based electric generation fleet of 320 gigawatts. To say that China, with an economy growing in double digits, will soon dwarf the amount of coal fired generation operating in the United States is an understatement. By 2010, at its current rate of growth, China’s CO₂ emissions will exceed that of the U.S.

Congress is considering climate change and global warming issues and yet a program that could actually result in the installation of technologies to lessen the CO₂ footprint will be allowed to languish for yet another year or longer. It is not appropriate that innovative energy technology projects, whether advanced coal projects including coal to liquid projects, biofuels, renewable and other alternative fuel projects which are apparently ready to enter planning and perhaps construction, and clearly superior to those technologies that emit carbon dioxide today, will be further delayed.

Worse yet, projects of this nature create their own momentum and delays inevitably mean that projects will be abandoned.

In our view, the Secretary, even with the requirements for final regulations that are directed in the continuing resolution, could proceed with consideration of the pre-applications already submitted. Specifically, DOE is not prevented by the language of the continuing resolution from selecting projects to proceed with the submission of applications. The language of the continuing resolution directs that regulations govern the "award" of loan guarantees not the process by which applications are submitted and projects are considered. Rather than "put at least a twelve month hold" on projects that have already spent time, resources and cash to prepare pre-applications, the DOE should be directed to proceed under the DOE guidelines already issued; evaluate the pre-applications, select projects and invite such projects to continue collection of information, align financing and negotiate contracts and conduct those other activities necessary to comply with the existing guidelines. Where the guideline criteria are different from the criteria for awarding loan guarantees, as set forth in final regulations, such projects will need to be modified but they will not need to wait. The awarding of the loan guarantees can be governed by the final regulations. At least with such a process we will not lose even more time.

This process does not require, in our judgment, a change in the language of the H.J. Res. 20; it merely requires the Senate to affirm its understanding that the language of the continuing resolution can be interpreted in the manner described herein.

Each of our organizations is very concerned about the potential for even more delays in the implementation of this important program. We would be happy to discuss our concerns further with you or your staff should you so desire.

We ask that you consider making clear the Senate's intentions regarding the loan guarantee program when this portion of the resolution is before the Senate.

American Chemistry Council
American Forest and Paper Association
Coal Utilization Research Council
Edison Electric Institute
Industrial Energy Consumers of America
National Association of Manufacturers
National Mining Association

Cc:

The Honorable Robert C. Byrd, Chairman, Senate Committee on Appropriations
The Honorable Thad Cochran, Ranking Member, Senate Committee on Appropriations