



ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

November 20, 2009

Mr. Arun Majumdar
Director, Advanced Research Projects Agency-Energy
Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Dear Mr. Majumdar:

Congratulations on your recent confirmation as the new Director of the Advanced Research Projects Agency-Energy (ARPA-E). I am writing to you on behalf of the Organization for International Investment (OFII) regarding our concerns with the first ARPA-E Funding Opportunity Announcement (FOA).¹ As you may already be aware, this FOA restricts the ability of U.S. subsidiaries of companies based abroad and their American workers to fully compete for program funds. This discriminatory eligibility provision undermines the effectiveness of the program, calls into question the U.S. commitment to a nondiscriminatory environment for foreign investment, and invites similar protectionist retribution from other countries. I wanted to ensure this issue was brought to your immediate attention as you step into your new role at the Department of Energy.

By way of further background, OFII is a business association representing the U.S. operations of many of the world's largest international companies. These companies directly employ more than 5 million Americans here in the United States and support an annual U.S. payroll of over \$364 billion. As evidenced by the attached membership list, OFII members are household name companies with historic and substantial U.S. operations. OFII member companies, many of which are longtime partners with the DOE, are well positioned to make important contributions to the ARPA-E program and their participation would be of significant benefit to the Department and to the United States. In fact, companies like Siemens, Philips, Bosch and BASF are already working to help the U.S. achieve its energy goals.

I communicated our deep concerns with the policy direction of the first FOA earlier in the year with Secretary Chu in the attached letter. His response is also attached for your convenience, as well as a related statement of concern Senator Brownback submitted at your confirmation hearing. I also had the opportunity to meet with Assistant Secretary Sandalow in September to discuss this issue in greater detail.

¹ APRA-E Funding Opportunity Announcement # DE-FOA-0000065.

Please let us know if you and your staff have any questions or would like to discuss this issue directly. In the meantime, we strongly urge you to ensure that no similar restrictions are included in future FOAs for the ARPA-E program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy McLernon', written over a light blue horizontal line.

Nancy McLernon
President & CEO

cc:

The Honorable Steven Chu
Secretary of Energy

The Honorable Michael Froman
Deputy National Security Advisor for International Economic Affairs
and Deputy Assistant to the President

The Honorable Lawrence H. Summers
Director of the National Economic Council
and Assistant to the President for Economic Policy

Ambassador Ron Kirk
United States Trade Representative

The Honorable Gary Locke
Secretary of Commerce



ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

May 26, 2009

The Honorable Steven Chu
Secretary of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Dear Secretary Chu:


On behalf of the Organization for International Investment (OFII) and the more than 5 million American workers employed here by U.S. subsidiaries of foreign-based multinationals, I write to express concern about participation restrictions placed on these companies in a recent ARPA-E Funding Opportunity Announcement (FOA).¹ This discriminatory treatment of certain U.S. companies is not mandated by applicable law or regulation. Restricting the ability of these companies and their American workers to fully participate in the program and compete for program funds undermines the effectiveness of the program, calls into question the U.S. commitment to a nondiscriminatory environment for foreign investment, and invites similar protectionist retribution from other countries. We urge you to reconsider these restrictions and issue an amendment to the FOA that removes these restrictions and allows all U.S.-domiciled companies, regardless of ultimate ownership, to compete on a level playing field for available ARPA-E funds. Representatives of our member companies would be pleased to meet with you and your staff to provide further information on how their participation has benefited similar programs.

By way of further background, OFII is a business association representing the U.S. operations of many of the world's largest international companies. These operations directly employ more than 5 million Americans here in the United States and support an annual U.S. payroll of over \$364 billion. As evidenced by the attached membership list, many OFII members are household name companies with historic and substantial U.S. operations. Many are significant partners of your Department, and will be adversely affected by these new provisions.

The restrictions included in the ARPA-E FOA would limit the ability of numerous U.S.-incorporated companies to participate fully in this important program. Two restrictions are particularly troublesome. First, the FOA prohibits a foreign entity² from serving as the lead of a team competing for ARPA-E funds. Second, the FOA requires that “no

¹ APRA-E Funding Opportunity Announcement # DE-FOA-0000065.

² The FOA definition of a “foreign entity” is overly broad and includes any entity that is “directly or indirectly owned or controlled by a foreign company or government.”



more than 25% of the ARPA-E funds may be expended by the combination of all foreign entities on the project . . . regardless of whether the work is performed in the United States or a foreign location.” These restrictions are both surprising and onerous because, to the extent it is important that ARPA-E funded activities take place within the United States, the existing FOA requirement that 90% of the work be performed on U.S. soil would accomplish that goal.

As currently drafted, the restrictions on the participation of “foreign entities” will severely limit the ability of such significant DOE partners as Saint-Gobain, BASF, Philips Electronics, and Bosch from participating in the program. These companies employ thousands of American workers who work in research, production and office facilities throughout the United States. As such, the restrictions discriminate in favor of some U.S. companies and workers while disadvantaging other U.S. companies and workers. OFII Member Companies can make important contributions to the ARPA-E program and their participation would be of significant benefit to the Department and to the United States. Respectfully, restrictions that limit in any material way their ability to participate undermine the effectiveness of the program, make no economic sense, and will deprive U.S. taxpayers of the full value of their investment.

We would further note that these restrictions are not legally required. We understand that the restrictions were adopted by Departmental program officials believing they were “in the spirit” of the Buy America provisions in the American Recovery and Reinvestment Act. We are very concerned that the program officials did not appreciate the significantly adverse and public impact of these restrictions on U.S. companies, on the effectiveness of the ARPA-E program, and on U.S. trade policy more generally.

Setting aside any questions the restrictions raise under U.S. international agreements, they are also inconsistent with the longstanding and explicit U.S. policy to encourage foreign investment in the United States and accord nondiscriminatory treatment. The FOA invites discrimination against U.S. companies abroad, which is exactly what President Obama and the other G20 Leaders pledged to avoid through their commitment to “promote global trade and investment and reject protectionism.”

Finally, the restrictions currently set forth in the FOA are a disturbing example of what can happen when government crafts overtly protectionist policies. The atmosphere created by the “Buy America” provisions has encouraged officials to discriminate believing such discrimination is consistent with what appears to be prevailing policy. This is the very concern that we, along with dozens of companies and other trade associations, raised in our February 4th letter to the President opposing the Buy America provisions. In that letter, we warned that such a provision would “send the wrong message at the worst possible time.” Our fear was that the “wrong” message would be

received by other countries. It is now clear that the wrong message was heard by U.S. officials as well.

We strongly urge you to remove these unprecedented and unwarranted restrictions from the ARPA-E funding opportunity announcement, and to ensure that no similar restrictions are included in future FOAs for the ARPA-E program or other DOE programs.

Sincerely,



Nancy McLernon
President & CEO
Organization for International Investment

cc:

The Honorable Michael Froman
Deputy National Security Advisor for International Economic Affairs
and Deputy Assistant to the President

The Honorable Lawrence H. Summers
Director of the National Economic Council
and Assistant to the President for Economic Policy

Ambassador Ron Kirk
United States Trade Representative

The Honorable Gary Locke
Secretary of Commerce



ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

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Brother International Corp.	Miller Brewing Company	Toyota Motor North America
Brunswick Group	Mitsubishi Electric & Electronics	Transurban
Bunge Ltd.	Munich Re	Tyco International (US), Inc.
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CEMEX USA	Nestlé USA, Inc.	UBS
Covidien	The Nielsen Company (US), Inc.	Unilever
Credit Suisse Securities (USA)	Nokia, Inc.	Virgin Atlantic Airlines
Daiichi Sankyo, Inc.	Novartis Corporation	Vodafone
Daimler	Novelis Inc.	Voith Paper Inc.
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Enel North America	Philips Electronics North America	Zurich Insurance Group



The Secretary of Energy
Washington, D.C. 20585

July 29, 2009

Ms. Nancy McLernon
President and CEO
Organization for International Investment
1225 Nineteenth Street, NW, Suite 501
Washington, DC 20036

Dear Ms. McLernon:

Thank you for your May 26, 2009, letter concerning foreign participation and funding under the first Funding Opportunity Announcement (FOA) issued by the Advanced Research Projects Agency-Energy (ARPA-E).

You correctly note that the FOA permits participation by foreign entities and allows substantial funding of activities by foreign entities. However, you question the requirement that lead organizations be U.S. entities as well as the limitation on the percentage of ARPA-E funds that may be received by foreign entities participating in a selected project.

The first ARPA-E FOA provisions sought to strike a thoughtful balance on the issue of foreign participation, permitting a substantial role for foreign entities with the resources and capabilities to participate in the important transformational goals of ARPA-E, while meeting the stipulations of the American Recovery and Reinvestment Act. The second ARPA-E FOA will be modified based on other factors, and we will coordinate this with the Department of Commerce and the Office of the United States Trade Representative (USTR).

I believe that transformational results in energy research can be achieved when technology leaders and researchers from all over the world commit themselves to innovation. By supporting a global interest in collaborative energy research and innovations in energy technologies I hope to address better the energy, economic, and climate needs shared by all countries.

Again, thank you for your interest in this important program. If you have any questions or require additional information, please contact me or Shane Kosinski, Advanced Research Projects Agency-Energy, at (202) 287-1057.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steven Chu".

Steven Chu



Opening Statement
Nominations Hearing
October 8, 2009
Senator Sam Brownback

- Thank you Mr. Chairman and Ranking Member Murkowski and congratulations to both nominees for your selection to serve within the Obama Administration
- I'm extremely impressed with the experience both of you have in your respected areas of science, and I hope you maintain your commitment to the advancement of science from an objective viewpoint.
- I support the goals you both have laid out in your written testimony. I don't think anyone would argue with the importance of studying the submarine areas off the coast of the United States to better understand their resource potential, or providing scientific and engineering innovations to advance energy efficiency and security.

- But I ask that when you pursue these objectives, you do so from an unbiased objective approach that takes into account all scientific studies absent political ideologies, and hopefully therefore, moving our nation towards the goal of greater energy independence.
- I believe, through balanced policy, we can achieve this goal. What I don't believe, is that we can achieve this goal by promulgating national carbon emission regulation, regulation which I believe will only further cripple our national economy without any positive impact on global temperature reduction.
- Before I close, I wanted to address one issue I have with the Advanced Research Projects Agency-Energy at the DOE. Specifically, I was troubled that the Funding Opportunity Announcement for this program limits participation eligibility to U.S. operations of companies' headquartered abroad. Nationwide, these companies employ over 5 million Americans including 46,500 Kansans. There are no other programs at DOE that define these US companies as "foreign entities" and there is nothing in either applicable law or regulation that would require these restrictions. Many of these companies are longtime partners with the DOE and have expertise in this area that can help advance U.S. energy goals. As such, allowing their

participation in ARPA-E, very much like DOE successfully does in other programs, could positively impact future U.S. employment while contributing to the success of the program. I know that officials at the Department have had discussions with folks on this issue and I appreciate the Secretary's acknowledgement of those concerns and a commitment to consider the issue and look to modify future requirements. I would ask that the exchange of letters regarding this issue, and my full statement, be entered into the record. In addition, I would like your assurance, Mr. Majumdar, that the policy will be carefully reviewed, and hopefully changed, in light of these considerations.

- Thank you again for testifying today, and I look forward to working with both of you in the future.