

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-3641

Minority (202) 225-2927

December 4, 2023

Mr. Jigar Shah
Director
Loan Programs Office
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington D.C., 20002

Dear Mr. Shah,

We write to you regarding the Department of Energy's (DOE) Loan Programs Office's (LPO) recent conditional commitment to Li-Cycle US Holdings, Inc. (Li-Cycle) and the LPO's processes for vetting and approving applications and recipients.

On February 27, 2023, the LPO announced a conditional commitment to Li-Cycle for a \$375 million direct loan to help finance a lithium-ion battery resource recovery facility in Rochester, New York.¹ The LPO celebrated this conditional commitment under its Advanced Technology Vehicles Manufacturing program as supporting the Biden-Harris administration's efforts to "make half of all new vehicles sold in 2023 zero-emissions vehicles."²

However, since that date, disturbing updates about Li-Cycle and the proposed facility have emerged. On October 23, 2023, Li-Cycle announced it was "pausing construction work" on the Rochester facility, known as the "Rochester Hub," pending a comprehensive review of the strategy of the project and citing "escalating construction costs."³ Additionally, Li-Cycle stock prices recently plunged following a recent disappointing quarterly earnings report and the pause on construction of the Rochester Hub.⁴ Reportedly, Li-Cycle stock recently lost half of its value

¹ DEP'T OF ENERGY, LOAN PROGRAMS OFFICE, *LPO Announced a Conditional Commitment for Loan to Li-Cycle's U.S. Battery Resource Recovery Facility to Recover Critical Electric Vehicle Battery Materials*, Feb. 27, 2023, <https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-loan-li-cycles-us-battery-resource-recovery>.

² *Id.*

³ Press Release, Li-Cycle Announces Review of the Rochester Hub Project, Oct. 23, 2023, <https://li-cycle.com/press-releases/li-cycle-announces-review-of-the-rochester-hub-project/>.

⁴ Brian Sharp, *Li-Cycle's Stock Price Plummets, Pointing to Uncertain Future*, WXXI NEWS, Nov. 14, 2023, <https://www.wxxi.com/news/2023-11-14/li-cycles-stock-price-plummets-pointing-to-uncertain-future>.

following this quarterly report, and, as of November 15, its stock prices had fallen 88 percent year-to-date.⁵ Finally, two law firms recently announced they filed class action suits against Li-Cycle for making false and/or misleading statements and failing to disclose rising construction costs for the Rochester Hub, as well as the severity and impact of those costs.⁶

The Committee has also learned of potential challenges with the DOE loan itself. Reportedly, Li-Cycle stated the DOE loan was to close in June of this year, but that target has been pushed back twice.⁷ Li-Cycle also stated it will need to secure additional financing to meet DOE's loan terms.⁸

While some have observed that "green" energy companies have experienced difficulties this year,⁹ these developments suggest serious struggles for this company. This raises concerns about the LPO's vetting and due diligence processes as well as potential attempts to implore companies to incur obligations they cannot meet. For example, in 2022, you reportedly met with Li-Cycle Chief Executive Officer Ajay Kochar regarding DOE's program to encourage him to apply for an LPO loan.¹⁰ When he expressed uncertainty about Li-Cycle's ability to repay the loan quickly, you urged him to attend a clean-energy conference in Pittsburgh.¹¹ While news reports did not confirm it was this specific conference, you participated in an event of Cleantech Business Leaders Roundtable, a trade association you helped found, in Pittsburgh on September 22, 2022.¹² On October 19, 2023, Senator Barrasso and Chair Rodgers requested more information about the ethical concerns surrounding your continued association with this organization.¹³ While today's request implicates different concerns, as of today, Congress has not

⁵ Samuel O'Brien, *LICY Stock Alert: Why is Li-Cycle Down 60% Today*, INVESTORPLACE, Nov. 15, 2023, <https://investorplace.com/2023/11/licy-stock-alert-why-is-li-cycle-down-60-today/>; *Id.*

⁶ GLOBALNEWswire, *Kirby McInerney LLP Reminds Investors That a Class Action Lawsuit Has Been Filed on Behalf of Li-Cycle Holdings Corp. (LICY) Investors and Encourages Investors to Contact the Firm Before January 8, 2023*, Nov. 14, 2023, <https://www.globenewswire.com/news-release/2023/11/14/2780308/0/en/Kirby-McInerney-LLP-Reminds-Investors-That-a-Class-Action-Lawsuit-Has-Been-Filed-on-Behalf-of-Li-Cycle-Holdings-Corp-LICY-Investors-and-Encourages-Investors-to-Contact-the-Firm-Bef.html>; GLOBENEWswire, *Li-Cycle Alert: Brager Eigel & Squire, P.C. Reminds Investors that a Class Action Lawsuit Has Been Filed Against Li-Cycle, Corp. and Encourages Investors to Contact the Firm*, Nov. 14, 2023, [https://www.globenewswire.com/news-release/2023/11/15/2780665/0/en/LI-CYCLE-ALERT-Brager-Eigel-Squire-P-C-Reminds-Investors-that-a-Class-Action-Lawsuit-Has-Been-Filed-Against-Li-Cycle-Corp-and-Encourages-Investors-to-Contact-the-Firm.html#:~:text=\(%E2%80%9CLi%2DCycle%E2%80%9D%20or,the%20%E2%80%9CClass%20Period%E2%80%9D\).](https://www.globenewswire.com/news-release/2023/11/15/2780665/0/en/LI-CYCLE-ALERT-Brager-Eigel-Squire-P-C-Reminds-Investors-that-a-Class-Action-Lawsuit-Has-Been-Filed-Against-Li-Cycle-Corp-and-Encourages-Investors-to-Contact-the-Firm.html#:~:text=(%E2%80%9CLi%2DCycle%E2%80%9D%20or,the%20%E2%80%9CClass%20Period%E2%80%9D).)

⁷ Sharp, *supra* note 4.

⁸ Sharp, *supra* note 4.

⁹ See Sharp *supra* note 4.

¹⁰ See Scott Patterson & Ramkumar, *Joe Biden's \$400 Billion Man*, WALL ST. J., July 3, 2023, <https://www.wsj.com/articles/green-energy-climate-loans-49fda73b>; Nick Pope, *Biden Admin Approved Huge Loan to Green Company as It Was Allegedly Defrauding Investors. Now Its Stock Is Tanking*, DAILY CALLER, Nov. 16, 2023, <https://dailycaller.com/2023/11/16/biden-lpo-li-cycle-jigar-shah-loan/>.

¹¹ See Peterson & Ramkumar, *supra* note 10.

¹² See *id.*; Pope, *supra* note 10. See also Cleantech Leaders Roundtable, Pittsburg, PA, Global Clean Energy Action Forum CTR Reception, https://secure.everyaction.com/2h_-EH7jokqnp4xdUSn0TA2.

¹³ Letter from John Barrasso, Ranking Member, Senate Committee on Energy and Natural Resources & Cathy McMorris Rodgers, Chair, House Energy and Commerce Committee (Oct. 19, 2023).

received a response to that request. This lack of transparency undermines the public trust in the LPO.

We also seek more detail on some of your statements before the Senate Committee on Energy and Natural Resources at an October 19, 2023, hearing.¹⁴ In response to questions from Chairman Joe Manchin, you stated that you “don’t make any decisions on which loans we actually underwrite or approve.”¹⁵ You also stated that “[t]hese loans are being overseen by, you know, career federal staff.”¹⁶ As part of our oversight responsibilities, it is critical that we understand who the decisionmakers are in the LPO.

To assist in our oversight of the LPO and efforts to protect our federal funds from reckless investments, please provide the following documents and information by no later than December 18, 2023:

1. All documents and information sufficient to show the entire LPO process for reviewing and deciding whether to approve applications for LPO loans and loan guarantees, at both the conditional and final stages, including:
 - a. Each step or stage of the review and approval process.
 - b. The names and titles of each individual federal government official, employee, consultant, or contractor who participates in each step of the process.
 - c. The names and titles of each individual federal official, employee, consultant, or contractor who must grant approval at each stage for an application to progress to the next stage.
 - d. The role of any review panels or advisory boards that participate in this process.
 - e. Any and all minutes, transcripts, or memoranda from any review panels or advisory boards that participate in this process.
2. All internal guidance, memos, criteria, or policies governing each stage of the loan and loan guarantee application review process, including both the conditional and final stages.

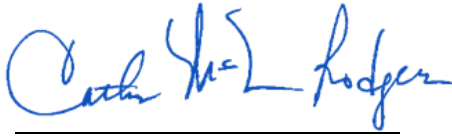
¹⁴ *Full Committee Hearing to Examine the Department of Energy’s Decision-making Process for Awarding Competitive Loans and Grants Funded Through the Inflation Reduction Act and the Bipartisan Infrastructure Law, Hearing Before the S. Comm. on Energy and Natural Res.*, 118th Cong. (2023).

¹⁵ *Id.* (response of Jigar Shah, Director, Loan Programs Office, to Joe Manchin, Chair, Senate Committee on Energy and Natural Resources).

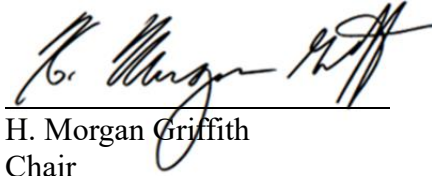
¹⁶ *Id.* (response of Jigar Shah, Director, Loan Programs Office, to Joe Manchin, Chair, Senate Committee on Energy and Natural Resources).

Thank you for your prompt attention to this important matter. Should you have any questions about this request, please do not hesitate to contact Christen Harsha with the Committee Majority staff at (202) 225-3641.

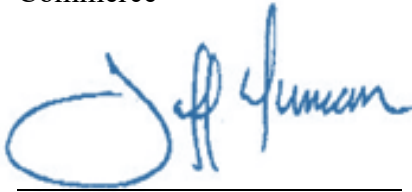
Sincerely,



Cathy McMorris Rodgers
Chair
Committee on Energy and
Commerce



H. Morgan Griffith
Chair
Subcommittee on Oversight and
Investigations



Jeff Duncan
Chair
Subcommittee on Energy, Climate,
and Grid Security

CC: Frank Pallone Jr., Ranking Member, Energy and Commerce Committee
Diana Degette, Ranking Member, Subcommittee on Energy, Climate, and Grid Security
Kathy Castor, Ranking Member, Subcommittee on Oversight and Investigations