

THE GOVERNMENT ATTACK ON XP VEHICLES WAS DESIGNED TO PROTECT ELON MUSK AS AN OBAMA FINANCIER

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Talking Points for XP DOE Complaint

Audience:

- DOE & other members of the government
- general public
- donors
- media
- green technology supporters

Objectives: This case is about an environment-friendly car manufacturer who was promised a level playing field in its applications for funds to the Energy Department only to be unfairly denied and financially and detrimentally harmed in the process.

- Expose cronyism at the Department of Energy
- CoA is representing taxpayers who deserve an open, transparent, and fair government loan process
- The DDC and Court of Federal Claims should grant XP Technology (including XP Vehicles, Inc. and Limnia, Inc.) Declaratory and Injunctive Relief, retribution fees and other damages

Key Messages:

1. Loans granted through the DOE's Loan Guarantee Program (LGP) and Advanced Technology Vehicle Manufacturing (ATVM) loan program were administered in an arbitrary and capricious manner, inconsistently favoring some and disadvantaging other applicants; lacked mechanisms for LGP applicants to administratively appeal its decisions; and re-reviewed rejected applications on an ad hoc basis.
2. XP's ATVM application was deliberately "set aside" and substantially delayed consideration by DOE in favor of loan applications from politically-connected government cronies like Tesla and Fisker, whose top executives and investors, Steve Westly (Tesla) and John Doerr (Fisker) donated millions to Democrats and the Obama Administration in 2008.
3. Many of the loan applications granted by the DOE went to companies that failed to produce the promised results, were not innovative in technology, or ultimately declared bankruptcy with the harm going to the American taxpayers (cite Solyndra, Tesla and Fisker as examples).
4. Of the \$25 billion that Congress authorized the DOE to loan, \$16 billion remains undisbursed. Why was XP's \$40 million request not granted when it could have been used to immediately create jobs?
5. The DOE violated multiple non-disclosure agreements with XP (and Limnia, Inc.) passing along patented technology to General Motors and other government cronies.
6. In the case of XP, we see another example of the DOE's cronyism, broken promises to American taxpayers, and misuse of executive agency influence.

Talking Points:

- The Department of Energy engaged in arbitrary and capricious methods when awarding loan guarantees through the Advanced Technology Vehicle Manufacturing (ATVM) loan program
 - The DOE administers the ATVM loan program, in which Congress authorized DOE to provide direct federal government loans supporting the advancement of technology vehicles
 - Congress authorized DOE to make \$25 billion in ATVM loans (DOE currently has approx. \$16 billion of unused lending authority).
 - At all times relevant, DOE knew that the ATVM loans had evaporated the private markets, and that unduly delaying or denying a small, innovative technology company's ATVM loan likely would scare away other private investors and lenders—meaning a business death sentence.
- XP Technology is a small business that has demonstrated innovation, energy efficiency, and provided technology that can advance green energy efforts and create jobs in the United States.
 - In November, 2008 XP Technology applied for a \$40 million ATVM loan to build a scalable, innovative and efficient electric car.
 - XP's design cost less than \$20,000 in base configuration, required no gasoline or extension cords to charge, was easy to repair and build, and used crash effect reduction materials.
 - All of the XP car's key parts were built and tested or already existed in off-the-shelf components proven in the industry for over a decade.
 - XP offered DOE asset collateral of over \$100 million to secure the ATVM loan
 - On December 2, 2008, DOE Director of Advanced Technologies Manufacturing Loan Program Lachlan Seward wrote to XP acknowledging receipt of its application and requesting certain information, which XP then provided.
 - On December 31, 2008, Seward informed XP that its application was "substantially" complete, and that DOE would advise XP if it needed additional information during the application review process.

- At all times relevant, XP qualified for the ATVM loan based on DOE's published material (see additional docs).

- We see from the examples of Tesla and Fisker that ATVM loans were massive expenditures that produced few results.
 - XP's application was "set aside" by DOE in favor of ATVM loan applications from other companies who have not produced results, therefore wasting taxpayer dollars that were intended to create jobs and promote better technology and innovation.

- The government stole technology from XP, violating non-disclosure agreements, and handed that information to General Motors, Ford, and other companies that received DOE funding.
 - XP had worked with DOE on applied fuel cell research and commercialization for over a decade.
 - XP obtained a grant in 2005 through the power plant development group called Limnia which it used to develop a battery 3 times more powerful than lithium batteries.
 - Limnia and XP signed NDAs with the DOE and Sandia, a government contractor, which were violated and resulted in General Motors and Ford using XP's technology.



