Bad News: Battery Charges

Battery Charges

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January's Rose Garden celebration launching the U.S. Advanced Battery Consortium is becoming a hollow victory for the Bush administration with the growing realization that the event violated White House policy to help smaller companies—and at the very least bypasses federal law.

The $260 million consortium unites the Department of Energy, General Motors, Ford, Chrysler and the Electric Power Research Institute in developing advanced battery technologies for electric vehicles under the government's Cooperative Research and Development Agreement (CRADA) program.

However, any company other than EPRI or the Big Three automakers that participates in the USABC must first, to receive any DoE funding, relinquish intellectual property rights to any developments arising out

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of DoE-funded research, said technology transfer experts.

DoE will then provide funding for conducting research on electric vehicles—and waive the exclusive rights to the consortium for automobile applications. Thus if "junior" members participating in the consortium "make a commercial breakthrough on new batteries, USABC gets it for nothing," said one technology transfer insider. The Big Three would reap all the benefits, both financial and technical.

That, the experts added, violates the intent of a CRADA, created by Congress in 1989, and the provisions of the decade-old Bayh-Dole Act, which stipulates that small businesses and nonprofit organizations should receive preferential treatment from all federal agencies concerning rights surrounding inventions developed through federally funded research.

Further, by swallowing up the property rights of smaller companies and organizations, DoE effectively eliminates all incentive for an inventor to commercialize an effort with the USABC—a contradiction of a highly publicized memorandum issued a year ago by Energy Secretary Adm. James Watkins.

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"It's just a terrible precedent," said Lita Nelsen, associate director of the Massachusetts Institute of Technology Technology Licensing Office and president of the Association of University Technology Managers. "It's cherry-picking the winners. As soon as it looks good, somebody will come after it."

Technology transfer experts attribute the current situation to legal wrangling by attorneys from both DoE and the Big Three, who appear to have swept aside previous participation negotiations in an effort to push the deal through quickly.

"It was a lawyer's special" ostensibly designed to centralize ownership in the consortium to bring prompt commercialization of the technologies, said one insider. Yet the majority of innovative designs are expected to hail from smaller businesses, now being warned against participation in the USABC by many federal and private tech-transfer specialists who believe the only beneficiaries will be EPRI and the Big Three.

Following direction from J. Michael Davis, DoE assistant secretary for conservation and renewable energy, the USABC recently requested approval from the Commerce Department to deviate from existing U.S. laws based on "exceptional circumstances," said Commerce Under Secretary of Technology Dr. Robert White on Jan. 15. White did not approve the request.

"DoE has concluded that small businesses and nonprofit organizations should be precluded from owning all the rights in their inventions relating to advanced battery research funded by the department," White wrote in his answer to DoE.

"The determination relies upon centralized decision-making, ignores the needs of small businesses and nonprofit organizations and removes any incentives for them or their employees to work with USABC," he added.

The Small Business Administration also wrote a letter to DOE, which noted the unfair treatment by DoE and the managers of the USABC, composed of senior personnel from Chrysler, Ford and GM.

When announced last fall, the consortium was well received and regarded as one of the first major initiatives tying together industry and government. Funding for the program is to be shared equally, with DoE giving $130 million over five years and industry committed to equal

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