

Enron's Raiding India Backed by Washington

by Ramtanu Maitra

An Enron Corp. team, led by Chairman and Bush-moneybags Kenneth Lay, arrived in New Delhi in early July, backed by two public threats to India by U.S. officials. The threats were delivered in support of the disastrous Dabhol private power project which Enron has foisted on India and its western state of Maharashtra. The super-profitable Dabhol Power Company (DPC) has rapidly turned into a leech fastened on Maharashtra's public budget by Enron.

U.S. Undersecretary of State for Economic, Business, and Agricultural Affairs Alan Larson, speaking before the U.S.-India Business Council in Washington on June 21, said: "I do want to underscore that it will be hard for foreign investors to look seriously at India until this dispute is resolved in a satisfactory way"—meaning, clearly, satisfactory to Enron. A week later, U.S. Assistant Secretary of State for South Asia Christina Rocca, visiting her newly acquired turf on a familiarization trip, told Indian businessmen that "the ongoing dispute between the DPC and the Maharashtra state government casts a cloud over India's entire investment climate." She also met with India's Minister for Power, Suresh Prabhu. Media speculations are that the Bush Administration is putting full-court pressure on Delhi to get a "satisfactory" solution to the dispute.

At Exhorbitant Cost

In 1993, the Maharashtra State Electricity Board (MSEB), a public sector undertaking, signed a Power Purchase Agreement with Enron's creation, Dabhol Power Company. This agreement was later renegotiated on Nov. 19, 1995. In the final agreement, DPC undertook to build and operate a 2,184 megawatt electricity generating unit at Dabhol. MSEB committed to making certain recurring payments over 20 years, commencing with the commissioning of Phase 1 of the plant.

The DPC plant is being built in two phases; 740 MW is already operational. Fixed payments by Maharashtra state to Enron on Phase 1 amount to Rs. 10.2 billion (about \$220 million) a year. Phase 2 is due to be commissioned in 2001, at which point fixed payments will triple, and so amount to at least Rs. 30 billion (\$650 million) a year.

In addition, Maharashtra is paying a variable payment for power generated and drawn; as of last November, this amounted to Rs. 3.72 per kilowatt-hour, or roughly 8 cents. Thus, an Indian state is paying Enron more than the average

FIGURE 10



price paid for electricity by retail customers in the United States, and paying fixed costs for the construction of the plant as well! Maharashtra's Board, the MSEB, is free to purchase as much power as it desires from Phase 1, but must pay for a minimum of 90% of the power generated in Phase II, whether it uses that power or not. MSEB will be paying Enron-DPC Rs. 70 billion (or nearly \$1.5 billion) per year as soon as Phase II starts.

Moreover, both the Maharashtra state government, and India's national government, have had to sign guarantees to pay and make good any default by MSEB, indemnifying Enron-DPC "against any loss sustained or incurred by the Company by reason of the invalidity, illegality, or unenforceability of any of this Guarantee."

MSEB supplies power to all of Maharashtra, excepting the Greater Mumbai Metropolitan Area. MSEB runs several power-generating units which produce 74% of all the power it supplies. It purchases the remainder from private power generators, including DPC. Between April 1999 and January

2000, MSEB purchased 12.3 billion units of power from private power generators, for a net payment of Rs. 26 billion—an average rate of *Rs. 2.11 per unit*. But of this, the 3.04 billion units purchased from DPC, cost Rs. 12.06 billion, or Rs. 3.97 per unit—*double the price*. In essence, MSEB got only 25% of its private power purchase from Enron, but gave Enron 46% of its total payments to private generators.

Between April and October 2000, MSEB purchased power from DPC at an effective rate (fixed and variable payments combined) of Rs. 6.13, or more than 13 cents, per unit—“California rates.”

Thus, MSEB is being dragged toward bankruptcy. In 1998-99, the year just prior to the commissioning of the DPC, MSEB had net revenue from the sale of power of Rs. 116.5 billion, and after expenditures, a surplus of Rs. 3.76 billion. But once the DPC came on line, MSEB faced losses. In January 2001, MSEB defaulted on payments due to DPC for the month of November 2000. DPC invoked the counter-guarantee clause, at which point, the MSEB and the government of Maharashtra cleared the bill. Subsequently, MSEB has not paid DPC monthly bills. The power plant has been shut down and the dispute has now reached its full-blown stage.

In Defiance of National Authorities

As mentioned earlier, when Phase 2 goes on stream, MSEB would end up paying DPC about 60% of its 1998-99 revenue level, in return for about 28% of its net energy supply. The payments would comprise about 30% of the state of Maharashtra's total annual budget. Thus, it is evident that the Enron deal was not only to bankrupt the MSEB, but also the government of Maharashtra.

The World Bank had turned down financing of the project in 1993, as not economically viable. More importantly, India's Central Electricity Authority (CEA) inspected and flunked the project. The CEA, whose approval is a must for building any power plant, concluded that the “entire Memorandum of Understanding is one-sided” in favor of Enron and its partners. But in an unprecedented development aided by Enron bribes, the project got built and plugged into Maharashtra's finances anyway. Financial irregularities involving the Enron officials and the Maharashtra state politicians made headlines regularly in the Indian media. Then-Enron CEO Rebecca Mark had said that Enron had earmarked \$20 million as “educational gifts.”

Some of the other accusations:

- There was no competitive bidding for the project and the deal was exclusively negotiated between the Maharashtra state government and Enron.
- The project costs and power tariffs were higher than for any other power project in India, and inflate prices elsewhere in the economy.
- The DPC was assured a post-tax return of 16% on capital investment, and there was no limit to the capital expenditure. In fact, calculations showed that the annual Enron profit

would be close to 32%—three times the average rate in the United States.

- Despite financial guarantees from the state and national government, Enron is shielded by the contract from Indian law and jurisdiction! All disputes must be settled under English law in England.

- An assurance was given that the project will not be nationalized.

- The power purchase agreement between the DPC and MSEB was initially kept secret from the public. In May 1997, the Indian Supreme Court dismissed a petition calling for its re-examination, holding that it was not in the public interest to go into the validity of the project and related contract. However, the court did not address the petitioners' main plea, on whether the project's promoters had obtained the CEA's statutory clearance as required under the Electricity Supply Act.

In fact, the CEA never cleared the project. The CEA handed it over to the Ministry of Finance, but that ministry did not issue any statement on the project. No one cleared it, not even when it was renegotiated in 1995.

On its part, Enron issued the following statement: “We were not surprised that people would have questions and concerns. This was the first foreign private sector power project in India and so we expected that there would be a good deal of debate concerning the project. However, we have worked hard to advise interested parties about the plant, its benefits, and Enron, and feel that now there is significant support for the project.”

Playing on Power Shortages

Despite Enron's assurances, the project was widely considered a boondoggle and an epitome of corrupt practices. Power shortages in India, however, have created an environment in which the maxim that “no power is more expensive than the lack of power” has come to rule the roost. Moreover, New Delhi made it clear at the outset of its economic reform and liberalization, that foreign direct investment would be a key input for upgrading India's ramshackle infrastructure. The general view at that point was that so long as the power tariff does not rise sharply to affect industry, commerce, and domestic consumers (India's agriculture sector enjoys virtually free consumption of electricity), more power is what the country needs.

Maharashtra's unscrupulous politicians and Enron formed a perfect alliance; but reality has brought them down, and the Dabhol project is now embattled. Maharashtra's Power Board's bankruptcy, which will eventually force New Delhi to step in, and the potential impact of the Phase 2 of the DPC in the coming years, are hard realities Delhi will have to address.

There is no doubt that Enron has made a bagful of money already, and it is not going to walk out. It is backed by Washington, and it has too much going on in its favor in India.

Enron made it evident that building power plants is not its only economic interest—it was more of a convenient way to enter India. Enron has already received clearances for the following projects in India, giving it the potential capability to loot, perhaps to bankrupt broad swaths of western India on the DPC model:

- **LNG terminal at Dabhol:** In 1993, the Indian government approved Enron's \$250 million development of a Liquid Natural Gas terminal at the DPC site. In 1997, Enron received permission to expand the terminal, which will process 5 million metric tons of LNG per year. DPC will receive some of it and Enron has been given license to sell to other customers. Enron plans to use the terminal as a base to develop an LNG distribution business through industrial western India via a pipeline network. Enron currently has 20-year contracts for 2.1 million tons per year of LNG with Oman and Abu Dhabi Gas Liquefaction Company Ltd. (ADGAS). Deliveries will begin by the end of this year.
- **MetGas Pipeline Project:** Enron is in the early stages of developing a natural gas pipeline project in Maharashtra. Through its marketing and pipeline affiliates, MetGas will import and re-gasify LNG into the Dabhol terminal. The proposed pipeline is then supposed to transport natural gas from Dabhol to industrial and commercial users in Maharashtra.
- **LNG tanker construction:** In January 1999, an Enron

affiliate and Mitsui OSK Lines, Ltd. (MOL), signed a joint venture agreement to construct, own, and operate a 135,000 cubic meter LNG carrier. The Shipping Corporation of India (SCI) acquired 20% equity in the venture in January 2000. The vessel will be used exclusively for transporting LNG from the Middle East to Dabhol.

- **Gas Authority of India Ltd. (GAIL):** In November 1999, Enron purchased 5.1% of GAIL. GAIL operates India's sole long-distance gas pipeline, which runs from the offshore gas fields in the Bombay High area to the capital, New Delhi.
- **Broadband Services:** This involves joint-venture projects to gain access to lay fiber-optic cables delivering broadband applications countrywide. It is presently engaged in a joint venture with the MSEB and Global Telesystems to bid for a 5,000 km fiber-optic backbone in Maharashtra.
- **Offshore fields:** Enron has a 30% stake in three offshore gas and oil fields in Panna, Mukta, and Tapti. Enron India operates three offshore oil and gas fields in a joint venture with Oil & Natural Gas Commission (ONGC) and Reliance Petroleum Ltd. Recent news reports indicate that Enron wants to sell its equity in these gas and oil fields to Indian buyers.

The Dabhol Crisis

While India's Power Minister is meeting with Lay and Rocca, speculations are rife about the nature of the solution to the DPC dispute one would expect. Some claim the cost structure will be renegotiated. Options include: reducing the interest rates on loans, as these have fallen after the loans were given; changing the tariff formula to remove the linkage to the dollar-rupee exchange rate; reducing MSEB's requirement to take or pay for 90% of the plant load; removing the padding in project costs as exposed by the Godbole Committee, which has looked at the project documents; sourcing naphtha from domestic suppliers, instead of importing from Middle East; using LNG, instead of naphtha, to bring down costs; and separating the LNG plant and power plant.


Or, India could buy out Enron from DPC. Enron, it appears, is not averse to this. Alternatively, Enron can be encouraged by Delhi to sell to private players, such as AES Transpower, which has evinced interest. But also, Reliance, a huge Indian outfit, has the resources to buy out the \$3 billion project, or at any rate, the LNG terminal.

It should be clear to New Delhi by now, that the foreign direct investment (FDI) will not materialize in India's infrastructure development, without dishing out huge profits to the multinationals, thus crippling the infrastructure itself.

Secondly, LNG plants are unviable in oil-starved countries such as India. With capabilities to build nuclear power plants for power generation, India, unlike some Asian countries, must not get into building LNG-fired power plants. LNG prices remain linked to the volatile crude oil market. The per-unit cost of LNG remains significantly higher than the coal-based units.

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