

The Real Findings and Recommendation of the Godbole Committee on Enron Project

An Analysis by Prayas Energy Group

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The Energy Review Committee entrusted with the task of in-depth scrutiny of the Enron deal has come out with some shocking revelations and bold recommendations. It is essential to note that these are unanimous recommendations of a group of highly eminent and experienced experts such as Dr. Madhav Godbole (Ex. Chairman MSEB and Former Union Home Secretary); Dr. EAS Sarma (Ex. Union Power Secretary), Mr. Deepak Parekh (Chairman, Infrastructure Development and Finance Corporation or IDFC).

Excessive Payments of Rs. 930 crores per year

The Committee, on in-depth analysis of the Enron PPA and related documents, has pointed out excessive and undue payments to Enron from MSEB on following counts:

- § **Undue Burden of Regasification Facility:** Even though the power plant requires only 42% of the regasification capacity (even at 90% PLF), Enron is charging the full cost to MSEB. This implies **overcharging by about Rs. 253 cr. per year** (p. 71, 72, 77).
- § **Undue Recovery of Shipping and Harbor Charges:** Even though the cost of these facilities is included in the capital recovery charge Enron is charging approximately Rs. 233 crores per year for these facilities. Excluding the reasonable cost of the shipping charter, Enron is **charging over Rs. 100 crores per year extra to MSEB** (p. 72, 73).
- § **Undue Recovery of O & M Charges:** Enron is charging O & M expenditure much higher than the norm stipulated by GoI for similar projects. O & M charges as per the GoI norms would be around Rs. 214 Cr./yr. whereas Enron's PPA fixes it at about Rs. 460 Cr./yr. This implies **excessive charge to MSEB of Rs. 246 Cr./yr** (Sec. 7.5.3 pg. 72).
- § **Undue Charge thorough Inflated Claims of Fuel Consumption:** As per the existing PPA, fuel cost is based on fuel consumption at 1878 kCal/kWh, but the actual fuel consumption rate guaranteed by the equipment manufacturer is much (~ 9 %) less. The Committee's analysis indicates that Enron earns **additional revenue of around Rs. 332 Cr./ yr** (Box 14, Fuel Arbitrage p. 79).

Thus, the calculations made by the committee indicates that even within the framework of the present agreement, it could be claimed **that DPC is overcharging MSEB by Rs. 930 crores per year**. This needs to be compared DPC's claimed equity of Rs. 3500 crores.

In addition, there are instances of undue and excessive payments such as continuation of the same tariff (dollar-linked) even after loan repayment is over. These are not separately quantified in the report. Further,, benefits on account of inflated capital cost are not considered here.

Reductions up to 50% in Tariff and Liability after Restructuring

The Committee has recommended several guidelines for reducing the tariff and liability of Enron project. These include adhering to tariff notifications and norms of the Government of India (GoI); restructuring and de-dollarization of equity and debt; separation of regas and associated facilities; change over from 'take-or-pay' to 'pay-as-use' principle for LNG contract; lowering PLF to the level of 30 to 50% in the initial years. As per assessment of the Committee, these guidelines would

reduce fixed charges by as much as 50% and would also result in reduction of total payments by as much as 50% (based on analysis of Table 7e, p. 82).

Some Critical (Unanimous) Observations of the Committee

- § “The committee is troubled with the failure of governance that seems to have characterized almost every step of the decision-making process on matters relating to DPC” (p. 83).
- § While commenting on the Ministry of Power’s tariff clearances for the project, the Committee says: “The Committee considers this combination of circumstances to go beyond the realm of coincidence and thereby is constrained to conclude that these assumptions were deliberately chosen so as to show that the DPC tariff was lower than the GoI tariff. As can be seen the entire demonstration of public interest owing to the lower DPC tariff is on extremely shaky ground and in the opinion of the Committee utterly unsustainable” (emphasis original) (p. 61).
- § While commenting on the demand projections, the Committee says: “ The Committee finds that, while the initial demand projections for DPC were flawed in that they ignored different load types in their projections, the demand projections that was the basis for commencement of Phase II was based on patently untenable assumptions given the information at that time; assumptions that have since proved to be completely unjustified” (p. 53).

Recommendations of the Committee

- § The Committee recommends that all documents, including associated contracts, related to all IPPs, including, in particular, DPC, be published by the Government of Maharashtra within two months (both emphases original) (Sec.8.1 p. 83)
- § “DPC may find the conditions of restructuring too onerous and may believe it has prospects of earning better returns if it had the contractual freedom to sell power to other parties directly. If so, the Committee recommends that DPC could be allowed to sell power to any such parties, outside the MSEB system, as it may be able to find, but only if DPC then agrees to relive MSEB of all its contractual obligations relating to the power plant” (both emphases original) (Sec. 8.4 p. 92)

This effectively implies that if DPC is not willing to bring down tariff in line with the recommendation of the Committee, MSEB should be freed from its contractual obligations.

- § The two members of the committee (viz., Dr. Godbole and Dr. Sarma) have recommended constitution of judicial commission of inquiry under the Commission of Inquiry Act. The other three members (viz., Mr. Parikh, Dr. Pachauri, Mr. Lal) have disagreed with this recommendation on certain grounds. First, they doubted whether such commission would serve any useful purpose and whether it can complete the task within a reasonable time-frame. Second, they felt that such a commission would only act as a hurdle in renegotiating the project. Lastly, they felt that the terms of reference given to the Committee did not provide it with any reason to suggest a Commission of Inquiry.

The ToR no. (4) is broad enough to allow and to require the Committee to recommend the Judicial Commission. Further, it is argued by Dr. Godbole and Sarma that such Commission may provide legal justification to free MSEB from contractual obligation. Further, by putting Enron in the tight corner, this measure will force it to come on the negotiation table and thus help rather than hinder the negotiations.
