Summary and Comments on Important Observations and Findings in Part I of the Report by the Energy Review Committee (Godbole Committee)

Prepared by

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May 2001

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The Committee appointed by the Government of Maharashtra comprised: Dr. Madhav Godbole (Chairman of the Committee) [former Home Secretary, Government of India], Dr. E. A. S. Sarma [former Energy Secretary, Government of India], Mr. Deepak Parikh [Chairman Industrial Development Finance Corporation], Dr. R. K. Pachauri [Director, Tata Energy Research Institute], Prof. Kirit Parikh [former Director Indira Gandhi Institute for Development Research] and Mr. V. M. Lal [Energy Secretary Government of Maharashtra][1]. The Committee submitted its 118 page-long report divided in eight chapters on 10th April 2001. It is accompanied with 20 annexes extending to another 80 pages. The first chapter called Introduction is devoted to the preliminary information about the Committee and hence not covered here.

Chapter 2

The Committee points out that, in the few years before Enron came on-line, the gap between the average revenue realisation and the average cost of supply (hencefurther referred to only as the gap) was limited even though the rate of growth in cost of supply was higher than the growth rate of the average realisation. In fact, there was reduction in subsidy claims (from GoM to MSEB to brim over the shortfall in MSEB accounts) from Rs. 630 cr. (1995-96) to Rs. 355 cr. (1998-99).

Further, the Committee points out that, in the year 1999-2000, there was sudden five-fold increase in the subsidy claim (to Rs. 2084 cr.) due to the sudden increase in the gap from 15 to 41 paisa (by 26 paisa or by 173%) per unit. This increase in the gap was partly due to the fall in average realisation (3 paisa), but mainly due to the sharp increase in the average cost of supply by 23 paisa per unit.

The Committee traces this sudden increase in average cost of supply in one year mainly to the sharp increase in power purchase cost, which rose in one year by Rs. 1543 cr. (from Rs. 2834 cr. to Rs. 4377 cr.). The Committee points out that the total payment to Enron was Rs. 1617 cr. in this year. In addition, the sharp rise could also be traced to the reduction in purchases from the other cheaper sources (reduction by about 900 mU) to accommodate the electricity from Enron (purchase of 3623 mU).

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[1] After lot of criticism and uproar over appointment of Prof. Kirit Parish, who was member of the Renegotiation Group, which negotiated, in 1995, the controversial agreement which this committee was expected to review. After this uproar, Prof. Parikh decided and made his decision public that he would not attend the meetings of the Committee.

The Committee points out that the five-fold increase in shortfall in MSEB's accounts (or subsidy from the GoM) in one single year (by Rs. 1729 cr.) could be attributed to two main factors: (i) rise in consumption of electricity (Rs. 379 cr.) and (ii) increase in the gap or increase in power purchase cost (Rs. 1411 cr.).

The Committee also points out that, in addition to the direct payments to Enron (DPC), MSEB had to pay increased interest due to the investment of Rs. 863 cr. in DPC through MPDCL.

The Committee also checks the T & D angle. It says, "even with an overnight reduction in the T&D loss, MSEB cannot pay DPC. Neither is the situation improved if there is sufficient additional demand" (p. 6).

It further adds that the under-performance in terms of quite high T & D losses "is not in itself responsible for the current problems with DPC, which are more related to the tariff and size of the project itself" (p. 13).

Thus, the Committee unanimously concludes that, in one year, payments to DPC has ruined financial position of MSEB and put a heavy burden on the finances of the GoM. It says, "But even if DPC (Enron), especially Phase II, were to be attached to a MSEB without any problems of T & D loss, it would still manage to drag MSEB back down into financial sickness" (p. 13).

To indicate the nature and magnitude of the burden placed by DPC on the state, the Committee compares the yearly payments of Rs. 6000 cr. to Enron with some other relevant financial statistics from the GoM presentation heads (in Box 3 on p. 24).

These include, (i) Total budgetable plan expenditure: Rs. 5818 cr.; (ii) Expenditure on Rural Development: Rs. 527 cr.; (iii) Water Supply, Sanitation, and Housing: Rs. 1633 cr.; (iv) Revenue Deficit in 2000-2001: Rs. 3939 cr.; and Incremental Debt Raised by GoM in 2000-2001: Rs. 5541 cr.

This prompts the Committee to comment: "This (burden of Enron payment) could conceivably lead to drastic cut in budget allocations for the 'State Plan' expenditure and can arguably lead to a declaration of a Plan Holiday" (p. 24).

Chapter 3

About the demand and supply (of electricity) position in the state, the Committee makes the following observations.

As far as demand for electricity in the state is concerned, the Committee observes that demand by low tariff consumer categories has grown, while that from the high-tariff categories has not.

Further, it points out that the demand projections prepared by various agencies have been historically over-estimated.

The capacity (of generation of electricity) available (in the state) is largely base-load capacity, where the state would actually appear to be in surplus.

The limited facilities available for serving the intermediate and peak (loads), which are based on gas and water suffer from fuel and water problems.

Hence, the Committee suggests that the new plants in the state need to be evaluated on the basis of their contribution to alleviating the shortages of capacity to meet the peak and intermediate demand.

The three new IPPs (private plants)—viz., Enron, Reliance (Patalganga) and Mittal (Bhadravati)—are "ill suited to meet either intermediate or peak load" because "both the plants are contracted for very high plant load factor (PLF) indicating their position as the base-load plants" (p. 15)

The Committee opines that, in an efficiently run system, the plants like Reliance and Enron would be used to meet intermediate and peak loads and therefor have lower PLF (p. 15).

In fact, the Committee opines that the Mittal-Bhadravati (or CIPCO) and Reliance which have been contracted for 87% and 90% PLF respectively would not "be able to match the load requirements of Maharashtra, as both are structured as base-load plants, with high PLF.

The Committee lists the names and capacities of the new plants that are coming on line in the near future (p. 20).

Chapter 4: The Dabhol Power Project

According to the Committee, the Enron (or DPC) project is not just a power project, but a complex intermeshing of power, LNG supply, shipping, and port projects put together.

Further, it observes that the "nature of the project has changed over time, as it has proceeded from the MoU stage to the implementation of Phase II of the project." And "with few exception . . . . the changes have been to the detriment of MSEB" (emphasis added) (p.21).

The Committee also concludes, "As the chronology of the project makes it clear, a number of critical decisions appear to have been taken without full considerations of the issues involved" (p. 21)

The Committee points out that in the initial MoU, it was explicitly stated "every effort will be made to avoid guarantees from Government of India to lenders." However, The Committee points out that the central government (the Vajapeyee led government of BJP and allies) thought it prudent to and so critical that it chose to renew the counter-guarantee on the last day of the government and before it had won its first vote of confidence in the Parliament.

The Committee, to be fair to the government, provides explanation by the then Finance Minister, who argued that it was done to avoid the payment of fine of $ 25,000 per day. This might be true.

But this would go for the period of few months before the new government could take office and make decision. However, while rushing to avoid these payments, the government and the Finance minister signed the deal, which has many extremely disastrous financial implications. Just to give one example of a comparatively minor element, the contract included payments to Enron for shipping LNG, which was higher than a comparable contract. The extra payments only on this account were equivalent to $28,000 per day to be paid for the next 18 years. As the Committee indicates later in its report, this was much more than the simple case of 'pennywise foolish pound'.

The Committee points out the designed capacities of the components of the complex project other than the power project such as the LNG Regasification Facility, Marine Facilities, Shipping Charter, Gas-Supply Agreement were excess of the need of the power project.

It also points out that the cost of these overcapacities were loaded entirely on the power project (and hence on MSEB). It further says that, though it was argued that this was unavoidable, it could have been easily avoided.

In this context, it is worth noting that the LNG Regasification facility which was integrated with the project against the recommendation of the Renegotiation Committee was of the capacity of 5 MTPA (million tons per annum), while the project needed only 2.1 MTPA. Though the cost of the entire facility was loaded on MSEB, Enron was planning to use the facility to supply gas to its own gas supply company called MetGas at about one sixth of the charge it would collect from MSEB.

Chapter 5: The Renegotiation Process

The Committee examined the manner in which the current power purchase agreement (PPA) was negotiated and signed in 1995 by the ‘Renegotiation Group’ (henceforth called only as the Group) appointed by the GoM in 1995. The Committee comes down heavily on the functioning and decisions of this Group.

The lack of transparency in the entire process of renegotiations in 1995 is highlighted by the Committee, “The non-availability of any details regarding the negotiation process, which are limited to the “*Summary Report of the Negotiating Group*” makes it difficult to explore the rationale of their suggestion in greater detail. It is a matter of some concern that deliberations that formed the basis for a decision by the GoM to support a project that was potentially a liability for the State to the extent of around Rs. 6000 crores year (at today’s exchange rates) should be recorded in so summary a fashion” (p. 27).

The difference in actual tariff and outgo with the related projections in the “Summary Report” of the Group prompts the Committee to comment: “This provides caution to the decision makers that seek to proceed without a thorough analysis of consequences under different scenarios” (p. 27).

In the fifth chapter, the Committee has gone into many of the flaws in the claims made by the Group as well as the differences in the actual values of the parameters and the projections made

by the Group. It also points out instances wherein the recommendations of the Group were not adhered to by Enron and MSEB.

The Committee begins by pointing out the fact that the Renegotiation Group was to submit its report to GoM by December 7, 1995. It was actually able to submit its report much earlier, on November 19, 1995, i.e., within eleven days of its constitution (p. 28).

To end the chapter, the Committee quotes from the observations made by the Bombay High Court "The speed at which the whole thing was done by the renegotiating group is unprecedented. What would stop one to say, as was said by the Chief Minister in the context of the original PPA, "Enron revisited, Enron saw and Enron conquered—much more that it did earlier" (p. 39).

We are not producing all the observations made by the Committee for want of space. But just to provide whiff of the comments in the chapter, here are two examples:

In the case of the reduction in the capital cost claimed by the Group, the Committee says: "It is important to realise that given the manner in which DPC's tariff is structured, a reduction in capital cost has per se, no effect on the tariff and therefore affords no benefit to MSEB. The increase in capacity is mostly due to a design change in the gas turbine. This additional MW output did not lead to any significant additional cost to DPC. The Group however considered this as a "*net benefit,*" as a "*saving in additional capital investment for additional capacity*", which was valued (by the Group) at US$ 253 million . . . . . This is very surprising; as the appropriate interpretation is surely that the initial cost was inefficiently high and therefore overstated. Furthermore, contrary to the impression conveyed, this came at a significant cost to MSEB, since it increase the total fixed charges to be paid by MSEB by about Rs. 250 core per year at today's prices" (all emphases original) (p. 29).

The Committee points at another fraud perpetrated by Enron in collaboration with MSEB: "As to the reduced capital cost of US$ 2501million, while it was agreed to and was the basis for the reduction in tariff . . . and is mentioned in a letter from DPC to MSEB dated April 8, 1996, the subsequent tariff submission from MSEB and CEA to the Government of India continue to mention the project cost as US$ 2828 million. This is not an insignificant error, as the higher project cost increases the normative tariff as per the GoI notification dated March 30, 1992, and helps to show that DPC has a lower tariff by comparison" (all emphases original) (p. 30).

At the end of the chapter, the Committee comments: "On almost all other (other than the removal of escalation clause) parameters . . . the Group's recommendations proved infructuous. The extent of variations from the Group's assumptions and actuality can be seen form the experience of MSEB since the commissioning of DPC's Phase I in May of 1999."

Further, the Committee points at the rate of Enron's electricity (during May 1999 to December 2000) of Rs. 4.67 per unit, which the Committee found "a far cry from Rs. 1.89 per unit (rate claimed by the Group)" (p.38). Finally, referring to this discrepancy, the Committee adds: "This has been due to the violation of three assumptions made by the Negotiating Group, whose adoption in the first instance was itself questionable" (p. 38).

Chapter 6: Critical Issues in the Dabhol Project

The chapter begins with the discussion on the observations made by the Bombay High Court in its decision on one of the suits that were filed against Enron. The court refused to review the government's decision because: "The Court should not enter into the merits of Government actions, more so, in economic matters, unless the same is unreasonable and is not in public interest . . . . But at the same time the Courts can centennially examine whether a decision masking process was reasonable, rational, not arbitrary and violative of Article 14 of the Constitutions." (P. 41).

Following this, the report states "The Committee believes that this report brings out these very concerns and shows in no uncertain terms that the decision making process followed in this case violated all these salutary principles, i.e., it was neither '*reasonable* [nor] *rational*'" (p. 41).

Hence, the Committee says: This chapter therefore confines itself to examining the "rationality and propriety" of various decisions made at different times with respect to DPC" (p. 41).

The Committee did not stop from conveying its opinion in no uncertain terms: "The Committee is surprised at the breadth of governance failure, which has occurred across time, across governments, and across agencies, right from 1992 till as late as 1999. . . . Every one of the assertions, relating to the benefits from the project, viz., the effectiveness of negotiations, its design and size, the need for power, and the competitiveness of tariff, for both Phase I and Phase II, have proven to be false and indeed, were based, even at the time of the assertions on extremely questionable assumptions" (emphasis original) (p. 41).

The Committee debunks all the justifications given by the GoM to adopt the route of negotiations instead of inviting bidding and observes that "Both the justifications and the quality of these negotiations are suspect" (emphasis original) (p. 42).

Commenting on the frequent assertions by some that the "Phase I was a desirable project while Phase II is the source of all problems," the Committee says: "Phase I was and is a high-cost base load plant with inappropriate fuel and benefits that are in no way commensurate with its costs" (emphasis original) (p. 45).

After analysing the demand projections that were used to support the need for Enron project, Committee comments: 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 projection that was the basis for commencement of Phase II was based on patently untenable assumptions, given the information at that time; assumption that have since proved to be completely unjustified" (emphasis original) (p. 53).

Here, the Committee comes down heavily on the CEA (Central Electricity Authority). It comments "It is a moot question whether the CEA discharged the statutory duty cast on it under the Electricity Supply Act adequately. It is not clear from all this whether the economic aspects of the project have been comprehensively evaluated" (p. 48).

The Committee does find the financial institutions on wrong foot: “the Committee also finds that the financial institutions showed poor judgement and lack of due diligence in accepting these (demand) projections without demur, as they indicated to the Committee during deliberations, and as is evidenced by their agreement to disburse funds for Phase II of the project. The decision of the financial institutions to fund this project seems to have been based primarily on escrow account given by MSEB, guarantee by the state government, and the counter-guarantee by the central government (for Phase I) rather than an independent and meticulous appraisal of the project” (p. 53).

In this chapter, the Committee also examines the issue of competitiveness of Enron’s tariff. Enron, all government agencies, and the other supporters, time and again, have averred that Enron’s “tariff is lower that the comparable GoI notification tariff on a <u>year on year basis</u>” (p. 54). The Committee explains why adherence to this norm was critical. First, this was legally obligatory and it was the basis of the key argument that the project is in the public interest.

After detailed investigation into this issue, the Committee comments: “the demonstration that the DPC tariff was lower than the GoI tariff was at best, another example of systemic failure and, at worse, something much worrisome. No reasonable person can accept the assumptions used for the comparison” (p. 54).

It concludes by saying: “Thus, in each and every instance, both for Phase I and Phase II, the assumptions are not only untenable; they are also <u>favourable</u> to DPC. . . . The Committee considers this combinations of circumstances to be 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. <u>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</u>” (emphasis original) (p. 61).

The Committee describes the mockery of Section 29 of the Electricity Supply Act at the hands of the GoM. This section aimed at providing an opportunity for public participation requires that an advertisement be placed in the newspapers inviting the comments and objections against the proposed project from members of public with a 60-day's notice. A similar notice was placed by Enron in some newspapers. On the expiry of the statutory 60 days’ period, the GoM wrote to CEA stating: "M/S Enron have stated that they have not received any objections." The CEA wrote back that it had been reported that in all 34 representations were submitted including two from consumer groups. On the very next day, the GoM wrote back that it had a look at the replies given by the DPC to these representations and had found the replies "adequate." The Committee comments: Given the limited time span (of one day) within which GoM examined the objections raised against the project, it is an issue whether satisfactory compliance of Section 29 was effectively evaluated" (p. 63).

Chapter 7 : Sustainability of Dabhol Power Project

The chapter begins with the summary of submission of MSEB. The submission suggested that GoI should take over total burden of DPC. At least MSEB should be freed from Phase II burden,

including Gas 'Take or Pay', regasification terminal, and escrow cover. Further, it claimed that even for Phase I burden, GoM would have to provide support for some time.

The submission of DPC claimed that it was willing to work out a solution so as to "ensure stability of MSEB and the project in the long term", without prejudice to its contractual rights. It suggested solutions such as off-take of power by GoI / NTPC, sale to other states, reduction in LNG "Take or Pay" by selling LNG on spot basis (provided MSEB bears differential cost if any). It also sought several tax concessions such as 10 year tax holiday (as applicable to mega power projects), import duty exemption, exemption from Minimum Alternative Tax and Dividend Distribution Tax. DPC submitted that the time-bound reforms of MSEB are essential, and that it "would be prepared to place its cards on table only in meeting at which GOI, GOM, MSEB and DPC were represented" (p. 67).

This implies that DPC was not willing to negotiate with the Committee, in defiance of government's resolution to ask the Committee to carry out negotiations with DPC. Further, the likely solutions suggested by DPC are aimed at finding ways to ensure that its revenues and profitability remain unchanged but the payments are ensured. This needs to be seen in the light of possibility of over 50% reduction in fixed costs recommended by the Committee (based on analysis of Table &E on p. 82).

In the light of submissions of MSEB and DPC, the Committee opined that "If DPC power is expensive for consumers in Maharashtra, so will it be for consumers in all other parts of the country." It further said, "DPC power is not the least-cost option, whether looked at from the point of view of a consumer in Maharashtra or elsewhere in the country" (p. 68).

In the remaining part of the chapter, the Committee has suggested several measures to restructure the DPC project. This analysis also brings out how the DPC tariff leads to unreasonably high benefits and profitability to DPC. Some of these examples are given below.

§ Even though only 42% of the capacity of LNG, regasification and harbour facility is required for the power plant, the tariff payable by MSEB is to meet full capital cost of the 494 million of this facility.

§ The total repayment for this facility is about Rs. 437 cr. per year. About 58% of this payment are the excess payment. **This implies that DPC is overcharging MSEB by about Rs. 253 cr. per year.**

§ Further, DPC is charging MSEB around Rs. 233 cr./yr. on account of the shipping and harbour charges. Since the cost of harbour is already charged to MSEB, and the cost of shipping charter is much higher than reasonable, **this implies that DPC is overcharging MSEB by over Rs. 100 cr. / yr.**

- DPC is charging O & M expenditure much higher than the norm stipulated by GoI for similar projects. O & M charge, as per GoI norm would be around Rs. 214 cr./yr. whereas, as per DPC's PPA, it is around Rs. 460 cr./yr. (< biblio >). **This implies excessive charge to MSEB of Rs. 246 cr./yr**.

- Unlike other projects, in which the tariff decreases as the loans are repaid, the tariff remains unchanged in the case of DPC, and that too in dollar terms. This results in astronomical returns on equity, as the debt equity ratio is 70:30.

Separating the power plant and LNG facility: Considering that only a part of the LNG and associated capacity will be required for the power plant, considering the feasibility of marketing gas to other users and spot sell of LNG, and considering the large investments planned by several companies in India for LNG terminals, the Committee has recommended separation of LNG and associated facilities from the power plant.

After examining a number of options the Committee has suggested indicative list of actions that would have a substantial impact on tariff. These are:

- Change DPC's tariff structure to a two-part structure on lines of GoI tariff structure. This would result in limiting equity return of DPC to 16% and to limit the O & M charges to a reasonable level mentioned above.
- De-dollarising equity: In this option, the equity would be denominated in rupees. This would lead to fixing the return on equity in Rs. terms rather than in dollar terms.
- Financial restructuring: This would include conversion of dollar debt in Rs. debt, with longer maturity periods and moratorium.
- Separation of LNG facility and renegotiating the LNG contract: This would lead to reduction in regas charges to 42% (actual requirement of power plant at full load) as well as shift from 'Take or Pay' to Pay as Use' contract for gas, implying substantial reduction in MSEB's contractual liability.
- Renegotiating the heat rate to match the actual heat rate: As per the existing PPA, fuel cost will be payable by MSEB assuming fuel consumption at 1878 kCal/kWh, but the actual fuel consumption rate guaranteed by the equipment manufacturer is much (~ 9 %) less than this. Thus, DPC earns profit on this account also (please refer to Box 14 'Fuel Arbitrage'). The Committee's analysis indicates that DPC earns additional return of around **Rs. 332 cr./ yr.** on this account alone.

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 about Rs. 1000 cr. per year**.

In Table 7E the Committee has listed impact of various options suggested by it on the fixed cost of DPC power. Analysis of this table revels that, by carrying out the restructuring of the project on the lines suggested by the Committee, it would be feasible to reduce the fixed capacity charge by over 50%!. This coupled with the recommendation to move from "Take-or-Pay" nature of LNG supply to "Pay-as-Use" and desirable PLF of only 30% in the initial year would result in reducing the total liability on MSEB to less than half !.

Thus, in this chapter, the Committee has clearly brought out the real extent of excessive profitability of DPC equity holders (even without considering the issues of inflated capital costs), which results in very high and un-affordable tariff. The Committee has also laid out the extent of cost reduction possible. Actual negotiations and the subsequent contractual modifications need to be weighed against these benchmarks.

Chapter 8: Recommendations of the Committee

The Committee came out with bold and forthright recommendations that were necessary to resolve such a vexed and urgent controversy. There are five main sets of recommendations, four of them are unanimous. The following is the brief description of the main recommendations and our comments and explanation.

The first unanimous recommendation is: "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 emphasis original) (p. 83).

While explaining the basis of this recommendation, the Committee says: "While commercial considerations may apply in certain instances, the Committee is convinced that in the case of PPAs, this concern is overwhelmingly overridden by the public interest. In a PPA, one of the parties (in this case, a state owned utility, the MSEB) undertakes financial obligations that eventually devolve on the public, either through increased tariffs or increased taxes to finance subsidies needed to be given by GoM, or a reduction in other expenditure by GoM . . . The public therefore has a right to know what is being contracted on their behalf" (emphasis original) (p. 83).

The next important unanimous recommendation of the Committee relates to the restructuring of the Enron project. The Committee feels that "the negotiations with DPC would be best carried out between the parties signatory to the various agreements" (emphasis original) (p.87).

The Committee comes out with the nine broad guidelines for restructuring the project. They include:

(i) Separating the LNG Facility: This would free MSEB from the undue burden of the excess capacity of the LNG Regasification Facility.
(ii) Renegotiating the LNG Supply and Shipping Agreements: This will free MSEB from the disastrous "Take-or Pay" clauses in both these agreements. It is to be replaced by agreements based on the principle of "Pay-as-Use."
(iii) Converting the Tariff into a Two-Part Tariff: This is in order to bringing in transparency in the tariff structure. But the Committee also suggests capping the profitability of Enron.
(iv) Removing All Dollar Denomination in the Fixed Charge Component: This relates to removal of the crucial element of dollar dependence by "de-dollarization" of not only the dollar-based debt but even the dollar-based equity.
(v) Carrying out Financial Restructuring of DPC: This is especially to reduce the financial burden in the initial stage when the off-take from the plant is expected to be low. The Committee has come out with many specific suggestions for this restructuring.
(vi) Cancelling the Escrow Agreement: The Committee is worried that the escrow agreement will lead to situation wherein MSEB will be left with little money to spend on wages and fuel. It also suggests that the escrow arrangement is not even in the interest of Enron.
(vii) Providing Support from GoI and GoM: The Committee points out that, for the success of the renegotiated agreement, the GoM will have to provide the subsidy to MSEB in timely

manner. Further, it suggests that GoI should also provide help especially to raise the Rupee finances.

(viii) Renegotiating the Heat Rate to Match the EPC Guaranteed Heat Rate: This will help reduce the tariff burden.

(ix) Setting Benchmarks for the Renegotiated Tariff: The Committee suggests that benchmark tariff should be set to ensure success of the renegotiations.

As could be seen, these guidelines are quite comprehensive. What they do is to provide a solid benchmark for not only tariff but for the entire content as well as for the process of the restructuring the project. In doing so, they effectively seal the escape-route of the close-door renegotiations, which Enron and its supporters have always been using in the past.

In its third unanimous recommendation, the Committee suggest that, in order to ease the burden of the fixed charges, especially in the initial period of low off-take, Enron may be allowed to sell its electricity to parties outside the state, provided the burden on MSEB be reduced to commensurate level.

Further, the Committee also recommends that if Enron finds the renegotiated agreement unaffordable, it may be allowed to sell its entire production to third parties outside the state, but with the condition that "**if DPC then agrees to relieve MSEB of all its contractual obligations relating to the power plant**" (both emphases original) (p. 92). Through this recommendation, the Committee effectively indicates the manner in which the governments should give ultimatum to Enron.

The Committee also makes a unanimous recommendation about the other two private power plants in the state, which it has shown to be equally disastrous as far as their contracted capacity is concerned. It recommends that "MSEB defers all PPAs with IPPs and re-examine them in accordance with a Least-Cost Plan and, in any case, till such time the demand levels in the state permit full absorption of power generation from such IPPs" (emphasis original) (p. 92).

The most important recommendation of the Committee relates to its displeasure over and failure of governance in the process of the making decisions over the Enron project. It is worth reading it in original. "The Committee is concerned with numerous infirmities in the process of approvals granted in the project, which brings into question the propriety of the decisions. Arguments advanced to support these decisions appear unconvincing, and *prima facie* against public interest. The Committee is troubled with the failure of governance that seems to have characterised almost every step of the decision-making process on matters related to DPC. This failure of governance has been broad, across different governments at different point of time, at both the state and the central level, and across different agencies associated with examining the project, and at both the administrative and political levels. It stains belief to accept that such widespread and consistent failure to execute assigned responsibilities is purely coincidental" (p. 83, 84). The entire Committee is unanimous in making this scathing observation.

However, only two members decided to follow this concern to its logical conclusion. The Chairman of the Committee, Dr. Godbole and another member Dr. Sarma recommend that "the GoM should appoint a judicial commission of inquiry in order that satisfactory answers are

found for the questions raised by the various sections of the people ion Maharashtra" (p. 84). Further, the two members point out that the due process of appraisal and adoption of the project in order to subserve the public interest had not taken place. They argue that "The fact that this has not been allowed to happen raises questions on whether there has been concerted effort towards exercise of undue influence on the process of decision making at each and every stage in the project. There have been clear lapses in the governance in the whole affair of DPC and this Committee would be failing in its duty if these lapses were not pointed out" (p. 84).

However, the Committee finds that establishing "in a legally sustainable manner whether there is exercise of undue influence or not" would require elaborate investigation in a legally sound manner. This could be handled only through a Commission under the Commission of Inquiry Act. "Such an investigation would be necessary for fixing both administrative and political accountability for the lapses, if any" (p. 84).

But the other three members did not agree with this recommendation of institution of a Judicial Inquiry Commission. They have given three main reasons. Their first excuse is that the "terms of reference did not provide the Committee with any reason to suggest a Commission of Inquiry" (p. 85). However, in the revised ToR, according to the fourth item, the Commission is asked to "suggest appropriate measures to ensure that the interest of the State, Maharashtra State Electricity Board and electricity consumers of the state of Maharashtra are properly and adequately considered, evaluated, and safeguarded" (p. 2). Thus, there is not only the reason and scope for the Judicial Commission, but, in fact, the ToR requires the Committee to suggest "adequate" measures. The two members making the recommendation have established the adequacy of the Commission beyond any doubt.

The other reasons for disagreement put forth by the three members is their doubt that "whether such a Commission of Inquiry would serve any useful purpose. Again, the two members have clearly indicated what critical purpose(s) such a Commission could serve. Further, in their final reason, the dissenting members observe that “Commissions of Inquiry in India have rarely completed their task within reasonable timeframe” So, they are afraid that “such a Commission if established could, in fact, only act as a hurdle in the re-negotiation of the project as recommended by the Committee" (p. 85).

Our Concluding Comments: The Inevitability of Judicial Commission

In fact, as things stand today, without institution of such a Commission, the renegotiations as suggested by the Committee unanimously, cannot take place. In the week before the Committee came out with the report, Enron had served another notice to the Central government threatening that it would go for the Arbitration Procedures in the London court. Promptly, the Finance Minister declared that the government is taking the route of reconciliation and appointed Justice Jeevan Reddy as a Conciliator on its behalf. This was the old game being played by the two old friends, who shared their interest in avoiding public scrutiny of the deal. It was a vain effort to nip in the bud the possible adverse public reaction after publication of the report. After the report was published, Enron made another offensive move. It gave a similar threatening notice to the GoM. This clearly indicated that Enron is not in the conciliatory mood.

The question is how to bring the belligerent Enron to the negotiation table, if the governments want to engage it in renegotiations following the guidelines set by the Committee. The answer again lies in the institution of the Judicial Commission. The two members making this recommendation provide the clue: "If the judicial inquiry also establishes that there is exercise of undue influence that had resulted in any decision that was against public interest, the relevant provision of the contract law may have to be invoked for legally reviewing the existing contractual commitments with DPC and taking necessary steps that would subserve the public interest, without GoM/ MSEB having to incur any contractual liability" (p. 85). This is the real import of the recommendations made by the Committee.

However, despite such a forthright report and bold recommendations, the resolution of the controversy seems distant, if we consider the political economy of the current imbroglio. On one hand, the governments cannot cross the "Laxmanrekha" drawn by the Committee in the form of the nine clear-cut guidelines for renegotiations. The Committee has sealed the old escape route of secret renegotiations that was used by Enron and its friends in the government. Anything below the norms set by the Committee will be simply unacceptable to people. Now, the governments rocked by the allegations of corruption cannot afford to the risk of taking this escape route. It is equally clear that Enron will not accept the proposal of renegotiations following the Committee's guidelines, as it will have to give up a substantial chunk of its enormous profitability in that case. Neither will Enron allow its old friends in the two governments to institute the judicial inquiry, which could lead to prosecution on bribery charges back home. Enron simply cannot afford such prosecution, as it will jeopardise its global business plans. In this sense, the situation has reached a deadlock.

There are only two keys to this dead lock. The first involves Enron calling it a day and giving up its claim on the high profitability and then accepting amicable settlement in direct and indirect manner. This though sound implausible at present, may turn out to be the case soon. The second key to the deadlock involves exertion of public pressure which would force the governments (and Friends of Enron) to institute the judicial inquiry. People of Maharashtra cannot wait for Enron to call it a day. They will have to garner their strength and act together through various professional, social, political, and other civil society institutions. They will have to undertake a multitude of programs from demonstrations, conferences, public meetings, to individual level efforts such as writing a letter to Chief minister of Maharashtra. This is the only recourse left to them in order to avoid the "Plan-Holiday" rather the "development-Holiday" thrust by Enron on the state and its people.

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