



FACT SHEET

Background on Enron's Dabhol Power Project

Enron is a majority owner of Dabhol, a massive combined-cycle power plant on the western coast of India's Maharashtra state. The Dabhol power plant was initiated in 1992 and took nine years to commence operation. The total project cost is \$2.9 billion. Enron owns 65%, Bechtel Enterprises owns 10%, General Electric owns 10%, and the Maharashtra State Electricity Board owns 15%. The project is 2,184 megawatts, which Enron says is the largest gas-fired power plant in the world. The plant closed in June 2001, due to a payment and contract dispute between the Maharashtra state government and the plant owners. Enron says it incurred over \$1 billion in costs for the plant.

I. CHRONOLOGY OF DABHOL POWER PROJECT

1991-1992	India opens its power sector to private foreign investors.
Feb. 1992	Enron begins investigating opportunities in the Indian power sector.
May 1992	Enron executives pitch their ideas to the Indian power secretary, who is in the United States to encourage foreign participation in the Indian power sector.
June 1992	Enron and General Electric sign a memorandum of understanding with the Maharashtra State Electricity Board (MSEB) to build the Dabhol project. The operating entity is the Dabhol Power Company, a joint venture. Enron is the majority owner, while General Electric and Bechtel each own 10% shares.
June 1992- Dec. 1993	The parties negotiate the terms of the deal. Enron obtains the necessary approvals for the project from the Indian government.
Dec. 1993	The Dabhol Power Company and MSEB sign the power purchase agreement.
1994-early 1995	Indian political parties opposing the ruling Congress party campaign on an anti-Enron platform. Enron seeks and obtains \$635 million in financing, insurance, and loan guarantees from Bank of America, ABN Amro, a group of Indian banks, the U.S. Export-Import Bank, and the Overseas Private Investment Corporation (OPIC).
Jan. 1995	Commerce Secretary Brown visits India, accompanied by Ken Lay, and oversees signing of loan agreements by the Dabhol Power Company with the U.S. Export-Import Bank and OPIC.

Spring 1995	The opposition alliance wins the election in Maharashtra in March, and in May the new government appoints a committee of state ministers (the Munde Committee) to review the Dabhol project.
Aug. 1995	The Munde Committee issues a sharply critical report that recommends scrapping the Dabhol project. The state government acts on this advice.
Aug.-Dec. 1995	Enron enters arbitration and seeks \$300 million in compensation. The state government files suit in September to void the agreement, alleging fraud and misrepresentation. U.S. officials, including Energy Secretary Hazel O'Leary, warn India that its action will discourage foreign investment.
Nov. 1995	Rebecca Mark, Chairman of Enron International, meets with Bal Thackeray, the top power in one of the ruling parties. Afterwards, negotiations resume between Enron and the state.
Jan. 1996	The state announces it will accept a revised agreement.
Feb. 1996	The state and the Dabhol Power Company finalize the terms of the revised agreement.
1996-1997	Legal challenges to the project by Indian groups continue, but are eventually dismissed.
1997	Enron obtains approval from the Indian government to expand the Dabhol liquified natural gas terminal to allow it to process 5 million metric tons annually.
May 1999	Dabhol Phase I (740 megawatts) begins generating power.
Jan. 2001	The state of Maharashtra stops paying for Dabhol as of its \$22 million December 2000 bill. The state subsequently seeks to cancel the power purchase agreement.
April 2001	Enron begins arbitration proceedings.
April 2001	Secretary of State Colin Powell raises Enron's problems regarding Dabhol in a discussion with India's foreign minister.
May-June 2001	The Dabhol Power Company ceases operation of the Phase I portion of the plant and halts construction on the 90% completed Phase II portion (1,444 megawatts).
May 2001	The Bush Administration releases the White House Energy Plan, which contains a provision that benefits Enron's India operations.
June 2001	Vice President Cheney raises Dabhol in a meeting with Sonia Gandhi, the president of India's opposition Congress Party.

July 2001	The National Security Council leads a “Dabhol working group” with Administration officials, including Treasury, State, the Export-Import Bank, and OPIC officials.
July 2001	Christina B. Rocca, Assistant Secretary of State, meets with Indian officials on Dabhol.
Oct. 2001	Alan Larson, Undersecretary of State for Economic, Business and Agricultural Affairs, raises Dabhol with the Indian foreign minister and the Indian national security advisor.
Nov. 2001	Talking points are prepared for President Bush to discuss Dabhol in a meeting with Indian Prime Minister Vajpayee on November 9. However, the topic is vetoed the day before the meeting on November 8, which is the same day that Enron discloses a stunning \$586 million in previously unreported losses.

II. DEVELOPMENT OF THE DABHOL PROJECT

Enron began to investigate opportunities in the Indian power sector in 1992, when India first opened its power sector to private foreign investors.¹ In May of that year, Enron executives pitched their ideas to the Indian power secretary, who was in the United States to encourage foreign participation in this sector.² By June 1992, Enron had selected Dabhol as the site for a project, and, with General Electric, Enron entered a memorandum of understanding with the Maharashtra State Electricity Board (MSEB) to build the Dabhol project.³ The operating entity was the Dabhol Power Company, which is a joint venture.⁴ During most of the project development period, Enron owned 80% of the project, while General Electric and Bechtel each owned 10%.⁵ (In late 1998, MSEB purchased part of Enron’s equity stake, which dropped Enron’s share to 65%.⁶)

The parties negotiated the project terms over an 18-month period, which culminated in

¹*Accounting for Enron: U.S. Fought for Company’s Project in India*, Wall Street Journal (Jan. 21, 2002); Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (A)*, 8 (revised July 6, 1998).

²*Id.*

³Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 10 (January 1999).

⁴Some sources refer to this entity as the Dabhol Power Corporation.

⁵Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 10 (January 1999).

⁶*Id.*

the Dabhol Power Company and MSEB signing a power purchase agreement in December 1993.⁷ Enron also obtained the necessary approvals for the project from the Indian government during this period.⁸ Over the next year, Enron developed the project financing, obtaining \$635 million in financing, insurance, and loan guarantees from Bank of America, ABN Amro, a group of Indian banks, the U.S. Export-Import Bank, and the Overseas Private Investment Corporation (OPIC).⁹

As discussed below, the initial agreement was modified early in 1996, and the project was expanded. In addition, in 1997, the Indian government approved Enron's request to expand a portion of the project, the Dabhol liquified natural gas terminal, to allow it to process 5 million metric tons annually.¹⁰

III. ENRON PROMOTION OF THE DABHOL PROJECT

From the project's inception, Enron strongly promoted Dabhol as a key element of its international strategy.¹¹ In 1996, Enron's CEO and Chairman, Ken Lay, said, "This project serves as a cornerstone of Enron's activities in India. We pursue additional projects in the country, we look forward to a long-term relationship with both the government and the people of India."¹² As early as 1992, Thomas White, the president of Enron Power, stated: "In the future, Enron's business will be 10% domestic and 90% overseas."¹³ The Dabhol project was easily Enron's most significant overseas endeavor in its size, cost, and political visibility. According to

⁷Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (A)*, 9-10 (revised July 6, 1998).

⁸Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 12-25 (January 1999).

⁹*Id.* at 114; *Financing for Indian Plant Secured*, Houston Chronicle (Jan. 17, 1995).

¹⁰Enron, *Enron International – Our Presence in India* (2000) (available online at: <http://www.ei.enron.com/presence/projects/india.html>).

¹¹*Power Politics: Enron's Plant in India Was Dead; This Month, It Will Go On*, Wall Street Journal (Feb. 5, 1999) ("Enron was eager to get a jump on the potentially mammoth [Indian] market").

¹²*Enron Power Co Welcomes India Court Dismissal of Lawsuit*, Asia Pulse (Dec. 3, 1996); *see also India Draws Private Firms to Power Sector*, Asian Wall Street Journal (Jan. 29, 1993) ("'We're very, very excited about it,' says Joe Sutton, the Enron official overseeing the project. 'We're forging the way forward. This will be the cornerstone of other agreements'").

¹³*International Power Enron Power Lays Out International Strategy; Lands Philippine Project*, Independent Power Report (July 17, 1992).

Enron, the 2,184 megawatt Dabhol plant is the largest gas-fired power plant in the world.¹⁴

Dabhol also was important for other Enron plans. Dabhol was intended to be a major customer for liquified natural gas supplies from a project that Enron had entered into with the Qatar government.¹⁵ As of 2000, Enron had 20-year contracts for 2.1 million tons/year of liquified natural gas with two Middle Eastern suppliers.¹⁶ A substantial element of the Dabhol project was construction of a modern port facility that could unload large tankers and a facility for regasification of the imported liquified natural gas.¹⁷ Enron saw this liquified natural gas terminal as the hub of a future Enron gas network in India.¹⁸ As of 2000, Enron was developing a natural gas pipeline project to carry the regasified liquid natural gas to Dabhol and customers north of Dabhol.¹⁹ In addition, in January 1999, Enron had entered a joint venture to construct, own, and operate a large liquified natural gas carrier dedicated to bringing liquified natural gas from the Middle East to the Dabhol terminal.²⁰

Enron lobbied the Indian government, the U.S. government, and other institutions such as the World Bank to support the project.²¹ Enron led the efforts to obtain the financing for the

¹⁴*High-Stakes Showdown; Enron's Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001).

¹⁵*See Enron's Overseas Reach Fell Shy of Goals: Firm Rode U.S. Policy, Washington Ties to Lofty but Failed Ventures*, Dallas Morning News (Feb. 2, 2002); Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (A)*, 8 (revised July 6, 1998).

¹⁶Enron, *Enron International – Our Presence in India* (2000) (available online at: <http://www.ei.enron.com/presence/projects/india.html>) (contracts were with Oman LNG and Abu Dhabi Gas Liquefaction Company Ltd.).

¹⁷Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (A)*, 8 (revised July 6, 1998).

¹⁸*Power Politics: Enron's Plant in India Was Dead; This Month, It Will Go On*, Wall Street Journal (Feb. 5, 1999).

¹⁹Enron, *Enron International – Our Presence in India* (2000) (available online at: <http://www.ei.enron.com/presence/projects/india.html>).

²⁰*Id.*

²¹*See Bidding Set for Enron's India Project*, Reuters (Jan. 21, 2002); *The Enron Affair – Shadowy Path to State Approval*, Financial Times (Jan. 12, 2002); Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (A)*, 9-10 (revised July 6, 1998); Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 114 (January 1999).

project, which was a huge and critical endeavor.²² Enron also hired lobbyists and orchestrated media campaigns.²³ According to a press account, Enron employee Linda Powers testified before the House Appropriations Committee in 1993 that Enron had spent \$20 million on educating Indians in how capitalist business should work.²⁴

A leader of the main anti-Enron alliance stated: “The public face of Enron’s strategy was to put up visiting U.S. officials and even local U.S. diplomats to argue that Enron was good for India and Indo-U.S. relations. This was a well-orchestrated campaign that had an insidious and secret element, which we are seeing unravel in Enron’s U.S. operations.”²⁵

IV. VIABILITY OF THE DABHOL PROJECT

As far back as April 1993, the World Bank evaluated the Dabhol project and concluded that it was “not economically viable, and thus could not be financed by the Bank.”²⁶

An April 30, 1993, letter from the World Bank Country Director for India to an Indian official in the Ministry of Finance found that the proposed plant would produce too much power at too high a price for the state.²⁷ Specifically, the World Bank found that the project was too

²²See *Enron Power Venture Signs Pact to Supply Indian State*, Asian-Pacific News (Dec. 9, 1993) (Enron still had “to complete financing arrangements. Apart from equity, the company intends to approach the U.S. Export-Import Bank and institutions such as the World Bank-affiliated International Finance Corp., as well as Indian financial institutions”); *Enron Backtracks, Deal Nears*, Power Asia (Sept. 13, 1993) (“Enron, with its reputation for efficiency, will be a blue chip client, facilitating mobilization of money in bonds and equity on the world market with [the International Finance Corp.] as a catalyst”).

²³For example, in 1993, Enron signed a consulting and investing agreement with former U.S. Secretary of State, James Baker and former U.S. Secretary of Commerce, Robert Mosbacher, saying it expected their knowledge and experience to aid Enron’s drive to expand foreign natural gas operations. An Enron spokesperson said: “They will be providing us counsel and advice on how we might pursue various projects outside the U.S., based on their knowledge of people and government structures and government protocol in countries around the world.” She further stated that they could be involved in discussions for projects under development in several countries, including India. *Heavyweights for Enron*, Platts Oilgram News (Feb. 23, 1993).

²⁴*The Enron Affair – Shadowy Path to State Approval*, Financial Times (Jan. 12, 2002).

²⁵*Id.*

²⁶Letter from Heinz Vergin, Director of the India Country Department, World Bank, to M.S. Ahluwalia, Secretary, Department of Economic Affairs, Ministry of Finance (Apr. 30, 1993) (with attachment: *India: Dabhol Power Project*). See also *High-Stakes Showdown; Enron’s Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001).

²⁷Letter from Heinz Vergin, Director of the India Country Department, World Bank, to M.S. Ahluwalia, Secretary, Department of Economic Affairs, Ministry of Finance (Apr. 30, 1993) (with attachment: *India: Dabhol Power Project*).

large for base load operation in Maharashtra.²⁸ The Bank also found that the plant's power, which would be produced from liquid natural gas, would cost much more than power from coal.²⁹ Under the proposed deal, the plant's power would displace lower cost power, raising power costs overall for the state.³⁰ The letter stated: "This adversely affects the economic viability of the project and would place a heavy financial burden on the MSEB."³¹ The World Bank also found that "[t]he project is not part of the least cost sequence for Maharashtra power development. Local coal and gas are the preferred choices for base load generation."³²

Enron responded by increasing its lobbying efforts, targeting the World Bank and various Indian officials.³³ According to a detailed report prepared by Human Rights Watch:

Enron was undeterred by the World Bank's refusal to fund the project or negative reports appearing in the Indian media. Consequently, Joseph Sutton, in a letter to Ajit Nimbalkar, wrote that Enron would hire a public-relations firm to "manage the media from here on." Sutton continued: "The project has solid support from all other agencies in Washington. We'll get there!"³⁴

In addition, Indian officials had concerns about the national economic impacts of importing large quantities of liquified natural gas. According to media accounts, "India's planning commission originally opposed the project on grounds that the plant's annual requirement of 3-million tons of gas would drain at least \$250-million from India's foreign exchange reserves."³⁵ While the size of the project was scaled down from the originally proposed 2,550 megawatts to a still massive 2,184 megawatts, it is not clear whether this

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

³¹*Id.*

³²*Id.*

³³Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (A)*, 9 (revised July 6, 1998); Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations* 14, 114 (January 1999).

³⁴Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 114 (January 1999), quoting Letter from Joseph Sutton, chief operating officer of Enron, to Ajit Nimbalkar, chairman, Maharashtra State Electricity Board (June 23, 1993).

³⁵*India Okays First Private Power Unit: A 1,920-MW Venture by Bechtel/Enron/GE*, Independent Power Report (Jan. 15, 1993).

reduction fully resolved the concern about the project's effect on foreign exchange reserves.³⁶

V. CONTROVERSY OVER DABHOL

The Dabhol project was highly controversial in India from the start, and it was associated with allegations of malfeasance and corruption at the highest levels.³⁷ While controversy has been ongoing throughout the life of the project, there are several key areas of dispute. These include the process and content of the original agreement, the process and content of the revised agreement, the project's effects on local communities, including human rights violations, and the cost of the power when the project ultimately came on line.

A recent op-ed in the *New York Times* stated: "From the beginning, critics in India warned that the power plant was economically unsound, and there have been suggestions that corruption was involved in the awarding of the contract. The Hindu, a leading Indian newspaper, said recently that 'no India-specific shenanigan has yet come to light.' But it added that the possibility of malfeasance cannot be dismissed 'in the light of voluminous material now available on Enron's unethical behavior in the U.S.'"³⁸

An official report on the Dabhol project was commissioned by the Indian government and published in 2001 by Madhav Godbole, "an independently minded bureaucrat."³⁹ The report "condemned" the "circumstances surrounding the approval" of the project, finding that "a severe abuse of governance and a lack of transparency marked [the project's] fast-track approval."⁴⁰

³⁶See *id.*; *High-Stakes Showdown; Enron's Fight Over Power Plant Reverberates Beyond India*, *New York Times* (Mar. 20, 2001).

³⁷*The Biggest Fraud in India's History*, *Guardian* (Nov. 30, 2001); The Munde Committee, *Report of the Cabinet Sub-Committee to Review the Dabhol Power Project* (1995), reproduced in Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations* (January 1999) ("The Project generated one of the most intense intellectual debates at the national level on any single commercial venture. . . . It soon took the shape of a mass agitation with the ordinary public getting involved in *satyagraha*, giving the Project law and order dimensions"). For example, there were allegations that India's Commerce Minister P. Chidambaram had "strongly supported Enron's Dabhol power project in public forums in India and abroad 'without disclosing the fact that he had given a paid legal opinion to Enron.'" *Entire Indian Project Can Use Naptha*, *Platt's Oilgram News* (July 26, 1995). *Business Line* reported that Enron had paid Mr. Chidambaram a "substantial fee" when he was practicing law in between holding two Cabinet posts, and members of the opposition party called for his dismissal on the grounds of conflict of interest. *Id.*; see also *Government for Stay on DPC Arbitration*, *Times of India* (Sept. 25, 2001); *India – Power Play*, *Energy Compass* (July 13, 2001) ("local reports continue to suggest that the entire deal is riven by corruption").

³⁸*Money, Energy Politics and Enron's Costly Misadventure*, *New York Times* (Feb. 3, 2002).

³⁹*Id.*

⁴⁰*Id.*

A. Criticisms of the Initial Agreement

Fueled by negative reaction to the Dabhol project, the opposition party won in Maharashtra in 1995 “on a platform of throwing Enron into the Arabian sea.”⁴¹ The new government promptly appointed a group of ministers, known as the Munde Committee, to review the Dabhol project.⁴²

The Munde Committee report critiqued both the process by which the project had been developed and the terms of the deal.⁴³ It found that the initial memorandum of understanding was rushed and “one-sided” (citing a letter from the World Bank), condemned the absence of competitive bids and lack of transparency in the process, critiqued subsequent changes to the project design as addressing “only the concerns of Enron,” and found that Enron was given undue favors and concessions.⁴⁴ The report also found that the capital costs of the project were inflated, that the rates for the power would be much higher than justified, in part because the contract was based on U.S. dollars (placing the risk of currency fluctuations on the state), that there were outstanding environmental questions, and that the project would adversely affect the state of Maharashtra.⁴⁵

Based on this evaluation, in August 1995, the state decided to halt construction and cancel the project.⁴⁶ The state’s chief minister Manohar Joshi stated:

From the speed with which the memorandum of understanding was signed it seemed as if Enron came, it saw, and it conquered. The proposed capital investment in the project is definitely more than it should have been, and there is uncertainty about many components of the power purchase agreement resulting in payment of an unjustified rate which is higher than other comparable projects and therefore the project, in its current form, is not

⁴¹*High-Stakes Showdown; Enron’s Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001); see also *The Biggest Fraud in India’s History*, Guardian (Nov. 30, 2001).

⁴²*High-Stakes Showdown; Enron’s Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001); Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 26 (January 1999); The Munde Committee, *Report of the Cabinet Sub-Committee to Review the Dabhol Power Project* (1995), reproduced in Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations* (January 1999).

⁴³The Munde Committee, *Report of the Cabinet Sub-Committee to Review the Dabhol Power Project* (1995), reproduced in Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations* (January 1999); *Entire Indian Project Can Use Naptha*, Platt’s Oilgram News (July 26, 1995).

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Legal Nightmare Looms as Maharashtra Axes Dabhol*, Power Asia (Aug. 7, 1995).

in the interest of the state.⁴⁷

B. Criticisms of the Revised Agreement

In response to the state's action, Enron sought \$300 million in compensation, while attempting to convince the Indian government to reverse its decision.⁴⁸ The state government countered by filing suit to void the agreement, alleging fraud and misrepresentation.⁴⁹ In early November 1995, Rebecca Mark, Chairman of Enron International, held a crucial meeting with the Bal Thackeray, the top power in one of the ruling parties.⁵⁰ After this meeting, negotiations resumed between Enron and the state.⁵¹ On January 8, 1996, the state announced it would accept a revised agreement, and the terms were finalized on February 23, 1996.⁵² While the state dropped its lawsuit, other Indian groups continued to pursue legal challenges to the project. Eventually, all of these were dismissed.⁵³

Critics of the revised agreement charged that the revisions were very minor, failed to fix the fundamental problems of the project, and in fact exacerbated those problems.⁵⁴ The revised agreement expanded Phase I of the project from 695 megawatts to 740 megawatts and committed the state to both Phase I and the 1,320 megawatt Phase II portion of the project (under the initial

⁴⁷Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (A)*, 9-10 (revised July 6, 1998) (quoting *Enron Decision: Shockwaves*, India Abroad (Aug. 11, 1995)).

⁴⁸*India's Maharashtra Govt Files Writ Vs Enron's Dabhol*, Dow Jones News Service (Sept. 7, 1995).

⁴⁹*Indian State Sues to Void Enron Pact, Alleging Fraud*, Wall Street Journal (Sept. 8, 1995); *India's Maharashtra Govt Files Writ Vs Enron's Dabhol*, Dow Jones News Service (Sept. 7, 1995); *Previous Adjudication May Strengthen Enron's Case in Dispute with India*, Global Power Report (Nov. 9, 2001).

⁵⁰*Power Politics: Enron's Plant in India Was Dead; This Month, It Will Go On*, Wall Street Journal (Feb. 5, 1999); Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (C)*, 1 (1996).

⁵¹Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (C)*, 1 (1996).

⁵²*Id.* at 3.

⁵³*See India: Supreme Court Not to Go into Enron Project Validity*, Hindu (May 3, 1997).

⁵⁴Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (C)*, 2-3 (1996); Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 29-31 (January 1999).

agreement, the state was bound only to the Phase I portion).⁵⁵ As the Maharashtra State Electricity Board was still committed to buying 90% of the plant's output and covering the risk of currency fluctuations, the expansion increased the financial risk to the state under the revised agreement.⁵⁶ In addition, while the state announced that Enron had reduced the capital costs of the project, critics charged that the reductions were largely the products of external factors, not accommodations by Enron.⁵⁷

A recent press account described Indian suspicion over the dramatic reversal: “[Enron’s recent] problems seemed to lend credence to long-standing claims in India that the company bulldozed and bamboozled a newly elected state government into approving a power project it had campaigned to stop. In 1995 the newly installed state government of Maharashtra approved in 12 days the building of a plant three times larger than the original project, which had taken nine months to negotiate.”⁵⁸

C. Local Opposition and Human Rights Violations

The local communities and other Indian interest groups strongly opposed the Dabhol project throughout its development. The communities had many of the same concerns outlined above regarding the lack of transparency in the development process and the cost of the power.⁵⁹ In addition, the project was projected to displace 2,000 people and land was seized without notification or compensation.⁶⁰ There were also environmental concerns with the project related to pollution of fresh water, diversion of fresh water for the project, and the potential contamination of salt water which would adversely affect fishing communities.⁶¹ According to a comprehensive report issued by Human Rights Watch in 1999, the local communities in fact suffered from sharply reduced quantities of fresh water available for consumption and

⁵⁵Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 30-31 (January 1999). Phase II may have been subsequently expanded, as recent reports describe Phase II as 1,444 megawatts. *India: Update 1 – Sale of Enron’s India Plant to Begin Next Week*, Reuters English News Service (Jan. 26, 2002).

⁵⁶See Harvard Business School, *Enron Development Corporation: The Dabhol Power Project in Maharashtra, India (C)*, 2 (1996).

⁵⁷*Id.*

⁵⁸*Bidding Set for Enron’s India Project*, Reuters (Jan. 21, 2002).

⁵⁹Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 33-42 (January 1999).

⁶⁰*Id.* at 39-44.

⁶¹*Id.* at 44-48.

agriculture.⁶²

Acting on these concerns, leading Indian environmental activists and representatives of villagers' organizations in the area organized to oppose the project through largely nonviolent protests.⁶³ They were countered aggressively by government security forces that were paid for by the Dabhol Power Company, the operating entity for the project, which was majority owned by Enron.⁶⁴

The Human Rights Watch report details what it termed "a pattern of serious human rights violations that the project provoked."⁶⁵ Police beat and jailed human rights and environmental workers deemed to have instigated largely nonviolent protests against the project, tear-gassed demonstrators, and threw suspected protestors into preventive detention.⁶⁶ Human Rights Watch found that Dabhol Power Company "employs security forces who routinely beat and harass people demonstrating peacefully against the power plant."⁶⁷

Enron denied any role in the arrests or beatings in India, but the Human Rights Watch investigation countered the Enron claims:

The Dabhol Power Corporation and its parent company, Enron, are complicit in these human rights violations. Enron's local entity, the Dabhol Power Corporation, benefitted directly from an official policy of suppressing dissent through misuse of the law, harassment of anti-Enron protest leaders and prominent environmental activists, and police practices ranging from arbitrary to brutal.⁶⁸

Additionally, the Human Rights Watch report found categorical evidence that Enron was paying the government directly specifically to police the protests, and that it was also lending the police its helicopters.⁶⁹

⁶²*Id.*

⁶³*Id.* at 2-3.

⁶⁴*Id.*

⁶⁵*Id.* at 2.

⁶⁶*Id.* at 2-3, 58-99.

⁶⁷*Hell's Wells*, Australian Financial Review (Feb. 10, 2001).

⁶⁸Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 3, 104-111 (January 1999).

⁶⁹*Id.* at 106-109; *Hell's Wells*, Australian Financial Review (Feb. 10, 2001).

Enron denied this report as well, so Amnesty International investigated. Amnesty found “suppression of local protests” and said that people who protested against Enron, however peacefully, were liable to “harassment, arbitrary arrest, preventive detention under the ordinary criminal law and ill-treatment.”⁷⁰

D. Dispute Over the Cost of Power

As it turns out, the critics’ predictions were correct, and the price of the power from Dabhol is far beyond what consumers in the area will pay or the state can afford. The financial problems began to appear in the winter of 2000. Phase I of the project runs on naphtha (a derivative of crude petroleum), but oil prices have apparently been higher than projected, and demand has been substantially lower.⁷¹ In addition, the deal was structured to peg the costs of power to the dollar, so the state bore the risk of currency fluctuations.⁷² The state was contracted to buy the full output of the plant, but was purchasing only 10%-20% of the plant’s output from Phase I.⁷³ The state was obligated nonetheless to pay the plant’s full fixed costs, which further increased the rates.⁷⁴

In 2001, power from Dabhol was four times more expensive than that from domestic power producers.⁷⁵ The payments due for the power from Dabhol alone would be more than Maharashtra’s entire budget for primary and secondary education.⁷⁶ These financial problems were expected to dramatically worsen after Phase II came on line, as it would add an additional 1,444 megawatts of power and the entire project would be converted to run off imported liquid natural gas, which is a relatively expensive fuel.⁷⁷

The state of Maharashtra stopped paying for Dabhol as of its \$22 million December 2000

⁷⁰*Hell's Wells*, Australian Financial Review (Feb. 10, 2001).

⁷¹*Bidding Set for Enron's India Project*, Reuters (Jan. 21, 2002).

⁷²*Money, Energy Politics and Enron's Costly Misadventure*, New York Times (Feb. 3, 2002); *Bidding Set for Enron's India Project*, Reuters (Jan. 21, 2002).

⁷³*High-Stakes Showdown; Enron's Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001).

⁷⁴*Id.*

⁷⁵*Enron Issues Veiled Sanctions Threat to India*, Financial Times (Aug. 24, 2001).

⁷⁶*High-Stakes Showdown; Enron's Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001).

⁷⁷*See id.*

bill.⁷⁸ The state subsequently sought to cancel the power purchase agreement.⁷⁹ Enron began arbitration proceedings in April 2001, ceased operation of the Phase I portion of the plant in May 2001, and halted construction on the 90% completed Phase II portion of the plant (1,444 megawatts) in June 2001.⁸⁰ Enron claims that the state owes it \$64 million in unpaid bills.⁸¹

VI. ENRON'S POSITION AFTER PLANT CLOSURE

The state has urged Enron to renegotiate the contracts at lower prices, but Enron has refused.⁸² Enron sought to sell its 65% stake in the project for \$2.3 billion.⁸³ In a September 14, 2001, letter to Indian Prime Minister Atal Bihari Vajpayee, Ken Lay stated that Enron wanted \$1.2 billion for the cost of the company's investment and \$1.1 billion for the purchase of offshore lenders' debt.⁸⁴ Mr. Lay argued that the \$2.3 billion total "strikes me as exceptionally reasonable when compared to the size of our legal claim," which Enron estimated at \$4 billion to \$5 billion.⁸⁵

In a press interview in August 2001, Mr. Lay warned that if Enron did not recoup at least its full costs in building the plant (reported in that article to be \$1 billion), India could be subject to U.S. sanctions.⁸⁶

VII. U.S. GOVERNMENT EFFORTS TO HELP ENRON ON DABHOL

⁷⁸*See id.* (stating that "the state of Maharashtra has stopped paying its bills" for Dabhol and "the December payment for \$22 million is now more than a month overdue, not to mention the January bill"). *But see Accounting for Enron: U.S. Fought for Company's Project in India*, Wall Street Journal (Jan. 21, 2002) (stating that the state electricity board stopped paying its Dabhol bills in May 2001).

⁷⁹*Enron Rocks India's Flagship Investors*, Financial Times (May 29, 2001); *Indian Govt Admits to "Mistake" in Agreeing to Enron's Tariff*, Asia Pulse (Jan. 28, 2002); *Dabhol Power Company: Will there Ever Be Light?*, Press Trust of India Limited (Dec. 25, 2001).

⁸⁰*Enron Rocks India's Flagship Investors*, Financial Times (May 29, 2001); *Indian Govt Admits to "Mistake" in Agreeing to Enron's Tariff*, Asia Pulse (Jan. 28, 2002); *Dabhol Power Company: Will there Ever Be Light?*, Press Trust of India Limited (Dec. 25, 2001).

⁸¹*Cheney's Role Draws Scrutiny*, Los Angeles Times (Jan. 19, 2002).

⁸²*Enron Rocks India's Flagship Investors*, Financial Times (May 29, 2001).

⁸³*White House Aided Enron in Dispute: Cheney, Others Intervened Over Indian Power Plant*, Washington Post (Jan. 19, 2002).

⁸⁴*Id.*

⁸⁵*Id.*

⁸⁶*Enron Issues Veiled Sanction Threat to India*, Financial Times (Aug. 24, 2001).

From the inception of the Dabhol project, Enron successfully enlisted the U.S. government in its support. The Export-Import Bank and the Overseas Private Investment Corporation (OPIC) were critical sources of funding and loan guarantees. Secretaries of State, Treasury, and Energy all supported the project, particularly during Enron's disputes with the Indian government in 1995 and 2001. Most recently, numerous Bush administration officials, including the Vice President himself, have intervened on Enron's behalf. There is even a provision that would help Enron regarding Dabhol in the White House energy plan for the nation.

A. Support During the Clinton Administration

After the World Bank declined to fund the Dabhol project, U.S. government entities provided key funding for the project.⁸⁷ OPIC ultimately supplied Dabhol with a total of \$160 million in loan guarantees and \$200 million in risk insurance.⁸⁸ The Export-Import Bank provided a roughly \$300 million loan in late 1994.⁸⁹ (Of this, \$202 million is outstanding, but four Indian banks have guaranteed the loan, eliminating any risk to U.S. taxpayers, according to an Export-Import Bank spokesperson.⁹⁰)

In addition, numerous Clinton Administration officials supported the project. For example, Commerce Secretary Brown wrote to India's minister of Commerce before a January 1995 trip to India, asking the minister to facilitate "financial closing" of the Dabhol project "in time to be celebrated during my visit."⁹¹ Once in India, and accompanied by Ken Lay, Secretary Brown oversaw the signature of loan agreements by Dabhol Power Company with U.S. Export-Import Bank and OPIC.⁹² In visits to India, Treasury Secretary Robert E. Rubin and Energy Secretary Hazel O'Leary expressed Washington's concern that India stand by commitments to investors.⁹³ For example, Secretary O'Leary warned India that it was hurting its reputation with

⁸⁷Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 114 (January 1999).

⁸⁸*See Enron Project was Raised with India*, Houston Chronicle (Jan. 18, 2002); Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations*, 114 (January 1999); *Financing for Indian Plant Secured*, Houston Chronicle (Jan. 17, 1995).

⁸⁹*See Financing for Indian Plant Secured*, Houston Chronicle (Jan. 17, 1995); *Enron Seeks U.S. Aid*, Miami Herald (Jan. 19, 2002) (sources provide varying exact dollar estimates).

⁹⁰*Id.*

⁹¹*Id.*; *see also Brown in India Unveils Alliance for Business*, Asian Wall Street Journal (Jan. 17, 1995).

⁹²*Brown in India Unveils Alliance for Business*, Asian Wall Street Journal (Jan. 17, 1995); *Financing for Indian Plant Secured*, Houston Chronicle (Jan. 17, 1995). *See also Accounting for Enron: U.S. Fought for Company's Project in India*, Wall Street Journal (Jan. 21, 2002).

⁹³*India's Dabhol/Fight - 2: In Some Areas Reform Seen Rapid*, Dow Jones International News (Apr. 26, 1995).

foreign investors.⁹⁴

After the project was cancelled, in late 1995 and 1996, Mack McLarty, a White House counselor, closely monitored the Dabhol project with the U.S. ambassador to India, keeping Ken Lay informed of the administration's efforts.⁹⁵ In addition, according to press reports, President Clinton's ambassador to India, Frank Wisner, "was among the plant's most influential advocates."⁹⁶ Mr. Wisner joined the board of an Enron-controlled company after he left the Foreign Service in 1997.⁹⁷

B. Support During the Bush Administration

The Bush Administration intensified U.S. government efforts on behalf of Dabhol as the project ran into trouble again in early 2001. As one commentator observed: "But there was something quite specific that Mr. Bush's top aides did to help Enron last year before the hollowness of the company became clear: they lobbied to avert the shutdown of a \$2.9 billion power plant in India built by Enron and two other American partners."⁹⁸

Numerous high level officials, including Vice President Cheney, encouraged the Indian government to resolve the dispute. On April 6, 2001, Secretary of State Colin Powell raised Enron's problems regarding Dabhol in a discussion with India's foreign minister.⁹⁹ Secretary Powell said that such intervention was not "inappropriate."¹⁰⁰

Vice President Cheney raised the issue of Dabhol in a meeting with Sonia Gandhi, the

⁹⁴*Enron: The Fallout: Enron Political Allies Saw to Indian Affairs*, Asian Wall Street Journal (Jan. 22, 2002). *But see Enron Episode Won't Affect Other Deals: O'Leary Murali Ranganathan*, News-India Times (Aug. 25, 1995) ("Energy Secretary Hazel O'Leary said last week that the cancellation of the Enron power project in Dabhol, Maharashtra, will not jeopardize other private power projects currently being pursued by the U.S. companies in India").

⁹⁵*The White House; That Invisible Mack Sure Can Leave His Mark*, Time (Sept. 1, 1997).

⁹⁶*White House Aided Enron in Dispute*, Washington Post (Jan. 19, 2002).

⁹⁷*Id.*

⁹⁸*Money, Energy Politics and Enron's Costly Misadventure*, New York Times (Feb. 3, 2002).

⁹⁹*Enron Probes Alleged Shredding Document Destruction Reportedly Continued To at Least Start of Jan.*, Boston Globe (Jan. 22, 2002).

¹⁰⁰*Anderson CEO Points a Finger at Enron Model; Company Policies Labeled a Failure*, Houston Chronicle (Jan. 21, 2002).

president of India's opposition Congress Party, on June 27, 2001.¹⁰¹ In a June 28, 2001, e-mail, a National Security Council aide wrote: "Good news is that the veep mentioned Enron in his meeting with Sonia Gandhi yesterday."¹⁰²

According to press accounts, the National Security Council led a "Dabhol working group" with Administration officials from various agencies, including Treasury, State, the Export-Import Bank, and OPIC, to try to resolve Enron's problems with the project.¹⁰³ E-mails sent from June 2001 through November 2001 from the National Security Council and OPIC discuss the Administration's efforts on Dabhol over that timeframe.¹⁰⁴

In July 2001, an assistant secretary of State, Christina B. Rocca, met with Indian officials on the Dabhol issue.¹⁰⁵ In discussing investment in India with an Indian industry group, she stated "many of India's problems in this regard can be summed up in the five-letter word, Enron."¹⁰⁶

The Administration's efforts continued into the fall of 2001. In October, the Undersecretary of State for Economic, Business and Agricultural Affairs, Alan Larson, raised the Dabhol issue with the Indian foreign minister and the Indian national security advisor.¹⁰⁷ On November 6, 2001, in a message to a top aide to the Indian Prime Minister, the President of OPIC, Peter Watson, emphasized how important this issue was to the U.S. government: "The acute lack of progress in this matter has forced Dabhol to rise to the highest levels of the United States government."¹⁰⁸ He continued: "I ask that you give this matter serious and immediate

¹⁰¹*White House Aided Enron in Dispute: Cheney, Others Intervened Over Indian Power Plant*, Washington Post (Jan. 19, 2002); *Veep Tried to Aid Enron: Key Role in India Debt Row*, New York Daily News (Jan. 18, 2002); *Money, Energy Politics and Enron's Costly Misadventure*, New York Times (Feb. 3, 2002).

¹⁰²*Veep Tried to Aid Enron: Key Role in India Debt Row*, New York Daily News (Jan. 18, 2002).

¹⁰³*White House Aided Enron in Dispute: Cheney, Others Intervened Over Indian Power Plant*, Washington Post (Jan. 19, 2002); *Accounting for Enron: U.S. Fought for Company's Project in India*, Wall Street Journal (Jan. 21, 2002).

¹⁰⁴*Chronology of Administration Dealings with Enron's Dabhol Power Plant in India*, Washington Post (Jan. 22, 2002).

¹⁰⁵*Id.*

¹⁰⁶*Accounting for Enron: U.S. Fought for Company's Project in India*, Wall Street Journal (Jan. 21, 2002).

¹⁰⁷*Chronology of Administration Dealings with Enron's Dabhol Power Plant in India*, Washington Post (Jan. 22, 2002).

¹⁰⁸*White House Aided Enron in Dispute: Cheney, Others Intervened Over Indian Power Plant*, Washington Post (Jan. 19, 2002).

attention.”¹⁰⁹

Administration officials warned India that President Bush would raise the issue of Dabhol with Indian Prime Minister Vajpayee when they met in November 2001, and talking points were prepared for President Bush to discuss the issue in a meeting with Mr. Vajpayee on November 9, 2001.¹¹⁰ However, an e-mail sent the day before the meeting, on November 8, warned that “President Bush can not talk about Dabhol.”¹¹¹ That same day, Enron had disclosed a stunning \$586 million in previously unreported losses.¹¹²

Since Enron’s collapse, the Administration has continued to pursue the issue, but more quietly. U.S. Ambassador Robert Blackwill recently warned an Indian business audience about the effects of the dispute.¹¹³ He stated: “I hear a frequent buzz from the United States that the sanctity of the contract may now be in doubt here, a concern that can spell death for potential investments.”¹¹⁴

C. The White House Energy Plan

In addition to lobbying Indian officials, the Bush Administration also included a provision in the White House energy plan that would benefit Enron on Dabhol. The final White House energy plan specifically recommends that “the President direct the Secretaries of State and Energy to work with India’s Ministry of Petroleum and Natural Gas to help India maximize its domestic oil and gas production.”¹¹⁵

The energy plan does not discuss this recommendation or explain why maximizing oil and gas production in India should be a U.S. national energy priority, but one of its primary effects is to benefit Enron.¹¹⁶ Dabhol was widely viewed as the cornerstone project for foreign

¹⁰⁹*Id.*

¹¹⁰*Enron’s Overseas Reach Fell Shy of Goals: Firm Rode U.S. Policy, Washington Ties to Lofty but Failed Ventures*, Dallas Morning News (Feb. 2, 2002); *White House Aided Enron in Dispute: Cheney, Others Intervened Over Indian Power Plant*, Washington Post (Jan. 19, 2002).

¹¹¹*White House Aided Enron in Dispute: Cheney, Others Intervened Over Indian Power Plant*, Washington Post (Jan. 19, 2002).

¹¹²*Id.*

¹¹³*Enron’s Overseas Reach Fell Shy of Goals: Firm Rode U.S. Policy, Washington Ties to Lofty but Failed Ventures*, Dallas Morning News (Feb. 2, 2002).

¹¹⁴*Id.* (quote dated Jan. 28, 2002).

¹¹⁵National Energy Policy Development Group, *National Energy Policy*, 8-20 (May 2001).

¹¹⁶*See Enron’s One Good Return: Political Investments*, Wall Street Journal (Jan. 31, 2002).

investment in energy projects in India.¹¹⁷ It was also the single largest foreign investment in India, representing over 10% of the total direct foreign investment in India since 1992.¹¹⁸ The conflict over Dabhol was broadly viewed as chilling foreign investment in India's energy sector.¹¹⁹ As a result, resolution of Enron's Dabhol problem was a precondition to collaboration between the United States and Indian governments to promote India's natural gas and oil production.¹²⁰

In addition, Enron had further ambitions in India's power sector. Enron saw its liquid natural gas imports facility at Dabhol as the hub of a future Enron gas network in India.¹²¹ As the chief executive of Enron International, Joseph Sutton, stated in 1999: "The power plant is important, . . . [b]ut our vision all along is to bring gas to India."¹²²

It appears that this recommendation on India was added to the White House energy plan late in the process. As of March 30, 2001, the State Department drafters had not included anything about India in the White House energy plan.¹²³ This recommendation was inserted after the draft came under White House control, during a period in which the White House task force

¹¹⁷See, e.g., *India Okays First Private Power Unit: A 1,920-MW Venture by Bechtel/Enron/GE*, Independent Power Report (Jan. 15, 1993) ("The approval is considered a landmark in India's efforts to attract foreign investors").

¹¹⁸*High-Stakes Showdown; Enron's Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001); *Enron Power Station to Begin Commercial Operations*, Agence France-Presse (May 11, 1999).

¹¹⁹See *Enron Rocks India's Flagship Investors*, Financial Times (May 29, 2001) (quoting a senior executive discussing the "hurdle rate of return" for investment in India, which is the minimum rate of return on equity in dollars: "'If this Enron thing works out badly,' the senior executive said, 'the hurdle rate is going to be infinity'"); *High-Stakes Showdown; Enron's Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001) ("The worry that Dabhol could chill foreign investment is serious for India"); *NSC Aided Enron's Efforts: Agency Sought Lay Meeting with Indians on Plant*, Washington Post (Jan. 25, 2002) (In a meeting with the Indian government on April 6, Secretary of State Colin Powell told his Indian counterpart that "failure to resolve the matter could have a serious deterrent effect on other investors"); *Accounting for Enron: U.S. Fought for Company's Project in India*, Wall Street Journal (Jan. 21, 2002) (quoting Bush Administration Ambassador to India, Robert D. Blackwell as stating, "I want to be frank. . . . These disputes have darkened India's investment climate"). See also quote from Christina B. Rocca, assistant secretary of State, *supra* note 106 and accompanying text.

¹²⁰*Enron's One Good Return: Political Investments*, Wall Street Journal (Jan. 31, 2002).

¹²¹*Power Politics: Enron's Plant in India Was Dead; This Month, It Will Go On*, Wall Street Journal (Feb. 5, 1999).

¹²²*Id.*

¹²³*Enron's One Good Return: Political Investments*, Wall Street Journal (Jan. 31, 2002).

met with Ken Lay and other Enron executives.¹²⁴

¹²⁴*Id.*