

Open Sesame?

By Prashant Bhusan

The Enron Power Project has totally ignored the right of the people to know

The Enron Power Project at Dabhol, Maharashtra, is a good case study of how withholding information regarding public authorities from the people can cause great prejudice to public interest and allow corruption to thrive. It is also a good example of how the authorities are frustrating the right to information of the people even in areas where there is some statutory obligation upon the authorities to disclose information.

Under the Electricity Supply Act, 1948, no project for the generation of electricity can be established without the approval of the Central Electricity Authority (CEA), a high level statutory authority created by the Act. Under Section 29 of the Act, every project involving a capital expenditure exceeding an amount fixed by the Central Government (currently about Rs.1000 crores), has to be submitted to the CEA for its approval. Before it's can be submitted, however, the Act requires that "the Generating Company shall cause such scheme, which among other things shall contain the estimates of the capital expenditure involved, salient features thereof and the benefits that may accrue therefrom, to be published in the Official Gazette of the State concerned and in such local newspapers as the Board or the Generating Company may consider necessary along with a notice of the date, not being less than two months after the date of such publication, before which licensees and other persons interested may make representations on such scheme."

Thereafter, the Act requires that the scheme along with the representations received from the public have to be submitted to the CEA which "shall, before concurring in any scheme submitted to it under sub-section (1) of Section 29, have particular regard to, whether or not in its opinion:

- "(a)
- (b)
- (c)
- (d) The scheme provides reasonable allowances for expenditure on capital and revenue account;
- (e) The estimates of prospective supplies of electricity and revenue therefrom contained in the scheme are reasonable'

- (f) In the case of a scheme in respect of thermal power generation, the location of the generating station is best suited to the region, taking into account the optimum utilisation of fuel resources, the distance of load centre, transportation facilities, water availability and environmental considerations;
- (g) The scheme conforms to any other technical, economic or other criteria laid down by the Authority in accordance with the national power policy evolved by it in pursuance of the provisions contained in clause (i) of sub-section (1) of section 3 (and such other directions as may be given by the Central Government)."

The idea is that all the salient features of a proposed power project are to be advertised in the Gazette and the newspapers so that any interested persons can submit representations against the project showing why the project would not be in public interest. Obviously, one of the important features of the project which needs to be notified would be the approximate cost at which electricity would be generated from the project, specially in projects where the power generated is to be purchased by public authority like the State Electricity Board. Since the cost of power is generally determined from the capital cost of the project, its debt equity ratio, the cost of debt, the return on equity and the cost of fuel etc., it is essential that all these features must be advertised for the people to know in order for them to make any meaningful representation on the project.

On 22.9.93, the Dabhol Power Company set up by Enron for the 2000 MW Power Project proposed to be set up at Dabhol, issued a public notification under Section 29 of the Electricity Supply Act, which read as follows:

"Pubic Notification

In pursuance of the Electricity (Supply) Act, 1948, Dabhol Power Company Unlimited, proposes to take up the following thermal generation scheme for implementation and accordingly in terms of Section 29 of the said Act, the scheme is hereby published. The salient features of the Scheme as under:

1. Dabhol Thermal Project (1905 MW Baseload + 100 MW peaking) Total cost: Rs.9, 053 crores guaranteed. Fuel: Natural gas (primary fuel), fuel oil (secondary fuel).

This Project is envisaged near villages of Veldur, Anjanwel and Dabhol in Ratnagiri district, the plant will be located on the South Bank of the Vashishti river as it

empties into the Arabian Sea. The project will be completed in about 5 years after approval and commencement of work.

Benefits of the scheme – The energy from the above project shall be supplied to the MSEB for meeting the power demand in the State.

Any licensee or any other person interested in taking objection, if any, in respect of the above scheme may please make representation to that effect within a period of 2 months from the date of publication of this Notification. Any representation received after 2 months shall not be entertained. The representation or concerned correspondence in this regard, may please be addressed to the Chief Engineer, Dabhol Power Company, “Nirmal” 17th floor, Nariman Point, Bombay 400 021. For any additional information on the above Schemes, please write on the above address.”

Several individuals and organizations including the Maharashtra Grahak Panchayat Samiti and the Swadeshi Jagran Manch sent letters to Dabhol Power Company asking them for further details about the Project including the cost of power to be produced from the project. The Dabhol Power Company’s response to these queries was that the public did not require all these information, as these aspects would be looked into by the CEA. The result was that since no one could come to know what the cost of the power from this Project would be, no meaningful representations could be sent. In fact, the Dabhol Power Company did not even sent these letters to the CEA saying that there were no adverse responses to the notifications.

It is another matter that the Power Ministry prevented even the CEA from going into the cost of power from the Project. The Power Ministry told the Chairman of the CEA on 11th November, 1993 that the Finance Secretary had stated that the cost of power had been looked into and found to be more or less in line with the other projects in Maharashtra. Consequently, on 26th November, 1993, the CEA granted only technical clearance to the Project and stated that “the aspect relating to import of fuel, foreign exchange outgo and the deviation from the Government of India” tariff notification including the return on equity, had been examined by the Foreign Investment Promotion Board (FIPB) and the Project has been found acceptable by them”.

Consequently, on 8th December, 1993, a Power Purchase Agreement was signed between the Dabhol Power Company and the Maharashtra State Electricity Board (MSEB) every page of

which was marked ‘secret’. This agreement was final for Phase I of the Project, which was for 695 MW and was left open regarding Phase II which, was for 1320 MW. The agreement required MSEB to purchase all the power generated by the Dabhol Power Company from Phase I at a price which could be determined from the terms of agreement”.

During the next year or so, various facts giving the price of power to be supplied by this Project gradually leaked out in the media and it became known that the cost of power from this Project would be Rs.2.40 per unit based on a Dollar rate of Rs.30 which rate would increase with the increase in the price of Dollar since the price of electricity from this Project was largely denominated in Dollar. Consequently, there was a big public outcry against the Project and the new BJP-Shiv Sena Government which came to power in Maharashtra in early 1995, announced that it would cancel the Project. Thereafter, however, the same BJP-Shiv Sena Government of Maharashtra re-negotiated the Project and now signed Phase II along with Phase I making the Project 2184 MW as opposed to 675 MW earlier. The Government announced that it had reduced the cost of power through negotiations and had brought it down from Rs.2.40 to approx. Rs.2 per unit.

In June, 1999, the Phase I of the Project became operational. The first two bills from the Dabhol Power Company were received by the State Electricity Board in July/August, 1999 and it was found that the price of power which was supplied by the Dabhol Power Company was approximately Rs.5 per unit. In order to accommodate this power, which the Board was obliged to take in accordance with the Power Purchase Agreement, the Board had to shut down the supplies from the Tata Electric Companies and the NTPC which were supplying power at approximately Rs.2 and Rs.1.30 per unit, respectively. It is estimated that Phase I of the Project would cost an annual loss of Rs.1000 crores to the Electricity Board and when the Phase II also becomes operational, the loss would be around Rs.3000 crores annually.

It is widely suspected and, in fact, fairly certain on the basis of circumstantial evidence that massive bribes have facilitated the signing of this financial ruinous Power Purchase Agreement. In fact, the BJP-Shiv Sena Government had made precisely this allegation in its suit filed in the Bombay High Court against the Dabhol Power Company seeking cancellation of the original agreement signed by the Power Company with the Sharad Pawar Government. What has facilitated this massive loot of public money is the fact that at all stages, the people were denied information about the Project, its cost and its

implications. Until it could no longer remain hidden or when it was leaked to the media, negotiations with Enron/Dabhol Power Company were privately held with no other Company being asked to bid or participate in the negotiations. The statutory notification about the Project required by the Electricity Supply Act hardly revealed anything about the Project and every subsequent query seeking more information was stonewalled. Even the Power Purchase Agreement itself and an agreement involving an outlay of more than Rs.1000 crores on the part of the State Electricity Board during the next 20 years, was hidden from the public view and every page of it was marked ‘secret’. All this secrecy was maintained deliberately even in the teeth of a statutory requirement for giving information to the public, just in order to facilitate this corrupt deal. A correspondence between the top official of Enron and the Chairman of the Maharashtra State Electricity Board, which subsequently came to light, showed the brazenness with which these conspirators were going about their business. On 28th June, 1993, the Vice President of Enron, Mr. Joe Sutton wrote to the Chairman of MSEB, Mr. Ajit Nimbalkar, after adverse report on the Project by the World Bank in the following terms:

“I recently met with the World Bank and have been following the articles in the India papers. I feel that the World Bank opinion can be changed. We will engage a PR firm during the next trip and hopefully manage the media from here on. The project has solid support from all other agencies in Washington. We’ll get there! We need now to put the PPA behind us.”

Such was the cozy relationship between Enron and the State Electricity Board with whom they were negotiating this massive contract that they did not hesitate to share with the Chairman the fact that they would engage a PR firm to manage the media and that they would try to change the opinion of the World Bank on the Project.

The Enron case is a stark example, which shows how deep, rooted is the vested interest of the bureaucracy and those in power to deny the right of information to the public. They realise that it is only by keeping the people in the dark that they can manage such loot of public money as they succeeded to do in the Enron case.

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