

OVERSEAS PRIVATE INVESTMENT CORPORATION  
WASHINGTON, D.C. 20527, USA



OFFICE OF THE  
PRESIDENT

February 19, 2002

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

We are in receipt of your letter of January 31, 2002, requesting documents and background materials on projects approved by the Overseas Private Investment Corporation (OPIC) involving the Enron Corporation. At the outset, please be assured we will be pleased to work with you and your staffs to provide access to the items needed for your inquiry.

Our staffs had a very productive meeting on February 11, and have held subsequent telephone conversations to discuss your request and coordinate necessary arrangements. The meeting was held with Patrick Heck and Dean Zerbe of the Committee staff and OPIC's representatives were led by Christopher Coughlin, Vice President for External Affairs, and Mark Garfinkel, Vice President and General Counsel. As indicated at that meeting, because of the potential volume of documents and the fact that a substantial amount of the material requested may include business confidential items, it was agreed OPIC would provide an overview of the active Enron-related projects and additional documents would be made available for review at OPIC's offices. Throughout this process, we would have frequent and open communications to be certain the Committee's requirements are fulfilled.

As you know, OPIC is a self-sustaining federal agency that provides political risk insurance and loans to help U.S. businesses of all sizes invest and compete in 140 emerging markets and developing nations worldwide. By charging user-fees, OPIC, a U.S. government agency, operates at no net cost to U.S. taxpayers. OPIC has earned a net profit in each year of operations -- \$215 million in FY 2001 - and its reserves currently stand at more than \$4 billion. Over the agency's 30-year history, OPIC has supported \$138 billion worth of

Senate Finance Committee

**EXHIBIT 3**

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investments that have helped developing countries to generate over \$10 billion in host-government revenues and create nearly 668,000 host-country jobs. OPIC projects have also generated \$64 billion in U.S. exports and created nearly 250,000 American jobs.

Since 1971, OPIC has accomplished its mission by supporting more than 3,000 projects throughout the developing world. Cumulatively, these projects have supported over one-half million host country jobs and have contributed to the host country tax base and infrastructure.

As of September 30, 2001, OPIC is managing a portfolio of 133 active finance projects and 253 active insurance contracts. OPIC products support developmental investments in locations that range from Algeria to Zimbabwe. OPIC plays an important role in regions that are strategically important to the United States. In addition to on-going activities in support of private investment in regions such as Africa, the Newly Independent States, Central America, and the Balkans. OPIC is also working extensively to provide investment support in Pakistan, Afghanistan, Indonesia, and other strategic countries desperately in need of the development benefits of private investment.

In regard to projects supported by OPIC involving the Enron Corporation, OPIC is currently supporting 10 international projects with Enron involvement in Argentina, Colombia, Gaza, Guatemala, India, Philippines, Turkey and Venezuela.

In reviewing the information provided below, it is important to note the enclosed opinion of OPIC's Vice President and General Counsel (Appendix 1) stating that "...when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. OPIC's exposure is solely to foreign project companies of which Enron is a shareholder/partial shareholder, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage."

I attach charts showing, respectively, OPIC's current political risk insurance and finance projects with Enron involvement. (See Appendix 2.) Ten projects with Enron involvement are being supported with political risk insurance with a combined maximum coverage of \$204 million which were approved under OPIC's normal project approval process. (See Appendix 3 for a description of the approval process for political risk and finance projects.)

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OPIC political risk insurance does not include commercial risk and is payable only for valid claims based on inconvertibility, expropriation or political violence related to international events which are beyond the control of the investor. OPIC's historical recovery rate of total claims settled is 94 percent.

In addition, OPIC is supporting finance projects in which Enron is a shareholder. As indicated above, because of the nature of OPIC's support to project companies, OPIC is not a direct creditor of Enron. The projects are structured as limited-recourse project financings, the borrower in each case is the project company, rather than Enron. As such, OPIC's Enron-sponsored borrower entities are not directly affected by the U.S. Enron-related proceedings. OPIC has financing outstanding to five projects involving Enron as a shareholder. OPIC entered into commitments for these five projects during FY1993-FY2000. Several of the projects are co-sponsored by other, credit-worthy sponsors. One of these projects is expected to complete repayment of its OPIC financing in 2003.

I trust this information is responsive and helpful. Please be assured OPIC will work with the Committee to meet your legislative responsibilities. If I can be of assistance at any time, please do not hesitate to call on me.

Sincerely,



Peter S. Watson  
President and  
Chief Executive Officer

cc: Patrick G. Heck  
Dean A. Zerbe

#### Appendix

1. OPIC Legal Opinion on relationship between OPIC and Enron and projects having Enron shareholding
2. List of OPIC active projects having Enron shareholding
3. Overview of OPIC Approval Process for Finance and Insurance Projects



APPENDIX 1



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February 19, 2002

Patrick G. Heck  
 Democratic Tax Counsel  
 U.S. Senate Committee on Finance  
 254 Dirksen Building  
 Washington, DC 20510

Dean A. Zerbe  
 Chief Investigative Counsel  
 Republican Staff  
 U.S. Senate Committee on Finance  
 254 Dirksen Building  
 Washington, DC 20510

Re: Legal aspects of relationship between OPIC and Enron and Enron-related projects.

Gentlemen:

This opinion clarifies certain issues pertaining to the information provided by OPIC to the Senate Finance Committee pursuant to its January 31, 2002, request for information regarding OPIC's support provided to Enron-related projects. Please note that when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. ~~OPIC's exposure is to~~ foreign project companies of which Enron is a sponsor, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage.

Sincerely,

Mark Garfinkel  
 VP and General Counsel

Overseas Private Investment Corporation

Active Finance Projects with Enron Equity Involvement - as of 2/1/02

Note: In reviewing the information provided below, it is important to note the opinion of OPIC's VP and General Counsel stating that "...when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. OPIC's exposure is solely to foreign project companies of which Enron is a shareholder/partial shareholder, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage."

Year Project Approved	Country	Project Name/Foreign Enterprise	Project Description	Sector	Total Current Project Loan Outstanding
FY1993	PHILIPPINES	Batangas Power Corporation	Establishment of a diesel-fired generator power plant	Energy - Power	
FY1994 + FY1998	INDIA	Dabhol Power Corp	Power plant	Energy - Power	
FY1994	TURKEY	Trakya Elektrik Uretim ve Ticaret A.S.	Power project	Energy - Power	
FY1998	VENEZUELA	Accroven SRL	Gas processing facility	Energy - Oil and Gas	
FY2000	GUATEMALA	Puerto Quezbal Power LLC	Power generation	Energy - Power	
					\$453,680,377

Overseas Private Investment Corporation

Active Political Risk Insurance Projects with Enron Equity Involvement - as of 2/1/02

Note: In reviewing the information provided below, it is important to note the opinion of OPIC's VP and General Counsel stating that "...when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. OPIC's exposure is solely to foreign project companies of which Enron is a shareholder/partial shareholder, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage."

Year Project Approved	Country	US Sponsor/Insured Investor	Project Name/Foreign Enterprise	Project Description	Sector	TOTAL CURRENT EXPOSURE
FY1992	GUATEMALA	Enron Power Corp.	Puerto Quetzal Power Corp.	Electric services	Energy - Power	
FY1993	PHILIPPINES	Enron Power Corp.	Batangas Power Corporation	Establishment of a diesel-fired generator power plant	Energy - Power	
FY1993	ARGENTINA	Enron Corp.	Enron Pipelina Company- Argentina, S.A.	Gas pipeline/compressor stations	Energy - Oil and Gas	
FY1994	INDIA	Enron Corp.	Dabhol Power Corp	Electric services	Energy - Power	
FY1994	COLOMBIA	Enron Corp.	Transportadora de Gas de la Region Central	Natural gas pipeline	Energy - Oil and Gas	
FY1995	TURKEY	Enron Corp.	Trakya Elektrik Uretim ve Ticaret A.S.	Electric services	Energy - Power	
FY1998	INDIA	Enron Oil & Gas India Ltd.	(no foreign enterprise)	Oil & gas	Energy - Oil and Gas	
FY1998	VENEZUELA	Enron Corp.	Accroven SRL	Natural gas liquids	Energy - Oil and Gas	
FY1998	PHILIPPINES	Enron Corp.	Subic Power Corp.	Electric services	Energy - Power	
FY1999	GAZA	Enron Corp.	Gaza Power Generating Private Limited Company	Power plant	Energy - Power	
						\$204,135,072

## OPIC Approval Process for Finance and Insurance Projects

### Background

OPIC is a U.S. government agency. Its mission is to mobilize and facilitate investment of U.S. private capital in the economic development of developing countries. OPIC accomplishes its mission through the following activities: insuring investments overseas against a broad range of political risks (the political risk insurance program), financing businesses overseas through direct loans and loan guaranties (the finance program), and financing private investment funds<sup>1</sup> that provide equity to businesses overseas. OPIC's programs are open in 140 countries. The predominate type of financing provided by OPIC's finance program is limited recourse project financing, which means that OPIC is looking to the project for repayment and the recourse to the equity investor is limited.

### The Finance Program Approval Process<sup>2</sup>

- A. The sponsor(s) of a project (the project equity investor(s)) or the prospective borrower submits an application for financing to OPIC. The U.S. project equity investor is considered to be the U.S. sponsor of the project. Financial statements of the sponsor(s) are required to be provided with the application. If the sponsor is a public corporation, audited financial statements for the most recent three years and the most recent 10K and 10Q are required to be provided with the application.
- B. The U.S. sponsor must complete a sponsor disclosure report providing information regarding the background of the sponsor. Information included on the sponsor disclosure report includes the personal credit history of significant shareholders, officers and directors as well as whether the sponsor or any affiliate is in default of any payment obligation to the U.S. Government or is debarred, suspended or voluntarily excluded from procurement or non-procurement dealings with the U.S. Government.
- C. Upon receipt of an application, a preliminary review is undertaken by OPIC's Office of Investment Policy and the project team for indications that the project will meet OPIC's statutory guidelines, including no negative U.S., environmental, worker or human rights effects and OPIC's need to be self-sustaining. The project team generally consists of a Finance Department manager, an investment officer and a project attorney.
- D. Assuming no negative indications, the project is brought forward to a screening meeting. A screening memorandum is prepared outlining the key issues. The Vice President for Finance, the Director of Credit Policy, the Associate General Counsel for Finance, members of the Office of Investment Policy and the project team review the screening memorandum to determine if the project warrants further consideration.

<sup>1</sup> The investment funds department does not have any Enron projects.

<sup>2</sup> The procedure described below applies to loans over a certain size. All loans to Enron-sponsored projects are over this size.

- E. If the screening committee determines that the project warrants further consideration, a retainer letter is sent to the customer. The retainer letter outlines OPIC's process and criteria, including the requirement for payment of a retainer fee.
- F. The project team undertakes due diligence in order to assess whether the project meets OPIC's credit underwriting criteria. OPIC's underwriting requirements are outlined in the Finance Department's underwriting guidelines. The credit underwriting process primarily includes an assessment of (1) the financial structure of the transaction, (2) the ability of all project participants to perform their respective obligations, and (3) the transaction's key risks and mitigants. This assessment is completed by reviewing and analyzing the project documents, the project participants' financial statements, public information on the project participants including filings with the Securities Exchange Commission, analyst reports, and rating agency reports. In addition, periodical searches and credit checks, including Internal Revenue Service, trade, supplier and bank checks, are done, and the project team contacts other government agencies, including the U.S. embassy in the host country.
- G. The financial statements for the key project participants are spread and analyzed. Financial statement analysis includes historical and projected income statement, balance sheet, cashflow, ratio and trend analysis, financial flexibility and wherewithal analysis, review of other liabilities including terms and covenants thereof, and, review of auditor's opinions.
- H. The financial model of the project is analyzed and sensitivity analyses are prepared. The overall risks and potential mitigants of providing financing to the project are examined. To assist with risk identification and mitigation, consultants with special expertise are sometimes engaged to analyze the technical aspects of the project and also to perform work in verifying and determining the adequacy of assumptions with respect to financial modeling, project economics, insurance (availability and adequacy), contractual soundness and adequacy, and management and project participants' operating capabilities. Site visits conducted by the project teams and OPIC's Office of Investment Policy include meetings with key project participants, host government officials, local counsel and U.S. embassy personnel. While much of the credit due diligence is done before the meeting of the credit committee, the credit evaluation process continues until disbursement.
- I. When the project team has completed sufficient due diligence, the Finance Department convenes a credit committee to determine if the project meets credit underwriting and other requirements. A credit committee due diligence package is prepared summarizing the key project information. The members of the credit committee include the Vice President for Finance, the Director of Credit Policy, the Associate General Counsel for Finance, the Director of Project Management, two

Finance managers, and members of the Office of Investment Policy<sup>3</sup>. The project teams are in attendance.

- J. If the project passes the credit committee, it goes to the Investment Committee. The Investment Committee is comprised of the following voting members: the President and CEO, the Executive Vice President and COO, the Vice Presidents for finance, insurance, and investment policy, the Vice President for Investment Funds; the General Counsel and the Director of Credit Policy are in attendance but do not vote. During the meeting, the Director of Credit Policy is required to present an independent view of the credit risks. The project team makes an oral presentation at the Investment Committee.
- K. All projects in excess of \$30 million require board approval<sup>4</sup>.
- L. The Board is presented with a paper that outlines the project, its risks and their mitigants, and the policy issues including developmental considerations. The project team gives an oral presentation and answers questions from members of the Board. The Board's focus is on policy aspects of the transaction.
- M. Once the Board approves the project, a commitment letter is negotiated with the sponsor(s) and/or a finance or loan agreement is negotiated with the borrower. The commitment letter is normally between the sponsor(s), the project company and OPIC. The commitment letter sets forth the broad terms under which OPIC is willing to provide financing. The finance agreement is between OPIC and the borrower and sets forth the terms of the financing, representations and warranties of the borrower, conditions to disbursement, covenants, events of defaults and collateral. If sponsor financial support for the project is required, that requirement will also be included in the finance agreement.
- N. The terms of the sponsor financial support for the project, if any, are set forth in a project completion agreement or a sponsor support agreement. Such support is normally capped and is usually of a limited duration. These agreements may impose financial and reporting requirements on the sponsor(s).
- O. Before any disbursement may be made, conditions precedent set forth in the loan agreement must be satisfied or waived. These conditions include execution and delivery of promissory notes and security documents (including project completion or sponsor support agreements, if any), consents of governmental authorities and other third parties, legal opinions, and Borrower's officers' certificates that the representations and warranties are true and correct in all material respects and that no default or event of default has occurred and is continuing.

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<sup>3</sup> Since 1985, the year that Enron was formed, the OPIC approval process has evolved. The credit approval has always rested with the Finance Department. There were periods when voting members also included representatives from the Investment Development and Investment Funds Departments.

<sup>4</sup> The dollar criteria for submission to the board may have changed over the years.

**NOTE:****Effect of filing under Chapter 11 of the Bankruptcy Code by Shareholders of Projects Financed by OPIC**

OPIC is not a creditor of shareholders/sponsors of projects financed by OPIC. For example, OPIC is not a creditor of Enron Corporation ("Enron"), which, directly or through intermediate entities, is a shareholder in five active OPIC finance projects. Nonetheless, projects in which Enron is a direct or indirect shareholder are often incorrectly portrayed as Enron credit exposure. Because OPIC is not a creditor of the shareholders of project companies that borrow from OPIC, the bankruptcy of a project company shareholder (or its parent) does not generally have a significant effect on the project itself.

In the case of Enron, the OPIC financings to projects in which Enron is a direct or indirect shareholder are structured as limited recourse project finance transactions that depend on the successful operations of the special purpose project company for repayment of the OPIC debt, not on the financial performance of Enron. These special purpose project companies to which OPIC lent funds are all entities located outside the United States. None of these entities are included in Enron's bankruptcy filing.

Four of the five active Enron-related projects that are financed by OPIC are completely built and operating successfully. Enron's bankruptcy is not expected to affect any of them. The remaining active finance project is the Dabhol project. While Enron's bankruptcy was not the cause of the project's problems, it does result in certain additional complications.

### The OPIC Political Risk Insurance (“PRI”) Program

Three kinds of PRI are authorized by OPIC’s governing statute (the Foreign Assistance Act of 1961, as amended (herein, the “Act”)):

- A. *Expropriation*, including, impairment, repudiation, and abrogation of a contract between an investor and the foreign government.
- B. *Inconvertibility of local currency*, including inability to transfer U.S. \$ from the host country
- C. *Political violence*, including sabotage and terrorism and loss of business income due to damage or destruction of property by political violence

Value of lost property

- 2. Lost business income

#### II. The process for issuance of PRI

- A. Informal conversations between OPIC insurance officer and U.S. company(s) proposing to invest in developmental projects in under-developed countries and emerging economies.

Determine whether prospective investor will likely be eligible for PRI

- (a) Insured(s) must be an “eligible investor”, as defined in the Act
- (b) Insured (s) cannot be persons or entities affiliated with persons not entitled to benefit from USG assistance (violators of Foreign Corrupt Practices Act, designees under Drug Kingpin Act, etc.);

- 2. Determine whether project likely to be eligible for PRI

#### B. Prospective insured files Registration for PRI

- 1. Fixes date after which investment to be insured may be made
- 2. Generally, OPIC insures only new investments

- (a) Exceptions for highly developmental projects
- (b) Post-9/11 needs of U.S. businesses

#### C. Prospective insured files Application for PRI

Detailed questions regarding the prospective insured, its ownership, the project, the other project participants, the amount to be invested by all

participants, the amount of U.S. procurement or other possible U.S. benefit, and related relevant questions

- D. Insurance officer reviews application, discusses project with applicant, and decides which project and project related documents appear relevant for review
1. Determines if prospective insured project likely to be eligible for PRI
  2. Reviews relevant project and project related documents, e.g.,
    - (a) Article of Incorporation of foreign enterprise in which investment to be insured is to be made; Shareholder Agreements; Loan Agreements (for institutional lender PRI); Licenses from host country government; Concession Agreements; Supply Agreements; Power Purchase Agreements
    - (b) Since late 2001, Project company financial statements and prospective insured financial statements
      - (1) Previously, financial statements were not considered relevant to PRI, since OPIC is not engaged in credit insurance. Some PRI carriers, for example, the Multilateral Insurance Guarantee Agency ("MIGA"), the World Bank counterpart of OPIC, consider the financial strength of the project and its sponsors relevant to determining the degree of risk in providing PRI, especially expropriation coverage, as host governments sometimes expropriate weak projects considered necessary for the host country to maintain. In late 2001, OPIC Insurance adopted a similar risk analysis
    - (c) Whether OPIC participation will meet the required tests of additionality to justify, in whole or in part, OPIC PRI rather than or together with private market PRI
  3. Obtains required clearances
    - (a) Foreign Government Approval, if required by Investment Incentive Agreement between USG and host country government
    - (b) Human rights clearance from DOS
    - (c) Embassy comments
    - (d) Foreign Policy clearance from DOS
    - (e) Worker Rights clearance and requirements from OPIC Office of Investment Policy
    - (f) Environmental clearance and requirements from OPIC Office of Investment Policy

4. Prepares Action Memorandum, describing the project, the sponsor and other participants, the project documents, the risks involved, the additionality analysis, and a country risk analysis

E. Policy Review

The Insurance VP, Insurance regional managers, attorney for the project, and Associate General Counsel, Insurance, convene as a group to review the Action Memorandum and raise any issue or concerns not covered in Action Memorandum

- 2 Insurance officer explains the project and responds to issues and concerns raised

F. Insurance up to \$25,000,000. Insurance Officer

Resolves issues and concerns raised at policy review

- 2 Prepares draft commitment letter or contract and forwards same to prospective insured

(a) Commitment Letter

- (1) Used when capacity limits exist or project needs priority attention
- (2) 3/6 months
- (3) Partially refundable fee if contract issued
- (4) Sets forth terms on which insurance will be issued, subject to mutual agreement

(b) Contract

- (a) Standard form, with blanks
  - (b) Blanks completed to reflect specific investment and project
  - (c) Investment/project specific amendments as required
3. Responds to comments and concerns of prospective insured
  4. Prepares final commitment letter or insurance contract and Action Memorandum
  5. Action Memorandum and commitment letter or contract reviewed and approved by project attorney, Insurance Regional Manager, and VP Insurance
  6. Commitment letter or contract sent to client for signature and, when returned, signed, signed for OPIC by Insurance VP.

G. Insurance over \$25,000,000, but not over \$50,000,000

Same as insurance up to \$25,000,000, except that prior to preparation of draft commitment letter or contract,

- (a) Insurance officer prepares analysis for Investment Committee (composed of CEO, EVP, and VPs)
- (b) Investment Committee reviews project and rejects, approves, or approves with conditions
  - (1) If approved with conditions, conditions must be satisfied before commitment letter or contract is sent to prospective insured for signature.

H. Insurance over \$50,000,000

- 1 Same as insurance over \$25,000,000, but not over \$50,000,000, except that prior to preparation of commitment letter or contract,
  - (a) Project is presented to OPIC Board of Directors
  - (b) Board approves or disapproves based on overall OPIC policy and DOS foreign policy considerations
- 2 Contract signed by OPIC CEO