

III. Multilateral Financing and Insurance

Enron used World Bank funds and funds from U.S. taxpayer supported agencies and lending organizations to finance the Guatemalan power project as well as the questionable payments to Sun King. The World Bank and the U.S. Department of Transportation Maritime Administration provided financing and the Overseas Private Investment Corporation (OPIC) provided political risk insurance.

World Bank

The World Bank, formally known as the World Bank Group, is one of the world's largest sources of development assistance. The World Bank is comprised of five institutions and each institution plays a role in the overall organization's mission to fight poverty and improve living standards for the people in the developing world. In Fiscal Year 2002, the World Bank provided \$19.5 billion in loans to its client countries and worked in more than 100 developing economies.¹⁰⁶

Enron received financing through one of the five World Bank institutions. The World Bank, through its International Finance Corporation (IFC), provided approximately \$761 million in financing for Enron's overseas operations.¹⁰⁷ In March 1993, IFC approved \$71 million to finance the Guatemala Project.¹⁰⁸

U.S. Department of Transportation, Maritime Administration

The Federal Ship Financing Program (Title XI of the Merchant Marine Act of 1936) provides for a full faith and credit guarantee by the U.S. Government of debt obligations issued by (1) U.S. citizen shipowners for the purpose of financing or refinancing U.S. flag vessels constructed or reconstructed in U.S. shipyards; (2) non-U.S. citizen shipowners for the purpose of financing or refinancing foreign flag vessels constructed or reconstructed in U.S. shipyards; or (3) U.S. shipyards for the modernization and improvement of their facilities.¹⁰⁹

¹⁰⁶ World Bank Group, <http://www.worldbank.org> (2002).

¹⁰⁷ Enron's Pawns, *supra* note 4, at 15.

¹⁰⁸ IFC Investment Agreement, *supra* note 5.

¹⁰⁹ MARAD Letter, *supra* note 6.

The Maritime Administration (MARAD) approved \$198 million in financing for four separate Enron affiliates, including \$98 million for the Guatemala Project as follows:¹¹⁰

Project	Financing	Date	Comment
Puerto Quetzal Power Corporation	Approved \$25 million	May 16, 1994	<ul style="list-style-type: none"> • Joint venture with King Ranch Oil and Gas, Inc. • Enron chose not to close the transaction and used alternative financing
Smith/Enron Cogeneration Limited Partnership	Approved \$50 million Outstanding \$27.2 million	Dec. 22, 1995	<ul style="list-style-type: none"> • Total cost of project \$204.3 million • Co-financed with World Bank (International Finance Corporation), Commonwealth Development Corporation, and DEG-Deutsche Investitions-Und-Entwicklungsgesellschaft mbH
Empresa Energetica Corinto, Ltd	Approved \$50 million Outstanding \$41.34 million	Dec. 28, 1998	<ul style="list-style-type: none"> • Joint venture between a wholly owned subsidiary of Enron and the Centrans Group
Puerto Quetzal Power LLC	Approved \$73 million Outstanding \$66.7 million	Sept. 21, 2000	<ul style="list-style-type: none"> • Financed the construction of one barge mounted power plant operating off the coast of Guatemala and two additional power barges and onshore facilities • Co-financed with OPIC providing \$50 million

Overseas Private Investment Corporation

The mission of the Overseas Private Investment Corporation (OPIC) is to facilitate the investment of private capital from the United States to emerging markets (less developed countries/areas and countries in transition from non-market to market economies).¹¹¹

¹¹⁰ MARAD Letter, *supra* note 6.

¹¹¹ 22 U.S.C. § 2191.

OPIC accomplishes this mission by selling political risk insurance and providing long-term financing to U.S. businesses investing in over 140 developing countries.¹¹² Although OPIC is an agency of the U.S. Government, it operates on a self-sustaining basis from fees paid on its insurance products and premiums received on its financing products, with no net cost to the U.S. taxpayer. Excess collections are maintained as reserves, which are composed entirely of non-tax dollars.¹¹³

OPIC political risk insurance provides coverage against three hazards: inconvertibility, expropriation, and political violence. In the event OPIC makes a claim payment, the payment comes from OPIC reserves. Once OPIC makes a payment to an insured, it makes every effort to secure reimbursement from the foreign government in question. Historically, OPIC has recovered 94 percent of claims settled.¹¹⁴

Enron, as with any insured, would have had to demonstrate that it was entitled to compensation in the amount claimed. While Enron purchased more than one insurance contract, OPIC had limited its loss exposure to less than the sum of all of these contracts. Enron's insurance contracts were subject to an overall stop loss agreement, which reduced the aggregate amount OPIC could be required to pay on the ten¹¹⁵ Enron contracts to \$204 million, an amount that is less than the sum of the individual contract amounts.¹¹⁶

With respect to OPIC financing, it is important to recognize that OPIC loans are generally made to a project company located in a developing country, with loan repayments coming from the revenues of that company rather than from the sponsors. Thus, project sponsors such as Enron are *not* OPIC borrowers and OPIC is *not* ordinarily a creditor of a project sponsor. Nevertheless, as of September 30, 2001, Enron was the largest OPIC project sponsor, with \$464 million in outstanding loan balances guaranteed by OPIC.¹¹⁷

OPIC's programs are backed by the full faith and credit of the U.S. Government. As such, mechanisms are in place that would allow OPIC to get funding from the U.S. Treasury should OPIC reserves be inadequate to pay claims (section 235(d) of the Foreign Assistance Act).¹¹⁸ OPIC has never had to call on the U.S. Treasury to cover a loss. With \$4.5 billion in reserves to cover any future losses OPIC may incur in its insurance or financing programs, and with its history of recovery on insurance claims, according to OPIC president, "it is unlikely OPIC will ever have to."¹¹⁹

Federal law authorizes criminal penalties for fraud with respect to OPIC.¹²⁰ As such, anyone who knowingly makes any false statement or report . . . for the purpose of influencing in any

¹¹² Letter from Peter S. Watson, President and Chief Executive Officer, Overseas Private Investment Corporation, to The Honorable Charles E. Grassley, Ranking Member of the Senate Committee on Finance 1 (March 15, 2002) (Exhibit 46) [hereinafter OPIC Letter (March)] (Currently, OPIC has reserves of \$4.5 billion.).

¹¹³ OPIC Letter (March), *supra* note 112, at 1.

¹¹⁴ OPIC Letter (March), *supra* note 112, at 4.

¹¹⁵ OPIC Letter (Feb.), *supra* note 4, at Appendix 2B.

¹¹⁶ OPIC Letter (March), *supra* note 112, at 4.

¹¹⁷ OPIC Letter (March), *supra* note 112, at 8.

¹¹⁸ OPIC Letter (March), *supra* note 112, at 5.

¹¹⁹ OPIC Letter (March), *supra* note 112, at 6.

¹²⁰ 22 U.S.C. § 2197(n).

way the action of OPIC with respect to any insurance, reinsurance, guarantee, loan, equity investment, or other activity of the Corporation is subject to the penalty.¹²¹

Under 18 U.S.C. § 1001, criminal liability may flow from knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact; making any materially false, fictitious or fraudulent statement or representation; or making or using any false writing or document, knowing that it contains a materially false, fictitious, or fraudulent statement or entry.¹²²

Political Risk Representations Made by Enron

In its 1992 preliminary information memorandum provided to potential creditors and investors, Enron represented the electricity market in Guatemala as one in which demand for electricity was relatively unaffected by price increases. Enron also represented that the political environment was one in which government policy is “designed to limit inflation, encourage foreign investment, and privatize public sector companies in a manner that does not cause major de-stabilization.” Enron stated that Empresa’s “financial data, as audited by Arthur Anderson & Co., reflects strong leadership and responsible decision-making”¹²³ and described Empresa’s history and relationship to INDE (the government agency that owned 91.7 percent of Empresa).¹²⁴ The memoranda, however, do not mention the severe criticisms of INDE by a blue ribbon commission on privatization established by Guatemalan President Jorge Serrano.¹²⁵

In contrast to this rosy description, the Guatemalan political environment was deteriorating rapidly and the price of electricity was a very important factor. In August 1991, in preparation for privatization, President Serrano wanted to reduce government subsidies for electricity, and raised electricity prices by 47 percent. In July 1992, President Serrano’s blue-ribbon commission drafted a bill to reform and restructure INDE. The bill restructured INDE’s Board of Directors and gave the Board, instead of President Serrano, the authority to name the President of INDE. The legislature passed the bill, but President Serrano vetoed it. Instead, Serrano instituted his own privatization plan by executive decree.¹²⁶

Enron’s Representations to OPIC Regarding Questionable Payments.

In 1992, Enron applied for political risk insurance from OPIC. In a preliminary information memorandum, Enron valued the cost of the 6 percent Sun King obligation at more than \$63 million over the 15-year life of the contract in the Guatemala Project. Those payments

¹²¹ Maximum penalties include a fine of not more than \$1 million, or imprisonment for not more than 30 years, or both. See Memorandum Congressional Research Service, Elizabeth B. Bazan, Legislative Attorney American Law Division, to Senate Finance Committee (April 22, 2002) (Exhibit 47) [hereinafter CRS Penalties Memo].

¹²² Maximum penalties include a fine under 18 U.S.C. § 3571 or imprisonment for not more than 5 years, or both. See CRS Penalties Memo, *supra* note 121.

¹²³ Enron Memo to OPIC, *supra* note 15, at 46-50.

¹²⁴ DICTATING DEMOCRACY, *supra* note 10, at 98.

¹²⁵ Enron Memo to OPIC, *supra* note 15.

¹²⁶ DICTATING DEMOCRACY, *supra* note 10, at 99. (As noted *supra* note 43, President Serrano’s appointee in that position, Alfonso Rodriguez Anker, who also served as the Chairman and CEO of Empresa, was the subject of congressional investigations.)

constituted 46.45 percent of the estimated Project cash flow.¹²⁷

Based on the same Enron Project projected financial statements, the value of the original Texas-Ohio Power (TOP) agreement with Sun King (16 percent of capacity payments and 21 percent of energy payments) was estimated to be worth over \$200 million. Thus, the percentage of Project revenues TOP committed to Sun King did not allow the Guatemala Project to achieve an economic rate of return.¹²⁸ As a result, the renegotiated 6 percent Sun King commitment allowed the Guatemala Project to achieve a rate of return acceptable to Enron, to the World Bank, and to the Guatemala Project creditors.¹²⁹

In 1992, in its preliminary information memorandum,¹³⁰ Enron described Sun King, under the section for “Royalty Participants,” as the originators of the Guatemala Project, and as:

[A] small group of Guatemalan businessmen representing sugar, coffee and shipping interests, attempting to enhance Guatemala’s economic growth prospects by solving its acute power shortages. This group (“Sun King”), together with a local electro-mechanical engineering firm, located Texas-Ohio Power . . . and assisted them in negotiations with EEGSA [Enron/Empresa], Puerto Quetzal, and with engineering and financial entities.¹³¹

The payments from TOP to Sun King were described as:

[A] monthly royalty payment in lieu of an equity interest in the Project in return for [Sun King’s] role in developing the Project, negotiating the PPA with EEGSA [Empresa], and ongoing assistance with permitting and port arrangements. Sun King originated, and, helped persuade convinced [sic] the Guatemalan government and EEGSA [Empresa] of the role and viability of privatized power in Guatemala, and provided initial development capital and services to TOP.¹³²

The preliminary information memorandum further stated that TOP had assigned the 6 percent royalty to Sun King, and “Sun King has continued to play an instrumental advisory role to Enron, particularly with respect to permitting and port relations.”¹³³

Thus, Enron benefited from taxpayer support and multilateral organization support to extend its international reach, including the Guatemalan power project with its questionable payments.

127 Enron Memo to OPIC Cash Flow, *supra* note 17; *See also* Enron Memo to OPIC, *supra* note 15.

128 Haug Interview, *supra* note 77.

129 Enron Memo to OPIC, *supra* note 15, at 81.

130 Enron Memo to OPIC, *supra* note 15, at 81.

131 Enron Memo to OPIC, *supra* note 15, at 81.

132 Enron Memo to OPIC, *supra* note 15, at 81.

133 Enron Memo to OPIC, *supra* note 15, at 51; *See also* Overseas Private Investment Corporation, Questions for Enron Power Development Corp.’s Richard A. Lammers 1, question 4 (June 9, 1992) (Exhibit 48) (OPIC submitted questions for response by Richard A. Lammers’s of Enron Power Development Corp. OPIC asked about Sun King and the 6 percent payments, specifically whether it was 6 percent of net or gross returns. In response, “6% of gross” was circled.); OPIC Questions to Lammers, at 2, question 13 (A hand-written response also included the following statements: “They are local Guatemalans with a stake in the Project. Still acceptable returns.” and “in contract before it was purchased.” Calculations based on the information provided to OPIC show that the 6 percent payments, shown as “Guatemalan share of revenue.”).