

**SENATE OF PAKISTAN
HOUSE OF THE FEDERATION**

Report No.13



***Report of the Senate Standing Committee on Water and Power
regarding "Over-expenditure in the projects—logic of escalation, if
any"***

PRESENTED BY

**SENATOR SARDAR MUHAMMAD YAQOOB KHAN NASAR
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON WATER AND POWER

I, Chairman of the Standing Committee on Water and Power, have the honour to present the report regarding "Over-expenditure in the projects—logic of escalation, if any," The Standing Committee on Water and Power had constituted a Sub-Committee on the subject which finalized its report and presented in the whole Standing Committee on 14th April, 2017.


The composition of the Standing Committee on Water & Power is as under:-

1)	Senator Sardar Muhammad Yaqoob Khan Nasar	Chairman
2)	Senator Muhammad Daud Khan Achakzai	Member
3)	Senator Nisar Muhammad Khan	Member
4)	Senator Sirajul Haq	Member
5)	Senator Atta ur Rehman	Member
6)	Senator Muhammad Ali Khan Saif	Member
7)	Senator Dr.Ghous Muhammad Khan Niazi	Member
8)	Senator Muhammad Zafarullah Khan Dhandla	Member
9)	Senator Taj Haider	Member
10)	Senator Ahmed Hassan	Member
11)	Senator Mukhtiar Ahmed Dhamrah @ Aajiz	Member
12)	Senator Nauman Wazir Khattak	Member
13)	Minister of State for Water and Power	Ex-officio Member

The Committee discussed the said matter in its meeting held on 14th April, 2017. The Standing Committee has endorsed the report of the Sub-Committee and allowed to present it as a special report in the House. Following members attended the meeting:-

1.	Senator Sardar Muhammad Yaqoob Khan Nasar	Chairman
2.	Senator Muhammad Daud Khan Achakzai, Advocate	Member
3.	Senator Atta ur Rehman	Member
4.	Senator Ahmed Hassan	Member
5.	Senator Mukhtiar Ahmed Dhamrah@ Aijaz	Member
6.	Senator Nauman Wazir Khattak	Member

The report of the Sub-Committee is attached.


(JAVAID IQBAL)
Secretary Committee


(SENATOR SARDAR MUHAMMAD YAQOOB KHAN NASAR)
Chairman

REPORT OF THE SUB-COMMITTEE OF
THE SENATE STANDING COMMITTEE ON WATER & POWER

A Sub-Committee of the Senate Standing Committee on Water & Power was constituted under the Convener ship of Senator Nauman Wazir Khattak. Senator Muhammad Daud Khan Achakzai, Advocate and Senator Nisar Muhammad were the members of the Sub-Committee.

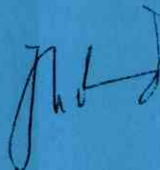
The TORs of the Sub-Committee are as under:

- i. Economic priority and the sources of energy.
- ii. Over-expenditure in the projects—logic of escalation, if any.
- iii. Comparative study and analysis of energy mix.

The Sub-Committee held meetings on 27.01.2017, 24.02.2017, 16.03.2017 and 20.03.2017. As far as economic priority, source of energy, comparative study of the cheapest sources and analysis of future energy mix is concerned, the Ministry remained unable to submit an analytical report on the above agenda items and the reason given was that it was a lengthy exercise and that the Ministry could not properly analyze the whole issue on following accounts:

- a) Human Resource and capacity issue.
- b) Provision of data on renewable energy resources.

The Committee was alarmed to know that a comprehensive data account is not available in the Ministry and the Ministry is unable to draw an analogy between the cheaper and the expensive sources of energy so as to forecast a better energy mix for the consumers at large. The Committee observed that the analytical skill and knowledge needed to envision the future needs of the country, to resolve the energy crisis is a serious issue. The country is passing through a critical time when during the scorching heat of summer many of the Pakistani citizens lose their lives and a considerable part of population is forced to bear the brunt of load shedding. It is a grave situation and it is imperative to collect proper data and digitalize it, reflecting reliable and viable future energy needs of the country. The Committee observed that lack of professionals in the Ministry is the sole reason for this poor state of affairs. Surprisingly neither engineers nor energy experts are available with the Ministry. Experts on market based salary or consultant companies need to be engaged immediately.

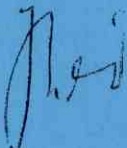


During visit of Nandipur Power Project the Committee while questioning on various aspects of the project direly felt that capacity of the whole staff, Board of Directors, and CEOs is a serious issue. Even the routine figures remained unanswered during the Committee meetings. Intervention, both political and non political can be easily seen in appointments and postings of the human resource. Such an inability and incapacity of the human resource surfaced time and again during discussion of the above agenda. In this digital age it is very easy to secure data, keep it updated and to use it for future plans.

The Sub-committee directed the Ministry to prepare a comprehensive report. The report must encompass the relevant data of the generation, the distribution capacity of different DISCOs with future needs. It should be a living document so that changes can be made with the changing and improved technology. The Committee also directed that professional approach is required to run the DISCOs. Unfortunately they are being run by the Federal Ministry with over arching political interference; just a limited and meaningless autonomy is provided to the DISCOs. Professionally speaking, the capacity issue of the human resource cannot be redressed unless the system is liberated from the strangulating hold of the colonial *baboos* and *sahibs both bureaucrats and politicians*. Without professional approach, the *baboos* may attain general knowledge and memorize a few figures but that too would confine them to a limited, generic approach. They are unable to look into the technical details of the engineering issues. The pathetic situation of the Board of Directors and CEOs speak volumes of the incapacity of human resource and poor performance shown at this critical time of energy crisis. The Board of Directors and CEOs must be selected on merit and the people from academia, the research scholars, representatives of A, B and C tariff, financial experts and former employees/ officers from different DISCOs with good repute should be brought on the BOD so as to resolve the issue through better planning.

Over-expenditure in the projects—logic of escalation, if any

The Committee visited Nandipur project, taking it as a case study of the escalation. Nandipur project was approved by the ECC on 27.12.2007 with the cost of US\$ 329 million. Contract was awarded to Dongfang Electric Corporation Ltd. (China) (DECL) and it was signed between Northern Power Generation Company Limited (NPGCL) and Dongfang Electric Corporation Ltd. (China) (DECL) on 28th January, 2018. Two consortiums were established for financing of the project.



- 1) COFACE (Consortium of BNP Paribas and HSBC Bank) for Euro 68.967 million.
- 2) SINOSURE (Consortium of BNP Paribas, HSBC and Intesa Bank) for USD 150.151 million.

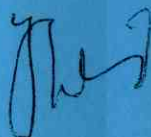
Drafts of both consortium agreements were duly vetted by Ministry of Law and Justice from time to time and financing agreement by COFACE was signed on 03.10.2008. The signing of COFACE agreement for Euro 68,967,879.65 was done after seeking due vetting of the agreement from Ministry of Finance and law Division however effectiveness of this facility was subject to signing of SINOSURE facility. Here the perceived country risk impeded the way and signing of SINOSURE facility agreement for USD 150.151 million could take place following the withdrawal by Intesa bank (Italy). The 3rd draft of SINOSURE agreement was received on 27.01.2009 from BNP Consortium. It was submitted to Ministry of Water and Power on 31.01.2009 and the draft was consequential upon the induction of China Exim Bank. On 02.02.2009 the Ministry of Water and Power submitted the same draft to Ministry of Finance and also to Law Division. On 02.02.2009 Law Division proposed certain changes in financial agreement but no changes were suggested in legal opinion.

The Ministry of Water and Power requested Law Division to finalize the agreement before 9th March, 2009 being the last day of SINOSURE Buyers Credit Agreement. And after that credit revalidation of Letter of intent from Sinosure will be required and Coface might also raise objections as it had already declined Letter of intent for 525 MW Chichokimallian project. The Ministry of Water and Power apprised the law Division of the serious financial implications and adverse effect on the other projects.

On 4th March, 2009 the Law Division conveyed the following decisions:-

In view of the peculiar circumstances emanating from the referred letter and observation / vetting done by this Division, the Administrative Ministry along with the Finance Division may take appropriate decision. Keeping in view the matter of financial crises described by the referring Ministry the aforesaid Divisions may be the best arbiter to get out of the imbroglio / quandary.

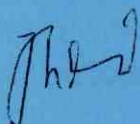
On **05.03.2009**, Ministry of W&P gave an approval to NPGCL to visit China for signing of Sinosure Facility Agreement. On **19.03.2009** M/o W& P submitted Final Draft of



Sinosure Facility Agreement to MoF for concurrence. Sinosure Facility agreement was signed on 19.03.2009. On **31.03.2009**, M/o W&P requested the Finance Division to grant Ex-post Facto Approval and issue GoP Guarantees as per format given in schedule 6 of SINOSURE Buyers Credit Facility Agreements signed on 19.03.2009. On **17.04.2009**, on a reference dated 7th April, 2009 made to the Law Division by the Finance Division, the Law-II Section proposed that: (i) as the draft had already been agreed between the parties, the referring Division may take necessary action accordingly; and (ii) for future, extensive meetings be arranged by the referring Ministry in order to develop standard drafts with consultation of Law & Justice Division and other concerned Ministries.

On **25.05.2009**, Law & Justice Division, vide O.M. F.No.1(133)/08-Law-II, dated 25.04.09, concurred in the Mo W&P's summary for the ECC seeking ex-post facto approval for, inter alia, the MOF Guarantees for the Coface & Sinosure agreements. On **29.05.2009**, MoF's advice to Mo W&P to submit the case to Attorney General of Pakistan for seeking approval for the provisions relating to (i) the English Law being the law governing the Agreements, and (ii) resolution of disputes, if any, through arbitration under the ICC rules, with the venue of arbitration as London. On **25.06.2009**, the approval, as solicited by Mo W&P, accorded by the Attorney General for Pakistan.

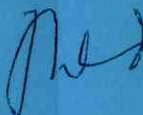
On 20.01.2011 M/o Law & Justice vide U.O. No.1(297)/2008-Law(II) conveyed that this Division was not mandated to issue ex-post facto legal opinion in breach of Rules in respect of a Draft which had not been cleared by this Division. Nothing was pending with this Division and no meeting was required. On 23.04.2011 MoW&P submitted the Summary to the Prime Minister for resolution of issues for implementation of Nandipur Project. MoW&P submitted that: (a) An "Inter ministerial Committee" may be constituted of the relevant stakeholders to resolve the outstanding issues pertaining to the Project on fast track basis. The Inter Ministerial Committee may comprise of Secretary Finance, Secretary Ports & Shipping, Secretary Law & Justice Division, Secretary Water and Power and Managing Director PEPCO; and (b) The Inter Ministerial committee may be authorized to take all necessary actions (including negotiations with the participants of the Project) for amicable resolution of the outstanding issues pertaining to the Project within one (1) month in order to ensure its expeditious implementation and completion.



Unfortunately this shuttlecock movement of very simple case got entangled between Ministry of Water, Ministry of Finance and the Law Division. Either the SOPs for signing an agreement were not clear or it was a deliberate delay causing huge loss to the public exchequer. The then authorities were so myopic in their approach in facilitating a national projects that they did not comprehend the serious repercussions causing such a loss, as estimated by the Hon'ble Judicial Commission later on to the tune of 113 billion inclusive of the opportunity loss.

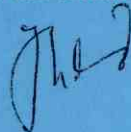
Recommendations

- (i) The Committee recommended that a data base be established for future planning of the energy sector and directed the Ministry to submit a comprehensive analytical report within six months. It should be a living document subject to need based changes with a futuristic approach.
- (ii) The Sub-Committee directed that load shedding must be done away with those areas of the country where the proportion of recovery is 90% or higher and those showing theft must be Load shed in proportion to the theft on that Feeder.
- (iii) The Sub-Committee directed that the escalation of Nandipur Project should not be passed on to the public at large rather the Federal Government should bear the brunt of the financial loss during construction and adjust it in their equity which would result in their RoR on the Equity to be reduced from 17% to 8%.
- (iv) The committee also directed the Ministry to provide details of the 17% profit they have been receiving from their various Power projects. The Ministry failed to provide the same. The committee directed them to provide the same to the main committee in their next meeting.
- (v) The Committee advised that in this energy crisis the Ministry should have been prepared to present such a report in a very short period. The data should have been digitalized and made available at the push of a button. The Committee directed that the report on agenda items be prepared and presented to the Committee within six months.
- (vi) On a question of peak hours and non-peak hours tariff, the Committee recommended that as the DISCOs charge the consumers differently during peak and non-peak hours so the same incentives should be provided to the IPPs. This would encourage IPPs to



generate electricity during Peak Hours and carry out scheduled maintenance during off peak hours.

- (vii) The Committee recommended that the Up-front tariff given by NEPRA on Solar and Wind were on the higher side as compared to international rate (UAE 2.9 cents, India 5,65 cents and Pakistan 17 – 11 cents). NEPRA must review the rates and also ensure uniformity of tariff amongst all the local and foreign investors.
- (viii) The Committee directed the Ministry to provide details and rationale of the additional insurance guarantee amounting to 7 percent being given to Chinese or other foreign investors and not to local investors. NEPRA, should also inform the committee as to why this discrimination is done between local and foreign investors. NEPRA not to include 7% insurance premium in the Tariff and that if done, would be unjust with local investors and an uncalled for burden transferred on consumers.
- (ix) The Committee directed the Ministry to ensure that Pakistani Human Resource must be preferred to the foreign HR and the same is the future guideline to be incorporated in all future agreements so that Pakistani workers can seek their due jobs.
- (x) While procuring material for all energy projects, preference be given to Pakistani products if the quality is as per the required standard. All standards should be Pakistan Standards as defined by PSQCA, GoP.
- (xi) The Committee opined that language barriers of foreigners is no excuse to employ the foreign country labour. They must employ Pakistani Human Resource and in case of communication barriers, they can seek services of the interpreters on their own.
- (xii) The Committee directed that merit must prevail while appointing the CEOs of different DISCOs. The Board of Directors should also have representation from academia, tax payers, consumers of A, B-1, B-2, B-3 and B-4 etc. categories, ex-employees of DISCOs with good repute and financial experts. While appointing Board Members and CEOs, no political pressure or person with political affiliation be appointed.
- (xiii) The Committee was of the view that Pakistan has enough capacity to do away with the load shedding but unfortunately the Ministry does not operate some of the plants



(xiv) The Committee directed the NAB authorities to submit a report to the Committee on Nandipur within 3 months. The progress of findings of the NAB would go a long way in accelerating the criminal proceedings against those who were responsible at that time.

(xv) The intervention of Provincial Governments in the Federal Projects like Nandipur was considered as over stepping intervention from the Provincial Chief Minister in the Federal domain.

(xvi) The Committee directed that the delay on part ^{of} Ministry of Law, the then Federal Minister for Law and the then Secretary Law was quiet vivid. The same was given in the decree of Hon'ble Judicial Commission formed by the Hon'ble Supreme Court of Pakistan. The NAB was directed to proceed accordingly and submit their report in the next three months to the Senate main Committee on Water & Power.

20-3-2017
(SENATOR NAUMAN WAZIR KHATTAK)
Convener