Asian Development Bank Accountability Mechanism
Compliance Review Panel

REPORT ON ELIGIBILITY

To the Board of Directors
On
Compliance Review Panel Request No. 2011/1
On the Visayas Base-Load Power Development Project
In the Republic of the Philippines
(Asian Development Bank Loan No. 7303 – PHI)

20 June 2011
ABBREVIATIONS

ADB  -  Asian Development Bank
CRP  -  Compliance Review Panel
FDCCC - Freedom from Debt Coalition Cebu Chapter
KEPCO - Korea Electric Power Corporation
KESC - Kepco SPC Power Company
KPHI - KEPCO Philippines Holdings Incorporated
NGO - Non-Government Organization
OCRP - Office of the Compliance Review Panel
OSPF - Office of Special Project Facilitator
RAR - Review and Assessment Report
SPC - SPC Power Corporation
SPF - Special Project Facilitator
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. BACKGROUND</td>
<td>5</td>
</tr>
<tr>
<td>II. DESCRIPTION OF ADB-ASSISTED PROJECT</td>
<td>5</td>
</tr>
<tr>
<td>III. EFFORTS TO ADDRESS COMPLAINT THROUGH OSPF</td>
<td>5</td>
</tr>
<tr>
<td>IV. CONFIDENTIALITY</td>
<td>5</td>
</tr>
<tr>
<td>V. ELIGIBILITY</td>
<td>6</td>
</tr>
<tr>
<td>A. Filing of the Request</td>
<td>6</td>
</tr>
<tr>
<td>B. Content of the Request</td>
<td>6</td>
</tr>
<tr>
<td>C. Eligibility Criteria</td>
<td>6</td>
</tr>
<tr>
<td>D. Exclusions</td>
<td>7</td>
</tr>
<tr>
<td>VI. CONCLUSION</td>
<td>7</td>
</tr>
<tr>
<td>VII. RECOMMENDATION</td>
<td>8</td>
</tr>
</tbody>
</table>

### APPENDICES

1. Original Request Letter 9
2. Notice of Registration 14
3. Press Advisory 16
I. Background

1. The Office of the Compliance Review Panel (OCRP) received a request for compliance review of the Visayas Base-Load Power Development Project (Loan 7303-PHI) on 25 May 2011. In accordance with the operating procedures for the CRP, the CRP obtained certain materials relating to the consultation phase from the Special Project Facilitator (SPF), including the SPF’s determination on the eligibility criteria. The CRP and OCRP fielded a mission to Cebu on 16 June and met with the NGO acting as one of the representatives of requesting parties; three of the requesting parties; and with officials from the Cebu Provincial Administration. In Manila, CRP and OCRP met with officials of the Korean joint-venture partner of the power plant company. CRP has advised the Alternate Executive Director representing the Philippines; Management and senior staff from the Private Sector Operations Department and the Regional and Sustainable Development Department of the process of determining eligibility. This is the first request received by the CRP for consideration for compliance review in relation to a private sector project, since private sector operations were specifically brought under the aegis of the accountability mechanism policy in 2003.

II. Description of the ADB-assisted project

2. The project is the Visayas Base-Load Power Development Project, Loan 7303-PHI, a private sector project. The ADB loan is supporting the construction of a 200 MW power plant in Naga City, which the CRP/OCRP mission inspected. Construction of the plant has been substantially completed, and the plant was commissioned on 31 May 2011 and has commenced commercial operations. Approximately 87% of the ADB loan has been disbursed. The borrower and implementer of the project is a joint-venture company, KEPCO SPC Power Company (KESC). KESC is owned 60% by KPHI Philippines, a wholly owned subsidiary of the Korea Electric Power Corporation (KEPC), and 40% by SPC Power Corporation, a Philippine company.

III. Efforts to address the complaint through OSPF

3. The requesters filed a complaint to OSPF on 28 February 2011 which was duly acknowledged on 1 March 2011 and declared eligible on 17 March 2011. The SPF circulated a Review and Assessment Report (RAR) on 28 April 2011 which recommended a two-stage consultation process. During the review and assessment the complainants informed OSPF that they did not wish to continue with the consultation and they confirmed this after receiving the RAR. They decided that the consultative meetings and discussions were not appropriate; they did not see how the proposed course of action could help achieve their desired outcomes and remedies; some were concerned about compromising their request for confidentiality; and they did not accept OSPF’s consultants. In view of the complainants’ decision to withdraw from the consultation process, the SPF closed the complaint on 2 June 2011. This satisfies the requirements of OM Section L1/OP para. 45(viii).

IV. Confidentiality

4. The request letter was unclear as to whether the requesters wished their identities to remain confidential. During the CRP mission to Cebu, three of the four requesting affected people referred to in the request letter, requested that their identities remained confidential.
The remaining requester (who also represents the other requesting parties), Engr. V. Obando, and Mr. A. Pedrosa of the Freedom from Debt Coalition Cebu Chapter (FDCCC) confirmed that they did not require their identities to be treated as confidential.

V. Eligibility

A. Filing of the request

5. The Secretary General of the FDCCC sent the request letter with attachments to OCRP. The request was signed by four requesters and two representatives (including FDCCC). On 2 June 2011, OCRP acknowledged receipt and registered the request.

B. Content of the request

6. The letter of request together with the additional information and clarifications provided during the CRP/OCRP mission to Cebu, adequately covers the information required for the CRP to determine request eligibility for compliance review.

C. Eligibility criteria

Specific eligibility criteria are evaluated below together with a reference to the relevant paragraph of the operations manual operational procedures.

7. Requester likely to be affected materially and adversely [OM Section L1/OP para. 45(i) and 45(iii)]. The request claims that the project will result in adverse impacts on the health of residents and nearby communities including proliferation of skin and respiratory illnesses. It lists three specific adverse impacts: (i) emissions of gases (CO2, SO2, CO, NO) by the plant that it says could cause respiratory illness; (ii) spillage of coal during transport, thereby exposing the community to hazardous and toxic metallic elements; and (iii) seepage of harmful elements from the Balili property coal ash dumpsite, that it says would contaminate marine life for human consumption. The letter states that the technology used for the plant, Circulating Fluidized Bed Combustion, does not prevent CO2 emissions which are responsible for global warming, and also produces four times more coal combustion waste per megawatt of electricity than conventional coal burning plants.

8. Harm will result from a failure of ADB to follow its operational policies and procedures [OM Section L1/OP para. 45(ii)]. The request claims that ADB failed to follow its policies and procedures in regards to the Safeguard Policy Statement, Public Communication Policy, policy on clean energy, proper and participative public consultation, and conduct of the Environmental Impact Assessment and its subsequent disclosure including details on coal ash disposal.

9. Identification and contact information [OM Section L1/OP para. 45(iv)]. In their letter, the requesters provide the address, phone number and email address of Mr. Pedrosa (Secretary General of the FDCCC) a representative, and the email address of Engr. Obando, a representative and requester. During the mission to Cebu, the CRP established the identities of Messrs. Pedrosa and Obando together with two other requesters who have requested their identities to be confidential. The CRP is satisfied that the requesting parties are affected persons.
10. **Representation [OM Section L1/OP para. 45(v)]**. The letter states that the requesters, who are residents of Naga City, authorize Mr. Jose Aaron Pedrosa of FDCCC and Engr. Vic Obando, a resident of Naga City, to file the complaint on their behalf. During the CRP/OCRP mission to Cebu, the three requesters met confirmed that they were represented by Engr. Obando and FDCCC through Mr. Pedrosa, This also fulfils the requirements of OM Section L1/OP para. 42.

11. **Brief project description [OM Section L1/OP para. 45(vi)]**. The request letter contains the name and location of the project.

12. **Desired outcomes or remedies [OM Section L1/OP para. 45(vii)]**. The request letter sets out seven desired outcomes or remedies. These are (i) review of the project EIA with meaningful public consultation; (ii) review of the coal disposal site EIA with public participation; (iii) disclosure of all project-related documents; (iv) withholding of funds until items (i) to (iii) were resolved; (v) compensatory damages from ADB for the health effects of the project; (vi) due diligence by ADB of the track record of SPC, the joint venture partner in KESC; and (vii) withdrawal of ADB funding if there were to be a determination that the project had been poorly designed and implemented (proven violation of national and local laws).

D. **Exclusions**

13. In accordance with OM Section L1/OP para. 51, the request was examined against the following exclusions:

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<thead>
<tr>
<th>Exclusion</th>
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<tbody>
<tr>
<td>Not related to ADB’s actions or omissions?</td>
<td>No</td>
</tr>
<tr>
<td>Procurement of goods and services, including consulting services?</td>
<td>No</td>
</tr>
<tr>
<td>Allegations of fraud and corruption?</td>
<td>No</td>
</tr>
<tr>
<td>PCR issued?</td>
<td>No</td>
</tr>
<tr>
<td>Complaint related to adequacy or suitability of an ADB policy?</td>
<td>No</td>
</tr>
<tr>
<td>Frivolous, malicious, trivial or generated to gain competitive advantage?</td>
<td>No</td>
</tr>
<tr>
<td>Within jurisdiction of ADB’s Appeals Committee or ADB’s Administrative</td>
<td>No</td>
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<tr>
<td>Tribunal or related to ADB personnel matters?</td>
<td>No</td>
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<tr>
<td>About ADB’s non-operational housekeeping matters, such as finance and</td>
<td>No</td>
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<tr>
<td>administration?</td>
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<tr>
<td>Related to responsibilities of third parties?</td>
<td>No</td>
</tr>
<tr>
<td>Not involving ADB’s failure to follow its operational procedures and</td>
<td>No</td>
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<tr>
<td>guidelines?</td>
<td></td>
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<tr>
<td>Relating to government laws, policies and regulations?</td>
<td>No</td>
</tr>
<tr>
<td>Not been first filed with SPF?</td>
<td>No</td>
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</tbody>
</table>

VI. **Conclusion**

14. The request does not fall within any of the exclusions under the Accountability Mechanism policy for the Compliance Review Phase. It meets the requirements for eligibility stated in paragraph 45 of OM Section L1/OP. For these reasons, the CRP determines that the request is eligible for the Compliance Review Phase of the Accountability Mechanism.
VII. Recommendation

15. Based on the analysis outlined above, including the CRP’s finding that the request for compliance review is a valid request, the CRP recommends that the Board authorize the CRP to conduct a compliance review in respect of this project, pursuant to Terms of Reference and timeframe to be cleared by the Board Compliance Review Committee in accordance with the Accountability Mechanism policy.
CONFIDENTIALITY

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

May 23, 2011

MR. BRUCE PURDUE
Secretary
Compliance Review Panel
Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Philippines

Dear Mr. Purdue,

We, residents of Barangay [redacted] in the attached document, are affected by the ADB-funded Visayas Base Load Project (Proj. No. 43906).

We authorize Mr. Jose Aaron Pedrosa Jr. of the Freedom from Debt Coalition-Cebu and Engr. Vic Olando, a resident of Brgy. Central Poblacion, City of Naga, Cebu to file this request for compliance review on our behalf.

We would like to request the Compliance Review Panel to help our community by investigating the Asian Development Bank's compliance with its own policies and procedures with regard to the Visayas Base Load Project (Proj. No. 43906) that has given way to the construction, operation, and maintenance of a 200-Megawatt coal-fired power plant in Naga, Cebu, Philippines. We understand that the CRP must first determine whether our request is eligible.

We believe the Asian Development Bank (ADB) has failed to follow its policies and procedures, specifically with regard to its Safeguard Policy Statement, Public Communication Policy, policy on clean energy, proper and participatory public consultation, and conduct of environmental impact assessment.

The ADB has failed to conduct consultation with affected people informing them about the project at the earliest stage of the project. Residents of Brgy. Calon, the project site, were not consulted or made part of the consultation on the development of the project. Likewise, the ADB failed to consult with local communities to ascertain the project's social acceptability.

The ADB also failed to disclose relevant project documents such as the Environmental Impact Assessment (EIA), preliminary project information were not disclosed to the local community prior the construction of the project and during its public scoping.

The ADB also failed to include in the EIA details on coal ash disposal. The present assigned coal ash dumpsite, a submerged land fronting the sea, will result in seepage/leakage of metallic elements1 (such as arsenic, lead, mercury, and others) into the sea which are identified harmful elements to marine life resources2. We direct your attention to relevant national laws which prohibits dumping of solid wastes on or near bodies of water.

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1. Dr. Romy Quijano’s findings, pp.11-12. Financing Naga’s Coal-fired Power Plant, FDC Cebu Study, September 2010
2. Round Table Discussion (RTD) Narrative, Index III. Appendices, Ibid. Also see attached Department of Health (DOH) Memorandum 2010-0184,
As a result of ADB’s failure to comply with its policies and procedures, our communities are and will be suffering the following adverse impacts:

- Operation of the project will result in adverse impacts on the health of residents and nearby communities. Proliferation of skin and respiratory illness is expected among residents upon the operation of the coal power plant based on historical data. Specifically:
  - The circulating fluidized bed combustion (CFBC) technology that will be used in the operation of the project will not be able to prevent the emission of carbon monoxide, sulfur oxide, carbon dioxide and nitrogen oxide that are responsible for respiratory illness.
  - Transport, handling and disposal of coal containing metallic elements relative to the operation of the coal plant pose several health risks to communities. Based on experience, incidental spillage of coal by land and sea transport will expose residents and the environment to such hazardous and toxic elements. The Balli property as coal ash dumpsite will result in seepage of harmful elements which will lead to contamination of marine life resources for human consumption.
- The ADB assured that the project will make use of clean coal technology to lessen/mitigate the impact of the plant’s operation on climate. However, the use of Circulating Fluidized Bed Combustion (CFBC) Technology will not prevent carbon dioxide among emissions which are responsible for global warming. CFBC plants produce about four (4) times more coal combustion waste per megawatt of electricity than conventional coal burning plants.

We would like ADB to remedy the harm in the following manner:

- Withholding of the remaining appropriated funds for the implementation and completion of the project up until resolution of the above-mentioned issues.
  - The conduct of a comprehensive review of the EIA on the project with the active and meaningful participation by the public at large; local communities, civil society organizations, local government units and agencies, academe, and the legal community.
- The conduct of a comprehensive review of the EIA on the proposed/identified coal ash disposal site with the participation of the public at large pertaining to the above mentioned sectors.
- Disclosure of all project-related documents that will enable communities to participate meaningfully in the project development such as feasibility studies, socio-economic impact assessment and EIA, among others.
- Conduct of a due diligence by the ADB regarding the track record of Saloon Power Corporation (SPC) as a partner in the joint venture undertaking with the Korean Electric Power Corporation (KEPCO). A number of violation of environmental and labor laws have been attributed to SPC in its operation of the existing 100-MW coal-fired power plant.
- Should there be a determination of actual health hazards brought about by the project, the ADB should provide immediate relief in the form of compensatory...
damages, considering the long-term effects of the project, to the affected communities.
- Should there be a determination that the project was poorly designed and implemented (proven violation of national and local laws), ADB should withdraw its funding support from the project without prejudice to the compensation by way of damages caused by the project to the communities and the environment.

We have raised our concerns with ADB staff and with the Office of the Special Project Facilitator in the following manner:
- Meeting with Mary Abad by the NGO Forum on ADB on behalf of TDC-Cebu on 23 September 2009 requesting for a monitoring visit by the project officer regarding the identified site for coal ash disposal and indiscriminate dumping by SPC.
- Meeting with Mary Abad and her team with a number of residents regarding the issue on the identified coal ash disposal site, non-disclosure of project information, EIA, among others, lack of consultation in the beginning of the project, and other adverse impacts of the project.
- A letter sent to President Kurada dated December 9, 2009 outlining the issues raised by the community regarding the project.
- Meeting with Ms. Kunimil Fukaya, ADB’s principal investment specialist, together with other specialists. Petitioners on the environmental case were present. The meeting was about the issue of coal ash disposal, specifically the identified Balili property.
- We filed a case against the project before the OSFF on 28 February 2011 and received acknowledgment from the OSFF on 3 March 2011.
- Our complaint was declared eligible by the OSFF on 17 March 2011.
- On 11 April 2011, the OSFF together with the GoR Group Foundation (the mediator) met with the complainants. During the meeting, the mediators admitted not reading the documents that we have submitted supporting our complaint before the OSFF. Likewise, complainants have determined the bias of the mediator towards the local government unit and KEPCO for meeting them prior to the affected people.
- On 13 April 2011, complainants wrote to the OSFF expressing their decision to forego the mediation process\(^2\).

We now request the CRP to investigate whether ADB has complied with its operational policies and procedures because we do not believe that the attempts to solve the problems have been purposeful and we believe that there is an issue of ADB’s non-compliance with its policies and procedures.

We are not satisfied with the outcome of the complaint procedure to date because the consultation phase, specifically the intended mediation process, is biased towards the ADB, KEPCO and the local government unit.

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1 See annex
2 See attached minutes of the said meeting.
3 See attached letter to Mr. Robert May, OSFF.
Aside from the information provided above, there are other documents that may help the CRP in assessing our request for compliance review. We attach a list of those documents and their sources:

1. Financing Naga’s Coal-fired power plants: FDC Cebu Study, September 2009
3. Notice to Sue
4. Department of Health (DOH) Memorandum
5. Philippine Earth Justice Center Petition Against Coal Ash Disposal
6. Temporary Environmental Protection Order Against Coal Ash Dumping
7. Letter to ADB President Haruhiko Kuroda
8. Letter to ADB President Kuroda from Baguio Bishop Vicente Navarra
9. Minutes of the Meeting with Ms. Kurumi Fukaya
10. Letter to Mr. Robert May
11. Signatures gathered from Naga supporting our request.

Our names, addresses, and contact information are provided below.

[Signature]
Engr. Vicente Obando
Address: 046, Brgy. Central Poblacion, Naga, Cebu
Telephone Number: (022)489-8937
Email Address: vicobando2@gmail.com

[Signature]
We, Mr. Jose Aaron Pedrosa, Jr. and Engr. Vicente Obando, represent the above-named requesters. Please contact us through the following:

Jose Aaron Pedrosa, Jr.
Secretary General
Freedom from Debt Coalition Cebu
NOTICE OF REGISTRATION

Engr. Vicente Obando and Other Requesters
045, Brgy. Central Poblacion, Naga, Cebu
Email: vcoobando2@gmail.com

Representative:
Jose Aaron Pedrosa, Jr.
Secretary General
Freedom from Debt Coalition Cebu
125 V. Rama Ave., Calamba, Cebu City
Email: aaronpedrosa@yahoo.com.ph

Subject: Notice of Registration
Request for Compliance Review (Request No. 2011/1)
Philippines: Visayas Base-Load Power Development Project
(Loan No. 2612/7303-PHI)

The Compliance Review Panel (CRP) refers to a request for compliance review (Request) filed by your representative, Mr. Jose Aaron Pedrosa, Jr., on behalf of certain requesting parties (Requesters) including Engr. Vicente Obando, and received by the Secretary, CRP by email on 23 May 2011. Full documentation relating to the Request was received by the Office of the Compliance Review Panel on 25 May 2011 and, as such, this date is the date of receipt of the Request.

The CRP also acknowledged the request for confidentiality for the Requesters, with the exception of Engr. Obando, as conveyed in Mr. Pedrosa’s email of 24 May 2011.

On 2 June 2011, ADB’s Special Project Facilitator confirmed to us that the Requesters had terminated their participation in the consultation phase of ADB Accountability Mechanism.

Therefore, in accordance with paragraph 30 of the CRP Operating Procedures (the CRP Procedures), the CRP has registered the Request in its Complaints Registry as Request No. 2011/1. The complaint registry is at: http://compliance.adb.org/dl/06350.pdf?alldocs/KUIA-8HF6GG?OpenDocument. 

6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
Tel (632) 632 4149
Email: crp@adb.org
Fax (632) 636 2088
www.compliance.adb.org
The CRP will inform the ADB Board of Directors of the registration of this Request and will also issue a press advisory to be published on its website at: www.compliance.adb.org.

The registration of this Request does not address the eligibility of the Request or the merits of the allegation of non-compliance but serves to acknowledge receipt of the Request and to notify the Requestors of the registration of the Request.

In accordance with paragraph 31 of the CRP Procedures, the CRP will determine the eligibility of this Request by 16 June 2011 and will inform the Requesters of the decision. The CRP will also inform the ADB Board of Directors of its findings on eligibility.

Please confirm that all communications in connection with this Request will be sent and made through the nominated representatives of the Requesters at the following contact information:

Jose Aaron Pedrosa, Jr.
Secretary General
Freedom from Debt Coalition Cebu
Address: 125 V. Rama Ave., Calamba, Cebu City
Telephone: (032) 505-4382
Mobile: 0906-371-4811
Email: aaronpedrosa@yahoo.com.ph

Engr. Vicente Obando
Address: 045, Brgy. Central Poblacion, Naga, Cebu
Telephone: (032) 489-8027
Email: vicobando2@gmail.com

In your written communications to the CRP and OCRP, please indicate the registration number: Request No. 2011/1.

Yours sincerely,

[Signature]

Rusdian Lubis
Chair, Compliance Review Panel

cc: ADB President
ADB Board of Directors
Secretary, CRP
PRESS ADVISORY


Manila, 3 June 2011. The Compliance Review Panel (CRP) registered on 2 June 2011 a request for compliance review (Request) filed by certain affected persons from Naga, Cebu, Philippines on 25 May 2011. The Requesters are represented by the Secretary General of the Freedom from Debt Coalition Cebu, Mr. Jose Aaron Padroza Jr., and one of the Requesters, Engr. Vicente Obando. The remaining Requesters are covered by the confidentiality protections afforded to requesting parties under the ADB Accountability Mechanism policy.

In accordance with its Operating Procedures, by 16 June, the CRP will determine whether the Request is eligible for compliance review and will inform the ADB Board of Directors and the Requesters, accordingly. If the CRP determines that the Request is eligible, it will recommend to the Board the authorization of a compliance review. If the CRP finds the Request as ineligible, it will so inform the Board of its decision.

The Notice of Registration and other information on this Request can be found in the CRP Registry at the CRP website: http://compliance.adb.org/di/0035c.php?l=es&sec=EC2A

Contact:
Bruce A. Purdue
Secretary
Compliance Review Panel
Email: crp@adb.org
Telephone: +63 2 832 4149