

**CRP REQUEST NO. 2011/1 – REQUEST ON THE VISAYAS BASE-LOAD POWER
 DEVELOPMENT PROJECT (LOAN NO. 2612-PHI)**

Terms of Reference for Compliance Review

I. Introduction

1. These Terms of Reference (TOR) have been prepared by the Compliance Review Panel (CRP) for undertaking a compliance review of the Visayas Base-load Power Development Project pursuant to a request for compliance review (the Request) (Appendix 1)
2. On 20 June 2011, the CRP determined the Request eligible, and recommended to the ADB Board of Directors (Board) to authorize a compliance review. On 11 July 2011, the Board authorized the compliance review.
3. Under paragraph 122 of the Accountability Mechanism policy¹ and paragraph 37 of the CRP Operating Procedures, these TOR, which cover the scope of review, methodology and timeframe, are submitted for clearance to the Board Compliance Review Committee (BCRC). Following clearance by BCRC, the CRP will provide the TOR to the Board and all stakeholders, and post them on the CRP website within 14 days from receipt of Board authorization of a compliance review.

II. The Request for Compliance Review

4. Brief particulars of the Request and the Project are summarized below:

Project Name	Visayas Base-Load Power Development Project
Country	Philippines
Borrower	KEPCO SPC Power Corporation (KSPC)
Requesting parties	The requesters, who are residents of Naga City, authorized Mr. Jose Aaron Pedrosa of Freedom from Debt Coalition Cebu Chapter (FDCCC) and Engr. Vicente Obando, a resident of Naga City, to file the complaint on their behalf.
Allegations	Non-compliance with ADB policies and procedures including Safeguard Policy Statement, Public Communication Policy, policy on clean energy, proper and participative public consultation, and conduct of the Environmental Impact Assessment
ADB operations department responsible	Private Sector Operations Department

¹ ADB. 2003. *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*. Manila.

Project categorization	Category A following the ADB Environment Policy (2002) ²
Project Description	The ADB loan is supporting the construction of a 200 MW power plant in Naga City. Construction of the plant has been substantially completed, and the plant was commissioned on 31 May 2011 and has commenced commercial operations.
Project Status	The ADB loan for the Project was approved by the Board on 11 December 2009; became effective on 4 March 2010 and is scheduled to be financially closed on 31 May 2012. Approximately 87% of the ADB loan has been disbursed.
Project Implementation Arrangement	The borrower and implementer of the project is a joint-venture company, KSPC. KSPC is owned 60% by KPHI Philippines, a wholly owned subsidiary of the Korea Electric Power Corporation (KEPCO), and 40% by SPC Power Corporation (SPC), a Philippine company.
CRP	Mr. Rusdian Lubis, CRP Chair is taking primary responsibility for the compliance review. The CRP will be supported by the Office of the Compliance Review Panel.
Contact person:	Mr. Rusdian Lubis, Chair, CRP Mr. Geoffrey R. Crooks, Officer-in-Charge, OCRP Email: crp@adb.org Tel: (02) 632 4149

III. Purpose and Scope of Compliance Review

5. The purpose of the CRP is to investigate alleged violations by ADB of its operational policies and procedures in the Project that directly and materially harm project affected people in the course of the formulation, processing, or implementation of the Project. The purpose of the compliance review is to focus on ADB's accountability in determining whether ADB has or has not complied with its operational policies and procedures in connection with the Project, and not to investigate the borrower or the executing agency. The conduct of these other parties will be considered only to the extent directly relevant to an assessment of ADB's compliance with its operational policies and procedures. After carrying out a compliance review, CRP will issue to the Board its findings and recommendations, including recommendations, if appropriate, for any remedial changes to be implemented by Management in the scope or implementation of the Project.

IV. Allegations of Non-compliance with ADB Policies

6. The requesters claim 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.

² ADB. 2002. *Environment Policy, Operations Manual and Guidelines*. Manila

7. Based on the allegations by the requesters of non-compliance with specific provisions of ADB policies, and CRP's findings in its eligibility review of the Request, the CRP will consider ADB's operational policies and procedures that were in effect at the time of Board approval, and any staff instructions relating to the formulation, processing, or management of the Project.

V. Conduct of Compliance Review and Methodology

8. The CRP will carry out its work expeditiously, transparently and in a manner to ensure that there is engagement with Management and staff, the requesters, project-affected people, the Government of the Philippines, the Cebu Provincial Government and its implementing agencies, and the Board, including the Executive Director representing the Philippines.

9. The compliance review will include the following:

- (i) review of ADB files and other documents related to the Project;
- (ii) conduct of site visits with the prior consent of KSPC;
- (iii) consultation with all concerned stakeholders, including interviews with:
 - ADB Management, staff and consultants,
 - staff from the Office of the Special Project facilitator (OSPF) on its engagement at the consultation phase of the Accountability Mechanism,
 - requesters, project-affected people,
 - officials from the KSPC ,
 - officials from the Cebu Provincial Government,
 - the Board, including the Executive Director representing the Philippines,
- (iv) use of consultants as appropriate, to assist the CRP in carrying out its work; and
- (v) apply any other review methods that the CRP considers appropriate in complying with its mandate.

10. The CRP will exercise discretion and maintain a low profile in conducting the compliance review. The CRP will not give any media interviews at any stage of the compliance review. CRP members will be subject to ADB's confidentiality and disclosure of information policy, including those provisions aimed at ensuring that confidential business information is not disclosed. Any material or information submitted to any CRP members or the OCRP on a confidential basis from any party will not be released to any other parties without the consent of the party that submitted it. Compliance review is not intended to provide judicial-type remedies and the CRP's findings and recommendations are not adjudicative. The Chair and members of the CRP will be subject to the CRP's protocols on conflicts of interest that mandates disclosure of all potential conflicts of interest so that the Chair (or CRP members if the Chair has a potential conflict of interest) can decide the appropriate course of action.

11. After conducting its compliance review, the CRP will issue a draft report of its findings and recommendations to the Management and the requesting parties for comments. Both the Management and the requesters will have 30 days to comment on the draft report. Within 14 days from receipt of the comments on the draft report, CRP will consider the comments and finalize the report, and issue its final report to the Board, including its findings and recommendations. If appropriate the recommendations may include any remedial actions for ADB Management to implement, in order to bring the Project back into compliance with ADB policies.

VI. Timeframe

12. The CRP will carry out the compliance review in accordance with the compliance review phases set out in the Policy on the Accountability Mechanism, the corresponding Operations Manual (OM Section L1/BP) and the CRP Operating Procedures.

Step	Event	Timeframe
6	CRP Draft report. CRP will issue its draft report of its findings and recommendations to the Management and the Requesters for comments.	Not time-bound
7	Management's and Requesting parties' responses to CRP draft report	30 days from submission of the draft report
8	CRP's Final Report. CRP finalizes its Report, based on comments received, and issues CRP's final Report to the Board, with responses from Management and the Requesters as attachments.	14 days from receipt by CRP of comments from the Management and from the Requesters
9	Board Decision: Board consideration of the CRP's Final Report Release of the Board Decision and CRP's Final Report	21 days from submission of CRP final report.

13. This timeline does not take into account any additional time requested for filing responses. If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC's clearance.

/S/ Rusdian Lubis
Chair, Compliance Review Panel
28 July 2011

Appendix:

Request for Compliance Review