



**Asian Development Bank Accountability Mechanism  
Compliance Review Panel**

**Final Report**

**on  
Compliance Review Panel request No. 2011/1  
on the Visayas Base-Load Power Development Project  
in the Republic of the Philippines  
(ADB Loan No. 2612-PHI)**

**12 March 2012**



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## ABBREVIATIONS

ADB	–	Asian Development Bank
AM	–	Accountability Mechanism
CO <sub>2</sub>	–	carbon dioxide
CFBC	–	circulating fluidized bed combustion
CRP	–	Compliance Review Panel
DENR	–	Department of Environment and Natural Resources (Philippines)
EIA	–	environmental impact assessment
EMP	–	environmental management plan
KEPCO	–	Korea Electric Power Corporation
KPHI	–	KEPCO Philippine Holdings, Inc.
KSPC	–	KEPCO SPC Power Corporation
MMT	–	multipartite monitoring team
MW	–	megawatt
NGO	–	nongovernment organization
NO <sub>2</sub>	–	nitrogen dioxide
NO <sub>x</sub>	–	nitrogen oxides
OCRP	–	Office of the Compliance Review Panel
OM	–	Operations Manual (Asian Development Bank)
OSPF	–	Office of the Special Project Facilitator
RAR	–	review and assessment report
RRP	–	Report and Recommendation to the President
SDP	–	social development plan
SEIA	–	summary of the environmental impact assessment
SO <sub>2</sub>	–	sulfur dioxide
SPF	–	Special Project Facilitator

**In this report, “\$” refers to United States dollars.**

## EXECUTIVE SUMMARY

This report was prepared by the Compliance Review Panel (CRP) in response to a request for a compliance review of the Visayas Base-Load Power Development Project—Loan 2612-PHI. The loan was made after the project had been designed and after key consultations and an environmental assessment had already been undertaken; therefore, this compliance review focused on whether the Asian Development Bank (ADB) exercised necessary due diligence in assessing project design, seeking Board approval, and ensuring the implementation of the project was in accordance with its operational policies and procedures.

The project was to build and operate a 200 megawatt (MW) coal-fired power plant in Naga City, Cebu, Republic of the Philippines. The plant consists of two nominal 100 MW units and is located on the previous ash pond disposal area of the existing 203.8 MW Naga Power Plant. It uses circulating fluidized bed combustion boilers that emit relatively low levels of nitrogen oxides and sulfur dioxide. The aim was to alleviate the power shortage in the Visayas region and to provide base-load power to the grid.

This private sector investment project is the first collaboration between ADB and the Korean Export-Import Bank. A direct loan of up to \$120 million was provided to the Korea Electric Power Corporation (KEPCO)/SPC Power Corporation (KSPC). KSPC is 60% owned by the Korea Electric Power Corporation Philippine Holdings, Inc. (KPHI) and 40% owned by SPC, both Philippine corporations. The loan was signed and became effective on 4 March 2010 and is scheduled to be financially closed on 31 May 2012. Construction of the plant has been substantially completed; it was commissioned on 31 May 2011 and has commenced commercial operations. On 27 June 2011, the plant was inaugurated. A total of \$86.0 million has been disbursed from the ADB loan, out of which \$4.3 million was repaid by KSPC on 30 November 2011. The outstanding amount to date under the ADB loan facility is \$81.7 million.

A complaint was filed with the Office of the Special Project Facilitator on 28 February 2011 that was acknowledged on 1 March 2011 and declared eligible on 17 March 2011. A review and assessment were initiated, but the complainants decided to withdraw from the consultation, and the Special Project Facilitator closed the complaint on 2 June 2011.

On 25 May 2011, the CRP received a request for a compliance review. The requesters claimed that the project would result in adverse impacts on the health of residents and nearby communities due to (i) emissions of gases that could cause respiratory illnesses; (ii) spillage of coal during transport exposing residents to hazardous, toxic metallic elements; and (iii) seepage from the Balili coal ash dumpsite that could contaminate marine life for human consumption. The letter further stated that the technology used for the plant did not prevent emissions responsible for global warming and also produced 4 times more coal combustion waste per MW of electricity than conventional coal-burning plants.

The requesters claimed that ADB failed to comply with its Safeguard Policy Statement, its Public Communication Policy, and its policies on clean energy and public consultations. In addition, the conduct of the environmental impact assessment (EIA) and its subsequent disclosure, including details on coal ash disposal, did not comply with ADB standards.

On 20 June 2011, the CRP determined that the request was eligible and recommended a compliance review that the Board authorized on 11 July 2011. Terms of reference were provided to the Board and the requesters on 28 and 29 July 2011.

The CRP investigation consisted of a document review; interviews with ADB staff, the requesters, KPHI and KSPC officials, government officials, and other resource persons; and a site visit on 15 and 16 September 2011.

Based on the compliance review conducted, the panel concluded that there was non-compliance with policies on environment, public communications, and social dimensions in ADB operations. The CRP also concluded that the project was not fully compliant with the Energy Policy. Specifically, the project did not comply with the following.

**A. Environment Policy (2002) and Operations Manual F1: Environmental Considerations in ADB Operations (2006)**

The CRP finds that ADB:

- (i) failed to require preparation of an updated EIA in line with the requirements of this policy;
- (ii) had not properly conducted rigorous, comprehensive due diligence on ash management when the project went to the Board for approval;
- (iii) did not request a thorough environmental audit of the existing Naga power plant's impact in the project's area of influence or a revision of the ambient air dispersion modeling in the EIA; and
- (iv) did not request preparation of an environmental management plan (EMP) for each historic ash disposal site.

**B. Operations Manual L3: on Public Consultation, Information Disclosure (2008) and C3: Incorporation of Social Dimensions into ADB Operations (2007)**

The CRP finds that ADB:

- (i) did not recognize community concerns about the project's potentially negative impacts on health and did not require a mitigation plan to ensure that communities were fully informed about preventive and safety measures to reduce them;
- (ii) failed to make the full EIA available upon request before project approval and did not disclose subsequent significant changes in the summary environmental impact assessment (SEIA) prior to project approval;
- (iii) did not ensure adequate information dissemination and did not require actions to enable effective community feedback and redress of grievances and during due diligence did not address the absence of representatives from all communities directly affected and from relevant nongovernment organizations (NGOs); and
- (iv) failed to meet its standards for addressing the social risks of the project and did not ensure that the borrower acknowledge and address significant community concerns about its potentially negative impacts, especially on health, and did not require a social development plan that would have helped to address these real concerns.

**C. Energy Policy (2009) para. 15 (v)**

The CRP finds that:

- (i) although the choice of clean coal technology can be justified under the Energy Policy, ADB did not exercise rigorous due diligence in complying with its environmental and social safeguards as required.

The CRP recommends that the Board approve the following recommendations and that ADB take the following measures.

**Recommendation 1:** Undertake a comprehensive air dispersion modeling study that includes the key pollution sources in the project's area of influence and validate its predictions with actual air emissions and ambient air quality monitoring data. Develop an action plan based on recommendations from the modeling study and emphasize the potential for continuous monitoring and recording of air emissions and ambient air quality.

**Recommendation 2:** Undertake a comprehensive study on ash utilization at cement plants and the ready-to-mix concrete plant and implement plant-specific recommendations and EMPs. In addition, prepare and implement EMPs for the existing ash ponds and historic ash disposal sites.

**Recommendation 3:** Expand or complement the existing MMT to ensure representation of all communities directly affected and all appropriate NGOs and to facilitate transparent and inclusive communication and grievance redress.

**Recommendation 4:** Implement a community outreach program focusing on preventing negative health impacts from air, water, and noise pollution and potentially negative impacts from exposure to unprotected coal ash deposits.

## I. INTRODUCTION

1. This report was prepared by the Compliance Review Panel (CRP) in response to a request for a compliance review of the Visayas Base-Load Power Development Project—Loan 2612-PHI.<sup>1</sup> The Asian Development Bank (ADB) Accountability Mechanism (AM) states that a compliance review is to, “investigate alleged violations by ADB of its operational policies and procedures in any ADB-assisted project that have resulted or are likely to result in direct, adverse, and material harm to project-affected people in the course of the formulation, processing, or implementation of the ADB-assisted project.”<sup>2</sup> The CRP does not investigate the borrower or the executing and implementing agencies. Their roles are considered only if they are directly relevant to an assessment of compliance with ADB operational policies and procedures.

2. In conducting the investigation and finalizing its report, the CRP focused on whether ADB exercised necessary due diligence in assessing project design, seeking Board approval, and ensuring its implementation in accordance with ADB operational policies and procedures.

## II. BACKGROUND

3. The project involved the construction and operation of a 200 Megawatt (MW) coal-fired power plant in Naga City, Cebu, Republic of the Philippines. The plant consists of two nominal 100 MW units located in the ash pond disposal area of the existing 203.8 MW Naga Power Plant and uses circulating fluidized bed combustion (CFBC) boilers that generate relatively low levels of nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>). The aim was to address the power shortage in the region and to provide base-load power to the grid. It was specifically designed to (i) support sustainable growth in the Visayas region by increasing the availability of reliable and competitively priced power to meet the growing demand of consumers without additional financial burdens on the Government of the Philippines; (ii) reduce electricity costs by increasing competition and efficiency through private sector investment; and (iii) be a model for future private sector investments in greenfield, environmentally friendly, coal-fired power generation under the new regulatory regime for meeting the country’s future energy needs.

4. This is the first collaboration between ADB and the Korean Export-Import Bank. On 11 December 2009, ADB approved a direct loan of up to \$120 million to the Korea Electric Power Corporation (KEPCO)/SPC Power Corporation (KSPC). KSPC is 60% owned by the Korea Electric Power Corporation Philippine Holdings, Inc. (KPHI) and 40% owned by SPC, both Philippine corporations. The ADB loan was signed and became effective on 4 March 2010 and is scheduled to be financially closed on 31 May 2012. Construction has been substantially completed; the plant was commissioned on 31 May 2011 and commenced commercial operations. It was inaugurated on 27 June 2011. As of 30 November 2011, \$81.7 million of the total ADB loan facility was outstanding.

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<sup>1</sup> ADB. 2009. *Report and recommendation of the President to the Board of Directors to the Republic of the Philippines for the Proposed Loan Visayas Base-Load Power Development Project*. Manila

<sup>2</sup> ADB. 2003. *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*, paragraphs 99 and 107, *Operations Manual L1/OP: ADB’s Accountability Mechanism* issued 19 December 2008, paragraphs 9, 39 and 46 and *Operations Manual L1/BP, ADB’s Accountability Mechanism* issued 29 October, 2003, paragraphs 5 and 9. Manila

### III. REQUEST FOR COMPLIANCE REVIEW

5. Some affected persons filed a complaint with the Office of the Special Project Facilitator (OSPF) on 28 February 2011 that was acknowledged on 1 March 2011 and declared eligible on 17 March 2011. The Special Project Facilitator (SPF) circulated a review and assessment report (RAR) on 28 April 2011 that recommended a two-stage consultation. During the review and assessment, the complainants informed OSPF that they did not wish to continue with the consultation and confirmed this after receiving the RAR. They decided that the consultative meetings and discussions were not appropriate, and they did not see how the proposed course of action could help achieve their desired outcomes. In addition, they were concerned about maintaining their confidentiality, and they did not accept the OSPF consultants. The SPF therefore closed the complaint on 2 June 2011.

6. On 25 May 2011, the Secretary of the CRP received a request for compliance review (Appendix 1). In accordance with its operating procedures, the CRP obtained information on the consultation phase from the SPF including the determination of eligibility. This is the first request for a compliance review of a private sector project since private sector operations were specifically brought under the AM in 2003.

7. The complainants listed three specific adverse impacts of the project: (i) emissions of carbon dioxide (CO<sub>2</sub>), SO<sub>2</sub>, and nitrogen dioxide (NO<sub>2</sub>) that could cause respiratory illnesses; (ii) spillage of coal during transport exposing the community to hazardous, toxic metallic elements; and (iii) seepage of harmful elements from the Balili coal ash dumpsite that could contaminate marine life for human consumption. The request further stated that the technology used for the plant did not prevent the CO<sub>2</sub> emissions responsible for global warming and also produced 4 times more coal combustion waste per MW of electricity than conventional coal-burning plants.

8. The request alleged that ADB failed to follow its Safeguard Policy Statement, its Public Communication Policy, and its policies on clean energy and public consultations. It also stated that the conduct of the environmental impact assessment (EIA) and subsequent disclosure including details on coal ash disposal did not comply with ADB procedures.

9. The request specified seven desired outcomes: (i) a comprehensive review of the EIA with meaningful public consultation; (ii) a comprehensive review of the coal ash disposal site with public participation; (iii) disclosure of all project-related documents; (iv) withholding remaining funds until items (i)–(iii) have been resolved; (v) compensatory damages to affected communities from ADB for the adverse health effects of the project; (vi) due diligence by ADB on the track record of SPC; and (vii) the withdrawal of ADB funding if it determines that the project was poorly designed and implemented (i.e. in violation of national and local laws).

### IV. ELIGIBILITY OF THE REQUEST

10. The CRP assessed the eligibility of the request by reviewing project documents, ADB policies and procedures, and the RAR provided by the OSPF and determined that it did not fall within any of the exclusions under the AM for the compliance review phase. It also met the requirements for eligibility stated in paragraph 45 of *Operations Manual* (OM) Section L1/OP. The CRP consulted the Philippine Executive Director, the Vice-President of Private Sector and Cofinancing Operations, the Directors General from the Private Sector Operations Department and from the Regional and Sustainable Development Department, and the General Counsel and fielded a mission to Cebu on 16 June 2011.

11. On 20 June 2011, the CRP determined that the request was eligible and recommended that the Board authorize a compliance review which it did on 11 July 2011. The terms of reference (Appendix 2) for the review were provided to the Board and to the requesters on 28 and 29 July 2011, respectively. The list of people contacted by the CRP during the compliance review is in Appendix 3.

## **V. METHODOLOGY AND CONDUCT OF THE REVIEW**

12. The CRP investigation consisted of a document review; interviews with ADB staff, the requesters, KPHI and KSPC officials, and other resource persons; and a site visit on 15 and 16 September 2011. The investigation was supported by an environmental expert (international) and a document examiner (national). CRP Chair Rusdian Lubis took the lead assisted by part-time member Anne Deruyttere. Part-time member Antonio La Viña, a former official of the Department of the Environment and Natural Resources (DENR) of the Philippines, had limited participation to avoid any potential conflict of interest.

### **A. Role of the Compliance Review Panel**

13. The role of the CRP in the AM is to determine whether or not ADB has complied with its operational policies and procedures. The CRP does not necessarily address all issues raised by requesters nor is it a mechanism for compensation. As noted earlier, ADB involvement in this project started after it had been designed and after key consultations and an environmental assessment had already been undertaken. As a result, the CRP focused on examining whether ADB exercised necessary due diligence in assessing project design and preparation, seeking Board approval, and ensuring the implementation of the project in accordance with ADB policies and procedures.

### **B. Scope of the Compliance Review**

14. Consistent with the AM, the review investigated the alleged claims of harm and whether they could have been caused by noncompliance with ADB policies. Before presenting its findings, the CRP notes the following.

- (i) The AM mandates the investigation of claims of actual or potential direct and material harm; however, given that some possible impacts on the environment and on human health may be delayed, it is too early to establish with absolute certainty whether the direct and material harm specified by the requesters will in fact materialize. Nevertheless, the requesters are likely to be directly affected materially and adversely by the project if ADB safeguards were not followed or if due diligence was not rigorously conducted. The CRP therefore finds that the potential for direct harm to both the environment and to human health exists and that ADB must ensure that measures are in place to minimize, if not eliminate that potential.
- (ii) While the use of coal does contribute to climate change, there is currently no way to demonstrate the location-specific impacts of a project or activity that emits greenhouse gasses. Harm due to climate change cannot be attributed to a specific project but to global greenhouse gas emissions. Therefore, a direct link cannot be made between this project and specific climate change impacts.

- (iii) During project preparation, the Balili site was identified as an option for ash disposal, but the approved project did not include this facility. The Balili site is still under consideration and is the subject of a legal controversy; therefore the CRP has not commented on the inclusion of this potential project component and addressed this issue only to the extent that it illustrates the uncertainty about managing ash disposal and the gaps in public consultations.

## VI. RELEVANT ADB POLICIES

15. In conducting the compliance review, the CRP considered the policies and procedures listed below. The Safeguard Policy Statement of 2010 cited in the request was not considered as it had not been adopted at the time this project was approved. In addition to the other policies referred to in the request, the CRP also considered the Policy on Non-Sovereign Operations to understand better the nature and context of the project.

- Environment Policy, November 2002
- OM F1: Environmental Considerations in ADB Operations, September 2006
- OM L3: Public Communications, December 2008
- OM C3: Incorporation of Social Dimensions into ADB Operations, April 2007
- Energy Policy, June 2009
- OM D10: Non-Sovereign Operations, August 2009

## VII. FINDINGS

### A. Environment Policy

16. **ADB did not request an updated EIA to use as the basis for the preparation of the summary environmental impact assessment (SEIA); this resulted in deficiencies in project preparation and contributed to noncompliance with the Environment Policy.**

17. The Environment Policy and OM F1 on Environmental Considerations in ADB Operations (jointly referred to hereinafter as the Environment Policy) require the preparation of a full EIA and an SEIA for category-A projects. This requirement implies an approach that involves first the preparation of an EIA that would meet ADB requirements and then preparation of an SEIA using the executive summary of the EIA. Although an EIA<sup>3</sup> was prepared by KSPC in October 2005 and approved by DENR before ADB became involved in the project in 2009, CRP is of the opinion that ADB had to ensure that the EIA was in full compliance with the Environment Policy,<sup>4</sup> including the international “environmental standards and approaches laid out in the World Bank’s *Pollution Prevention and Abatement Handbook*” or similar standards.<sup>5</sup>

<sup>3</sup> The Philippine terminology for an EIA is environmental impact statement. In this report the EIA of October 2005 is the EIA that was prepared for the project.

<sup>4</sup> OM F1/OP para. 4 General Requirements for Environmental Assessment and Environment Policy 2002, para. 61 Environmental Assessment Reports: “Important considerations in undertaking environmental assessments include examining alternatives; identifying potential environmental impacts including indirect and cumulative impacts and assessing their significance; achieving environmental standards; designing least-cost mitigation measures; developing appropriate environmental management plans and monitoring requirements; formulating institutional arrangements; and ensuring information disclosure, meaningful public consultation, and appropriate reporting of results.

<sup>5</sup> OM F1/OP para. 25 and Environment Policy 2002 para. 62 Environmental Standards and Emission Levels. ADB follows the standards and approaches laid out in the World Bank’s *Pollution Prevention and Abatement Handbook* which describes generally acceptable pollution prevention and abatement measures and emission levels. However,



In its internal review, some gaps were identified, and ADB asked KSPC to address them<sup>6</sup> in separate studies but did not require KSPC to update the EIA to comply with the Environment Policy. ADB disclosed the SEIA publicly on 10 March 2009 and circulated it to the Board on the same day approximately 2 weeks before the environment committee presented its findings and recommendations on the EIA. Consequently, the SEIA was prepared without an updated EIA.<sup>7</sup> The SEIA was updated on 9 and 19 October 2009, and the Report and Recommendation to the President (RRP) contained additional information that filled some of the information gaps in the EIA, but there was no supporting analysis.<sup>8</sup> The CRP finds (i) an updated, consolidated EIA was not prepared to meet the standards of the Environment Policy; and (ii) the SEIA was not based on the EIA, i.e., on the executive summary. In addition, the CRP finds that the environmental management plan (EMP) in the SEIA did not address ambient air quality monitoring requirements or managing and disposing of the ash generated by the new power plant. The following paragraphs discuss these issues in detail.

**18. ADB should have satisfied itself that a comprehensive examination of alternatives had been undertaken as required for compliance with the Environment Policy and as part of due diligence in preparing the project for Board approval.**

19. The feasibility study for this project included an analysis that involved selecting the optimal capacity of the power plant; however, alternatives such as (i) the specific plant location; (ii) the input fuel other than coal; or (iii) the combustion technology (CFBC) were not analyzed.<sup>9</sup> The EIA provided a qualitative analysis setting out the advantages and disadvantages of the power plant types considered during project planning but did not contain the systematic and rigorous analysis required. No cost information was provided for the various fuel types except for the one selected for the project (\$ 270 million), and a diesel fuel option was not included in

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the environmental assessment for any individual project may recommend adopting alternative emission levels and approaches to pollution prevention and abatement. This flexibility is required to best reflect national legislation and local conditions in determining the standards and emission levels.

<sup>6</sup> The internal peer review on the EIA recommended the following among other issues: (i) a detailed marine ecological study and thermal dispersion modeling prior to the final design of the discharge tunnel; (ii) appropriate lining of the ash disposal area at the municipal dump site to prevent groundwater contamination; (iii) a detailed study on linking the existing Naga power plant and the new power plant (especially the air emission monitoring results); (iv) discussion on the viability of using integrated gasification combined cycle as an alternative technology (iv) consultation with the community during construction to determine their concerns; (v) proper documentation of the regular management meetings that served as the venue to discuss and address the environmental issues of the project; and (vi) monitoring and documenting compliance with the provisions/conditionalities stipulated by the environmental coordinating committee and in the environmental management plan.

<sup>7</sup> The Environment Policy requires preparation of an EIA for Category A projects and "Content and Format of Environmental Impact Assessment (EIA)" presents specific guidance (including outlines and descriptions) for the preparation of the EIA and its EMP. Only one EIA was prepared for this project—the one dated October 2005 prior to ADB involvement in this project in December 2008—and it met only national requirements, not ADB requirements.

<sup>8</sup> The EIA contained an analysis of alternative types of coal-fired plants (focusing on fuel types and technologies) but not of other design parameters discussed in the SEIA and the RRP.

<sup>9</sup> Para. 61 of the Environment Policy (2002) states that an important consideration in the preparation of an EIA includes "examination of alternatives." In addition, "Content and Format of Environmental Impact Assessment" gives instructions for preparing the alternatives section of the EIA: "The consideration of alternatives...calls for the systematic comparison of feasible alternatives for the project site, technology, and operational alternatives. Alternatives should be compared in terms of their potential environmental impacts, capital and recurring costs, suitability under local conditions, and institutional, training and monitoring requirements. For each alternative, the environmental costs and benefits should be quantified to the extent possible, economic values should be attached where feasible, and the basis for the selected alternative should be stated... Examining alternative means of carrying out a project involves answering the following three questions: (i) what are the alternatives?, (ii) what are the environmental impacts associated with each alternative?, and (iii) what is the rationale for selecting the preferred alternative?"

the analysis. The SEIA, however, did include an analysis of some of these alternatives, and the RRP included further alternatives without clear evidence that additional studies had been conducted. Although the discussion of alternatives in the SEIA and RRP were a major improvement over the EIA, they still did not meet the guidelines in the Environment Policy. The SEIA should have been based on a rigorous analysis of all technically feasible fuel options (including diesel fuel) to identify the most appropriate one. The CRP notes the presentations in the SEIA and RRP varied with regard to plant locations, fuel types, and boiler technologies. The discussions in the RRP did not include: (i) a diesel fuel option or (ii) capital or recurring cost information for any of the alternatives presented. In addition, the RRP did not include the following discussions presented in the SEIA: (i) with and without-project alternatives; (ii) alternative cooling systems; (iii) design alternatives for the intake and discharge canal systems; and (iv) alternative water sources for the project. In summary, the EIA did not comply with the Environment Policy guidelines even if the SEIA and RRP could be considered to have done so.

**20. ADB should have been ascertained that rigorous due diligence on an ash management plan had been done before the project went to the Board. Submitting the project for Board approval while the ash disposal plan was uncertain constitutes noncompliance with the Environment Policy.<sup>10</sup>**

21. When the Board approved the project, specific arrangements for ash management were uncertain. Although project documents stated that ash would be sent to nearby cement plants, no site-specific ash disposal plan had been prepared, and there was no firm legal commitment from the cement manufacturers to accept the ash. During project preparation, the Balili property was considered for ash disposal, but this option was subsequently dropped as it did not meet ADB safeguard requirements and also became the subject of a legal controversy. The RRP distributed to the Board on 18 November 2009 stated that, "ash will be disposed of as raw material for cement manufacturing through agreement with the Cebu Provincial Government..." In the event that alternative ash disposal is needed in the future, any proposed site will be required to meet ADB environmental and social safeguard requirements and approval." The issue of ash management continued after Board approval. On 17 August 2010, the regional trial court issued a temporary environmental protection order banning SPC and Toledo plants from transporting and disposing of ash outside their respective plant sites. On 15 March 2011, the TEPO was extended and enjoined SPC and KSPC from disposing and transporting ash outside their respective plants. On 11 April 2011, the court lifted the ban for disposal at the Naga plant, but the ban on transporting ash outside the boundaries of the KSPC and SPC plants' premises remained. On 16 September 2011, the CRP mission was informed of SPC's decision not to allow disposal of the KSPC plant ash at the ash pond located at its Naga plant by 30 September 2011. The CRP mission was also informed of new ash management options, namely (i) use the ash at nearby cement plants, (ii) use the ash at a ready-mix-concrete plant, or (iii) dispose of the ash at a landfill site (other than the Balili site) that was under development. In conclusion these

<sup>10</sup> OM F1/OP para 30. Uncertainties in Locations and Alignments of Infrastructure. For most environmentally sensitive projects, especially under category A, major site selection issues should have been addressed by the time of Board approval. Where specific locations or alignments of major infrastructure or project facilities are uncertain at the time of Board approval, the EIA or initial environmental examination must include an EMP that presents full details on the agreed process to be followed for environmental assessment, including any special studies of environmental issues and specification of environmental mitigation measures during project implementation. The pertinent details must be presented in the SEIA or summary of the initial environmental examination and summarized in the RRP. The details must also be reflected in the loan agreement.

OM D10/OP para. 31 "The project team manages and/or undertakes comprehensive due diligence to evaluate the key risk aspects of the transaction, including the technical, market, financial, economic, legal, corporate governance, compliance (e.g., development objectives and effectiveness, know-your-client, anti-money laundering, and market checking), and the social and environmental aspects of the proposed transaction."

ash management issues could have been avoided with rigorous due diligence before the project went to the Board.

**22. During due diligence, ADB failed to ensure ambient air monitoring, comprehensive air dispersion modeling, and environmental auditing and therefore failed to design comprehensive measures for the mitigation of environmental impacts and thus did not comply with the Environment Policy.**

23. Baseline ambient air quality data were generated to assess compliance with national standards, and the CRP found them to be compliant; however, the sampling procedure did not comply with ADB standards (based on international standards), so compliance with ADB standards could not be assessed.<sup>11</sup> In addition, the ambient air quality data presented in all quarterly reports for 2010 were based on an incorrect sampling period and were thus not appropriate for assessing compliance with either national or international standards. ADB appears not to have exercised proper due diligence regarding sampling periods.<sup>12</sup> The CRP also notes the appropriateness of the DENR ambient air quality monitoring conditions specified in the environmental compliance certificate for this project issued on 5 December 2005; however, although the certificate specified four air quality monitoring stations as per KSPC's request on 26 July 2010, the number was reduced to two. Given the concerns expressed by the local community about air pollution and its impacts on human health, ADB should have firmly promoted air pollution monitoring by KSPC. In addition, due diligence on air quality monitoring during plant operations was less than adequate because ADB did not provide any guidance on the format or comments on the quarterly reports submitted by KSPC.

24. The CRP finds that the air dispersion modeling in the EIA predicted ambient concentrations of pollutants (total suspended particulates, SO<sub>2</sub>, and NO<sub>x</sub>) based on emissions at the project power plant and the existing SPC coal-fired power plant at Naga. The assessment of predicted ambient pollutant concentrations was based solely on national standards; however, ADB did not ask KSPC to engage a consultant to conduct a comprehensive audit of the Naga plant to (i) assess the validity of the air pollutant emissions data used as input to the air dispersion model, (ii) review the air pollution control measures used at that plant, and (iii) recommend measures for mitigating the potentially adverse impacts of air pollution on human health and the environment.<sup>13</sup> In addition, in the assessment of the modeling results, ADB did not request that KSPC include international ambient air quality criteria required by the Environment Policy. The SEIA summarized the air dispersion modeling and associated findings presented in the EIA without considering the validity of the data from the Naga plant, other major emission sources, or the international ambient air quality criteria required by ADB.

25. The CRP notes that from 1999 to 2004, the leading cause of death (33%) in the project area reported by rural health units was pneumonia.<sup>14</sup> Data for 2008–2009 indicate that upper respiratory tract infections were the most common diseases among people living in barangays<sup>15</sup>

<sup>11</sup> Baseline air quality data in the project area was generated using the 1-hour sampling period required in national legislation but cannot be used for assessing compliance with the Environment Policy which requires a 24-hour sampling period. ADB failed to instruct KSPC to use the 24-hour sampling period.

<sup>12</sup> Ambient air quality data in all quarterly reports for 2010 were based on a 30-minute sampling period and were thus not appropriate for assessing compliance with national or international standards.

<sup>13</sup> In addition to air pollution, the scope of the environmental audit could have also included an assessment of wastewater discharges and ash management and other potential risks (e.g. groundwater contamination and fire).

<sup>14</sup> EIA (October 2005).

<sup>15</sup> Barangay is the smallest administration division within a municipality in the Philippines and equivalent to village or district.

Colon, Pangdan, West Poblacion (the area of direct impact), and adjacent Barangay Inoguran<sup>16</sup>. At that time, air pollution sources included the SPC power plant at Naga, the APO (CEMEX) Cement Plant, quarries, and motor vehicles. Although the data do not establish a direct causal relationship between air pollution levels and the health of people living in the vicinity of the power plant, both mortality and morbidity levels were much higher than national averages. The CRP interactions with the affected persons and the health records of affected persons indicate that air emissions are likely affecting the health of residents of communities directly impacted. Air emissions from the new plant could further deteriorate air quality and could potentially increase negative health impacts in the project area.

**26. ADB did not require the EIA and SEIA to address the potential impacts of historic ash disposal and failed to propose EMPs for the disposal sites with necessary mitigation measures and monitoring plans and therefore did not comply with the Environment Policy.**

27. The new plant is located on deposits of historic ash from the existing Naga plant, some of which had to be excavated. When ADB got involved in this project in December 2008, historic ash had already been excavated, transported, and disposed of at three different sites (Naalad, Pangdan, and the land on which the Naga Municipal Hall was built). ADB conducted due diligence regarding (i) toxicity characteristic leaching procedure tests on historic ash at the new plant site, and (ii) DENR approval for the use of this historic ash as landfill (based on test results that confirmed non-hazardous characteristics). After historic ash disposal, the Naalad and Pangdan sites became the subject of complaints by nongovernment organizations (NGOs) and community members. ADB should have instructed KSPC to prepare EMPs for the historic ash disposal sites and include them in the updated EIA and SEIA.

28. ADB should have conducted a detailed review of the ash characterization plan, including the rigor of the sampling procedures, and of the toxicity characteristic leaching procedure to ascertain whether it was consistent with international guidance (US EPA Method 1311).

29. After establishing that historic ash from the project site was deposited at the Naalad and Pangdan sites, ADB requested two reports<sup>17</sup> in September 2009 from KSPC indicating that the disposal had been done legally and with the necessary approvals and landowners' consent. The multipartite monitoring team (MMT) conducted another test on five coal ash samples collected from each of these sites and found they were not hazardous. In addition, a coal ash sample from the Naga Municipal Hall was also not hazardous.<sup>18</sup> While ADB had confidence in the laboratory analysis, there was doubt about the sampling procedure (i.e. whether the samples accurately represented the actual ash at the disposal sites).<sup>19</sup> The CRP shares the concerns expressed by ADB staff regarding the coal ash samples.

<sup>16</sup> Sources from Manila District Hospital and Don Vicente Sotto Memorial Hospital in Cebu City.

<sup>17</sup> "Report of Ash Disposal during Site Grading" (4 September 2009) and the "Report on Ash Disposal Activities of KEPCO/SPC Power Corporation during Site Grading" (7 September 2009).

<sup>18</sup> The ash sampling and analyses were done adequately in accordance with accepted practices. The test results indicated that the ash was not hazardous according to Philippine or international standards and guidelines. Based on these findings, DENR did not object to its use as landfill. It therefore appears that the disposal of the excavated ash was done in accordance with applicable law and acceptable environmental practices.

<sup>19</sup> On 27 September 2009, ADB technical staff cautioned that, "We don't know how the samples were collected, and no quality assessment/quality control samples were taken. This reduces scientific rigor. As a result, be careful about how you discuss these results. You can say the samples were compliant, but you cannot say the historic ash is compliant. Right now, you have interesting and encouraging data. It shows that the ash samples are not hazardous, but the results are nowhere nearly scientifically rigorous."

30. **During due diligence on the resettlement plan and its implementation, ADB did not identify that the land on which displaced families were resettled was an historic ash disposal site and therefore did not comply with the Environment Policy and the Policy on Involuntary Resettlement (2005).<sup>20</sup>**

31. Constructing the new plant and the transmission facility required the displacement of 22 families, 17 of which were relocated in 2008 on land reclaimed with historic ash. The site had no environmental permits and had not been protected with topsoil. It also did not have septic tanks or other measures to minimize negative environmental and health impacts. The resettlement plan reviewed by ADB did not address the inappropriate site and the necessary remedial actions, and due diligence on the historic ash disposal sites (Pandang and Naalad) did not include the resettlement site. In May 2010, the lenders' independent engineer alerted them to the lack of environmental permits and the potential environmental and health risks from exposed historic ash at the resettlement site and recommended testing and remedial measures including topsoil cover and septic tanks.<sup>21</sup> In conclusion, ADB did not comply with the Environment Policy (2002) and the Policy on Involuntary Resettlement (2005)<sup>22</sup>

## **B. Policies on Consultation, Public Disclosure, and Social Dimensions**

32. **ADB failed to recognize the significance of health concerns raised during consultations which is not compliant with the requirements for consultation in the Environment Policy and the Policy on the Incorporation of Social Dimensions into ADB Operations<sup>23</sup>**

33. Early in 2009 when ADB started its due diligence on the project, the EIA had already been issued by the DENR and extensively covered the public consultations including a comprehensive scoping in 2004 and two public hearings in 2005.<sup>24</sup> With the exception of some NGOs concerned with the potential impact on climate change, the consultations showed strong support for the project because of its potential to create jobs, to increase revenue for the municipality, and to provide opportunities for further development though there were also widespread concerns about potentially increased air, noise, and water pollution.<sup>25</sup> During the public hearings, health concerns were addressed by highlighting the reduced risks of the CFBC technology compared with conventional coal-fired power plants and project compliance with national standards and international criteria. Useful suggestions were made by participants including more testing for health impacts, but they were not considered in the project

<sup>20</sup> The CRP did not review the resettlement plan and its compliance with the Policy on Involuntary Resettlement, except for the selection of the resettlement site as it is related to the requesters' claim of indiscriminate ash dumping.

<sup>21</sup> Shaw Consultants International reported in May 2010 that resettlement housing was built on a site reclaimed with historic ash and limestone apparently without the necessary environmental review or permits. The dwellings did not have sewer services; sewage was discharged into the ocean.

<sup>22</sup> The ADB Policy on Involuntary Resettlement, OM F2/OP (2006) paras. 3 and 26 (vi) and (xi) indicate that the resettlement plan must include a review of feasible alternative location options and environmental protection and management.

<sup>23</sup> The Environment Policy (2002) OM F1/OP para. 9 requires "consultation with affected groups and local NGOs to identify and help address environmental issues that arise during implementation."

<sup>24</sup> The 2004–2005 consultations are described in detail in Annexes G to J of the EIA report.

<sup>25</sup> The initial scoping conducted during October and November 2004 included pre-scoping meetings and several focus-group discussions involving local government, community organizations, and environmental NGOs as well as a perception survey of 478 households, the majority of which were in the three barangays comprising the primary impact areas (Colon, Tangke and North Poblacion). The survey indicated that 10% of those interviewed objected to the project mostly because of adverse health effects. Of those who approved of the project 74 % of all responses on perceived negative impacts were related to health impacts, including air, noise and water pollution.

documents. While not a requirement under Philippine law, participants also asked and were promised access to the full EIA. ADB recognized the quality of the consultations prior to engaging in the project but failed to recognize the importance of widespread community concerns about health impacts.

**34. ADB failed to engage with civil society organizations during the early stages of involvement and did not comply with the policies on the Incorporation of Social Dimensions into ADB Operations and on Public Communications.<sup>26</sup>**

35. The extensive consultation on the EIA (2004–2005) also revealed opposition to the project from some community organizations and especially from environmental NGOs concerned with climate change. When ADB started its due diligence more than 3 years after the last public hearing, it did not engage with the environmental NGOs to seek their input and contacted them only after receiving complaints in August 2009. By that time, however, the controversy surrounding the project had escalated and ultimately resulted in significant delays in project approval.

**36. During due diligence, ADB did not identify or address the weaknesses in the mechanism for informing and communicating with the public and therefore did not comply with the Policy on Public Communications.<sup>27</sup>**

37. The MMT<sup>28</sup> established in December 2008 as required under Philippine environmental law was considered in project documents as the primary mechanism for environmental monitoring and for communication between KSPC and the stakeholders, including NGOs. During due diligence, ADB did not identify the weaknesses of the MMT and its limitations as a means of communication for the project, including the lack of representatives from one of the three *barangays* in the immediate vicinity of the plant and from interested NGOs. Furthermore, the information disseminated by KSPC/KEPCO and the MMT was reported to be inadequate, not timely, and not in the Cebuano language.<sup>29</sup> In particular, there was concern that the communities directly affected were not informed about potentially negative health impacts from air, noise, and water pollution and from exposure to ash. While KSPC has a community relations office that manages the limited social development plan (SDP) and addresses specific individual grievances, environmental NGOs expressed concern that they did not have a channel for communicating with KSPC and that they were excluded from the MMT. After the first complaints were received in August 2009, ADB took action and encouraged KSPC and the MMT to make the necessary changes. While this was a positive step, given the high visibility of the project, a more comprehensive public information and communication plan should have been required during due diligence.<sup>30</sup>

<sup>26</sup>The Policy on the Incorporation of Social Dimensions into ADB Operations (2006) requires, “seeking the cooperation of NGOs and civil society groups throughout the project cycle” OM C3/BP, para. 6 (i). The procedure on Public Communications (2008) requires, “seeking, receiving, and imparting information and ideas on ADB projects (OM L3/BP para. 5).”

<sup>27</sup>To fulfill the requirements of the policy to facilitate information and dialogue with affected people and to ensure feedback during implementation, the policy encourages the, “development of a communications plan particularly for projects likely to generate a high level of public interest “. Para. 16 and footnote 11 provide indications on the scope and content of such plan (OM L3/OP para 15-17).

<sup>28</sup>The MMT included, at the time of the CRP mission, representatives of the sponsors, the DNER, the city of Naga, *barangays* Colon and Tangke, the rural health unit, and representatives from other community organizations..

<sup>29</sup>KEPCO periodically publishes a brief bulletin in English reporting on the progress of construction, the MMT and the SDP but does not address community health concerns.

<sup>30</sup>The ADB’s internal review process in July 2009 had identified the lack of public consultation provisions in project documents.

**38. ADB did not comply with the provisions of the Environment Policy and the Policy on Public Communications regarding the disclosure of updates to the SEIA.**

39. The SEIA for the project was publicly disclosed in March 2009, 120 days before Board consideration as required by the Environment Policy for a project classified as category A, but it did not include the Balili site as an option for ash disposal. In September 2009, ADB fielded its first due diligence mission on the Balili site and classified it as an associated facility subject to category-A safeguard requirements. Before Board consideration on 11 December 2009, the preparation of the EIA for Balili had started with pre-scoping meetings from 18 to 20 November 2009. Although it was a requirement in the Environment Policy, the corrigenda to the SEIA (9 and 19 Oct 2009) reflecting the change in ash disposal arrangements were not publicly disclosed. The failure to make important project information available to the public is not compliant with the Policy on Public Communications.

**40. ADB did not respond in a timely manner to requests for access to the full EIA and therefore did not comply with the provisions on public disclosure in the Environment Policy and the Policy on Public Communications.<sup>31</sup>**

41. During the public hearings in 2005, participants asked and were promised access to the full EIA.<sup>32</sup> Although Philippine environmental law does not require full disclosure of the EIA, ADB policy states that the full EIA shall be available to interested parties upon request. After the SEIA was posted in March 2009, ADB received several requests from civil society to obtain a copy of the EIA.<sup>33</sup> ADB referred requesters to KSPC, and while promising support to facilitate the release, ADB facilitated access only on 11 December 2009, the day the project was approved by the Board.

**42. During due diligence, ADB, did not properly address significant community concerns regarding the potential health impacts of the project and did not require the necessary prevention and mitigation measures and therefore did not comply with the Policy on the Incorporation of Social Dimensions into ADB Operations.**

43. The EMP identified air pollution as the primary concern of nearby residents and other stakeholders and included measures to address the health concerns raised during the consultation,<sup>34</sup> but while the initial poverty and social assessment and the summary poverty reduction and social strategy mentioned the widespread support for the project, they did not focus on the significant public concerns about health and did not make a reference to dissenting views. In addition, they did not include available information on the high incidence of respiratory diseases or local mortality and morbidity data. The failure to adequately consider a key social issue<sup>35</sup> and to identify meaningful measures to mitigate potentially negative impacts beyond the very modest proposals in the EMP did not comply with the Policy on the Incorporation of Social Dimensions into ADB Operations.

<sup>31</sup> OM FI/OP, para. 10 and OM L3/OP, para. 19. The SEIA for category-A projects .... "shall be posted on ADB's website at least 120 days before the ADB Board considers the loan, or in relevant cases, before approval of category-A subprojects ..... The 120-day rule applies to all public and private sector category-A projects. ADB shall make the full EIA available to interested parties on request."

<sup>32</sup> Public hearing of 16 September 2005, pages 3, 12 and 20, Annex I of the EIA.

<sup>33</sup> Civil society organizations had requested a copy of the EIA as early as 2005.

<sup>34</sup> Environmental Management Plan (Section 5 of the 2006 EIA) page 25–27.

<sup>35</sup> OM C3/OP, para. 6. The initial poverty and social assessment should .... (i); identify key social issues that need to be addressed during implementation of the project ....

44. Based on the EMP, the SEIA and RRP did include a modest Social Development Program (SDP) with an annual budget of \$6,000, approximately one third of which was earmarked for “medical/dental missions”, free distribution of medicines and upgrading/improving of local health centers<sup>36</sup>. In CRPs view, the SDP was designed as a corporate public relations program, without focus and very limited resources. Considering the widespread community concerns on the cumulative impacts of the power plants further and the existing high levels of environmental pollution. ADB should have required a community outreach program focusing on information and prevention of health hazards related to air, water and noise pollution as well as the risks related to the exposure of unprotected coal ash deposits.

### C. Energy Policy

45. The policy in force was adopted in 2009. It aims to strike a balance between promoting energy efficiency and renewable energy and using fossil fuels such as coal as long as clean technologies are employed. Paragraphs 14<sup>37</sup> and 33<sup>38</sup> of the Energy Policy illustrate this balance. Paragraph 15(ii)<sup>39</sup> affirms that access to energy is essential for reducing poverty, and paragraphs 15(i)<sup>40</sup> and 20<sup>41</sup> specifically address reducing greenhouse gases. More specifically, para 15(v) requires due diligence by ADB to ensure compliance with safeguard policies<sup>42</sup>

<sup>36</sup> KSPC reported that for 2011, the budget had been doubled.

<sup>37</sup> ADB. 2009. Energy Policy. para. 14: The objective of the 2009 Energy Policy is to help developing member countries provide reliable, adequate, and affordable energy for inclusive growth in a socially, economically, and environmentally sustainable way. It will emphasize energy efficiency and renewable energy; access to energy for all; and energy sector reforms, capacity building, and governance.

<sup>38</sup> Para. 33: “To meet the electricity needs of the region, large capacity additions will be required for which coal-based generation will grow. ADB will encourage developing member countries (DMCs) to adopt available cleaner technologies, such as fluidized bed combustion, supercritical and ultra-supercritical boilers, and flue gas desulfurization. As new technologies—such as integrated gasification combined cycle and carbon capture and storage (or sequestration)—are shown to be technically feasible and economically viable, ADB will support their deployment in DMCs to increase their financial viability. ADB will also assist DMCs in collaborating with developed countries on long-term technology transfer agreements for new and better technologies under development. It will selectively support coal-based power projects if cleaner technologies are adopted and adequate mitigation equipment and measures are incorporated into the project design. Some DMCs with smaller grids that depend on oil-based power supply or imports from neighboring countries may need to install coal-based power plants using subcritical boiler technology. Such diversification will improve power system reliability and energy security and may be the least-cost option. In the interest of economical and developmental needs, ADB will support such base-load power plants if found to be justified after due diligence. Assistance will also be extended to retrofit existing power plants that need to improve efficiency.”

<sup>39</sup> Para. 15 (ii): “To achieve these objectives, policy implementation will be based on the following principles: (ii) Efforts to provide energy services for inclusive economic growth will be wide-ranging, and programs to extend energy services to communities and groups will be accelerated. Because Millennium Development Goal targets cannot be met without access to modern energy services, access to energy is essential to reducing poverty.”

<sup>40</sup> Para. 15 (i): “To achieve these objectives, policy implementation will be based on the following principles: (i) Support for energy efficiency improvements and renewable energy projects will be prioritized and broadened to reach as many sectors in as many ways as possible. This will (a) ease growth in fossil fuel demand and upward pressure on energy prices, (b) improve energy security, and (c) reduce emissions of greenhouse gases.”

<sup>41</sup> Para. 20: “Harnessing energy efficiency is one of the most effective ways to meet energy demand, while addressing global warming. Increasing the efficiency of energy use and supply will yield more service value from each primary energy unit consumed, as well as produce large environmental and economic benefits. Energy efficiency is essential to (i) ease growth in fossil fuel demand and upward pressure on energy prices, (ii) improve energy security, and (iii) reduce emissions of greenhouse gases.”

<sup>42</sup> Para 15 (v): “All energy sector investments will comply with ADB safeguard policies regarding the environment, involuntary resettlement, and indigenous peoples to ensure that affected persons are protected from impoverishment risks and development programs for such vulnerable groups are incorporated and implemented.



46. This coal-based power plant uses subcritical CFBC boilers which result in low SO<sub>2</sub> and NO<sub>x</sub> emissions that comply with ADB requirements (based on national standards and international criteria based on World Bank requirements). The project design uses electrostatic precipitators that are highly efficient devices for collecting particulate matter. In addition, feed coal preparation for CFBC technology is more efficient than that for pulverized coal technology, and CFBC technology also allows the use of a wide range of fuels including coal with various characteristics. The CRP finds that the decision to use the CFBC technology is in line with the Energy Policy, specifically with paragraph 33.

47. Though the choice of technology is in line with the Energy Policy, the decision to finance a coal-fired power plant project should have been accompanied by rigorous due diligence to ensure compliance with the environmental and social safeguard policies. As elaborated in paragraphs 16 to 44 of this report, ADB did not exercise rigorous due diligence in complying with its safeguard policies when it implemented this project and therefore did not fully comply with the Energy Policy.

## **VIII. CONCLUSIONS**

### **A. Compliance with the Environment Policy**

48. The CRP did not address all the issues and demands of the requesters as compliance review is not an adversarial litigation nor is it a forum in which to address specific complaints. It is instead designed to ascertain compliance or noncompliance with ADB policies and, in the case of the latter, to suggest ways to bring a project into compliance. For this reason, the CRP has limited itself to the policies where it found noncompliance. The CRP concludes that ADB did not comply with the following policies and operational procedures.

#### **ADB did not comply with the Environment Policy (2002) and Environmental Considerations in ADB Operations (OM F1, 2006) for the following reasons.**

- (i) ADB failed to require an updated EIA. The project's only EIA was prepared prior to ADB involvement and did not comply with certain international criteria; did not include critical studies for the design of the project; did not include a rigorous evaluation of alternatives; and did not clearly present a comprehensive EMP. Because an updated EIA was not prepared, ADB failed to require an SEIA based on the EIA as required by the Environment Policy.
- (ii) ADB had not properly conducted rigorous, comprehensive due diligence on ash management when the project went to the Board for approval. Although project documents stated that ash from the power plant would be sent to nearby cement plants for recycling, no site-specific ash recycling plan had been prepared, and there was no firm legal commitment from the cement manufacturers to accept ash from KSPC.
- (iii) ADB did not request a thorough environmental audit of the existing Naga power plant's impact on the project area or a revision of the ambient air dispersion modeling in the EIA that took into consideration the cumulative impacts of air emissions from the existing and new power plants and the other major sources of air pollution (e.g. cement plants).
- (iv) ADB did not request an EMP for each historic ash disposal site that included details on potential impacts, associated mitigation measures, and a monitoring plan.

**B. Compliance with the Policies on Consultation, Public Disclosure and Social Dimensions in Bank Operations**

**ADB did not comply with the policies on Public Consultation, Information Disclosure and the Incorporation of Social Dimensions into ADB Operations for the following reasons.**

- (i) ADB did not recognize community concerns about the project's potential impact on health and did not require a mitigation plan to ensure that communities were fully informed about preventive and safety measures.
- (ii) ADB failed to make the full EIA available upon request before project approval and did not disclose subsequent significant changes in the SEIA prior to approval.
- (iii) ADB did not ascertain that the means for disseminating information were adequate and did not require actions to enable effective community feedback and the redress of grievances. In addition, during due diligence ADB did not address the lack of representatives from all communities directly affected and from relevant NGOs.
- (iv) ADB failed to meet its standards for addressing the social impacts of the project and did not ensure that the borrower acknowledge and address significant community concerns about potentially negative impacts, especially on health. ADB did not require an SDP to address these real concerns.

**C. Compliance with the Energy Policy**

**ADB did not comply with the Energy Policy (2009) para 15 (v).**

- (i) The decision to finance a coal-fired power plant project should have been accompanied by rigorous due diligence to ensure compliance with environmental and social safeguards. It was not, so ADB did not fully comply with the Energy Policy.

## **VI. RECOMMENDATIONS**

49. The project has essentially been completed as the power plant has been commissioned and is operational. For this reason, the CRP has limited itself to recommendations that are practical and still doable and geared toward minimizing adverse impacts on human health and the environment.

50. The CRP recommends that the Board approve the following recommendations and that ADB take the following measures.

**Recommendation 1:** Undertake a comprehensive air dispersion modeling study that includes the key pollution sources in the project's area of influence and validate its predictions with actual air emissions and ambient air quality monitoring data. Develop an action plan based on recommendations from the modeling study and emphasize the potential for continuous monitoring and recording of air emissions and ambient air quality.

**Recommendation 2:** Undertake a comprehensive study on ash utilization at cement plants and the ready-to-mix concrete plant and implement plant-specific recommendations and EMPs. In addition, prepare and implement EMPs for the existing ash ponds and historic ash disposal sites.

**Recommendation 3:** Expand or complement the existing MMT to ensure representation of all communities directly affected and all appropriate NGOs and to facilitate transparent and inclusive communication and grievance redress.

**Recommendation 4:** Implement a community outreach program focusing on preventing negative health impacts from air, water, and noise pollution and potentially negative impacts from exposure to unprotected coal ash deposits.

51. The Board asks ADB by 6 June 2012 to provide to the CRP, with a copy to the Board, a course of action with timelines on implementing the above measures for the CRP to monitor and report to the Board.

**/S/ Rusdian Lubis**  
**Chair, Compliance Review Panel**  
**12 March 2012**

## Request

### 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]

[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 Obando, 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 participative 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. Colon, 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 elements<sup>1</sup> (such as arsenic, lead, mercury, and others) into the sea which are identified harmful elements to marine life resources<sup>2</sup>. We direct your attention to relevant national laws which prohibits dumping of solid wastes on or near bodies of water.

<sup>1</sup> Dr. Romy Quijano's findings, pp.11-12, *Financing Naga's Coal-fired Power Plant, FDC Cebu Study*, September 2010

<sup>2</sup> Round Table Discussion (RTD) Narrative, Index III, Appendixes, *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<sup>3</sup>. Specifically:
  - o 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<sup>4</sup>
  - o 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.
  - o The Balili 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 the 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 Salcon 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

<sup>3</sup> See pp 17-18, Naga Comprehensive Land Use Plan 1996-2005, Annex 2. Also see Morbidity and Mortality Data (2005-2009), Index V, *ibid*

<sup>4</sup> See page 7, *ibid*

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 FDC-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<sup>5</sup> sent to President Kuroda dated December 9, 2009 outlining the issues raised by the community regarding the project
- Meeting with Ms. Kurumi Fukaya<sup>6</sup>, 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 OSPF on 28 February 2011 and received acknowledgment from the SPF on 1 March 2011.
- Our complaint was declared eligible by the OSPF on 17 March 2011.
- On 11 April 2011, the OSPF together with the CoRE 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 OSPF. 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 OSPF expressing their decision to forego the mediation process<sup>7</sup>.

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.

<sup>5</sup> See annex

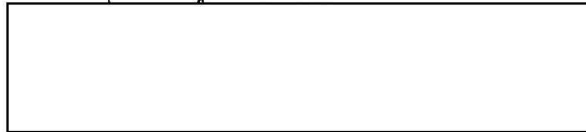
<sup>6</sup> See attached minutes of the said meeting.

<sup>7</sup> See attached letter to Mr. Robert May, OSPF.

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
2. Comprehensive Land Use Plan of Naga (1996-2005)
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 Bacolod 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.



**Engr. Vicente Obando**

Address: 046, Brgy. Central Poblacion, Naga, Cebu

Telephone Number: (032)489-8027

Email Address: vicobando2@gmail.com



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

Address: 125 V. Rama Ave., Calamba, Cebu City  
Telephone Number: (032)505-4382  
Mobile number: 0906-371-4811  
Email Address: [aaronpedrosa@yahoo.com.ph](mailto:aaronpedrosa@yahoo.com.ph)



**Engr. Vicente Obando**  
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## CRP Terms of Reference



### 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 policy<sup>1</sup> 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:

<b>Project Name</b>	Visayas Base-Load Power Development Project
<b>Country</b>	Philippines
<b>Borrower</b>	KEPCO SPC Power Corporation (KSPC)
<b>Requesting parties</b>	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.
<b>Allegations</b>	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
<b>ADB operations department responsible</b>	Private Sector Operations Department

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

<b>Project categorization</b>	Category A following the ADB Environment Policy (2002) <sup>2</sup>
<b>Project Description</b>	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.
<b>Project Status</b>	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.
<b>Project Implementation Arrangement</b>	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.
<b>CRP</b>	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.
<b>Contact person:</b>	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.

<sup>2</sup> 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	<b>CRP Draft report.</b> CRP will issue its draft report of its findings and recommendations to the Management and the Requesters for comments.	<b>Not time-bound</b>
7	<b>Management's and Requesting parties' responses</b> to CRP draft report	<b>30 days</b> from submission of the draft report
8	<b>CRP's Final Report.</b> 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.	<b>14 days</b> from receipt by CRP of comments from the Management and from the Requesters
9	<b>Board Decision:</b> Board consideration of the CRP's Final Report  Release of the Board Decision and CRP's Final Report	<b>21 days</b> 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

### **List of Persons Contacted**

The Compliance Review Panel (CRP) contacted the following persons, within and outside Asian Development Bank (ADB), in carrying out its investigation of the request under the PHI: Visayas Base-Load Power Development Project (Project). This list is not exhaustive as it does not include persons who requested that their identities be kept confidential.

#### **ADB Staff**

Ms. Jocelyn Erlinda Munsayac, Safeguards Specialist, PSOC  
 Mr. Shih-Liang Tu, Senior Safeguards Specialist, PSOC  
 Ms. Marinela Cecilia Pascua, Senior Safeguards Officer, PSOC  
 Ms. Arlene Porras, Safeguards Officer, PSOC  
 Mr. Vijay Joshi, Environment Specialist, RSES  
 Mr. Nessim Ahmad, Director, RSES concurrently Practice Leader (Environment)  
 Mr. S. Chander, Chair, Energy CoP  
 Ms. Mary Abad, Investment Specialist, PSCM  
 Ms. Kurumi Fukaya, Principal Investment Specialist, PSIF2, PSOD  
 Mr. Takeo Koike, Principal Investment Specialist, PSIF1, PSOD  
 Ms. Ann Quon, Principal Director, DER  
 Mr. Robert Dawson, The Secretary, OSEC  
 Mr. Ajay Sagar, Assistant Secretary, OSEC  
 Mr. Baily-Gibson Simon, Senior Secretariat Specialist, OSEC  
 Ms. Kala Mulqueeney, Senior Counsel, OGC  
 Mr. Gin Colin, Senior Counsel, OGC  
 Mr. Jose Manuel Limjap, Investment Specialist, PSIF2  
 Mr. Chin Choon Fong, Asst. General Counsel, OGC  
 Mr. Robert May, Special Project Facilitator, OSPF  
 Ms. Karin Oswald, Principal Project Facilitation Specialist, OSPF  
 Mr. Christopher Thieme, Director, PSIF2  
 Mr. Jo Yamagata, Deputy Director General, PSOD  
 Mr. Philip Erquiaga, Director General, PSOD  
 Mr. Xianbin Yao, Director General, RSDD  
 Mr. WooChong Um, Deputy Director General, RSDD  
 Ms. Ursula Schaeffer-Preuss, Vice-President, Knowledge Management and Sustainable Development  
 Ms. Lakshmi Venkatachalam, Vice-President, Private Sector and Cofinancing Operations  
 Mr. Andrew Collins, Alternate Executive Director, Board of Directors, ADB  
 Mr. Jose Miguel Cortes, Alternate Executive Director, Board of Directors, ADB  
 Mr. Siraj Shamsuddin, Alternate Executive Director, Board of Directors, ADB  
 Mr. Bounleau Sinxayvolavong, Alternate Executive Director, Board of Directors, ADB  
 Mr. Michele Miari Fulcis, Executive Director, Board of Directors, ADB  
 Mr. Philip Bowen, Executive Director, Board of Director, ADB  
 Mr. Gaudencio Hernandez, Jr., Executive Director, Board of Directors, ADB  
 Mr. Eduard Westreicher, Executive Director, Board of Directors, ADB  
 Mr. Jérôme Destombes, Executive Director, Board of Directors, ADB  
 Mr. Jaejung Song, Executive Director, Board of Directors, ADB  
 Mr. Chaithuth Sudthitanakom, Executive Director, Board of Directors, ADB  
 Hon. Cesar V. Purisima, Governor for the Philippines in ADB and Secretary, Department of Finance

**CEBU PROVINCIAL GOVERNMENT**

Hon. Gwendolyn Garcia, Governor, Province of Cebu  
Mr. Adolfo Quiroga, Provincial Planning and Development Coordinator, Provincial Capitol, Cebu  
Atty. Jose Ma. Gastardo, Consultant, Office of the Governor, Provincial Capitol, Cebu

**KSPC/DENR-MB**

Mr. Bok-Yull Lee, President, KSPC  
Mr. Bin Ryu, Finance Manager, KSPC  
Mr. Sang Jae Choi, Finance Manager, KSPC (new)  
Mr. Jung-Ju Kim, Chief Financial Officer, KSPC  
Mr. Neil Lawrence Miral, ECC and Environmental Compliance Staff, KSPC  
Ms. Jasmin Suma-Oy, Community Relations Officer, KSPC  
Mr. Victorio Naval, General Manager for Community and Public Relations / Environment, KSPC  
Mr. Hee Sang Kwak, Technical Manager, KSPC  
Mr. Guhwa Kang, Ash Disposal Manager, KSPC  
Mr. Willian Cuñado, EIA Chief, Department of Energy and Natural Resources  
Mr. Mar Tabuco, Pollution Control Division Chief, Department of Energy and Natural Resources

**Requesters' Representatives**

Mr. Aaron Pedrosa, Jr., Secretary General, Freedom from Debt Coalition Cebu (FDCC)  
Engr. Vicente Obando, Requester / Requesters' Representative

**Nongovernment Agencies**

Ms. Frannie Aliganga – Women Sector Leader  
Ms. Gloria Ramos – Global Legal Action on Climate Change (GLACC)  
Atty. Benjamin Cabrido – Philippine Earth Justice Center, Inc. (PEJC)  
Mr. Vince Cinches – Cebu Alliance for Renewable Energy (CARE)

## Response from the Requesters

### Comment on the CRP Draft Report on the Request for Compliance Review of the Visayas Baseload Power Project in Naga

February 20, 2012

**Mr. Rusdian Rubis**

Chairperson, Compliance Review Panel  
Asian Development Bank

Dear Mr. Rubis:

In our complaint (request for compliance review), we pointed out that the Asian Development Bank (ADB) failed

- (1) to conduct consultations with the affected people informing them about the project.
- (2) to disclose relevant project documents which could have provided the affected people with balanced view on the project taking stock of its social, economic and environmental impacts
- (3) to ensure that a project disposal facility was in place even before the approval of the loan. The fact that the proponent's own EIA study lacks details on coal ash disposal was conveniently glossed over by ADB when it proceeded to secure Board approval for the project funding.

ADB undoubtedly failed to exercise due diligence in its accommodation of KSPC's loan application.

The Compliance Review Panel's (CRP) findings contained in the ***Draft Report on CRP Request No. 2011/1 on the Visayas Base-Load Power Development Project in the Republic of the Philippines (ADB Loan No. 2612-PHI)*** amplify these concerns when it found ADB non-compliant in many respects insofar as compliance to its own policies is concerned. These findings come as a vindication for the affected people in the many years of anti-coal plant campaign owing to the exclusion of the community in vital processes, lack of meaningful participation as a result of non-disclosure of project documents and the resulting material, cumulative, direct and non-direct harms that could be attributed to the plant operation.

While we welcome the findings of the CRP on ADB's non-compliance with its own environment policy, policy on consultation, public disclosure and social dimensions in its own operations and its own energy policy, we find the report apologetic to ADB and wanting in its recommendations.

Throughout the Draft Report, the CRP justifies these non-compliances and provides ADB with an excuse for its evident lapses and blatant failure to "exercise necessary due diligence in assessing project design, seeking Board approval, and ensuring its implementation in accordance with ADB operational policies and procedures".

In the Draft Report's executive summary, it acknowledged "the serious efforts made (by ADB) to comply with ADB safeguards". It pointed out that ADB "was under significant time constraints".

In its Introduction, CRP declared that it "was cognizant that this loan was for a private sector investment project with unique circumstances. ADB became involved after the project had been fully designed and after key consultations and environmental assessment had been undertaken".

**Comment on the CRP Draft Report on the Request for Compliance Review of the Visayas Baseload Power Project in Naga**

The CRP opined in its Recommendations “that non-compliance was contributed to by the unique circumstances of this private sector project including time constraints and limited ADB leverage”.

These declarations pre-empt the possible liability of the ADB management arising from the non-compliance to its own policies as abovementioned. It can readily be seen that the CRP apologizes in behalf of ADB.

However, ADB’s own policy violations are glaring enough for the CRP to ignore. But even with its own findings, the CRP seems to downplay the catastrophic translation of ADB’s policy violations to the environment, health and welfare of the community.

1. That there is a finding that “mortality and morbidity levels (in the project area as well as some nearby barangays) were much higher than the national averages” should prompt the CRP to recommend the suspension of the plant operations pending the completion of an air dispersion modeling study and the establishment of a mechanism for continuous monitoring of ambient air quality. This should have been considered by ADB and demanded from proponent prior to its decision to approve the loan in 2009.

The CRP should have recommended the suspension of the coal plant operations pending the establishment of a support mechanism for the local health system to address respiratory and other health issues which as the CRP observed were more prevalent in Naga in contrast to national standards. It could have Invoked the precautionary principle since the existence of diseases and health issues could be attributed to coal plant operations, thus, clearly sufficient basis to hold ADB accountable.

ADB may posit that the historical health data does not directly point to the KSPC coal-fired power plant not only for lack of direct causal relationship but also because of the fact that this health situation was in existence even before the ADB-funded coal-fired power plant was established.

This view would only reveal the utter disregard of ADB for the living conditions of the affected people in Naga. Another coal plant would mean aggravating the already serious health situation of the locality.

2. The CRP recommends that a comprehensive study on ash utilization at cement plants be undertaken. In its findings, the CRP noted that “at the time of Board approval (11 December 2009), the arrangements regarding the ash disposal site were uncertain”. It noted that even late last year (November 2011), “there was still no final decision on disposing of the ash”.

When the CRP fielded a mission in Naga, Cebu, the complainants reiterated the fact that the coal ash disposal facility remained uncertain and highlighted its being the subject of a pending court litigation.

To date, the Mandaue City Green Court, which hears the case against indiscriminate coal ash dumping in Naga and Toledo, has denied the request of KSPC among others to allow the usage



**Comment on the CRP Draft Report on the Request for Compliance Review of the Visayas Baseload Power Project in Naga**

of the Balili Beach property for the disposal of the latter's coal ash. A temporary environmental protection order (TEPO) which the same court issued last year still stands, hence, prohibiting coal ash disposal at the proposed coal ash disposal at the Balili property or anywhere else without prior court consent.

This threatens the viability of its coal plant operation. ADB, however, was not without advice on this potential dilemma. The affected people including the legal team have warned ADB's own principal investment specialist (Kurumi Fukaya) and ADB team members about this scenario, among others.

3. The CRP also found that the use of circulating fluidized bed combustion technology (CFBCT) "is in line with ADB energy policy" but found that ADB did not fully comply with its energy policy when it did not conduct "rigorous due diligence in compliance with ADB environment and social safeguards".

We find this pronouncement as sugarcoating ADB's clear double talk when it comes to its professed commitment to adopt clean energy technology. We maintain that CFBCT produces four times more coal combustion waste per MW compared to conventional coal plant technology. The same technology does not arrest CO2 emissions.

4. Finally, the CRP is of the opinion that since the power plant has been built and is operational, "bringing the project into full compliance is therefore no longer possible". We beg to disagree.

As disclosed by the CRP report, as of November 2011, \$81.7 million of the total loan facility extended to KSPC is still outstanding. ADB as a creditor is duty-bound to protect its reputation and goodwill.

The KSPC project is an embarrassment to ADB as it exposes its failure to uphold fundamental banking ethics – the exercise of due diligence prior to the extension of any loan facility. The KSPC project exposes ADB's disregard for its own policies and regulations in the name of expediency and perhaps, profit. It exposes ADB's bad faith in not considering affected people, their issues, sentiments and concerns in the entire project cycle – from the conceptual stage up to operation.

The CRP which found non-compliance by ADB on its own policies further puts ADB in bad light not because it came out with adverse findings but because it advanced a set of recommendations that is deficient, non-responsive and mostly apologetic to ADB. Rather than rectify the policy violations, it shifts accountability and liability away from ADB.

The CRP should have recommended the imposition of sanctions to KSPC for its deliberate distortion of facts and non-disclosure of project information that ultimately led to ADB's decision to finance its project, with the latter failing to exercise due diligence. The loan agreement between ADB and KSPC should be revisited whether penalties could be imposed by the former against the latter. Payment of the loan facility could also be accelerated as a way of penalizing KSPC.

**Comment on the CRP Draft Report on the Request for Compliance Review of the Visayas Baseload Power Project in Naga**

While the CRP is in no position to adjudicate claims, it has the moral ground to recommend and recommend well. The CRP should have recommended:

1. The conduct of a comprehensive review of the EIA on the project as an exercise of due diligence, albeit belatedly done, with active and meaningful participation by the public at large: local communities, civil society organizations, local government units and agencies, academe, and the legal community.
2. The disclosure of all project-related documents that will enable communities to meaningfully participate in the project development and monitoring.
3. The conduct of due diligence by ADB, albeit belated, regarding the track record of Salcon Power Corporation (SPC) as a partner in the joint venture undertaking with KEPCO. A number of violations of environmental and labor laws have been attributed to SPC in its operation of the previously existing 100 MW coal-fired power plant.
4. Should there be a determination of actual health hazards brought about by the project, the ADB and/or KSPC should be made to provide immediate relief in the form of compensatory damages, considering the long-term effect of the project to the affected communities as well as the creation of an adaptation fund in anticipation of the material, cumulative and direct harms posed by the project to the affected people and communities.
5. Should there be a determination that the project was poorly designed and implemented, proven violation of national and local laws, ADB should be made to make a declaration expressing concerns and apprehension about the project without prejudice to the compensation by way of damages to the affected communities.

Signature:

**Jose Aaron Pedrosa, Jr.**  
125 V. Rama Ave., Calamba, Cebu City  
Tel. No.:(032)505-4382  
E-Add:aaron\_pedrosa@yahoo.com

**Engr. Vicente Obando**  
046 Brgy. Central Poblacion, City of Naga, Cebu  
Tel. No. (032)489-8027  
E-add:vicobando2@gmail.com

In our behalf,

[Redacted Signature]

[Redacted Signature]

[Redacted Signature]

**Engr. Vicente Obando**  
046 Brgy. Central Poblacion, City of Naga, Cebu

## Response from ADB Management



Asian Development Bank

## Memorandum

Office of the Vice-President  
Private Sector and  
Cofinancing Operations

23 February 2012

To: Rusdian Lubis  
Chair, Compliance Review Panel

From: Lakshmi Venkatachalam *Lakshmi Venkatachalam*  
Vice President, Private Sector and Cofinancing Operations

Subject: **CRP Request No. 2011/1 – Request for Compliance Review of the Visayas Base-Load Power Development Project (Loan 2612-PHI)**  
**– Management Response**

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As requested in your memo dated 20 January 2012, submitted herewith is Management's response to the Compliance Review Panel Draft Report on the Visayas Base-Load Power Development Project.

Attachment: a/s

Cc: The President  
Vice President (Knowledge and Management)  
Vice President (Operations 2)  
OIC, OCRP





**MANAGEMENT'S RESPONSE  
DRAFT REPORT ON COMPLIANCE REVIEW PANEL REQUEST NO. 2011/1  
ON THE VISAYAS BASE-LOAD POWER DEVELOPMENT PROJECT  
IN THE REPUBLIC OF THE PHILIPPINES**

**I. INTRODUCTION**

1. The Compliance Review Panel (CRP) has requested comments on its draft report dated 20 January 2012 on the Visayas Base-Load Power Development Project in the Philippines (Loan No. 2612-PHI) (Project).
2. Pursuant to paragraph 125 of the Accountability Mechanism Policy, Management hereby provides comments on the draft report, consisting of:
  - (i) Management's general comments on the CRP's draft report set out in Section II;
  - (ii) Management's specific responses to each of the CRP's 13 findings in Section III; and
  - (iii) Management's responses to each of the CRP's four recommendations in Section IV.

**II. MANAGEMENT'S GENERAL COMMENTS ON CRP'S DRAFT REPORT**

3. The Management response addresses each of the CRP's 13 findings and demonstrates that ADB staff used sound professional judgment and exercised due and adequate care, based on the information and circumstances on hand at the time, in order to make informed decisions and determinations to properly assess and implement the Project, in compliance with ADB policies.
4. With respect to the CRP's observation in paragraph 14 (iii) of the draft report (that the Balili site illustrates the uncertainty about managing ash disposal and the gaps in public consultation), Management would like to submit that ADB has remained consistent and unequivocal throughout the entire project preparation and implementation, that the Balili site would only be acceptable if it complies with ADB's environmental safeguard requirements. Accordingly, ADB has been consistent and compliant with the ADB policies, and there was no uncertainty about ash management, nor gaps in public consultation.
5. With respect to the CRP's observation summarized in paragraphs 49 and 54 of the draft report that there were noncompliances by ADB of its policies and that such noncompliances were contributed to by the "unique circumstances" of this private sector project relating to the time constraint and ADB's "limited leverage," Management wishes to point out that ADB, as well as all its assisted projects, whether they are in the private sector or not, are bound to comply with ADB's safeguard policies. For this Project, ADB exhibited considerable leverage in the Project's design and refinement of its safeguards mitigation measures, as evidenced by the fact that the Project has suspended its proposal of landfilling ash at the Balili site, and is currently pursuing an environmentally sound option of ash management.

### III. MANAGEMENT'S SPECIFIC RESPONSES ON THE CRP'S FINDINGS

6. It would have been useful if, in its draft report, the CRP had provided more specificity as to the particular actions of ADB which they believe caused a breach of specific sections of the relevant ADB policy or procedure. This would have enabled ADB to respond more directly to many of the issues raised by the CRP in its draft report.

7. Nevertheless, Management sets forth below its responses to each of the CRP's 13 findings. References to the "environment policy" in the CRP draft report are referred to as the "Environment Policy (2002)" in Management's responses.

#### 1. Environment Policy (2002)

8. **Project preparation.** The CRP draft report noted that ADB accelerated the preparation of the summary environmental impact assessment (SEIA) and this in turn led to deficiencies in project preparation.

**CRP Finding 1:** Paragraph 17 ***"The CRP finds that accelerating the preparation of the initial SEIA resulted in deficiencies in project preparation and contributed to ADB's noncompliance with the environment policy."***

9. Regarding the quality of environmental impact assessment (EIA) and SEIA, the policy provides guidance on what should be covered by these documents in Paragraph 61 of the Environment Policy (2002): *"Important considerations in preparing the environmental assessment includes assessing induced, indirect and cumulative impacts, examining alternatives, achieving environmental standards, designing least-cost mitigation measures, developing appropriate environmental management plans and monitoring requirements, formulating institutional arrangements, and ensuring meaningful public consultation."*

10. As a prelude to the CRP's finding in paragraph 17 of the draft report, paragraph 16 states: *"...KSPC was not required to update the EIA to meet ADB standards. Instead, the gaps were to be addressed in studies to be submitted to ADB (and other lenders) in separate reports. Consequently, the SEIA was prepared without an updated EIA in order to meet the 120 day disclosure requirement before presenting a project to the Board."* The CRP then observed that because "KSPC was not required to update the EIA," this triggered a noncompliance by ADB of the Environment Policy (2002). As set out in paragraphs 11 and 12 below, KEPCO SPC Power Corporation (KSPC) was required to update the information of the EIA through the SEIA and other documents. This is consistent with the Environment Policy (2002) and OM F1/OP paragraph 4 which provides: *"Environmental assessment, however, is a **process** rather than a **one-time report**, and includes environmental analyses and environmental management planning that take place **throughout the project cycle**" [emphasis added].*

11. It is relevant to note that a significant effort to collect and update the ambient environmental quality data was initiated by August 2008.<sup>1</sup> The process continued during the preparation and approval of the concept review paper and during the site visit by the project team on 2 March 2009, and finally reached the stage of disclosure on 10 March 2009, after seven months of effort. In addition to summarizing the EIA approved in 2005, the SEIA included recent ambient environmental quality data on air quality, noise, effluent discharges, groundwater

<sup>1</sup> ADB participation in the project commenced in December 2008. The ADB Board approved the Project in December 2009.

quality, and marine water quality collected during August and November 2008 (paragraphs 40-44 of the SEIA). It also addressed the issues of disposal of the existing ash at the Project site (hereinafter referred to as "historical ash") (paragraph 90 of the SEIA) and described an environmentally sound mechanism for managing the new ash to be generated by the Project (paragraph 104 of the SEIA). The SEIA thus provided the readership with a summary, as well as an update on the EIA, and included information that was collected and analyzed over a period of seven months.

12. For quality assurance, ADB conducts a peer review during project preparation through its environment committee for category A projects. Such a review was conducted for the Project, and the gaps were filled by the project team in subsequent documentation, as acknowledged by the CRP.

13. The draft CRP report also makes certain observations in paragraph 16 on the environmental management plan (EMP), which could be construed as having deficiencies: *"The EMP in the SEIA was not comprehensive as it lacked, for example, ambient air monitoring requirements as well as a plan for managing existing ash at the project site and for disposing of ash generated by the new power plant."* The CRP may wish to review these observations because of the following reasons:

- (i) The ambient air quality monitoring requirements were described in detail in the EIA and were mentioned in paragraphs 127-128 of the SEIA;
- (ii) A plan for managing existing ash at the Project site was prepared and followed by KSPC with the approval of the Department of Environment and Natural Resources (DENR). ADB did not require this plan to be included in the SEIA because the historical ash had already been transferred and disposed of during April-May 2008 prior to the preparation of the SEIA. During the due diligence, ADB confirmed that the historical ash had been analyzed using the toxicity characteristic leaching procedure (TCLP) in September 2006 and that DENR had classified it non-hazardous industrial waste and confirmed it to be fit for use as landfill material (recorded in paragraph 90 of the SEIA);
- (iii) Regarding the new ash, paragraph 104<sup>2</sup> of the SEIA did describe that the new ash to be generated by the Project will be recycled at a cement plant and will be disposed of at an emergency ash pond to be built within KSPC's plant site in case of temporary shutdowns of the cement plants. Please also refer to the detailed response to CRP Finding 3 on a related matter.

14. Consistent with the Environment Policy (2002), it was not necessary that KSPC updates the findings of environmental due diligence in a document entitled "updated EIA." Rather, the gaps in the EIA were to be addressed and additional new information was to be provided, for example, in the SEIA, as this is all part of the ongoing environmental assessment process undertaken for the Project. Indeed, to ensure full implementation of the safeguards and actions described in the SEIA, ADB contractually requires KSPC in the ADB loan agreement to comply

<sup>2</sup> SEIA paragraph 104 provides: *"Ash Disposal. The plant will generate ash at a rate of about 250 tons/day. Ash will be transported to a nearby cement plant to be used as a raw material on a regular basis. Ash collection will be in a dry form and will be stored in the ash silo. It will be transferred through a closed truck to minimize the release of fugitive dust. In emergencies, ash will be transferred from the silo in a humidified form and stored in the emergency ash pond. High density polyethylene (HDPE) will be lined in the ash pond area to ensure that there will be no ground seepage of the wet ash."*

with all "Environmental and Social Requirements" which encompasses all actions and recommendations contained in the EIA as well as the SEIA.

15. In summary, ADB took necessary steps to ensure compliance with the Environmental Policy (2002) throughout project preparation. The SEIA was prepared with due care, it provided updated information in keeping with the policy that environmental assessment is a process, and updated information was considered while finalizing the Project and mitigation measures. The totality of the actions demonstrates compliance with the Environmental Policy (2002).

16. **Alternatives Analysis.** The CRP draft report noted that ADB did not do a comprehensive examination of alternatives.

**CRP Finding 2:** Paragraph 19 *"Despite its late involvement in the project, the CRP believes that ADB should have satisfied itself that a comprehensive examination of alternatives had been undertaken as required for compliance with the environmental policy and as part of due diligence in preparing the project for Board approval."*

17. Please refer to paragraph 9 above citing paragraph 61 of the Environment Policy (2002).

18. A comprehensive examination of alternatives had been undertaken in accordance with the Environment Policy (2002). An alternatives analysis does not only consider cost, it must first consider technical viability. If an alternative is not deemed to be technically viable, it would not be useful to carry out further expensive and time-consuming feasibility studies to provide specific cost information on all alternatives. As required in the Environment Policy (2002), the SEIA (paragraphs 64-79) and the RRP (Appendix 3 "Rationale for Adoption of Fuel Type and Technology")<sup>3</sup> included comprehensive alternative analyses in terms of with- and without the Project, locations, fuel types, boiler technologies, and other technical dimensions. Among the viable fuel options, diesel was not considered an alternative for a base load power plant like the Project due to cost considerations. This analysis was elaborated in the RRP (Appendix 3). ADB was thus compliant with the Environment Policy (2002) that entails examining alternatives for a project.

19. The rationale for the Project was well justified (which the CRP appeared to question in paragraph 49 of the draft report). As described above, based on the alternatives analyses with consideration for the specific circumstances of the Visayas area, the choice of coal and the use of circulatory fluidized boiler combustion (CFBC) was determined to be optimal. The selection of

<sup>3</sup> RRP, Appendix 3, paragraph 1 "In June 2004, the Ministry of Commerce, Industry, and Energy of the Republic of Korea and the Department of Energy of the Philippines signed a memorandum of understanding to foster cooperation between the two countries in addressing the projected power supply shortage in Cebu, and to promote utilization of technology for more environmentally-friendly power generation. Later that year, the Korea Electric Power Corporation (KEPCO) and the SPC Power Corporation (SPC) worked jointly to support a feasibility study that resulted in a recommendation to construct a 200-megawatt (MW) coal-fired power plant on the island of Cebu, utilizing circulating fluidized bed (CFB) combustion technology, in an area adjacent to SPC's Naga Power Plant Complex (the Project). In determining the optimal location and fuel supply for the Project, the study took into account the unique configuration of the Visayas' transmission grid and the availability of other fuel sources, including indigenous renewable resources such as geothermal. After determining coal to be the optimal fuel type, the study considered subcritical CFB technology to be the most effective from the viewpoint of the plant's size, coal characteristics, environmental regulation, and cost." The subsequent sections in this Appendix 3 elaborated the alternatives analysis.

CFBC was also consistent with ADB's policies, particularly the Energy Policy, as explained in the RRP.<sup>4</sup>

20. **Management of new ash.** The CRP draft report noted that the ash disposal plan was incomplete upon submission to the Board.

**CRP Finding 3:** Paragraph 21 *"The CRP is of the opinion that submitting the project for Board approval while the ash disposal plan was incomplete constitutes ADB's noncompliance with its environment policy and procedures."*

21. Please refer to paragraph 9 above citing paragraph 61 of the Environment Policy (2002).
22. An adequate ash management plan was in place when the Project was submitted for Board approval. At the time of Board approval, the stated new ash management plan anticipated recycling in cement plants and, as a back-up measure, disposal in a lined ash pond at the Project site should an emergency prevents ash from being used for cement manufacturing (SEIA paragraph 104, see footnote 2 above).<sup>5</sup> Because recycling of coal ash as a raw material for cement manufacturing is considered a desirable practice internationally, the new ash management plan presented to the Board was considered technically sound and acceptable.
23. The CRP states in paragraph 20 of the draft report that the arrangements regarding the ash disposal site were "uncertain" and that *"Although the project documents stated the ash would be sent to nearby cement plants, no site-specific ash disposal plan had been prepared, and there was no firm legal commitment from the cement manufacturers to accept the ash..."* It should be noted that ADB policy in fact provides the flexibility that not all project facets need to be "set in stone"<sup>6</sup> by the time of Board consideration. Nevertheless, as demonstrated in paragraph 22 above, the ash management plan was in place at the time of Board approval.
24. Further, safeguards were built into ADB's loan agreement with KSPC. While the agreements with cement companies were memoranda of understanding (MOU) at the time of ADB Board approval, these MOUs formed a basis for the parties' intentions to enter into legally binding contracts in due course. ADB ensured legal protection and certainty with respect to the ash recycling plan in the financing documents, which included a legal obligation that KSPC shall, by the time it would start generating ash at the plant, execute the definitive contracts with the cement companies or else, enter into alternative ash disposal arrangements satisfactory to ADB,

<sup>4</sup> RRP, paragraph 30 "ADB's Energy Policy recognizes that coal-based generation will grow to meet the electricity needs of the region. It states that ADB will encourage developing member countries to adopt available cleaner technologies, such as CFB, and assist them in collaborating with developed countries on technology transfer. Under the policy, ADB may support subcritical coal technology for developing member countries with small-sized grids depending on oil-based power supply as a least-cost option to diversify fuel sources to improve system reliability and energy security. The Project complies with ADB's Energy Policy along all of these dimensions. It was developed based on the intent of the governments of the Philippines and Republic of Korea to cooperate in activities promoting cleaner power generation to address projected power shortages under a memorandum of understanding signed in 2004....It will also decrease dependency on expensive and inefficient diesel plants, and increase reliability of the Visayas transmission system particularly in the Cebu, Negros, and Panay subgrid."

<sup>5</sup> For ash management mechanism by recycling at cement plants, the only need for a site-specific ash disposal plan is for emergencies when the cement plants are shutdown and are unable to receive ash. Shutdown of the cement plants may occur due to mechanical malfunctioning though it is rare.

<sup>6</sup> Paragraph 22 of the Environment Policy (2002) states "However, for some projects, there are *uncertainties* about precise location and physical details at the time of Board consideration....ADB needs to emphasize that environmental assessment is a process rather than a one-time report, so that necessary environmental analyses and management planning happen at appropriate times in the project cycle."



including compliance with ADB's environment and social policies.<sup>7</sup> The ash management plan therefore was contractually sound and was in compliance with the Environment Policy (2002) including the need, under paragraph 67 of the Environment Policy (2002), to proactively manage the unanticipated impacts of a project during implementation.

25. The CRP states in paragraph 20 of the draft report that *"The Balili property was considered as a disposal site but was then and remains the subject of a legal controversy and requires an EIA that satisfies ADB requirements."*

26. Management would like to clarify the background of the Balili site as follows. The original RRP dated 27 July 2009 stated that on 6 May 2009, KSPC and the Cebu Provincial Government (CPG) entered into an arrangement for ash disposal at a landfill site while KSPC continued to negotiate recycling of ash with the nearby cement plant. A detailed study of the proposed ash disposal site (the Balili site) was ongoing.<sup>8</sup> Subsequently, in view of the controversy on the Balili site which was triggered by the concerns raised by the civil society in the "Notice to Sue" dated 26 August 2009,<sup>9</sup> KSPC suspended the proposal of ash disposal at the Balili site and decided to firm up the ash recycling arrangements with the cement plants. On 10 November 2009, KSPC and CPG executed legal documents for ash recycling at two cement plants. To reflect these developments in the RRP, ADB circulated a corrigendum to the RRP on 18 November 2009 stating (in paragraph 15 of the RRP) that *"Ash will be disposed of as raw material for cement manufacturing through agreement with the Cebu Provincial Government.....In the event that alternative ash disposal is needed in the future, any proposed site will be required to meet ADB's environmental and social safeguards requirements and approval."*<sup>10</sup>

<sup>7</sup> Common Agreement dated 4 March 2010, Sec. 6.11(c): On or before the Commercial Operation Date of Unit 1, procure that:

(i) (x) the agreements contemplated in the Ash Disposal Agreement, the Memorandum of Understanding between the Ash Disposal Contractor and Apo Cement Corporation dated November 10, 2009 and the Memorandum of Understanding between the Ash Disposal Contractor and Taiheiyō Cement Philippines, Inc. dated November 10, 2009 (collectively "Memoranda of Understanding with Cement Companies") are executed in full force and effect, or (y) an alternative ash disposal arrangement is in place that complies with Environmental and Social Requirements and the Summary Environmental Impact Assessment and that is acceptable to the Required Lenders in consultation with the Independent Engineer ("**Compliant Alternative Ash Disposal Arrangement**"), and

(ii) an Ash Transportation Agreement is executed with the Ash Transportation Contractor that complies with Environmental and Social Requirements and the Summary Environmental Impact Assessment and that is acceptable to the Required Lenders in consultation with the Independent Engineer ("**Compliant Ash Transportation Arrangement**").

Should the Borrower thereafter adopt any ash disposal arrangement or ash transportation arrangement other than those contemplated in Sections 6.11(c)(i) and 6.11(c)(ii), respectively, the new ash disposal arrangement or ash transportation arrangement, as the case may be, shall likewise be compliant with Environmental and Social Requirements and shall be acceptable to the Required Lenders in consultation with the Independent Engineer.

<sup>8</sup> RRP, Appendix 4, paragraph 14 "A detailed ash management and disposal plan will be developed by August 2009. On 6 May 2009, KSPC entered into an Ash Disposal Landfill Facility Agreement with the Cebu provincial government, while it continued to negotiate with the nearby cement plant, which will use ash as raw material. Based on the Ash Disposal Landfill Facility Agreement, the provincial government will be mainly responsible for developing the landfill facility including securing permits, licenses, and environmental clearance with assistance from KSPC and its contractors. KSPC has identified the proposed actions and schedule for preparing the plan. A detailed study of the proposed ash disposal site is ongoing taking into consideration the area, distance, capacity, and life of the municipal dump site."

<sup>9</sup> Global Action for Climate Change and other organizations sent a "Notice to Sue" on 26 August 2009 to KSPC, DENR, CPG, Naga municipal government, and others.

<sup>10</sup> This corrigendum also revised paragraph 14, Appendix 4 of the RRP as follows: "On 10 November 2009, KSPC and the Cebu Provincial Government (CPG) entered into an Ash Disposal Agreement and MOU for Ash Recycling, whereby CPG provides the ash generated by the Project to one or more cement manufacturers. KSPC (or its transportation contractor) will deliver the ash to the cement manufacturer on behalf of CPG. Recycling of ash for

27. Therefore, at the time of the Board approval, the Balili site was no longer a part of the Project's plan for ash management. As correctly noted by the CRP, the Balili site had not met the safeguard requirements of ADB and was not a complete ash management plan. ADB did not propose, nor did the Board approve, the proposal to dispose of the new ash at the Balili site.

28. In summary, at no point in time during the due diligence or negotiations with KSPC did ADB compromise on its stated policy and position that any ash management plan must be completely acceptable to ADB and compliant with the ADB safeguard requirements. At the time of the Board approval, the Project had an environmentally sound mechanism for managing the new ash including a well thought through plan for emergency disposal. ADB also proactively addressed any future variations to the ash management plan that may be proposed by KSPC by laying out in the loan agreement the procedures to be followed if any variations were to be proposed. As of today, ADB has not consented to the use of the Balili site for KSPC's ash disposal and KSPC accordingly is currently putting in place other ash management arrangements.<sup>11</sup> ADB therefore was and remains compliant with the Environment Policy (2002), in respect to the ash management arrangements.

29. **Cumulative Impacts.** The CRP draft report contains various findings relating to cumulative environmental impacts.

**CRP Finding 4:** Paragraph 24 *"As a result of not considering the cumulative impacts of existing plants and associated facilities, ADB failed to ensure a sound basis for designing measures to reduce or mitigate environmental risks and impacts and was therefore noncompliant with ADB's environment policy."*

30. Please refer to paragraph 9 above citing paragraph 61 of the Environment Policy (2002).

31. The EIA for the Project included cumulative impacts. The summary of these impacts was included in paragraphs 114 to 117 of the SEIA. ADB ensured that the Project would reduce as well as mitigate environment risks and impacts of the Project to minimize cumulative impacts, in compliance with the Environment Policy (2002). This was achieved by the selection of technology that burns coal at low temperatures (and thus reduces NO<sub>x</sub> formation), provides for injection of limestone in the boiler to reduce the formation of SO<sub>x</sub>, and use of a state-of-the art electrostatic precipitator to reduce the emissions of suspended particulate matter. ADB has thus ensured that the Project adopted adequate feasible mitigation measures relevant to coal fired power plants of applicable capacity to stay well within the relevant emission standards<sup>12</sup> and to contribute minimally to cumulative impacts.

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*use as a raw material in cement manufacturing is considered an environmentally acceptable practice globally. In emergencies, ash will be transferred from the silo in a humidified form and stored in the emergency ash pond on-site, lined with high density polyethylene (HDPE) to ensure no ground seepage of the wet ash. In the event that alternative ash disposal is needed, KSPC and CPG agree that KSPC will not deliver, and CPG will not allow any ash disposal to any site other than to the cement manufacturer, until any proposed site meets ADB's environmental and social safeguards requirements and approval."*

<sup>11</sup> KSPC has developed comprehensive new ash management arrangements, whereby KSPC will dispose of its ash by recycling it at a cement plant and a ready-mixed concrete plant and to place any residual ash at secured landfill sites at a safe distance from the coast.

<sup>12</sup> In determining appropriate environmental standards for ADB projects, ADB follows the standards and approaches laid out in the World Bank's *Pollution Prevention and Abatement Handbook*.

32. Furthermore, at the time of project preparation ADB was aware that the Naga power plant was an old plant and was approaching shutdown for refurbishment or a permanent closure. By participating in a cleaner power plant of similar capacity, ADB thus created an opportunity for refurbishment of Naga plant. Such a refurbishment provides a real and effective opportunity to mitigate cumulative impacts that are due to the sources of pollution that existed before KSPC plant became operational. Recommendation 1 of the CRP to establish an air dispersion model is relevant in this context. This is an effective way to address air pollution related health concerns due to existing, as well as future sources of air pollution.

33. **Air Quality.** The CRP draft report contains various findings relating to air quality.

**CRP Finding 5:** Paragraph 26 ***"The CRP concludes that ADB did not require KSPC to establish sound baseline ambient air quality indicators, to ensure adequate monitoring, and to develop a methodology for monitoring potential environmental impacts on health and was therefore noncompliant with ADB's environment policy."***

34. Please refer to paragraph 9 above citing paragraph 61 of the Environment Policy (2002).

35. The EIA included the baseline ambient air quality indicators such as SO<sub>x</sub>, NO<sub>x</sub>, and suspended particulate matter, which are the air quality parameters associated with coal fired power plants, and the EMP further required monitoring of the same indicators. The Project also met ADB's as well as the Philippines' emission standards for air emissions. ADB thus ensured that the Project was in compliance with the national and international requirements for air quality in relation to construction and operation of power plants. Furthermore, soon after commissioning of the plant, KSPC introduced continuous ambient air monitoring stations at two receptor sites at residential areas. The ambient air monitoring at these stations also includes PM<sub>10</sub>. KSPC therefore has used the right indicators for air quality impacts for coal fired power plants, and KSPC has been proactive to expand the monitoring rigor in keeping with good practice. ADB thus is compliant with the Environment Policy (2002).

36. With regards to health impacts, it would appear from the dates of consultations and surveys that the health impacts and concerns in the Project area are due to the sources of air pollution existing prior to the Project. The CRP may therefore consider the fact that the creation of additional power generation capacity (with ADB's assistance) provides a practical opportunity for the authorities to address the health impacts by improving the emissions of the Naga plant through a future refurbishment or closure.

37. In respect of the CRP's view in paragraph 26 of the draft report that the Project should have required KSPC to *"develop a methodology for monitoring potential environmental impacts on health,"* Management submits that this is beyond the scope of a project level EIA. It is more a subject matter of research in public health.

38. **Historical Ash Issues.** The CRP draft report stated that ADB did not conduct a proper degree of due diligence or require appropriate mitigation measures in respect of the historical ash.

**CRP Finding 6:** Paragraph 28 *"The CRP finds that ADB failed to require that the EIA and the SEIA address the potential impacts of transporting and disposing of the historic ash and failed to propose mitigating measures and was therefore non-compliant with ADB's environment policy."*

39. Please refer to paragraph 9 above citing paragraph 61 of the Environment Policy (2002).

40. KSPC submitted an update of the EMP to DENR in May 2008 for the historical ash disposal. When KSPC approached ADB for financing and finalized the preparation of the SEIA in January-March 2009, the disposal of historical ash was already completed. Therefore, the SEIA described where the historical ash had been transferred.<sup>13</sup> ADB, during its due diligence, reconfirmed that KSPC had tested the toxicity of historical ash and DENR had provided prior approval for its use as landfill material, as described in paragraph 90 of the SEIA. Therefore, additional mitigation measures relating to the transportation and disposal of the historical ash were not considered necessary. The documentation on the historical ash was prepared and issues pertaining to the environmental impacts of historical ash were satisfactorily assessed. ADB was thus compliant with the Environment Policy (2002).

41. The CRP raises some concerns about the due diligence on toxicity of historical ash undertaken in 2009 in paragraph 29 of the draft report. ADB's technical staff had raised some caution about the "scientific rigor" of sampling and testing during the project preparation. The historical ash covered a land area of 13,000m<sup>2</sup> at Naalad and about 12,000m<sup>2</sup> at Pangdan. Three samples were collected from each site. Considering that the ash disposed had been tested earlier by KSPC in 2006 and found nontoxic, the project team took the view that three samples each from the two sites were adequate to "screen" the disposed historical ash for potential toxicity. It may be noted that the level of pollutants in the samples were significantly lower than the threshold levels that define the samples to be toxic. The samples were collected (4 out of 6) by Ostrea Mineral Laboratories, an ISO 17025 (general requirement for the competence of testing and calibrations of laboratories) accredited and DENR approved laboratory in the Philippines. The laboratory uses the United States Environmental Protection Agency (USEPA) method 1131 for collection of samples and USEPA method 1131 A for testing of coal ash. The laboratory collected the samples in the presence of members of the multipartite monitoring team (MMT). The test reports clearly mention that the samples were taken from the historical ash deposited at Naalad and Pangdan. The project team therefore ensured that the toxicity results used during the due diligence were reliable and did meet the scientific requirements for such analysis.

<sup>13</sup> SEIA paragraph 90 **"Excavated Ash Spoil.** About 169,482 m<sup>3</sup> of ash was disposed of from the construction site during site grading works. The excavated ash was utilized by the city of Naga as backfilling material for city's reclamation project. Some of it was also utilized by individuals as backfilling material; prior certifications were secured from DENR. Prior to hauling and transportation of the excavated spoil, laboratory testing showed that the ash contained no hazardous waste element and DENR approved the transportation of the ash materials."

42. **Health Risks at the Resettlement Site.** The CRP draft report made a finding that ADB did not identify potential health risks associated with resettlement.

**CRP Finding 7:** Paragraph 32 *"The CRP is of the opinion that during due diligence on the resettlement plan, ADB did not identify the potential health risks associated with this location and was therefore noncompliant with ADB's environment policy."*

43. Please refer to paragraph 9 above citing paragraph 61 of the Environment Policy (2002).
44. Resettlement was undertaken in October 2008 on a site reclaimed by ash, prior to ADB's involvement. Laboratory tests conducted earlier had shown that the ash at the resettlement site contained no hazardous waste elements (paragraph 90 of the SEIA). During ADB's due diligence in March 2009, ADB interviewed the relocated families and confirmed that they were satisfied with their present situation, and there were no complaints about health issues from the relocated families while there was limestone layer covering the site to avoid direct exposure of ash to the residents. Subsequently after May 2010 when the lenders' technical advisor brought to ADB's attention that the condition of the land had deteriorated and that it should be covered with topsoil, ADB required, and KSPC implemented, remedial actions.<sup>14</sup> This is consistent with the Environment Policy (2002) and OM F1/OP paragraph 4 that environmental assessment is an ongoing process and takes place throughout the project cycle. ADB is thus compliant with the Environment Policy (2002).

## 2. Policies on Consultation, Public Disclosure, and Social Dimensions

45. **Community Concerns and Social Impacts.** The CRP draft report finds that ADB failed to identify and address community concerns and social impacts.

**CRP Finding 8:** Paragraph 34 *"In the CRP's opinion, due diligence failed to identify serious community concerns about the potential health impacts of the project and did not address the necessary prevention, mitigation, and public disclosure requirements and was therefore noncompliant with ADB's policy on consultation, public disclosure, and social dimensions."*

46. OM Section C3/OP (25 April 2007) paragraph 5 provides that *"The process of identifying likely social dimensions, including potential beneficiaries and people likely to be adversely affected by an ADB-supported project will start during project identification and will continue with increasing refinement during project preparation and implementation."*
47. ADB's due diligence identified community concerns about health impacts, and the EIA (Section 3.4.3.C and Table 3.69, page 224) and SEIA (paragraph 111 and Environmental Management Plan) reported on the community concerns on health, indicating that Project-specific concerns, including clean air and waste management, were adequately addressed and that the remaining opposition were mainly from environmental NGOs due to the concerns for global warming from coal fired power plants. While the RRP did not refer to the community concerns, mitigation measures related to them were specifically mentioned (paragraph 52 of the RRP). The SEIA and the RRP were publicly disclosed.

<sup>14</sup> The CRP noted in paragraph 31 of the draft report that *"...eventually corrective actions were implemented on the initiative of other lenders."* ADB in fact worked side by side with other lenders in this initiative.

48. The incidences of illness recorded in the EIA (Table 3.66) and health related complaints expressed during the consultations following commencement of ADB due diligence were due to causes that existed before the Project came into operation. The approach taken by ADB, therefore, was to explain to the community that the Project would meet the international and national standards and minimize the health impacts through the Project's design and implementation. ADB's due diligence, therefore, focused on ensuring that the technology used was more environmentally friendly. With the utilization of CFBC technology and an electrostatic precipitator, SO<sub>x</sub>, NO<sub>x</sub>, and particulate matter production would be reduced significantly. These aspects were recorded in both the EIA (Sections 2.4.2.9 and 4.3.1.5) and the SEIA (paragraph 93)<sup>15</sup> and explained in consultations (public hearing presentation on 6 August 2005). ADB is thus compliant with the Environment Policy (2002) and related OM Section C3/OP (25 April 2007).

49. **Consultations with Affected Groups and NGOs.** The CRP states that information dissemination to, and consultation with, affected people and civil society was inadequate.

**CRP Finding 9:** Paragraph 36 *"The CRP finds that the provisions in the environment policy for 'consultations with affected groups and local NGOs to identify and help address environmental issues that arise during implementation' were not observed and ADB is therefore noncompliant with its environment policy and policy on the incorporation of social dimensions in ADB operations. Similarly, the provisions in the policy on the incorporation of social dimensions in ADB operations for seeking the cooperation of NGOs and civil society groups throughout the project cycle were not complied with."*

50. To ensure that concerns of stakeholders are heard, the multipartite monitoring team (MMT) was formed by DENR and has regularly met every quarter, chaired by DENR regional staff. MMTs are well recognized fora for consultation in the Philippines. Representatives from all affected *barangays* (including the originally missed North Poblacion) eventually joined the MMT by September 2009. The communities were consulted on the health impacts at public consultations, held in English and Cebuano, and through their MMT representatives, and appropriate mitigation measures were incorporated into the Project design such as the use of CFBC technology and an electrostatic precipitator. ADB noted the absence of representatives from certain civil society organizations in the public consultations and the MMT meetings, and has continuously encouraged the MMT to include them.

51. Per OM F1/OP<sup>16</sup> and OM C3/BP(25 April 2007),<sup>17</sup> ADB encourages consultation with and participation by stakeholders and actively seeks the cooperation of civil society groups

<sup>15</sup> SEIA, paragraph 93 "Air Emissions. During operations, coal-fired power plants produce the following major pollutants: SO<sub>x</sub>, NO<sub>x</sub>, SPM and CO<sub>2</sub>, which is a major contributor to greenhouse gases. With utilization of CFBC technology, (i) SO<sub>x</sub> production will be reduced significantly because of the introduction of limestone for sulfur capture, and (ii) NO<sub>x</sub> production will be significantly reduced because of the lower firing temperature at 750°C-900°C. An electrostatic precipitator will be installed with a minimum of 99.96% efficiency for design coal to reduce particulate matter emissions. The emission standards of the World Bank's Pollution Prevention and Abatement Handbook (PPAH) guidelines and Philippine standards set by DENR are in Table 9."

<sup>16</sup> OM F1/OP, paragraph 9 "Public consultation.....For category-A and -B projects, the borrower must consult with groups affected by the proposed project and with local nongovernment organizations (NGO). The consultation needs to be carried out as early as possible in the project cycle so that views of affected groups are taken into account in the design of the project and its environment mitigation measures. Such consultation will also take place during project implementation to identify and help address environmental issues that arise."

<sup>17</sup> OM C3/BP, paragraph 6 "In pursuing these social development outcomes, ADB (i) encourages consultation with and participation by stakeholders (including the government, executing and implementing agencies, clients and/or



where appropriate. When KSPC approached ADB for financing, consultations with affected groups and civil society organizations including two scoping meeting (15 October 2004 and 6 November 2004), two public hearings (August-September 2005) held by DENR and Cebu Provincial Board, and focus group discussions (October-November 2004) had already been conducted.<sup>18</sup> The Project had been endorsed by the local government units concerned, local organizations, residents, and government officials in the localities concerned (see the EIA Annex J: Endorsements). Additionally, after ADB started processing the Project, ADB sought collaboration and views from the civil society organizations as follows.

52. When civil society organizations brought to ADB's attention their concerns in August 2009, ADB immediately reacted by fielding a due diligence mission on 2-4 September 2009 and met with the NGO Forum on 23 September 2009 to understand the concerns. ADB met with the civil society organizations and CPG on 12 November 2009 to seek their views on the Project. Subsequently, on 8 November 2010, during its due diligence mission on the Balili proposal, ADB met with the organizations that had submitted a petition to the Regional Trial Court in Madaue City (on 12 August 2010) for the issuance of an environmental protection order to the Naga power plant and for the nullification of the ash disposal arrangement between CPG and KSPC. In these outreach efforts, ADB sought opinions from the civil society organizations that voiced their concerns.

53. ADB took the organizations' concerns seriously and proceeded cautiously in its due diligence and dialogue with KSPC and CPG on the use of the Balili site and on the ash erosion issues at the historical ash disposal sites. ADB improved project implementation through consultation with affected people and civil society, in compliance with the Environment Policy (2002) and the policy on incorporation of social dimensions into ADB operations. These efforts led to the suspension of KSPC's agreement with CPG on the use of the Balili site (or at least until such time the Balili proposal fully satisfies ADB's safeguard requirements) and KSPC's remedial actions on the eroded ash in Pangdan and Naalad.

54. **Disclosure of EIA.** The CRP draft report noted that ADB was not timely in disclosing the EIA and changes in the Project.

**CRP Finding 10:** Paragraph 38 *"The CRP concludes that the lack of a timely response to the request for access to the full EIA is not compliant with the provisions on public disclosure in ADB policies on environment and public communications."*

55. Paragraph 64 of the Environment Policy (2002) provides *"The full EIA or IEE reports are also made available to interested parties upon request."*

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beneficiaries, people affected by ADB-supported projects); provides them with opportunities to engage in key stages of the country programming and project cycles; and actively seeks, where appropriate, the cooperation of nongovernment organizations and other civil society groups in formulating, designing, implementing, monitoring, and evaluating projects."

<sup>18</sup> The following public consultations had been held during the various stages of EIA preparation: first level scoping meeting on 15 October 2004 (EIA, Annex C); second level scoping meeting on 6 November 2004 (EIA, Annex D); public hearing on 6 August 2005 held by DENR and another public hearing held by the Cebu Provincial Board (EIA, Annex I (Minutes of the Public Hearing)); focus group discussions on 24 October 2004 and 7 November 2004 (EIA, Annex H). Surveys were also conducted (EIA, Annexes E to G).

56. The SEIA was publicly disclosed on 10 March 2009. ADB first received the request for a copy of the EIA from a civil society organization on 8 December 2009 and received a reminder on 10 December 2009. ADB made it available through a document depository website and sent the link to this website to the requestor by email on 11 December 2009. There was no undue delay in ADB's efforts in making the EIA available.

57. **Disclosure of Changes in the SEIA.** In paragraph 39 of the CRP draft report, the CRP noted that "*subsequent updates to the SEIA....modified the original plan for ash disposal at the cement plants to allow for disposal at the Balili landfill site.*" While the CRP acknowledged that "*the final SEIA and the RRP reverted back to ash disposal at the cement plants,*" the CRP pointed out that "*The major changes to the SEIA were not publicly disclosed nor was ADB forthcoming with clear information and therefore further contributed to the public controversy surrounding the site*" and that "*the lack of transparency by the ADB was not consistent with its policy on public communications which emphasizes, '...the right of people to seek and receive information about ADB-assisted activities in a timely, clear, and relevant manner.'*" Based on this understanding, the CRP made its finding in paragraph 40:

**CRP Finding 11:** Paragraph 40 "*CRP acknowledges the significant time pressures for project approval, however, in its opinion, ADB did not comply with its policy requirements on public communications, particularly on SEIA disclosure and on providing transparent and timely information to stakeholders.*"

58. As pointed out by the CRP, OM L3/BP, paragraph 5 provides, "*ADB supports the right of people to seek, receive, and impart information and ideas about ADB-assisted activities. ADB shall provide information in a timely, clear, and relevant manner so it can communicate with, listen to, and consider feedback from its stakeholders. ADB shall share information with affected people early enough for them to provide meaningful inputs into the project design and implementation.*"

59. The SEIA, which explained that the Project's new ash would be recycled at a cement plant, was publicly disclosed on 10 March 2009. On 6 May 2009, KSPC and CPG entered into an arrangement for ash disposal at a landfill site while KSPC continued to negotiate recycling of ash with the nearby cement plant. A detailed study of the proposed ash disposal site (the Balili site) was ongoing. In August 2009, ADB became aware of the concerns of the civil society on the Balili site and immediately conducted due diligence. After due diligence, ADB was of the view that the Balili site could be used for ash disposal if properly designed as a secured landfill site. However, ADB clarified to KSPC that ADB's acceptance of the Balili site would be strictly subject to proper technical and environmental planning and legal documentation that comply with ADB's safeguard policies.

60. In order to align the information in the SEIA (which described ash recycling only) with that of the RRP (which outlined the possibility of the Balili landfilling option as well as the ash recycling option), ADB circulated two corrigenda of the SEIA to the Board on 9 and 19 October 2009, to refer to the Balili landfilling option in the SEIA.<sup>19</sup> While ADB was preparing to publicly disclose the SEIA corrigenda, KSPC informed ADB on 26 October 2009 that it had decided to suspend the Balili disposal option and firm up the original plan of disposing of ash at cement

<sup>19</sup> The first corrigendum on 9 October 2009 was intended to cover this information completely. However, this corrigendum had a section of the text inadvertently dropped out. To correct this, the second corrigendum dated 19 October 2009 was circulated to the Board.



plants. On 10 November 2009, KSPC and CPG executed legal documents for ash recycling at two cement plants.

61. With the Project reverting back to the ash recycling option, the information contained in the SEIA corrigenda did not any more reflect the current position, which is ash recycling. Given all these developments, no changes were made to the SEIA, which was, and remained consistent with the final proposal presented to the Board. ADB was preparing to disclose the updates to the SEIA but did not do so only because KSPC went back to the ash recycling option.

62. **Social Dimensions.** The CRP draft report reiterated its finding that ADB was noncompliant by failing to identify and address key social issues.

**CRP Finding 12:** Paragraph 42 *"In the CRP's opinion, ADB failed to comply with its policy on the incorporation of social dimensions in ADB operations in identifying key social issues and ensuring that they were addressed during project design and implementation."*

63. OM C3/OP (25 April 2007), paragraph 8 provides, *"Based on the issues identified and process initiated during the IPSA, a social analysis is carried out during project design to examine opportunities, constraints, and likely social impacts of the project, and to identify and formulate design measures and implementation arrangements to maximize the social benefits and avoid or minimize the social risks of the project in a participatory manner."*

64. The Initial Poverty and Social Analysis (IPSA) and the Summary Poverty Reduction and Social Strategy (SPRSS) were prepared. The IPSA mentioned that "adverse environmental impacts (noise and air pollution) of the project will be mitigated" while the SPRSS highlighted measures as well as social programs to address health concerns by mentioning that (i) *"Antipollution technology and devices will be installed to eradicate air pollutants... KSPC will continue monitoring the health of local communities, and contribute to the improvement of health services and facilities"* and (ii) *"... will conduct regular medical missions ... to monitor health conditions and at the same time identify illnesses of local residents including women and children related to coal-fired power plant such as severe asthma..."*<sup>20</sup> Further, health impacts were assessed in the EIA (Sections 4.2.3.6 and 4.3.3.4, pages 22 and 36) and the SEIA (paragraph 111<sup>21</sup>) and mitigation measures were formulated. These documents adequately covered the environmental and social risks, including the health risks associated with the Project. They further show that the disclosure of information and the consultations with affected people were carried out in accordance with the Philippine Environmental Impact Statement

<sup>20</sup> The SPRSS stated that (i) *"Antipollution technology and devices will be installed to eradicate air pollutants and ensure they do not infiltrate nearby communities. KSPC will continue monitoring the health of local communities, and contribute to the improvement of health services and facilities"* and (ii) *"KSPC through its SDP will conduct regular medical missions to the host barangay to monitor health conditions and at the same time identify illnesses of local residents including women and children related to coal-fired power plants, such as severe asthma and allergies, depressed immune systems, learning disabilities, autism, and behavioral disorder."*

<sup>21</sup> SEIA, paragraph 111 *"Health. Air pollution is the primary health concern of nearby residents and other stakeholders, as the fuel to be used is coal. Experience in other places has shown that high levels of carbon dioxide, nitrogen, and sulfur from a coal-fired power plant are emitted to the atmosphere. The proponent shall ensure that the anti-pollution technology and devices are functioning at all times. The CFBC technology will use calcium carbonate to trap and solidify the sulfur and its derivatives present in the coal. Furthermore, the relatively low burning temperature in the furnace will lessen the derivatives of nitrogen to an acceptable level. The EP will be installed to eradicate the suspended particles from going into nearby communities. In addition, the storage area for coal will be enclosed by a roofed structure to prevent the carbon ash from going into nearby communities. KSPC will continue monitoring the health of local communities, and contribute to the improvement of health services and facilities. Period medical missions with free medicines will continue to be provided by KSPC."*

(EIS) system and ADB's policies. In addition to the pollution-control features, the Project incorporates the social dimensions by stakeholder consultations in the MMT, the media campaign implemented by KSPC, and KPSC's corporate social responsibility activities and plan, which included support of local medical clinics.

65. In summary, ADB's due diligence identified key issues such as health concerns expressed by affected people and the social dimensions of these concerns were specifically addressed in project design and implementation. ADB was compliant with ADB's policy on consultation, public disclosure, and social dimensions and related OM Section C3/OP (25 April 2007) on social dimensions.

### 3. Energy Policy

66. The CRP found that ADB was not compliant with the Energy Policy through its non-compliance with the environment and social policies.

**CRP Finding 13:** Paragraph 47 *"The CRP is of the opinion that the decision to finance a private sector coal-fired power plant even with environmentally friendlier CFBC technology should have been accompanied by rigorous due diligence in compliance with ADB environment and social safeguards. Based on its findings, the CRP concludes that ADB did not fully comply with the energy policy."*

67. The CRP's observation that ADB was not fully compliant with the Energy Policy is based on its conclusion that ADB did not comply with the environment and social safeguard policies (paragraph 52 of the CRP draft report). As explained in Management's responses to the CRP Findings 1-12 above, ADB conducted rigorous due diligence in compliance with ADB's environment and social safeguard policies, therefore, ADB was compliant with the Energy Policy too.

### 4. Summary

68. The CRP has further summarized its findings in paragraphs 50, 51, and 52 of the draft report. The specific comments to each of the CRP's Findings 1-13 above demonstrate ADB's compliance with policies.

69. In summary, Management would like to submit that the Project represents a significant effort on the part of ADB to meet the demand for electricity in the region, and is indeed in close alignment with its strategic objectives. It would also like to reassure the CRP that ADB undertook detailed due diligence, and held various levels of consultations, reviews, and discussions through extended and detailed engagement with stakeholders before making a final decision on engaging with KSPC and the Project. ADB has complied with ADB's safeguard policies during the processing of this transaction, and has also put in place adequate control mechanisms to ensure the Project's compliance with ADB policies during the implementation and operation phases.

#### IV. CRP'S RECOMMENDATIONS

70. Management responds to the CRP's four recommendations as follows.

**Recommendation 1:** *Complete an air dispersion modeling study and implementation plan that includes the key pollution sources in the project area and validate its predictions with actual air emissions and ambient air quality monitoring. Emphasize more frequent and enhanced air dispersion modeling (e.g. including key emission sources) and continuous monitoring of ambient air quality.*

71. Given that further air dispersion modeling could provide useful information to site additional air quality monitoring stations, this recommendation is helpful. Management accepts this recommendation as a good practice and will work on implementing this recommendation in consultation with the relevant government agencies.

**Recommendation 2:** *Undertake a comprehensive study on ash utilization at cement plants and implement its recommendations. In addition, monitor the environmental effects of existing ash ponds and historic ash disposal sites.*

72. KSPC has already developed comprehensive new ash management arrangements, whereby KSPC will dispose of its ash by recycling it at a cement plant and a ready-mixed concrete plant and to place any residual ash at secured landfill sites at a safe distance from the coast. KSPC has recently submitted an initial environment examination (IEE) report for this ash management plan. ADB is reviewing the IEE for compliance with our Safeguard Policy Statement (SPS) 2009. ADB will continue to monitor KSPC's environmental performance including its existing ash ponds, historical ash disposal sites, and its new ash management arrangements.

**Recommendation 3:** *Design and implement a comparative study on morbidity and mortality in the project area in coordination with appropriate academic and government institutions in accordance with international best practices. Based on the findings, design and implement a participatory action plan to monitor changes in baseline data, prevent and mitigate health risks, and community outreach and support for the local health system.*

73. Air dispersion modeling (conducted under Recommendation 1) will help identify mitigation measures to control the major existing and future sources of air pollution and address the health risks in the region. While these measures are to be required outside the Project's scope, ADB will recommend these mitigation measures for implementation to relevant government agencies. ADB will also continue to monitor KSPC's compliance with its commitment on the implementation of the mitigation measures specified in the EIA and the SEIA, community outreach, health monitoring, and support for local health system. The documented research on health impact of air pollutants will be used to guide such an effort. A separate study on morbidity and mortality is not required.

**Recommendation 4:** *Expand or complement the existing MMT to ensure representation of all directly affected communities and appropriate NGOs and to facilitate transparent and inclusive communication and grievance redress.*

74. Barangay North Poblacion, which was not at the MMT in the beginning, had been represented at the MMT by September 2009. ADB has already suggested to the MMT to include representation of civil society organizations who have expressed their concerns to ADB. Since KSPC serves as the MMT secretariat, in the coming days ADB will urge KSPC to engage local communities and appropriate NGOs in continued communications and grievance redress. Through regular review missions, ADB will also continue to engage with the local communities and concerned NGOs (whether or not they are part of the MMT) and be responsive to their concerns.

75. Further, the CRP suggested in paragraph 54:

*"The CRP is of the opinion that noncompliance was contributed to by the unique circumstances of this private sector project including time constraints and limited ADB leverage. The CRP believes that ADB should consider examining its current processes and procedures regarding due diligence and processing of private sector projects and put in place effective mechanisms to ensure policy compliance in all cases."*

76. In line with the SPS (2009), ADB's Private Sector Operations Department has significantly added safeguard staff resources and established its Quality at Entry procedures to continuously ensure our compliance with ADB safeguard requirements.