



**Comments on the Second Project Design Document and Application for Validation after
Rejection of Registration by CDM Executive Board**

***GHG Emission Reductions through grid connected high efficiency power generation, Coastal
Gujarat Power Ltd., India***

July 16, 2011

The Center for International Environmental Law (CIEL) respectfully submits the following comments on the *Project Design Document (PDD)* for *GHG Emission Reductions through grid connected high efficiency power generation*. We thank the CDM Executive Board for taking these comments into consideration.

The project is not appropriate for validation for at least two reasons. First, the process for local stakeholder consultation was inadequate. As a result, local communities were not properly involved in the planning process. Second, the project will result in significant environmental harm (most of which the PDD Environmental Assessment fails to document) and should therefore not be legitimized by the CDM.

The role of the CDM within the Kyoto framework is to assist developing countries to achieve sustainable development and allow developed countries to meet their emission reduction obligations, with the ultimate objective of reducing overall global emissions and averting dangerous interference with the climate system.¹ Rather than helping to shift India's economy towards sustainable energy sources, this project does the opposite, by locking the country into nearly three decades of reliance on a greenhouse gas-intensive fossil fuel.

¹ See CDM Home Page, United Nations Framework Convention on Climate Change, <http://cdm.unfccc.int/index.html> (last visited July 15, 2011).

COMMENTS

I. Stakeholder engagement process in the preparation of the PDD was inadequate.

The Marrakesh Accords define “stakeholders” as the “public, or any individuals, groups or communities affected, or likely to be affected, by the proposed CDM project activities.”² Further, a PDD for CDM projects must include “stakeholder comments, including a brief description of the process, a summary of the comments received, and a report on how due account was taken of any comments received.”³

The PDD submitted for this project appropriately lists “local villagers” as stakeholders, however, it fails to record any comments, whether positive or negative, from local villagers. The PDD’s description of its stakeholder engagement process is indeed brief. It recounts only that the “stakeholders were invited for a meeting on 19th September 2006 by newspaper advertisements dated 15th August 2006 and 18th August 2006[, and that a] presentation was given by [Coastal Gujarat Power Limited] discussing the various aspects of the project.”

This cursory description is in no way sufficient for the Board to effectively evaluate whether the process afforded local stakeholders an adequate opportunity to comment and participate in the formation of the PDD. No information is provided as to whether the newspapers in which notice of the meeting was published are widely distributed and read among affected populations, nor whether they were translated into the local languages. Without knowing where the meeting was held, there is no way to evaluate whether it was easily accessible to community members, or held at a time and day of the week that a significant portion of interested community members would be able to attend. It is also not clear whether

² Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its first session, Decision 3/CMP.1, Annex, ¶ A(1)(e), FCCC/KP/CMP/2005/8/Add.1 (March 30, 2006), *available at* <http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf#page=6> [hereinafter Decision 3/CMP.1].

³ Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its first session, Decision 4/CMP.1, Appendix B, ¶ 2(n), FCCC/KP/CMP/2005/8/Add.1 (March 30, 2006), *available at* <http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf#page=6> [hereinafter Decision 5/CMP.1].

the “presentation . . . discussing the various aspects of the project” was given at the community meeting. In addition, there is no evidence provided that placing an advertisement in a local newspaper is a culturally appropriate way of informing the local population of a community meeting. For example, the Asian Development Bank (ADB), one of the projects funders, noted in its Summary Environmental Assessment Report that in the project area, “the literacy rate was only 54.2%, with the female literacy rate at 45.5% and the male literacy rate at 62.7%.”⁴

The ADB Environmental Assessment Report also provides a more detailed description of the local stakeholder consultation process, noting that in addition to the 19 September 2006 public hearing, “further consultations were subsequently conducted in villages.”⁵ The report noted that 65 people from the villages surrounding the project area attended the meeting, that concerns raised at the meeting were recorded in minutes, and that some villagers “expressed concern about the potential environmental and social impacts of the Project.”⁶

Given the local village consultations, and the fact that 65 community members were present at the September 19th meeting, it is surprising that there were no comments recorded in the PDD. Indeed, the ADB Report clearly states that some villagers expressed concerns about the potential environmental and social impacts of the project. Accordingly, these comments and concerns should have been included in the PDD summary of stakeholder comments. Instead, there is no mention of any comments or opinions from local villagers at all. To comply with CDM rules, not only should the dissenting comments have been reported, the project participants should have addressed how they responded to those concerns-- including whether the concerns were addressed or not, and if not, a justification for failing to address the concerns.

⁴ Asian Dev. Bank, [ADB], *Environmental Assessment Report, India: Mundra Ultra Mega Power Project* at 18, Summary Environmental Impact Assessment, Project Number: 41946 (Nov. 2007), available at <http://www.adb.org/Documents/Environment/IND/41946-IND-SEIA.pdf> [hereinafter ADB Environmental Assessment].

⁵ *Id.* at 1.

⁶ *Id.* at 30.

Further evidence that the stakeholder engagement process was inadequate is a complaint recently filed with the Office of the Compliance Advisor/Ombudsman (CAO) by a local trade group of fishermen in which they assert, among other grievances, that they were not properly consulted by project participants.⁷

In order to properly assess the stakeholder engagement process while evaluating a PDD, the Board must have access to the stakeholder comments to have the opportunity to make an independent determination whether the comments have been properly characterized. The Board should have access to the presentation content as well, to have the opportunity to determine whether it was accurate, unbiased, comprehensive, and delivered in a culturally appropriate manner.

Full and effective participation of these stakeholders – particularly affected peoples and communities, as well as individuals or organizations with information concerning potential environmental threats – is essential to the successful development and implementation of the CDM and to achieving sustainable development. At a minimum, for stakeholders to engage in a meaningful and participatory local consultation process, project participants must give early and effective notice to local stakeholders (*i.e.*, individuals, group or communities that are affected, or are likely to be affected, by a proposed CDM project), and provide opportunities for them to participate in the project approval process.

CDM rules require that the project participant invite local stakeholders to submit comments, summarize comments received, and then submit a report to the DOE on how the

⁷ The CAO reviews actions of the International Finance Corporation another sponsor of this project. Office of the Compliance Advisor/Ombudsman [CAO], *Complaint from Machimar Adhikar Sangharsh Sangathan (MASS Association for the Struggle for Our Fishworkers Rights) regarding Tata Ultra Mega* (June 11, 2011), available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=171 [hereinafter Tata Mundra CAO complaint].

comments were taken into account.⁸ Furthermore, all communications with local stakeholders should be in the local language(s) and distributed by appropriate and effective means to eliminate any significant logistical and communication barriers. The level of consultation should be proportional to the level of project impact that is likely to result from a particular CDM project.

Project documents, such as the PDD, EIA and other supporting documentation, including the project's projected scope, lifetime, adverse impacts, and management plans, should be translated into the local language(s) and be made available online. Hard copies of these documents, including translated versions, should be made available to local stakeholders in affected communities by the most appropriate and accessible means, *e.g.*, in community centers, churches, libraries, and schools. Notification to the public should be prompt and accessible such that it reaches all stakeholders. Prior to the start of the comment period, copies of all supporting documentation, including versions translated into the local language(s) should be made available as hard copies and on the project website.

Notice and other communication regarding comment periods should be clear, detailed, and widely circulated, and provided to affected peoples and communities by appropriate and effective means (*e.g.*, radio, TV, posters near the project area). Comment period start/end dates and times, with the applicable time zone, should be posted online. Local stakeholders should be allowed to submit comments in the language(s) spoken in the proposed project area – these comments should be taken into account in the same way as comments written in English or other languages. Local stakeholders should also have opportunities to participate in a meaningful way, *e.g.*, the ability to voice concerns to decision-makers, at any point during the CDM project cycle, not only during a formal comment period.

⁸ Decision 3/CMP.1, ¶ 37(b).

From the scant information in the PDD, there is no way to evaluate whether the process was appropriate, although there are indications that it was not. The complete absence of any dissenting viewpoints or concerns noted in the PDD is inconsistent with the fact that the ADB report documents concerns raised by communities. Additionally, the fact that a CAO complaint was filed by community groups impacted by this project, strongly suggests that the consultation process was not sufficient.

II. The environmental assessment is inconsistent with complaints from local communities, fails to adequately account for environmental damage, and may not comply with India's environmental law.

The PDD characterizes environmental impacts of the project during construction and operation as “negligible.” However, discrepancies between the description in the PDD and allegations raised in the CAO complaint suggest the project may violate India's environmental law. The main issues raised in the complaint are:

Issue 1: Cooling system used in project is not the type that was approved by the Ministry of Environment and Forests.

Community groups point out that the environmental clearance given by Ministry of Environment and Forests was conditioned on the installation of a closed cycle cooling system with cooling towers.⁹ However, the PDD states the project will use a once through sea water cooling system. A once-through cooling system is significantly more harmful to marine ecology,¹⁰ and has been banned in many countries. According to a report by the California Energy Commission on environmental impacts associated with once-through cooling at coastal power plants,

⁹ Tata Mundra CAO Complaint at Annex 1.

¹⁰ See California Energy Commission, *Issues and Environmental Impacts Associated With Once-Through Cooling at California's Coastal Power Plants*, Staff Report CEC-700-2005-013 (June 2005), available at <http://www.energy.ca.gov/2005publications/CEC-700-2005-013/CEC-700-2005-013.PDF>.

These power plants indiscriminately ‘fish’ the water in these habitats by killing the eggs, larvae, and adults when water drawn from the natural environment flows through the plant (entrainment impacts) and by killing large adult fish and invertebrates that are trapped on intake screens (impingement impacts). These facilities also affect the coastal environment by discharging heated water back into natural environments.¹¹

Clearly the once through cooling system jeopardizes the aquatic ecology in the neighboring waters. And to the extent it does not comply with conditions set out by the Ministry of Environment and Forests it may not be in full compliance with the environmental laws of the host country.

Issue 2: Intake channel for the project did not obtain environmental clearance

The intake channel for the project is shared with the adjacent Adani Power Project (4620MW) located within the Mundra Special Economic Zone. In the CAO complaint, affected communities claim that there were no separate clearances conducted for the project’s use of the intake channel. If studies were conducted, information about them was not made available to the public. An additional power plant will contribute significantly to any environmental consequences of an intake channel, and merits a separate study and review by the Ministry of Environment and Forests. .

Issue 3: Associated facilities of the project have been cited by the Ministry of Environment and Forests for serious violations of Indian environmental law.

According to the Environmental Assessment Report prepared for the ADB, coal will be shipped to the Mundra Port and transferred to the project site via railway. The Mundra Port, owned and operated by the Adani Group, has been issued a show-cause notice by the Ministry of Environment and Forests for violating the Coastal Regulation Zone (CZR) notification of 1991

¹¹ *Id.*

on a number of grounds.¹² As the Mundra Port is an associated facility of the project, it is necessarily implicated in these environmental failures.

CONCLUSION

Coal projects create a host of environmental harms. The CDM should not legitimize environmentally questionable projects. On a purely procedural basis, the PDD fails to properly comply with requirements to consult effectively with stakeholders. Moreover, the PDD glosses over the environmental assessment with vague assurances that all would be done in an environmentally friendly manner, while concerns raised by local community groups indicate this is not the case. For the aforementioned reasons, we respectfully request that the Board not validate the proposed project.

¹² Ministry of Environment and Forests, Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of the Coastal Regulation Zone Notification, 1991 by M/s Mundra Port & SEZ Limited - regarding (Dec. 15, 2010), available at <http://moef.nic.in/downloads/public-information/show-cause-mundra-opg.pdf>. The violations are associated with the following: large scale reclamation using dredged material is being carried out on mangrove area behind the West and North port site; a dredging disposal pipeline in the intertidal area carrying the dredged material to the landward side of the port to reclaim the land area on the West and North port side which has been obstructing the tidal flow due to which the mangroves stretches on the western and northern port side have been seriously affected and at several places the mangroves have dried up; and the creeks systems and the natural flow of seawater is being obstructed by reclamations along the creeks, with destruction of mangroves being observed at several stretches.