



TERMS OF REFERENCE

Terms of reference for audit of IFC

CAO Compliance

Ref: C-I-R6-Y12-F160

October 24, 2012

Coastal Gujarat Power Limited / India

Case of

Machimar Adhikar Sangharsh Sangathan (MASS)

About CAO

CAO (Office of the Compliance Advisor/Ombudsman) is an independent office that reports directly to the president of the World Bank Group. The CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance arm of the CAO, to appraise whether the concerns raised in the complaint merit a compliance audit of IFC/MIGA.

CAO's compliance mandate is to audit IFC, and how IFC assured itself of the environmental and social performance of its investments. The focus of this process is thus on IFC's appraisal and supervision of an investment, and whether or not IFC complied with its own policy provisions. CAO does not audit IFC's client.

CAO discloses the findings of its compliance appraisal in an appraisal report to inform the president and boards of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

For more information about the CAO, please see www.cao-ombudsman.org

Background

As part of the Government of India's Ultra Mega Power Project, Coastal Gujarat Power Limited (CGPL) is in the process of building a supercritical coal fired power plant¹ with a capacity of over 4000 MW at the port town of Mundra in the Kutch district of Gujarat, India (the Project). CGPL is sponsored by Tata Power Company Limited (Tata Power) which acquired 100 percent of CGPL on a build, own and operate basis. In March 2012, CGPL announced the successful commissioning of the first of its five 800 MW units. The second unit is scheduled for commissioning by August 2012.

The Project is being developed in the context of India's larger energy strategy which calls for a 160,000 MW increase in power generation capacity through 2017 in order to sustain a growth rate of 8 percent per annum. CGPL is one of several large power projects that are being promoted under the Government of India's Ultra Mega Power Project (UMPP). As a UMPP plant the Power Finance Corporation (a government company) selected the project site, technology and type of fuel to be used as well as obtaining required initial approvals for the plant. The Project was awarded to Tata Power through tariff-based competitive bidding in 2007. The Project is intended to generate electricity for sale to the utilities of five different states in regions of western and northern India through a long term 25 year take-or-pay power purchase agreement.

Total project cost is estimated at US\$4.14 billion out of which IFC is financing US\$450 million in the form of a straight senior loan. The Project was assigned IFC's environmental and social category A, signifying that it could have significant adverse social and/or environmental impacts that are diverse, irreversible, or unprecedented.

CAO received a complaint regarding IFC's investment in CGPL from Machimar Adhikar Sangharsh Sangathan – the Association for the Struggle for Fishworkers' Rights (MASS) representing fisherfolk in the vicinity of the project (the Complainants) in June 2011. According to its Assessment Report dated January 2012, the CAO Ombudsman determined that it was unable to facilitate a resolution to the issues raised by the complainants. The CAO Ombudsman thus referred the complaint to CAO Compliance for appraisal and potential audit on February 1, 2012.

Significant in the context of the complaint is the fact that the coastline around Mundra is undergoing a rapid industrial transformation. This involves, in addition to the construction of the CGPL power plant, the development of the the Adani Group's Mundra Port and Special Economic Zone (MPSEZ) which includes significant expansion of existing port facilities and the construction of a 4620MW coal fired power plant (Adani Power).

Having reviewed the complaint and related documentation CAO concludes that a number of issues raised by the Complainants merit further enquiry. Thus, in accordance with its Operational Guidelines, CAO decided in July 2012 to conduct an audit of IFC's social and environmental performance in relation to this investment.

¹ Supercritical coal fired power plants operate at higher temperatures than conventional subcritical and thus produce power more efficiently and with lower GHG emissions.



Scope of the Audit

The overall scope of the compliance audit is to assess the reasonableness of IFC's approach to an investment based on its mission, experience, and guidance.

The focus of compliance auditing is on IFC, and how IFC assured itself of project performance.

As set out in CAO's appraisal report the focus of the compliance audit will be the following:

- a) whether the IFC exercised due diligence in reviewing CGPL's environmental and social (E&S) assessments;
- b) whether IFC gave adequate consideration to the cumulative impacts of Adani Power and the construction of the Mundra West Port in its E&S review;
- c) whether IFC's assessment of community support for the project was adequate;
- d) whether Performance Standard 5 has been correctly applied with regard to the Complainants' seasonal fishing settlements and fish drying areas;
- e) whether IFC provided CGPL with adequate guidance on the drafting of an Action Plan that met the requirements for specificity set out in Performance Standard 1;
- f) whether IFC exercised due diligence in its review of CGPL's reporting on regulatory and lender E&S requirements;
- g) whether IFC has been sufficiently proactive in engaging with the client to remedy E&S issues that have been identified in project supervision;
- h) whether IFC policies and procedures provide adequate guidance to staff on how to manage E&S risks associated with projects in areas that are in the process of undergoing rapid industrial development with environmental and social consequences to be defined.

The scope of the audit also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

Audit Criteria, Approach and Preliminary Timeline

The audit criteria are the conditions for IFC's involvement, including IFC policies, performance standards, guidelines, procedures, and other requirements. Specifically these include the IFC's Policy and Performance Standards on Environmental and Social Sustainability (2006); the Guidelines on Thermal Power in the Pollution Prevention and Abatement Handbook (1998), the Environmental, Health, and Safety General Guidelines (2007) and relevant provisions of national law.



The approach to the audit is described in the CAO Operational Guidelines (April 2007), and states that the working definition of compliance auditing adopted by CAO Compliance is as follows:

A compliance audit is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the audit criteria.

The audit will typically be based on a review of documents, interviews, observation of activities and conditions, or other appropriate means. The verification of evidence is an important part of the audit process.

The preliminary time schedule is for CAO to have a draft audit report ready by March 2013. CAO's Operational Guidelines state that the draft audit report is to be circulated to senior management of IFC and all relevant departments for factual review and comment. Comments should be submitted in writing to the CAO within 15 working days of receipt by the departments. Upon receiving comments on the draft, CAO Compliance finalizes the report. The final report is submitted to the senior management of IFC for a response. The audit report and any response from IFC is forwarded to the Office of the President of the World Bank Group. Once the President is satisfied with the response by IFC management, the Office of the President provides clearance for the audit report and the response. After clearance, CAO Compliance shares the audit report and the management response with the World Bank Group Board and discloses both documents on the CAO Web site.

As per its established practice CAO will engage an audit panel to work with it on this task. For this particular audit, CAO considers the following as necessary for the audit panel;

- Expertise in the management of environmental risks associated with major infrastructure and/or energy projects, in relation to both air and marine pollution.
- Expertise in the management of social impacts of major infrastructure and/or energy projects, particularly in relation to resettlement and community consultation.
- In depth understanding, experience and knowledge of private sector issues in a development context.
- In depth knowledge of IFC's Performance Standards, applicable Environmental and Social Review Procedures, as well as internal work practices.
- Experience and knowledge of compliance auditing, legal practices, and the complexity of development institutions.