Early Warning System

MIGA-10646

Gulf Power Limited

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Quick Facts

Countries	Kenya
Financial Institutions	Multilateral Investment Guarantee Agency (MIGA)
Status	Approved
Bank Risk Rating	A
Voting Date	2014-04-29
Borrower	Standard Bank
Sectors	Energy
Potential Rights Impacts	Healthy Environment, Labor & Livelihood, Right to Food, Right to Health, Right to Water
Investment Type(s)	Guarantee
Investment Amount (USD)	$ 43.70 million

Project Description

In 2009, Kenya Power and Lighting Company, the national transmission and distribution company of Kenya, invited bids for the design, financing, supply, erection, commissioning, operation, and maintenance of three new 60 to 80 megawatt medium-speed diesel electricity generating plants, which are to be located in the Athi River region, approximately 20 kilometers from Nairobi. Gulf Energy Limited won the bid to build one of the plants, a greenfield (i.e. built on land never developed) 80 megawatt heavy fuel oil diesel power plant, with a 66 kv interconnector and backup-metering equipment on a 20 year build-own-and-operate basis, along the Nairobi-Mombasa highway in the Athi River area of Mavoko Municipality, Kenya. The project will have a 20 year power purchase agreement with Kenya Power and Lighting.

Early Warning System Project Analysis

RISK CATEGORIZATION

The project is a category "A" under MIGA's Policy on Environmental and Social Sustainability. MIGA's categorization is based on an environmental and social impact assessment undertaken by the IFC in 2011. The Board approved IFC funding for the Project in October 2012, and the IFC invested in December 2013. The IFC undertook a pre-investment appraisal mission in November 2013, which confirmed that the 2011 environmental and social impact assessment is still valid as construction has not yet started, environmental and social conditions at the site are consistent with those presented in 2011, and the design of the project has not materially changed. MIGA's assessment of the applicable and social environmental standards is therefore based on the IFC environmental and social impact assessment.

APPLICABLE SOCIAL AND ENVIRONMENTAL STANDARDS

PS1 - Social and Environmental Assessment and Management Systems
PS2 - Labor and Working Conditions
PS3 - Pollution Prevention and Abatement
PS4 - Community Health Safety and Security
PS8 - Cultural Heritage

IFC documentation states that "[t]he key environmental and social impacts include air quality, noise, occupational health and safety, community health and safety, traffic management, hazardous material and waste management, and access to water during both construction and operation." Key pollution issues of concern for construction and operation phases include: air quality (emissions and dust), noise, soil erosion, water supply, hazardous and non-hazardous waste management, workers' accommodation effluent management, solid waste management, drainage and storm water runoff, as well as impact on water quality of Athi river.

IFC documentation states that PS5 (Land Acquisition and Involuntary Resettlement) is not applicable because the Project site land was acquired through a lease agreement with a private owner and no economic or physical resettlement took place. There are currently no economic activities undertaken on the site, however the IFC environmental impact assessment notes traces of pastoralists' cattle routes bordering the site that may have to be rerouted.

Additionally, IFC documentation states that PS6 (Biodiversity Conservation and Sustainable Natural Resource Management) is not applicable because the site is located in a degraded habitat mainly surrounded with commercial and industrial activities as well as the Nairobi-Mombasa highway and a residential development. IFC states that the site is in a semi-arid area which is not optimal for agricultural use due to generally low water content and low natural fertility.

Lastly, IFC documentation states that PS7 (Indigenous Peoples) is not applicable as the site is located in an urban area, and no indigenous peoples were sighted in the area during the environmental impact assessment.

People Affected By This Project

ENVIRONMENTAL AND HUMAN RIGHTS RISK ASSESSMENT

LABOR RIGHTS

IFC documentation stated that the power plant is expected to generate about 100 jobs during the construction phase of the project while another 28 jobs will be created during the operational phase. However, the IFC notes that "[g]iven the high skills generally required for construction and operation of thermal power plants, the number of jobs created at the local community level may be limited. This is likely to lead to discontent in communities if it is perceived that preferential treatment is given to 'outsiders' both in terms of procurement and jobs. Corruption and nepotism could exacerbate this impact."

The following questions may be relevant in determining whether you or your community has suffered a violation of labour rights due to the construction or operation of Gulf Power's heavy fuel oil power plant:

- Are working conditions in this industry safe and healthy?
- What opportunities (legal or other) are available if you consider that your working conditions are not just and favorable?
- Are your wages in connection with the project sufficient to meet your basic needs and those of your family?

RIGHT TO WATER

According to the United Nations Development Assistance Framework for Kenya in 2009-2013, water resources are increasingly being threatened by pollution, degraded catchments and over-exploitation. In most informal settlements, there are very limited facilities for excreta disposal and, due to overcrowding, there is no space for garbage disposal, resulting in poor sanitation. The influx of workers during construction may exceed the capacity of the local area in terms of waste disposal, and result in unsanitary conditions.

According to IFC project documentation, during the construction phase of the power plant, fugitive spills from construction plant and equipment related operations could potentially enter the sub-surface through interstitial spaces and or weathered zones within a rock. These types of spills could potentially impact the perched aquifer. Additionally, the use of construction equipment (excavators, trucks, etc.) poses a risk for leaks of oils and lubricants which could potentially contaminate surface water. Such contamination would threaten an already vulnerable water supply, and result in health risks to employees and any local populations.

The following questions may be relevant in determining whether you or your community has suffered a violation of the right to water due to the construction or operation of Gulf Power's heavy fuel oil power plant:

- Do you have access to water that is safe, affordable and available in sufficient quantity?
- Do you have reasons to believe that your access to water could change as a result of the planned investment project?
- What opportunities (legal or other) are available if you feel that your right to water has been affected?

RIGHT TO HEALTH

According to the United Nations Development Assistance Framework for Kenya in 2009-2013,the population in Kenya is characterized by high mortality rates, low and declining life expectancy, increasing fertility rates, high infant mortality and death rates, and declining population growth rates due to poor health and the AIDS pandemic.

IFC documentation acknowledges that a range of wastes will be generated during the operational phase of the project including domestic waste generated by operational and security personnel, used oil, tank sludge and replacement of components of the power plant infrastructure. Any unmanaged hazardous waste in the form of contaminated water and soil and redundant electronic equipment and computers will pose significant pollution and health risks to an already vulnerable population of employees and any local communities

Investment Description

- Multilateral Investment Guarantee Agency (MIGA)

The investment is a MIGA guarantee of $31.9 million ($43.7 million) for a period of up to 20 years against the risk of war and civil disturbance from the Standard Bank of South Africa to Gulf Power Limited in Kenya.

The MIGA guarantee is against the risk of war and civil disturbance protects against loss from, damage to, or the destruction or disappearance of, tangible assets of the business or the total inability to conduct operations essential to a project's overall financial viability that may be caused by politically motivated acts of war or civil disturbance in the country, including revolution, insurrection, coups d'état, sabotage, and terrorism.

For tangible asset losses, MIGA would pay the investor's share of the lesser of the replacement cost and the cost of repair of the damaged or lost assets, or the book value of such assets if they are neither being replaced nor repaired.

For total business interruption that results from a covered war and civil disturbance event, compensation would be based, in the case of equity investments, on the net book value of the insured investment or, in the case of loans, the insured portion of the principal and interest payment in default.

This coverage encompasses not only violence in the host country directed against a host country government, but also against foreign governments or foreign investments, including the investor's government or nationality.

Temporary business interruption may also be included upon a request from the investor and would cover a temporary but complete cessation of operations due to loss of assets or unreasonably hazardous conditions in the host country, which result in a temporary abandonment or denial of use. For short-term business interruption, MIGA would pay unavoidable continuing expenses and extraordinary expenses associated with the restart of operations and lost business income or, in the case of loans, missed payments.

Private Actors Description

The developer of the Project is Gulf Power Limited (the "Company"), a special purpose company incorporated in Kenya by a consortium of Kenyan investors with a view to enter the power generation business in Kenya.

Private Actor 1	Private Actor 1 Role	Private Actor 1 Sector	Relation	Private Actor 2	Private Actor 2 Role	Private Actor 2 Sector
-	-	-	-	Gulf Power Company	Contractor	-
-	-	-	-	Standard Bank of South Africa Limited	Client	-
-	-	-	-	The Kenya Power and Lighting Company Limited	Contractor	-

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CONSULTATION PROCESS

The IFC environmental and social impact identified a stakeholder consultation plan that include the Mavoko municipality planner, provincial administration-district commissioner, district officer and area, Athi river town community/general public and the village elders within a 5km radius of project site, pastoralists community, social groups, local industries, Kenya Power and Lighting Company staff, chief, and Athi River police. Interviews were conducted with these various stakeholders to assess attitudes toward the proposed Project including a household/residents survey where a random sample of over 100 local residents of different occupational status and gender were engaged.

Comments from stakeholders were also collected from the public consultation hosted by the provincial administration at the Project site in 12 March, 2010 and attended by 145 people. Some of the benefits and key concerns of stakeholders were the creation of jobs for locals, including: non tribal allocation of project benefits; increased security in the area as a result of night lighting; improved housing and infrastructure such as access to water; construction of church, hospitals; sponsoring of local youth activities; protection of health and safety for residents; increased road traffic congestion during fuel deliveries; strains on local resources in particular water; and health and housing facilities due to increased in population.

IFC states that these consultations included the provision of information about the project during the consultation and the stakeholders' comments were judged to be free in their expression. The comments were all positive toward the Project, and no general or specific objections were made.

During development, IFC states that the Company will hire a community liaison person and will work with the community to develop a stakeholder engagement plan, prior to commencement of construction activities, to manage concerns, perceptions and expectation of the communities including Superior Homes. This should include a communication strategy to keep the community informed of the risks and impacts from the Project and the mitigation measures in place; provide regular updates on the Company's action plan with regards to community health and safety matters; advice on employment creation; creation of small businesses through the supply chain opportunities; community development opportunities; and setting up a grievance mechanism.

ACCOUNTABILITY MECHANISM OF MIGA

The Compliance Advisor Ombudsman (CAO) is the independent complaint mechanism and fact-finding body for people who believe they are likely to be, or have been, adversely affected by an IFC or MIGA- financed project. If you submit a complaint to the CAO, they may assist you in resolving a dispute with the company and/or investigate to assess whether the IFC is following its own policies and procedures for preventing harm to people or the environment. If you want to submit a complaint electronically, you can email the CAO at CAO@worldbankgroup.org. You can learn more about the CAO and how to file a complaint at http://www.cao-ombudsman.org/

Campaign Documents

- New report analyses South African banks footprint in SADC mining projects