

ENVIRONMENTAL PUBLIC CONSULTATION ON DEVELOPMENT LMG IMPORT TERMINAL AT PIPAVAV MARINE FACILITY

¹DR. K. N. SHETH, ²DR. K. C. RAVAL

¹Director, Faculty Of Engineering, SSES, Rajpur, Kadi, Dist. Mehsana, (Gujarat) India

²Director, School Of Law, Gujarat University, Ahmedabad, (Gujarat) India

¹profdrknsheth@gmail.com, ²raval1961@gmail.com

ABSTRACT : An attempt is made to study the public consultation process in the prior Environmental Clearance (EC) process for the project of L&G, Import terminal at Pipavav, Marine Facility at Ta: Rajula, Dist. Amreli, Gujarat proposed by M/S Swan Energy Ltd. The process was critically reviewed in accordance with the legal requirements of, "Public Consultation", Clause: 7, third stage as given in the Notification no. SO1533 issued by Ministry of Environment and Forest, New Delhi on 14th September, 2006 in exercise of the powers conferred under Section-3 of Environment Protection Act, 1986. The public has right to know and express their opinions and give their suggestions to the authorities to facilitate sustainable environmental decision. A Public Hearing is a platform for providing reliable, adequate feedback for ensuring an equitable agreement on controversial issues. It has been reported that the Public hearing in case under review as it appears from the record that it was not found to be fair and legitimate. Sarpanch, Gram Panchayat and public present in hearing appealed in writing to postponed hearing and they protested against the project. The scheduled time of the hearing was 12.30 hours but hearing could be commenced only at 17.45 hours and it appeared that the Public hearing session was not found to be interactive and open. Public Participation was found to lack adequate mechanism and forums for informed dialogues among stake holders.

Key words : EIA Public Hearing, Ministry of Environment and Forest, Environmental Protection Act, 1986

1.INTRODUCTION

Environmental Impact Assessment (EIA) is one of the proven tools to achieve the goal of environmentally sustainable development. Ministry of Environment and Forest have imposed certain restriction and prohibition on new projects or activities or modernization of existing projects based on their potential Environmental Impacts by issuing a Notification under Environment Protection Act, 1986.

In exercise of powers conferred by Sub Section-1 and Clause-V of the Sub Section-2 of Section-3 of the Environment Protection Act, 1986 read with Clause-d of sub rule-3 of rule-5 of Environment Protection Act Notification no. SO1533 dated 14th September, 2006, Central Government has imposed certain restrictions and prohibitions on new projects or activities or modernization of existing projects listed in the schedule to the notification requires to be taken after the prior environmental clearance from the Central Government or as the case may be by the 'State Level Assessment Authority' constituted by the central Government under sub section3 of section-3 of the said Act must follow the procedure specified in the said notification. Rule 7 of the Notification requires that four stages in the prior Environmental

Clearance (EC) process wherein stage (3) is public consultation.

Stage (3) - Public Consultation:

i. "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following:-

- a. Modernization of irrigation projects (item 1(c) (ii) of the Schedule).
- b. All projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.
- c. Expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.
- d. All Building /Construction projects/Area Development projects and Townships (item 8).
- e. All Category 'B2' projects and activities.
- f. All projects or activities concerning national defense and security or involving other strategic

considerations as determined by the Central Government.

ii. The Public Consultation shall ordinarily have two components comprising of:-

a. A public hearing at the site or in its close proximity- district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

b. Obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

c. The public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee

d. (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant.

e. In case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

f. If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

g. For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about

the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

h. After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

2. PRESCRIBED PROCEDURE FOR CONDUCT OF PUBLIC HEARING

1.0 The Public Hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest possible public participation at the project site(s) or in its close proximity District-wise, by the concerned State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC).

2. 0 The Process:

2.1. The Applicant shall make a request through a simple letter to the Member Secretary of the SPCB or Union Territory Pollution Committee, in whose jurisdiction the project is located, to arrange the public hearing within the prescribed statutory period. In case the project site is extending beyond a State or Union Territory, the public hearing is mandated in each State or Union Territory in which the project is sited and the Applicant shall make separate requests to each concerned SPCB or UTPCC for holding the public hearing as per this procedure.

2.2. The Applicant shall enclose with the letter of request, at least 10 hard copies and an equivalent number of soft (electronic) copies of the draft EIA Report with the generic structure given in Appendix III including the Summary Environment Impact Assessment report in English and in the local language, prepared strictly in accordance with the Terms of Reference communicated after Scoping (Stage-2). Simultaneously the applicant shall arrange to forward copies, one hard and one soft, of the above draft EIA Report along with the Summary EIA report to the Ministry of Environment and Forests and to the following authorities or offices, within whose jurisdiction the project will be located:

a. District Magistrate/s

- b. Zila Parishad or Municipal Corporation
- c. District Industries Office
- d. Concerned Regional Office of the Ministry of Environment and Forests

2.3 On receiving the draft Environmental Impact Assessment report, the above-mentioned authorities except the MoEF, shall arrange to widely publicize it within their respective jurisdictions requesting the interested persons to send their comments to the concerned regulatory authorities. They shall also make available the draft EIA Report for inspection electronically or otherwise to the public during normal office hours till the Public Hearing is over. The Ministry of Environment and Forests shall promptly display the Summary of the draft Environmental Impact Assessment report on its website, and also make the full draft EIA available for reference at a notified place during normal office hours in the Ministry at Delhi.

2.4 The SPCB or UTPCC concerned shall also make similar arrangements for giving publicity about the project within the State/Union Territory and make available the Summary of the draft Environmental Impact Assessment report (Appendix III A) for inspection in select offices or public libraries or panchayats etc. They shall also additionally make available a copy of the draft Environmental Impact Assessment report to the above five authorities/offices viz, Ministry of Environment and Forests, District Magistrate etc.

3.0 Notice of Public Hearing:

3.1 The Member-Secretary of the concerned SPCB or UTPCC shall finalize the date, time and exact venue for the conduct of public hearing within 7 (seven) days of the date of receipt of the draft Environmental Impact Assessment report from the project proponent, and advertise the same in one major National Daily and one Regional vernacular Daily. A minimum notice period of 30 (thirty) days shall be provided to the public for furnishing their responses;

3.2 The advertisement shall also inform the public about the places or offices where the public could access the draft Environmental Impact Assessment report and the Summary Environmental Impact Assessment report before the public hearing.

3.3 No postponement of the date, time, venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and only on the recommendation of the concerned District Magistrate the postponement shall be notified to the public through the same National and Regional vernacular dailies and also prominently displayed at all the identified offices by the concerned SPCB or Union Territory Pollution Control Committee;

3.4 In the above exceptional circumstances fresh date, time and venue for the public consultation shall be decided by the Member –Secretary of the concerned SPCB or UTPCC only in consultation with the District Magistrate and notified afresh as per procedure under 3.1 above.

4.0 The Panel:

4.1 The District Magistrate or his or her representative not below the rank of an Additional District Magistrate assisted by a representative of SPCB or UTPCC, shall supervise and preside over the entire public hearing process.

5.0 Videography:

5.1 The SPCB or UTPCC shall arrange to video film the entire proceedings. A copy of the videotape or a CD shall be enclosed with the public hearing proceedings while forwarding it to the Regulatory Authority concerned.

6.0 Proceedings:

6.1 The attendance of all those who are present at the venue shall be noted and annexed with the final proceedings.

6.2 There shall be no quorum required for attendance for starting the proceedings.

6.3 A representative of the applicant shall initiate the proceedings with a presentation on the project and the Summary EIA report.

6.4 Every person present at the venue shall be granted the opportunity to seek information or clarifications on the project from the Applicant. The summary of the public hearing proceedings accurately reflecting all the views and concerns expressed shall be recorded by the representative of the SPCB or UTPCC and read over to the audience at the end of the proceedings explaining the contents in the vernacular language and the agreed minutes shall be signed by the District Magistrate or his or her representative on the same day and forwarded to the SPCB/UTPCC concerned.

6.5 A Statement of the issues raised by the public and the comments of the Applicant shall also be prepared in the local language and in English and annexed to the proceedings.

6.6 The proceedings of the public hearing shall be conspicuously displayed at the office of the Panchayats within whose jurisdiction the project is located, office of the concerned Zila Parishad, District Magistrate, and the SPCB or UTPCC. The SPCB or UTPCC shall also display the proceedings on its website for general information. Comments, if any, on the proceedings which may be sent directly to the concerned regulatory authorities and the Applicant concerned.

7.0 Time period for completion of public hearing:

7.1 The public hearing shall be completed within a period of 45 (forty five) days from date of receipt of the request letter from the Applicant. Therefore the SPCB or UTPCC concerned shall sent the public hearing proceedings to the concerned regulatory authority within 8(eight) days of the completion of the public hearing .The applicant may also directly forward a copy of the approved public hearing proceedings to the regulatory authority concerned along with the final Environmental Impact Assessment report or supplementary report to the draft EIA report prepared after the public hearing and public consultations.

7.2 If the SPCB or UTPCC fails to hold the public hearing within the stipulated 45 (forty five) days, the Central Government in Ministry of Environment and Forests for Category 'A' project or activity and the State Government or Union Territory Administration for Category 'B' project or activity at the request of the SEIAA, shall engage any other agency or authority to complete the process, as per procedure laid down in this notification.

3.THE PROPOSER - SWAN ENERGY LTD.

Swan Energy Ltd. established in 1909 listed with Bombay Stock Exchange and had composite textile manufacturing facilities. The process house comprising spinning, weaving, processing and Tyre Cording designed and developed by Swan Energy Ltd. are of International standards and are said to be eco friendly and has been in Narol, in the heart of Ahmedabad.

Swan Energy Limited (SEL) has tied up with Gujarat State Petroleum Corporation Limited (GSPC) for the proposed 700 MW Gujarat Pipavav Power Corporation (GPPC) gas based power plant at Pipavav. This 700 MW gas-based combined cycle power plant requires approximately 0.8 MTPA of natural gas. It is also proposed to expand the capacity of the GPPC to 1,050 MW and 2,100 MW in further phases that will need an additional 1.6 MTPA of gas.

In order to supply LNG to GPPC and other users, it is proposed to construct an LNG Import Terminal at Pipavav, District Amreli, and Gujarat for a throughput capacity of 3 MTPA of natural gas in the initial phase with a potential to be increased to 10 MTPA. The LNG gas will be supplied to GPPC and will also be connected to the GSPC pipeline for other users in Gujarat. The proposed LNG import terminal promoted by SEL will be amalgamated within the existing operations of Gujarat Pipavav port Limited (GPPL) with the expansion of the GPPL port limits with the required Gujarat Maritime Board (GMB) approvals.

4.CRITICAL REVIEW OF THE PROCESS OF PUBLIC CONSULTATION

The said project is covered under Category A of the Notification no. SO1533 dated September, 14, 2006 as amended of MoEF, Government of India, New Delhi. A copy of the draft Environment Impact Assessment report and the Summary Environment Impact Assessment Report was sent to the following authorities or offices to make available the draft EIA Report for inspection to the public during normal office hours, till the Public Hearing is over. EIA report comprising of the terrestrial component was prepared by M/s Enkay Enviro Services Pvt. Ltd and the marine component by Indomer Coastal Hydraulics (P) Ltd., Chennai, under the overall coordination of BMT Consultants India Pvt. Ltd.

- 1)The District Collector Office, Amreli
- 2)District Development Officer, Amreli
- 3)District Industry Centre, Amreli
- 4)Taluka Development Officer, Rajula, Dist Amreli
- 5)The Chief Conservator of Forests, Bhopal
- 6)Regional Office, GPCB, Bhavnagar

1.Public hearing was not conducted within 30 days.

The Public hearing was conducted on 8th April, 2012. The Public hearing should be conducted within 30 days of the application made by the proponent. The Public Hearing was scheduled on date: 28.12.2011, which was postponed due to Election and scheduled on date: 07.03.2012, which was again postponed due to Holi Festival and again scheduled on date:18.04.2012, at 12.30 Hrs at Gujarat Pipavav Power Corporation (GPPC) Nr Ultratech Cement Plant, Village: Kovaya, Ta: Rajula, Dist: Amreli, Gujarat. An advertisement was published in Indian Express (English) and Saurashtra Samachar(Gujarati) News Paper initially on date: 26.11.2011 for hearing on date: 28.12.2011 which was re-advertised on date:05.02.2012 for hearing on date:07.03.2012. Again it was re-advertised on dated: 07.03.2012 for hearing on date: 18.04.2012.

2.The proceeding started under extremely turbulent condition.

The public protested for postponing the hearing before government authorities for many hours. This connoted that the public had no trust in the proceedings. Public thought that two way communications will not be possible.

3.The commitment from the proposers was not found to be firm.

The answers given orally as well as in writing as reflected in the proceedings were not found to be encouraging. The answers given by the proposer do not show any dedication towards the socio-economic development of the villages. It has been stated that

the development will be considered as a Corporate Social Responsibility

4. Participants need learning and understanding the relevant issues.

The villagers who participated in EIA public hearing do not go with all understanding of relevant issues. They neither prepare in advance nor possess skills to present the issues systematically. The notice was given well in advance if all important issues were discussed by a coordinated approach; their 'Voice' could have been felt.

5. FINDINGS:

1. In the procedure for conducting the public hearing the clause 3.3 (Appendix 4, Para 7, Pg. 3, Public Consultation) It has been very clearly stated, "No postponement of the date, time, venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and only on the recommendation of the concerned District Magistrate the postponement shall be notified to the public through the same National and Regional vernacular dailies and also prominently displayed at all the identified offices by the concerned SPCB or Union Territory Pollution Control Committee".

In this case, the first postponement which was on account of election is justified. However, on other postponement due to Holi is difficult to be justified.

2. In the procedure for conducting the public hearing the clause 6.4, it has been stated as under:

"Every person present at the venue shall be granted the opportunity to seek information or clarifications on the project from the Applicant. The summary of the public hearing proceedings accurately reflecting all the views and concerns expressed shall be recorded by the representative of the SPCB or UTPCC and read over to the audience at the end of the proceedings explaining the contents in the vernacular language and the agreed minutes shall be signed by the District Magistrate or his or her representative on the same day and forwarded to the SPCB/UTPCC concerned."

If the Proceedings of the Gujarat Pollution Control Board are read between the lines, then it will be observed that the 'public' who participated in hearing were not in full agreement with the proposer. They initially resisted to the public hearing itself but ultimately surrendered before the Government authorities. As such no firm commitment is found to exist from the proposer. It is difficult to arrive at conclusion that EIA and PH in this case will attain the goal of environmentally and socially sound and sustainable.

3. The basic purpose of the Public consultation is not achieved. The law does not provide for such environmental practices where public during the hearing remain controversial. Public participation looks adequate provision to ensure that input gained through Public Participation makes real making in decision making outcomes.

4. The majority of the participants as reflected from the proceedings of GPCB were villages – it appears that the participants had enough time to fully understand the relevant issues of EIA to be raised systematically in Public hearing. The participants have knowledge but they have not been able to put forth their arguments in concrete form. They have been found emotionally involved but do not have required skills of systematic presentation.

6. REFERENCES:

1. S.O. 1533 Notification of Ministry of Environment and Forest dated 14th September, 2006 (revised) Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), New Delhi.
2. <http://swan.co.in/index.php>
3. Executive Summary, Environment Impact Assessment, on Development of LNG Import Terminal at Pipavav Marine facility, August 2011
4. http://gpcb.gov.in/pdf/Swan_Energy_Ltd_Exe_Sum_Eng_and_Guj.pdf