

Report No. 40213-AL

The Inspection Panel 

Report and Recommendation

**ALBANIA: Power Sector Generation
and Restructuring Project
(IDA Credit No. 3872-ALB)**

July 2, 2007

The Inspection Panel
Report and Recommendation
on
Request for Inspection

ALBANIA: Power Sector Generation and Restructuring Project
(IDA Credit No. 3872 ALB)

1. On April 30, 2007, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) dated April 30, 2007, related to the Albania Power Sector Generation and Restructuring Project (the “Project”) financed by the International Development Association (IDA)¹ (Credit No. 3872 ALB). The Request was submitted by Mr. Lavdosh Ferruni, on behalf of the Civic Alliance for the Protection of the Bay of Vlora (CAPBV). On May 2, 2007, the Panel received a second document containing evidence of Mr. Ferruni’s authority to represent eight persons who live in the city of Vlora² and who claim to be affected by the Project.³
2. On May 2, 2007, the Panel registered the Request and notified the Executive Directors and the President of the International Development Association (IDA) that it had registered the Request.⁴ The Panel received Bank Management’s Response to the Request for Inspection on June 1, 2007 (the “Management Response”).
3. As provided in paragraph 19 of the 1993 Resolution establishing the Inspection Panel (the “Resolution”)⁵, the purpose of this report is to determine the eligibility of the Request and make a recommendation to the Executive Directors as to whether the matters alleged in the Request should be investigated.

A. The Project

4. The development objective of the Project is “*to achieve significant improvement in power system performance through: (a) priority investments to increase*”

¹ For the purposes of this Report, the IDA is also referred to as the “Bank”.

² The city is referred to as Vlora or Vlore in different documents. This report uses “Vlora.”

³ These eight persons, Civic Alliance for the Protection of the Bay of Vlora (CAPBV) and Mr. Lavdosh Ferruni, collectively hereinafter referred to as the “Requesters.”

⁴ The Inspection Panel, Operating Procedures (August 1994) (hereinafter “the Operating Procedures”), at ¶ 17.

⁵ International Development Association (IDA) Resolution 93-6, dated September 22, 1993.

*domestic thermal generation; and (b) measures to implement sector reforms and institutional strengthening.”*⁶ The objective is to be achieved through two Project components: a combined-cycle power station, and technical assistance and training.

5. The first component includes the “*construction of a combined-cycle power station (Vlore Thermal Power Plant) at a six-hectare Greenfield site about 6 km north of Vlora adjacent to an oil tanker terminal*” and the “*rehabilitation of the adjacent oil tanker terminal, and connection to the transmission network.*” The second component includes the “*provision of technical assistance to the Albanian Power Corporation (KESH) for the implementation of the Project, improvement of operation of KESH and sector reforms and provision of training to KESH in procurement and environmental management.*”⁷
6. According to the Project Appraisal Document (PAD), Vlora Thermal Power Plant would be designed to allow conversion to natural gas if and when imported gas is brought to Albania. The plant size would be 85 MW – 135 MW depending on the evaluation of bids.
7. Management of the implementation of the Project would be carried out by the Albanian Power Corporation (KESH). The Vlora Thermal Power Plant would be owned and operated by a separately incorporated enterprise, with all of its shares held by KESH. There would be a power purchase agreement between the company and KESH, probably with a guaranteed take-or-pay arrangement for a limited period and a provision for automatic adjustments to reflect variations in the price of imported distillate oil⁸.

B. Financing

8. The total Project cost is estimated to be US\$112.66 million. The estimated cost of the Project includes US\$3 million for the refurbishment of the existing oil tanker terminal and US\$4.4 million for connection to the Albanian transmission system at the planned Babica 220/110kV substation located seven km away. The total Project cost also includes US\$4.85 million for technical assistance and training. The Project is being financed through an IDA Credit equivalent to US\$25 million (SDR 16.9 million)⁹, an European Bank for Reconstruction and Development (EBRD) loan in an amount of US\$37.5 million, and an European Investment Bank (EIB) loan in an amount of US\$37.5 million. KESH is contributing

⁶ Project Appraisal Document on a Proposed Credit in an amount of SDR 16.9 million (US\$ 25 million equivalent) to Albania for the Power Sector Generation and Restructuring Project, dated February 17, 2004, hereinafter “PAD”, pg.2.

⁷ Development Credit Agreement between Albania and International Development Association for Power Sector Generation and Restructuring Project dated April 6, 2004, pg.14.

⁸ According to the PAD, this arrangement will provide for “*a track record of the financial performance of the subsidiary company...*” and “*could facilitate its subsequent privatization*” (PAD, pg18).

⁹ The IDA Credit was relented to KESH for 20 years with a 5 year grace period and an interest rate equal to the six-month US Dollar Libor rate plus 0.75%.

US\$12.66 million to the Project cost. The IDA Board of Executive Directors approved the Credit on March 16, 2004; it became effective on January 25, 2005. The Project Closing Date is January 31, 2008. As of May 2, 2007, SDR 450,000, or about 2.7% of the IDA Credit, had been disbursed.

B. The Request

9. According to the Request, *“if built, the Vlora Thermal Power Plant will destroy environment, tourism, safe fisheries, natural habitat, ecosystem, coral colonies as well as the unique historical and cultural significance of the entire Vlora Bay and Narta Lagoon.”*¹⁰ The Request states that, *“the Environmental Impact Assessment, in [sic] which the Bank has based its loan, refers only to one thermal power plant of 100 MW, while in the decision of the Government No. 610 dated 09/21/2004 - which the Bank is or should have been aware of - it is explicitly written that it is agreed to reach a capacity of 300 MW in next phases.”* The Request further indicates that *“the Government approved (Law No. 9231 dated 05/13/2004) just one km far from Vlora Thermal Power Plant a concessional agreement of building of [a] large oil storage deposit in the Vlora Bay.”*
10. According to the Request, *“the procedures concerning the Vlora Thermal Power Plant were already found in violation of Article 6 of the Aarhus Convention on Access to Information, Public Participation and Access to Justice, as determined by the Aarhus Convention Compliance Committee in its Draft Finding and Recommendations of March 23, 2007.”*
11. The Requesters have confirmed that they contacted Bank Management on several occasions.¹¹ However they are not satisfied with the answers and explanations provided. The Requesters assert that the Bank Management failed to consider the fact that: *“(a) the Project is based on the material misrepresentation of the site; (b) the Environmental Impact Assessment upon which the Bank’s loan was based was misleading, illegal and wrong; and (c) the Bank’s procedure leading to the Project is in violation of Albania’s laws on environment, public participation, cultural heritage and Environmental Impact Assessment, as well we the EU’s laws and guidelines.”*¹²
12. In their Request to the Inspection Panel, the Requesters asked the Panel to recommend to the Board of Executive Directors of the World Bank that an investigation be conducted on the alleged matters.

¹⁰ Request for Inspection, letter dated April 30, 2007, para. 3, p.1

¹¹ Letter to Orsalia Kalantzopoulos and Nadir Mohammed dated June 20, 2005; letters to Shigeo Katsu during the year of 2006 by Dr. Anna Kohen, Honorary Citizen of Vlora and Honorary Member of Civic Alliance for the Protection of the Vlora Bay; and meetings in Tirana with Orsalia Kalantzopoulos, Nadir Mohammed and Arlene Fleming.

¹² Request for Inspection, letter dated April 30, 2007, para. 5, p.2

13. In the Notice of Registration the Panel noted that the above claims may, *inter alia*, constitute non-compliance by the Bank with various provisions of the following Operational Policies and Procedures:

O/S 2.20	Project Appraisal
OP/BP 4.01	Environmental Assessment
OP/BP 4.04	Natural Habitats
OP/BP 4.12	Involuntary Resettlement
OP/BP 10.04	Economic Evaluation of Investment Operations
OPN 11.03	Management of Cultural Property in Bank-Financed Projects
OP/BP 13.05	Project Supervision

C. Management Response

14. On June 1, 2007, Management submitted its Response to the Request for Inspection.¹³ The Response addresses key issues raised by the Requesters. The Response includes 6 annexes.
15. The Response states that Albania has suffered from electricity shortages since the summer of 2000, which is due to growth in electricity demand and impacts from adverse hydrology on Albania's predominantly (95 percent) hydropower-based system. Management states that since 1997, Albania has had to import significant quantities of electricity. At the end of 2006, and as recently as January 2007, the country has suffered from significant power supply disruptions.¹⁴
16. Management states that the electricity crisis has had multiple adverse impacts on the poor. Management further notes that the use of budgetary resources for electricity imports means that funds are diverted from poverty reduction efforts.
17. The Response states that Albania's electricity needs are supplied almost solely by hydropower, which is subject to considerable variability since it is dependent on rainfall. Management states that "*the average generation in a normal hydrological year is about 4,000 GWh, compared to current demand of about 6,800 GWh.*"¹⁵ Management asserts that domestic thermal generation capacity is needed to reduce dependence on the import of electricity and to diversify domestic generation.
18. Management states that following the request of the Government of Albania to assist in arranging donor financing for a new thermal electric power plant (TEP), the Bank initiated discussions with EIB and EBRD regarding co-financing of a TEP, and informed the Government in January 2002 that the three institutions

¹³ Bank Management Response to Request For Inspection Panel Review of the Albania: Power Sector Generation and Restructuring Project (IDA Credit No. 3872 ALB), June 1, 2007.

¹⁴ Management Response, ¶ 6.

¹⁵ Management Response, ¶ 9.

- were prepared to assist in financing the Project. Management states that in 2002 an internationally recognized consulting firm prepared a siting and feasibility study of the proposed TEP with financing from the United States Trade and Development Agency (USTDA), and that this consulting firm also prepared the environmental assessment of the Project in 2003.¹⁶
19. Management notes that in January 2003, the European Commission and Albania started negotiations on a Stabilization and Association Agreement. Management states that the Albanian system needed to be interconnected with the Union for the Coordination of Transmission of Electricity (UCTE), which is the association of transmission system operators in continental Europe. Management further states that maintaining UCTE interconnection required Albania to meet a number of conditions and one of these conditions was the commissioning of the Vlora TEP.¹⁷
20. Management states that based on a review of available TEP unit sizes from different manufacturers, bids were invited for a capacity between 85 MW and 135 MW, and the contract was awarded for a thermal power plant of 97 MW capacity.¹⁸ Management notes that construction of a thermal plant in the southern part of the country will reduce technical losses and significantly improve the security and quality of supply in the country overall and in particular in the south, which is poorly served at present. Management states that the TEP is designed to allow conversion to natural gas if and when it is imported to Albania.
21. According to Management, an analysis of alternatives was carried out as part of the Project appraisal process, and four sets of alternatives to the Project were considered. Management further notes that the Project feasibility study considered other sites and it also considered other fuels as alternatives to the use of distillate oil in a combined-cycle generating unit at Vlora (site B). The other sites investigated were: Durres, Elbasan, Fier, Korce, Shengjin, and Vlora (site A).¹⁹ Management notes that the sites were evaluated on the basis of ten criteria, each assigned a different weight. Management indicates that the Vlora (site B) and Fier sites were found to be best from a transmission perspective. Management further notes that there was a close correspondence between the ordering of the sites on the basis of the ten criteria and the ordering on the basis of “levelized” cost alone.²⁰ Management states that in both cases, the recommended Vlora site was ranked first over the site at Fier, which was ranked second.²¹
22. Management indicates that the total amount of financing for the contract of the TEP is currently expected to be EUR92 million (approximately US\$123.3 million). Management states that based on the awarded Engineering, Procurement

¹⁶ Management Response, ¶ 12.

¹⁷ Management Response, ¶ 14.

¹⁸ Management Response, ¶ 15.

¹⁹ Management Response, ¶ 26.

²⁰ Management Response, ¶ 31.

²¹ Management Response, ¶ 30-31.

- and Construction (EPC) contract, the cost of the power station project includes: (i) an offshore oil tanker terminal; (ii) an undersea pipeline; and (iii) fuel storage facilities. It also includes a connection to the Albanian transmission system at the Babica 220/110 kV substation located seven kilometers away. The Project also includes funding for technical assistance and training.²²
23. Management indicates that the Project was assigned a “Category A” rating for Environmental Assessment (EA), because it recognized the potential significant impacts on the environment and the need for avoidance, mitigating and monitoring measures. Particular areas of concern include the impacts on air quality from stack emissions, water quality from cooling water discharge, and any ancillary impacts on the Narta lagoon, which according to Management is located about two kilometers from the Project site.
24. Management states that the key safeguard policies that were investigated for relevance under the EA (OP 4.01) process included Natural Habitats (OP 4.04), due to the proximity of the Narta lagoon (since then designated for protection) and Involuntary Resettlement (OP 4.12), due to the possible need for land acquisition for transmission line towers. Management further states that during Project preparation review and after consultations on the protected area around the Narta lagoon with the United Nations Development Programme (UNDP), it was found that the potential impacts on natural habitats would not be significant and hence the Bank’s safeguard policy would not be applicable.
25. The Response notes the Requesters’ concern that one or more additional TEPs would raise generation capacity at the selected Vlora site to as much as 300 MW.²³ Management states that the Project documentation shows the Vlora site could physically accommodate additional units for a total installed capacity of 300 MW. Management further states that *“the Project being financed by the Bank, EBRD and EIB is limited to one facility of 97 MW capacity and the final EA focused on that only.”* Management adds that *“if the Government decides to proceed with additional generation units (either at the Vlore site or another location), then a new comprehensive EA will be required.”*²⁴
26. The Response addresses the Requesters’ concerns regarding: (i) a proposed major industrial or “energy park;” and (ii) a proposed oil storage facility operated on a concession basis and located at a partially-built site south of the Vlora TEP, stating that, to Management’s knowledge, the proposal for the energy park never advanced to the pre-feasibility stage and that a proposed onshore oil terminal concession is not related to the Project, which will have its own independent offshore terminal, pipeline and storage tanks. Management indicates that, in its view, Project due diligence for unassociated investments in the general Project area did not need to be carried out by the Bank.

²² Management Response, ¶ 18.

²³ Management Response, ¶ 49.

²⁴ Management Response, ¶ 52.

27. In its Response, Management agrees that there was insufficient coverage in the EA on the matter of the review of potential cultural property. Management indicates that when this issue was subsequently raised, it carried out a supervisory visit was carried out in July 2006.²⁵ Management notes that as a result of the visit, it concluded *“that the site is not of archaeological significance due to the known locations of the ancient city sites in the Vlore Bay region and the lack of any evidence of human habitation during digging for the adjacent fishing harbor in the early 1980s and beyond. Consequently a surface survey of the selected site prior to the start of construction is neither necessary nor justifiable.”*²⁶
28. With respect to the Requesters’ concern of the Project’s potential impacts on ecosystems (i.e. *“fisheries, natural habitat, ecosystem, coral colonies”*), Management states that the EA and measures to be taken during implementation are adequate. Management indicates that the Project site is outside the protected area around the Narta lagoon, designated as such in 2004 by the Government, and is not anticipated to have an impact on this area.
29. Management states that the issue of tourism potential is not covered directly by Bank safeguard policies, but only indirectly through related issues such as potential impacts on cultural property and natural habitats. Management notes that while tourism adjoining the immediate site could possibly be reduced, the benefit of more reliable power in the Vlora area (and generally in the southern part of Albania) for tourism *“is undeniable.”*
30. Management indicates that the Bank Policy on Involuntary Resettlement was “triggered” and a Policy Framework for Land Acquisition was included in the PAD and disclosed. Management notes that this Framework was needed to address the very small amount of land that will need to be acquired for transmission line towers and not for the TEP itself. Management states that the land acquisition will not lead to actual displacement of households or businesses, since acquisition of privately held land is unlikely.
31. Management asserts that the EA was carried out *“in full compliance”* with relevant EU laws and guidelines. In addition, Management notes that the approach to due diligence followed by EBRD and EIB is heavily influenced by EU Directives. Management states that the Requesters’ claim that the Project violates Albanian laws on environment and public participation is not supported by legal citations and that the Government has stated that all Albanian legal requirements have been complied with in approving the Project and issuing the relevant licenses.
32. Management addresses the draft findings of the Aarhus Convention Compliance Committee and states that the Bank’s safeguard policy framework supports the Convention by, among other items, seeking early and meaningful dialogue.

²⁵ Back-to-Office Report on Cultural Property Issues, July 2006 included as Annex 3 to Management Response.

²⁶ Management Response, ¶ 56.

Management states its belief that the process leading up to the Project respected the requirements of the Aarhus Convention.²⁷

D. Eligibility

33. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,²⁸ and recommend whether the matter alleged in the Request should be investigated.
34. The Panel has reviewed the Request and Management's Response. Panel Member Tongroj Onchan, together with the Panel's Deputy Executive Secretary Dilek Barlas and expert consultant Eduardo Abbott, visited Albania from June 24 to June 30, 2007. During their visit, the Panel Team met with a wide array of Project stakeholders, including the Requesters, national, local and Project authorities, members of the Albanian Academy of Sciences, local professionals, including architects, engineers, journalists, archeologists and lawyers, members of the association of tourist and hotel entrepreneurs, student leaders, and numerous members of local NGOs and the community. The Panel also met with the Project Task Team Leader in the Bank Country Office of Tirana. The Panel Team visited the Project site, the city of Vlora, and the Fier site.
35. The Panel wishes to thank all those who facilitated the Panel Team's visit, especially the Civic Alliance for the Protection of the Bay of Vlora (CAPBV), officials of the Ministry of Finance, Ministry of Economy, Trade and Energy, KESH, the World Bank Country Office in Tirana and the many academics and members of civil society who met with the Panel Team in Manhattan, Tirana, Vlora, and the Project site.
36. Based on the reasons set forth below, the Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
37. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The persons who signed the Request have, and/or represent people who have, common interests and concerns related to the Project, and reside in the Borrower's territory, as required by Paragraph 9(a).
38. The Panel notes that the Request "*assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect upon the requesters*" as required by Paragraph 9(b).

²⁷ Management Response, ¶ 62.

²⁸ Conclusions of the Board's Second Review of the Inspection Panel (the "1999 Clarifications"), April 1999.

39. The Panel has reviewed the claims and the Management Response carefully in relation to this criterion. The Panel also gathered relevant information during its eligibility visit to Albania, particularly through its visit to the Project area, the proposed alternative Project site in Fier, and its meetings with Requesters, other members of civil society and local communities that might be affected by the Project, who reiterated the claims of non-compliance by the Bank with its own operational policies and procedures, and related harm.
40. The Panel wishes to emphasize that it recognizes the immediate importance of developing sources of electricity for Albania, which the Requesters also recognize. However, the Requesters have expressed serious concern about the construction of the TEP in Vlora. They claim that the Project will cause very significant harm to the environment, ecology, tourism of Vlora Bay area and Narta Lagoon, sites of great ecological, historical and cultural importance.
41. The Requesters and Management have advanced conflicting assertions regarding a number of important issues. Some of these issues are highlighted below.

Environmental Assessment

42. **Analysis of Alternative Sites.** The Requesters have expressed serious concerns about the adequacy of Management's consideration of other sites than Vlora. In its Response, Management states that seven candidate locations for a thermal power plant were evaluated on the basis of ten weighted criteria, including environmental and social factors. The Panel notes that Management indicates that *"there are no internationally standardized approaches to conducting such site rankings, and other evaluators might have chosen different ranking factors or weightings."*²⁹ The Panel notes that the Requesters dispute this notion and during the Panel visit stated that these criteria were chosen to justify the selection of the Vlora site. They claim that based on an appropriate selection criteria the best and most effective option would not be the building of a new plant at Vlora, but the rehabilitation of the existing power plant in Fier, a town 20 miles north-west of Vlora.
43. During its visit, the Panel Team noted that the selection of Vlora as the Project site is a source of significant dispute and controversy for the local community of Vlora. Some of the concerns expressed to the Panel Team relate to the potential harm to be caused by the TEP emissions both in the water and air which, because of prevailing winds and currents, will affect the enclosed Vlora Bay and contaminate the Vlora city air. These effects will have a negative impact not only on local population and fishing but also on the tourism industry which is an important source of employment and income in the area. The Requesters stated that the prospect of economic growth of the area is mostly based precisely on the activities to be harmed by the Project, namely tourism and fishing.

²⁹ Management Response, ¶ 47.

44. The Requesters have also expressed concern about the adequacy of Management's assessment of other fuels as alternatives to the use of distillate oil. Management states that the use of natural gas, indigenous coal and heavy fuel oil was considered. Management indicates that the option of a natural gas-fired combined-cycle unit at each of the proposed sites was found to be more costly than the distillate fuel option but that, if and when imported natural gas is brought to Albania, the Vlora plant could be readily converted to gas.
45. **Project Site Characterization.** The Panel notes the Requesters claim that the EA misrepresents the Project site. The Requesters' objection to the representation of the site in the EA as "*green field site ... relatively barren coastal area with little vegetation or wildlife.*" The Requesters note the proximity of the Project site to the Narta Lagoon, which is a protected area composed of beaches, sand dunes, forests and wetlands and is home to a number of endangered species. The Requesters assert that the area is sanctuary to important animals, plants and coral colonies, which might be significantly harmed by the Project. They allege that this was not considered during the preparation of the EA. The Panel notes Management's statement that the EA provided sufficient in-field review and site characterization and that where field data was missing reasonable surrogates were chosen. It adds, though, that the EA does rely on a certain level of reconnaissance level information on some topics, which will need to be refined as implementation progresses. Management adds that it "*sees no appreciable gains from an examination of additional project possibilities or choices selected.*"³⁰

Public Consultation and Disclosure

46. The Requesters assert that no adequate public consultation was carried out during the preparation of the Project. They claim that most of the meetings were not properly advertised, the information provided incomplete and, that in any event most of the meetings took place after the selection of the Project site had been approved by Government authorities.
47. In its Response, Management states that a public meeting was held in Vlora in October 31, 2002 to discuss the findings of the final siting study (dated October 21, 2002), and the draft feasibility study (dated August 6, 2002) including a detailed preliminary environmental analysis and a draft outline of an EA. Management indicates that following the standard Bank procedures for Category A projects, public consultations were held at the early EA preparation stage on April 2, 2003 and draft EA report stage on September 3, 2003.
48. The Requesters note that on April 27, 2005, they submitted a communication to the Aarhus Convention³¹ Compliance Committee ("the Committee") with regard

³⁰ Management Response, ¶ 55.

³¹ Aarhus Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, 25 June 1998, ECE/CEP/43 (hereinafter "Aarhus Convention").

- to compliance by Albania with its obligations under the Aarhus Convention concerning public access to information and participation in decision-making on the construction of an industrial park and a thermal power plant.³²
49. The draft findings of the Committee dated March 23, 2007, with regard to the decision³³ on the approval of the construction site of the thermal power plant in Vlora, were attached to Management Response.³⁴
50. The Panel notes that the draft findings the Committee, with regard to Decision No. 20, which established the site of the thermal power plant at Vlora, state that *“the only element of public participation in this phase of the process appears to have been the public meeting that took place in Vlora on October 31, 2002.”* The Panel also notes the Committee’s draft finding that *“the obscure circumstances around the meeting in October 2002, and the failure of the Party concerned to provide anything to substantiate the claim that the October meeting was duly announced and open for public participation, clearly point to the conclusion that the Party concerned failed to comply with the requirements for public participation set out in paragraphs 3, 4 and 8 of article 6 of the Convention.”*³⁵ The Committee’s draft findings did not consider the meetings that took place on April 2, 2003 and September 3, 2003 as instances of public participation since they occurred after Decision No. 20 had been finalized.³⁶
51. With respect to the above mentioned public consultations of the draft EA that took place on April 2, 2003 and September 3, 2003, the Committee, in its draft findings noted that *“no information has been provided by the Party concerned to demonstrate that the meetings in April and September 2003 were publicly announced, so as to make it possible for members of the public opposing the project to actively take part in the decision-making. Nor has the Party concerned been able to give any reasonable explanation as to why the rather strong local opposition to the project, indicated by the 14,000 people calling for a referendum, was not heard or represented properly at any of these meetings. It is thus clear to the Committee that the invitation process also at this stage was selective and insufficient.”*³⁷
52. The Panel notes the Committee’s draft findings with respect to the decision on the siting of the TEP near Vlora³⁸, which state that *“although some efforts were made to provide for public participation, these largely took place after the crucial decision on siting and were subject to some qualitative deficiencies, leading the*

³² Communication ACCC/C/2005/12 by the Alliance for the Protection of the Vlora Gulf (Albania).

³³ Decision of the Council of Territorial Adjustment of the Republic of Albania Decision No. 20 dated February 19, 2003.

³⁴ Management Response, Annex 4.

³⁵ Draft Findings and Recommendations of the Committee dated March 23, 2007, ¶ 67.

³⁶ Id. at ¶ 68.

³⁷ Id. at ¶ 69.

³⁸ Decision of the Council of Territorial Adjustment of the Republic of Albania Decision No. 20 dated February 19, 2003.

*Committee to find that the Party concerned failed to comply with the requirements in question.”*³⁹

53. With respect to the Requesters claim regarding the lack of public participation and disclosure, the Panel notes Management’s contention that: (a) the Committee’s compliance process is still underway,⁴⁰ and (b) the process leading up to the Project respected the requirements of the Aarhus Convention. The Panel notes that in fairness to all parties concerned, the facts related to these allegations and Management compliance, or lack thereof, with applicable policies and procedures can only be determined in the course of an investigation.
54. **Cumulative Impact.** The Panel notes that the Requesters claim that, “*the Environmental Impact Assessment, in which the Bank has based its loan, refers only to one thermal power plant of 100 MW, while in the decision of the Government No. 610 dated 09/21/2004 - which the Bank is or should have been aware of - it is explicitly written that it is agreed to reach a capacity of 300 MW in next phases.*” The Requesters further indicate that “*the Government approved (Law No. 9231 dated 05/13/2004) just one km far from Vlora Thermal Power Plant a concessional agreement of building of [a] large oil storage deposit in Vlora Bay.*”⁴¹ The Requesters assert that the Bank failed to take into account the future cumulative environment impact of one or more additional thermal power plants that would raise generation capacity at the selected Vlora site to as much as 300 MW and the other investments already approved by the Government in the vicinity of the Project site.
55. As noted above, Management states that the proposal for the energy park never advanced to the pre-feasibility stage and that a proposed onshore oil terminal concession is not related to the Project. Management indicates that, in its view, Project due diligence for unassociated investments in the general Project area did not need to be carried out by the Bank.

Natural Habitats

56. The Requesters assert that the Project site is located only 746 meters from the Narta Lagoon, which is a protected area, rather than the two kilometers as indicated in the Project documents. According to the Requesters, the Project will have significant impacts on the protected area and the Bank’s policy on natural habitats applies.
57. Management states that the Project site is outside the protected area around Narta Lagoon, designated as such in 2004 by the Government, and is not anticipated to

³⁹ Draft Findings and Recommendations of the Committee dated March 23, 2007, ¶ 77.

⁴⁰ Management Response includes in Annex 5 the “World Bank Response to Draft Findings of the Aarhus Convention Compliance Committee.”

⁴¹ Request for Inspection, letter dated April 30, 2007, ¶ 4.

have an impact on this area. Management notes that the Bank's policy on Natural Habitats does not apply.

58. The Panel observes that with respect to the Narta Lagoon the PAD states that *“Parliament is expected to designate the Narta Lagoon as a ‘Protected Area’ under a new law which provides for the establishment of protected areas to ensure the conservation of natural resources, protect biodiversity, and restore and maintain habitats and species. The Government has confirmed that the proposed Vlore power plant site will be outside of the boundaries of the Narta Lagoon protected area.”*⁴² The Panel notes that the character of the natural habitat of the Narta Lagoon is not under dispute but the probable effects of the Project is subject of contention.

Cultural Property

59. The Panel notes the conflicting assertions between the Requesters and Management regarding the archeological and historical significance of the Project site. The Panel notes that the Requesters assert that the Project site has important archeological and historical significance. The Requesters state that the Project site is in close proximity to an ancient Mediterranean port city, Treport Cape/Aulona, that has archeological significance. The Panel also notes that the Requesters state that the Project site has historical significance to Sephardic Jews escaping from Spain in 1492 who landed and settled in Vlora. The Requesters expressed strong concern that, if the thermal power plant is built, it will destroy the unique historical and cultural significance of the area. Local archeological experts reiterated and provided further information about these claims to the Panel Team during its visit to the Project area.

60. In its Response, Management acknowledges that there was insufficient coverage of the potential cultural property issues in the Environmental Assessment. Management states that a supervisory visit which was carried out in July 2006 concluded that the Project site *“is not of archeological significance”* and that *“consequently a surface survey of the selected site prior to the start of the construction is neither necessary nor justifiable.”*⁴³ Management also states that *“monitoring of excavations during construction of the plant and related civil works to identify and protect ‘chance finds’ was deemed the only action that needed to be taken, consistent with established Bank practice, and this is provided in the EPC contract.”*⁴⁴

⁴² PAD, p. 34.

⁴³ Management Response, ¶ 56.

⁴⁴ Management Response, ¶ 44.

61. The Panel confirmed that the Requesters contacted Bank Management on several occasions.⁴⁵ However the Requesters indicate that they are not satisfied with the answers and explanations provided by Management.
62. The Panel is therefore satisfied that the Request “*does assert that the subject matter has been brought to Management’s attention and that, in the Requesters’ view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.*” Hence, the Request meets the requirement of Paragraph 9(c) of the 1999 Clarifications.
63. The Panel notes that the subject matter of the Request “*is not related to procurement*”, as required by Paragraph 9(d) of the 1999 Clarifications.
64. The Credit financing the Project was approved by IDA Board of Executive Directors on March 16, 2004. The expected Closing Date of the Project is January 31, 2008. When the Request was filed on April 30, 2007, about 2.7% of the IDA Credit, had been disbursed. The Request therefore satisfies the requirement in Paragraph 9(e) that the related Credit has not been closed or substantially disbursed.⁴⁶
65. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f) of the 1999 Clarifications.

F. Conclusions

66. The Requesters and the Request meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.
67. In light of the foregoing, the Panel recommends an investigation of the matters raised by the Request for Inspection.

⁴⁵ Letter to Orsalia Kalantzopoulos and Nadir Mohammed dated June 20, 2005; letters to Shigeo Katsu during the year of 2006 by Dr. Anna Kohen, Honorary Citizen of Vlora and Honorary Member of Civic Alliance for the Protection of the Vlora Bay; and meetings in Tirana with Orsalia Kalantzopoulos, Nadir Mohammed and Arlene Fleming.

⁴⁶ According to the Resolution that established the Panel, “*this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.*” Footnote to Paragraph 14(c).