

The Complaint No. 96/2556: Community Rights, Case of Protest against the Project on Biomass Power Plant of the Thungsung Green Company, Limited, in village No 6 Thungsung Sub-district, Thung Yai District, Nakhon Si thammarat Province;

Mr. Wittaya Chuaputh and Mr. Chirawas Sikhiwat lodged a Complaint to the National Human Rights Commission of Thailand (NHRCT) with allegation on the approval of Biomass Power Plant construction by the Thungsung Sub-district Administrative Organization in Thungsung Sub-district, Thung Yai District, Nakhon Si thammarat Province. It was operated by Thungsung Green Company, Limited, without explanation and did not allow the local people to participate. They noticed that a project may cause impact on community and environment. Subsequently, the company had conducted entirely project even they have not received a license from the Department of Industry. The Complainants asked the NHRCT to examine this project.

The National Commission on Human Rights has considered the fact that the monitoring legal requirements and agreed that the biomass power plant in Thungsung District which may have an impact on natural resources, the environment and people's way of life. Therefore the Community Organizations and the Government Agencies should be responsible for the study of the proper analysis of the area and the impact that could occur if the power plant was found. The study's result as well as the prevention and alleviation effect should be explained the details to the public in the area. The information must be clear and sufficient for local people to understand, express their opinions and make decisions about the project. Therefore, such action must be done before the approval of the project. But it appears that the relevant authorities had given the approval without the participation of the public, it is a violation of rights and the right to participation of the Stakeholders. Although in the Energy Industry Act, B.E. 2550 (2007), granting a license is the authority of the Energy Regulatory Commission, but the Energy Regulatory Commission has to request an opinion from the Department of Industry and the Department of Industry has to conduct the activity on people participation in accordance with constitutional rights. So the opinion of local people through a participatory process and a feasibility study of the project area as well as the effects that may occur with the public is essential. That must be taken into consideration for the grant project. The local agencies and the Department of

Industry did not performed in accordance with the rights of people, therefore, they violated the Constitutional rights of citizens.

Measures to solve problem and Policy recommendations:

1. Measures to solve problem

- Nakhon Si thammarat Provincial Office and Thungsung Sub-district Administrative Organization shall coordinate the state agencies and academics to monitor environmental conditions and study of the environmental and health impacts, including measures to tackle the impact that may arise from the operation of a biomass power plant. They should also distribute such information to inform and educate people, abided by Constitution of the Kingdom of Thailand B.E. 2550 (2007), Section 57.
- Thungsung Sub-district Administrative Organization shall organize the community meetings or participation activity for people in the Village No. 6 and people nearby the project and summed up the opinions and concerns of the stakeholders, for the consideration of the Department of Industry and Energy Regulatory Commission.
- The Department of Industry and Nakhon SI thammarat Provincial Office shall review the approval on licensing of the electricity factory of Thungsung Green Company, Limited, in the Village No. 6, Thung Yai District, by investigating on the impact of potential detail and also include the objections and comments of people who have been through the participation process for consideration.
- The Energy Regulatory Commission shall scrutinize of the appropriateness of the project. All Related Agencies Including Thungsung Green Company, Limited, are requested to strictly implement the Energy Regulatory Commission's regulations on Environmental Impact Assessment and Monitoring for the Exemption is not required to conduct an Environmental Impact Analysis, under the Law on Environmental Quality Promotion for generating electricity from biomass, (Solid type).

2. Policy recommendations

- It was agreed to recommend to the Ministry of Natural Resources and Environment to review the regulations on “determine the type and size of the Company that have to prepare a report on the environmental impact assessment.” They shall determine the size of biomass power plant. The plant that larger than 1 MW project is required to submit an environmental impact assessment, in order to take measures to prevent and resolve the impact of power plants, larger than 1 MW, to provide security to the people around the power plant.
- It was agreed to recommend to the Department of Energy, to promote the power plant which is smaller than 1 MW, because people can use the agricultural waste materials as fuel for the community and they have the ability to resolve problems within the community for a small project;
- It was agreed to recommend to the Ministry of Public Health to declare that the biomass power plant, larger than 1 MW is the project that may affect health under the Health Act, B.E.2535 (1992);
- It was agreed to recommend to the Ministry of Interior and Ministry of Public Health to order local authorities to put the local Ordinances that the project on biomass power plant, larger than 1 MW, may affect health. This is to allow local authorities to have the guidelines for grant projects and receive feedback from citizens in the area;
- It was agreed to advise the Thungsung Sub-District Administrative Organization on conditions and criteria for the approval or opinion of the permit to operate, which may affect the environment and public health of the people in Thungsung Sub-district;

Therefore, the Nakhon Si Thammarat Provincial Office, Thungsung Sub-district Administrative Organization, Ministry of Industry, the Energy Regulatory Commission, Ministry of Natural Resources and Environment, Ministry of Energy, Ministry of Public Health and Ministry of Interior shall immediately implement and report to the NHRCT within 30 days from the date of receipt of this Report. If the given time elapsed, the NHRCT shall exercise

its authorities under the National Human Rights Commission Act, B.E. 2542 (1999), Section 30 and Section 31.