

## **Background information**

### **LEGAL REQUEST BY THE FEDERATED STATES OF MICRONESIA TAKEN AGAINST THE PRUNEROV II COAL-FIRED POWER PLANT, CZECH REPUBLIC**

#### **1. Czech Republic, CEZ and Prunerov coal-fired power plant**

The Czech Republic relies heavily on brown-coal (lignite) for power generation. Now CEZ Group (CEZ),<sup>i</sup> the country's largest power company, wants to replace three existing blocks and extend the operating lifetime of its Prunerov power plant – one of Europe's largest.<sup>ii</sup>

Prunerov power plant is the largest single source of carbon dioxide (CO<sub>2</sub>) emissions in the Czech Republic. The entire plant comprising Prunerov I and II emitted 10.1 million tonnes of CO<sub>2</sub> in 2007. CO<sub>2</sub> emissions from Prunerov II were 7.1 million tonnes.<sup>iii</sup>

Total annual CO<sub>2</sub> emissions from Prunerov are around 40 times higher than those of the entire Federated States of Micronesia (FSM),<sup>iv</sup> a Pacific nation which has made a submission to the Czech Ministry of Environment concerning the plant's expansion.

Greenpeace is calling for a global phase-out of coal use and, together with the legal experts from Environmental Law Service, for the decommissioning of Prunerov by 2015. Environmental Law Service and Greenpeace Czech are leading a campaign, Pohoda ČEZ,<sup>v</sup> against the Prunerov project. CEZ's plans are out of step with what is needed to prevent dangerous climate change. Further expansion of the power plant would lock the Czech Republic into the use of dirty coal for decades to come.

#### **2. Plans for expanding the Prunerov II power plant**

CEZ is planning to replace three of the five existing blocks in its Prunerov II coal-fired power plant.

CEZ plans to install outdated technology instead of best available technology (BAT), in increasing the size of the plant from its current capacity of five blocks of 210 MWe to two blocks of 210 MWe plus three blocks of 250 MWe. BAT is a requirement of an EU Directive and Czech Integrated Pollution Prevention and Control (IPPC) legislation which requires new large combustion power plants to operate between 42–45% net energy efficiency.<sup>vi</sup> The new blocks proposed by CEZ would operate at a minimum net energy efficiency of 38%.<sup>vii</sup>

CEZ argues that it does not need to comply with EU law because it is "reconstructing" the three blocks and not the entire plant. However, analysis shows that all major components (boilers, turbo sets, generators, desulphurisers, etc...) of the three blocks of Prunerov II will be entirely replaced. The project is thus a "complete renewal," and therefore should be subject to more stringent energy efficiency requirements.<sup>viii</sup> If CEZ moves forward under existing plans, the project will be in violation of Czech and EU laws on energy efficiency requirements for new large combustion power plants.

#### **3. Carbon dioxide emissions**

CEZ's current replacement plans regarding Prunerov II would lower the plant's CO<sub>2</sub> emissions from 7.1 million tonnes<sup>ix</sup> to 4.4 million tonnes per annum. However, if Prunerov II used BAT, CO<sub>2</sub> emissions could be lowered further to 3.9 million tonnes per year.<sup>x</sup> Although at first sight the difference between the two figures appears small, the overall environmental impact will be significant as CEZ plans to operate this outdated technology for the next 25 years. Over the lifetime of the plant, the difference could amount to approximately 12 million tonnes more of CO<sub>2</sub> to be emitted over 25 years.<sup>xi</sup>

#### **4. Prunerov II replacement plans and FSM's concerns**

In June 2008, the Czech Ministry of the Environment opened proceedings for an environmental impact assessment (EIA) concerning the replacement of blocks at the Prunerov II power plant.<sup>xii</sup>

In March 2009, the Czech Ministry of the Environment returned the EIA documentation to CEZ, asking for it to be revised and contain a proposed alternative that included BAT for energy efficiency. Contrary to its obligations, CEZ failed to submit such a proposal, and an expert report was drawn up without the alternative BAT proposal.

The Czech Ministry of the Environment, as the responsible public authority in the Czech Republic, contemplated conducting a transboundary environmental impact assessment regarding the project but decided against notifying any potentially affected states or interested parties. Greenpeace made this known in countries most vulnerable to the impacts of climate change. The Federated States of Micronesia (FSM) picked up on the information.

In December 2009, FSM made an official request to the Czech Ministry of Environment for a transboundary environmental impact assessment under Czech law.<sup>xiii</sup> Czech authorities initially denied the request but subsequently agreed to allow the FSM to submit its viewpoint on the complex renewal of Prunerov II to the Ministry of Environment.

In its submission of 4 January 2010, FSM stressed that the climate impacts of the project had not been assessed in the original EIA and argued that the Ministry of Environment should issue a negative final statement on the environmental impact assessment for CEZ proposed project.<sup>xiv</sup>

## **5. The legal precedent**

The 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context is the principal treaty focusing exclusively on transboundary EIA.<sup>xv</sup> The Convention addresses transboundary impacts to the state Parties. The Czech Republic has signed (in 1993) and ratified (in 2001) the Espoo Convention. In addition, all EU Member States are Parties to the Convention.

EC Directive 85/337 on EIA for public and private projects<sup>xvi</sup> integrates the Espoo Convention into EU law. The Directive was implemented into the Czech legal system by Act No. 100/2001 Coll., on Environmental Impact Assessment.<sup>xvii</sup>

The Czech Act is however broader than the Directive. Where the Directive speaks of significant effects on the environment “in another Member State”,<sup>xviii</sup> the Czech Act defines “affected state” as a state whose territory “can be affected by significant environmental impacts.”<sup>xix</sup> Thus the Czech transboundary EIA provisions includes by definition states outside the borders of the EU – including FSM.

While transboundary EIAs are common between neighbouring states, as far as Greenpeace and Environmental Law Service are aware, this is the first time that a state significantly threatened by climate change and far removed from the source of emissions has used the transboundary process in an attempt to ensure its concerns are taken into consideration.

## **6. Next steps**

Greenpeace understands that the Czech Ministry of the Environment will release its final decision on the EIA between 18 and 22 January.

If the Ministry issues a negative statement on the EIA, this will seriously affect CEZ's plans to extend Prunerov II.

Alternatively, if the Ministry issues a positive statement on the EIA in its current form, the extension will still have to overcome two further administrative hurdles: namely, receiving building permit and an Integrated Pollution Prevention Control permit.

In the wider context, the current case should put governments and corporations in developed countries on notice that states vulnerable to climate change are keen to explore new avenues to challenge decisions on projects that contribute to climate change.

## 7. FSM and its concerns about climate change

The Federated States of Micronesia (FSM) is a group of widely scattered islands located in the western Pacific. They are on the front line of climate impacts especially sea-level rise, changing weather patterns, and increased storms.

FSM consists of some 607 islands grouped into four states: Kosrae, Pohnpei, Chuuk (Truk) and Yap, with a total population of around 111,000. Occupying a small total land area of 702 sq km (271 sq miles), the islands of the FSM are scattered over an expanse of ocean equivalent to five times the size of France. The nation's culture and economy are heavily reliant on its marine resources. Most settlements and infrastructure projects are located on the coast.<sup>xx</sup>

The Intergovernmental Panel on Climate Change has recognised that island communities and low-lying areas are especially vulnerable to climate change, including sea-level rise, which is expected to exacerbate inundation, storm surges, erosion and other coastal hazards. These impacts threaten vital infrastructure, settlements and facilities that support the livelihood of communities. Warming oceans and ocean acidification are likely to heavily impact coral reefs, fisheries and other marine-based resources, increasing ciguatera poisoning and affecting food webs. Water resources are likely to be seriously compromised by rainfall changes and flooding.<sup>xxi</sup>

FSM has highlighted its concern about the expected increase of more extreme weather events such as droughts and storms related to El Niño and La Niña events. During last month's Copenhagen climate summit, FSM President Mori was outspoken about the fact that his nation is fighting for its very survival:

*"We are not certain if our biggest threat is from ocean acidification that will erode our islands from underneath, or from sea level rise that could submerge our islands under the sea, or from changes in weather and typhoon intensity that could make inhabiting our islands impossible. But we know that our continued peaceful existence is totally at risk. We know that the enemy that gives rise to these threats is climate change. And we know that to survive, we must act now."*<sup>xxii</sup>

## 5. The global impact of climate change

According to a report by Kofi Annan's Global Humanitarian Forum, within the next 20 years, one-in-ten of the world's present population could be directly and seriously affected by climate change.<sup>xxiii</sup> Already today, hundreds of thousands of lives are lost every year due to climate change and the report foresees that this will rise to roughly half a million in 20 years.<sup>xxiv</sup>

---

<sup>i</sup> CEZ Group, <http://www.cez.cz/en/home.html> (last visited Jan 16, 2010).

<sup>ii</sup> Carbon Monitoring for Action, Geographic Database, <http://carma.org/dig/show/world+country#digTop> (last visited Jan. 16, 2010).

<sup>iii</sup> Informační systém EIA, Complete Renewal of Prunerov II 3 × 250 MWe Power Plant According to the Act nr.100/2001 Coll. 105 (2009), [http://tomcat.cenia.cz/eia/detail.jsp?view=eia\\_cr&id=MZP221](http://tomcat.cenia.cz/eia/detail.jsp?view=eia_cr&id=MZP221) (in Czech).

<sup>iv</sup> Czech Republic's total CO<sub>2</sub> emissions (2007): 129.949 million tonnes. Czech Hydrometeorological Institute, <http://www.chmi.cz/cc/tabulky.html> (last visited Jan. 16, 2010) (in Czech).

Prunerov power plant total emissions (2007): 10.103 million tonnes. Czech Registry for Emission Allowance Trading, 54-55 (2008) [http://www.ote-cr.cz/povolenky/files/novinky/ISR\\_Data\\_2007\\_CZ](http://www.ote-cr.cz/povolenky/files/novinky/ISR_Data_2007_CZ) (data based on 2007 figures) (in Czech).

---

Federated States of Micronesia total CO<sub>2</sub> emissions (1994): 0.236 million tonnes. UNFCCC, Emissions Summary for Micronesia (Federated States of) [http://unfccc.int/files/ghg\\_data/ghg\\_data\\_unfccc/ghg\\_profiles/application/pdf/fsm\\_ghg\\_profile.pdf](http://unfccc.int/files/ghg_data/ghg_data_unfccc/ghg_profiles/application/pdf/fsm_ghg_profile.pdf) (1994 last available year).

<sup>v</sup> Pohoda ČEZ, <http://www.pohodacez.cz/> (last visited Jan. 16, 2010) (in Czech).

<sup>vi</sup> Czech legal act No. 76/2002 Coll. (Zákon č. 76/2002 Sb.) and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control. Concrete limits are in Reference Document on Best Available Techniques for Large Combustion Plants.

<sup>vii</sup> Informační systém EIA, Complete Renewal of Prunerov II 3 × 250 MWe Power Plant According to the Act nr.100/2001 Coll. 11 (2009), [http://tomcat.cenia.cz/eia/detail.jsp?view=eia\\_cr&id=MZP221](http://tomcat.cenia.cz/eia/detail.jsp?view=eia_cr&id=MZP221) (in Czech). Note without any changes in the project, CEZ is stating that the net thermal efficiency would be 39%; however, Greenpeace is using data available in the EIA documentation.

<sup>viii</sup> See Informační systém EIA, Complete Renewal of Prunerov II 3 × 250 MWe Power Plant According to the Act nr.100/2001 Coll. 105 (2009), [http://tomcat.cenia.cz/eia/detail.jsp?view=eia\\_cr&id=MZP221](http://tomcat.cenia.cz/eia/detail.jsp?view=eia_cr&id=MZP221) (in Czech).

<sup>ix</sup> Czech Registry for Emission Allowance Trading, 55 (2008) [http://www.ote-cr.cz/povolenky/files/novinky/ISR\\_Data\\_2007\\_CZ](http://www.ote-cr.cz/povolenky/files/novinky/ISR_Data_2007_CZ) (data based on 2007 figures) (in Czech).

<sup>x</sup> Legal liability of using BAT: Use of BAT defined in BREF is regulated by Act Nr. 76/2002 Coll. on Integrated Pollution Prevention and Control. This authority defines such emissions limits which correspond with the use of BAT.

<sup>xi</sup> See Informační systém EIA, Complete Renewal of Prunerov II 3 × 250 MWe Power Plant According to the Act nr.100/2001 Coll. 12 (2009), [http://tomcat.cenia.cz/eia/detail.jsp?view=eia\\_cr&id=MZP221](http://tomcat.cenia.cz/eia/detail.jsp?view=eia_cr&id=MZP221) (in Czech).

<sup>xii</sup> See Informační systém EIA, Complete Renewal of Prunerov II 3 × 250 MWe Power Plant According to the Act nr.100/2001 Coll. 12 (2009), [http://tomcat.cenia.cz/eia/detail.jsp?view=eia\\_cr&id=MZP221](http://tomcat.cenia.cz/eia/detail.jsp?view=eia_cr&id=MZP221) (in Czech).

<sup>xiii</sup> Czech Act No. 100/2001 Coll., on Environmental Impact Assessment.

<sup>xiv</sup> Andrew Yatilman, FSM Office of Environment and Emergency Management, Viewpoint of Federated States of Micronesia on the Complex Renovation of Prunerov II Power Plant 3x250 MWe plan, [http://www.pohodacez.cz/\\_files/file/Viewpoint%20of%20FSM%20on%20renovation%20of%20Prunerov%20I%20Plant.pdf](http://www.pohodacez.cz/_files/file/Viewpoint%20of%20FSM%20on%20renovation%20of%20Prunerov%20I%20Plant.pdf) (last visited Jan. 16, 2010).

<sup>xv</sup> Espoo Convention on Environmental Impact Assessment in a Transboundary Context 1991, <http://www.unece.org/env/eia/documents/legaltexts/conventionenglish.pdf> (last visited Jan.16, 2010).

<sup>xvi</sup> Directive 85/337 on EIA for Public and Private Projects as Amended in Directive 97/11/EC and 2003/35/EC.

<sup>xvii</sup> Act No. 100/2001 Coll., on Environmental Impact Assessment.

<sup>xviii</sup> Directive 85/337 on EIA for Public and Private Projects as Amended in Directive 97/11/EC and 2003/35/EC, art. 7(1).

<sup>xix</sup> Act No. 100/2001 Coll., on Environmental Impact Assessment, art. 11(1)(b) (based on a translated version).

<sup>xx</sup> BBC, Country Profile: Micronesia, [http://news.bbc.co.uk/2/hi/asia-pacific/country\\_profiles/1300849.stm](http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1300849.stm) (last visited Jan. 16, 2010).

<sup>xxi</sup> Mimura, NL. Nurse, RF. McLean J. Agard, L. Briguglio, P. Lefale, R. Payet and G. Sem, 2007: Small Islands Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of working Group II to the Fourth Assessment Report of the IPCC, ML Parry, OF Canziani, JP Plutikof, PJ van der Linden and CE Hanson, Eds, Cambridge University Press, Cambridge, UK pp687-716.

---

<sup>xxii</sup> Climate Pacific@COP15, Full speech of FSM President Emanuel Mori to the COP High Level Plenary, <http://climatepasifika.blogspot.com/2009/12/fsmcop15-seal-deal-to-save-humanity.html> (last visited on Jan. 16, 2010).

<sup>xxiii</sup> Global Humanitarian Forum, Human Impact Report, Climate Change: The Autonomy of a Silent Crisis 3 (May 29, 2009).

<sup>xxiv</sup> Global Humanitarian Forum, Human Impact Report, Climate Change: The Autonomy of a Silent Crisis 3 (May 29, 2009).