

**Council on Ethics,
Norwegian Government Pension Fund - Global**

To the Ministry of Finance

April 18, 2008

**Council on Ethics' assessment on investments in Israel
Electric Corporation**

We hereby refer to the letter from the Ministry of Finance, dated March 3, 2008, requesting an assessment of whether investments made by the Government Pension Fund – Global in Israel Electric Corporation (“IEC”) may constitute a breach of the fund’s Ethical Guidelines.

The NGO Norwegian People’s Aid has written to the Council, requesting that the Council recommend exclusion of the company. A local group of “*Palestinavenner*” (“*Friends of Palestine*”) from the municipality of Hamar has done the same. These requests are based on, i.a., the allegation that IEC has reduced the supply of electricity to Gaza and that this amounts to a form of collective punishment of the civilian population in Gaza.

In connection with this case, the Council on Ethics has held meetings with Norwegian People’s Aid and with the Israeli ambassador to Norway. Information has also been gathered from Palestinian energy officials through the Norwegian Ministry of Foreign Affairs. In its assessments, the Council has also referred to a report by the UN Office for the Coordination of Humanitarian Affairs (OCHA): “*Electricity Shortages in the Gaza Strip: Situation Report*”, dated February 8, 2008, and also to a ruling by the Supreme Court of Israel, dated February 27, 2008.

Background

The Council bases its assessment on the fact that the Fund holds bonds issued by IEC, which is 99.9% owned by the State of Israel. The company produces and distributes electricity to all of Israel and to areas under Palestinian government.

To the Council's knowledge, there are three sources of electricity supply to Gaza: Approximately 10% of the electricity is supplied from Egypt, 30% is generated in Gaza's own power plant, and the remainder, approximately 60%, is supplied by IEC via ten main power lines from Israel. In Gaza, the electricity is distributed by the Gaza Electricity Distribution Company ("GEDCO").

Gaza's own generation of electricity has been reduced following the Israeli bombing of the power plant in 2006, which destroyed half of the plant's production capacity. There have also been restrictions imposed by Israel on the supply of fuel to the power plant.

In the autumn of 2007, the Israeli Defence Ministry instructed IEC to reduce its supply of electricity to Gaza. The reduction was part of an economic blockade of Gaza in response to, i.a., rocket attacks from Gaza on Israel.

It is not disputed that living conditions for the population of Gaza are very difficult, and that the reduction in electricity supply comes in addition to other restrictions on transport of goods and border crossings for the population.

Report from OCHA

The UN body OCHA made public a report on February 8, 2008, in which the consequences of electricity shortages in Gaza are outlined. In the report, it is described how water supply and sewage treatment are dependant on electrical pumps, and the operation of these is hindered by electricity shortages. It is also described how hospitals in Gaza are affected by electricity shortages. Also, the OCHA report describes that limitations in the distribution system in Gaza make it difficult for GEDCO to make priorities in the distribution of electricity in order to meet humanitarian needs.

With regard to the reduction in electricity supply to Gaza, the following is stated:

"On October 28 2007, the Israeli Ministry of Defense declared it would start cutting electricity to Gaza in response to the continued and indiscriminant firing of rockets from Gaza to Israel. It proposed cutting power by a total of 1.5 megawattes, but it appears that it now plans to introduce a cut of 0.5 megawattes per week..."

"On Thursday, 7 February, the Israel Electricity Corporation reduced its supply to Gaza by around 0.5 megawattes under the instruction on the Ministry of Defense. The cut was less than the 1.5 megawattes proposed but still adds to the existing shortfall of 60 mgw."

The report assumes that there has been a plan to reduce the electricity supply to Gaza as a response to rocket attacks on Israel, and that a reduction by 0.5 MW has been implemented. The report is also understood to suggest that there is an escalation plan which involves further, weekly reductions by 0.5 MW per week.

Ruling by the Supreme Court of Israel

The question of legality of IEC's reduction in electricity supply to Gaza has been the subject of a petition for temporary injunction brought before the Supreme Court of Israel. The petition is brought on by a group of private individuals and NGOs in Israel. In the Supreme Court ruling, dated January 27, 2008, it was found that the reduction in electricity supply is not unlawful. This, however, has no direct bearing on the Council's assessment.

Central to the Supreme Court's assessment of the legality of the reduction in electricity supply, is the question of whether and to which extent it is possible for the distribution company GEDCO to distribute the electricity so that water supply and hospitals are not affected by the reduction. On this matter, the opinions of Israeli authorities and the petitioners differ. The Supreme Court finds that it is possible to distribute the electricity such that humanitarian needs are met. The petitioners maintain that it is physically impossible for GEDCO to distribute the electricity in such a manner that humanitarian needs are not affected by reduced supply. This question is technically complicated and it requires extensive insight into the construction and operations of the electrical distribution system in Gaza to determine whether such distribution is actually feasible. The Council assumes that, in practice, it is probably difficult to distribute the power according to humanitarian needs.

Meeting with Israel's ambassador to Norway

The Chair of the Council and the secretariat met with Israel's ambassador to Norway on March 10, 2008, to discuss the issue at hand.

The ambassador described the security situation for the civilian population of Israel which is subjected to repeated rocket attacks from Gaza. She also explained that employees of IEC have been targeted by gunfire when they have conducted maintenance work on the power lines which supply Gaza from Israel, and that Israeli power plants which produce electricity for Gaza are also targeted by rockets launched from Gaza.

The ambassador confirmed that for a short period in February of this year, IEC did reduce the supply of electricity to Gaza by 5% on one of ten power lines. This amounted to a reduction by 0.5% of the total amount of electricity supplied to Gaza by Israel. It was emphasised that this reduction lasted only for a short period and that normal supply of electricity then was resumed.

Meeting with Norwegian People's Aid

The Chair of the Council and the secretariat met with representatives of the NGO Norwegian People's Aid on March 14, 2008, to discuss the current issue. Norwegian People's Aid, which has representatives present in Gaza, confirmed to a large extent the information which has transpired through UN sources and media and described the difficult humanitarian situation in Gaza resulting from the Israeli blockades, which render the population without adequate provisions of food, medicines, electricity and other necessities. Norwegian People's Aid could not confirm that the reduction in supply of electricity had ceased.

The Council informed Norwegian People's Aid of its enquiries related to this issue and invited the NGO to submit any further information. Norwegian People's Aid did this in the form of an e-mail sent to the Council on April 10, 2008. Here, it was stated that based on their own enquiries, Norwegian People's Aid could still not determine that the reduction in supply of electricity had actually ceased, but that it was difficult to bring certainty to this question.

Information from Palestinian energy officials

The Council received an e-mail from the Middle East section of the Norwegian Ministry of Foreign Affairs on February 28, 2008. Information from Palestinian energy officials had been gathered via the Norwegian representation office in Al Ram. The Palestinian energy officials confirm that there are no ongoing reductions in the electricity supply to Gaza. The 0.5% reduction by IEC, which OCHA and other sources has referred to earlier, had in fact ceased.

There are restrictions on the supply of fuel for the Gaza power plant, but that this is unrelated to IEC.

Based on the e-mail from Norwegian People's Aid on April 10, 2008, a new enquiry was directed from the Council to the Ministry of Foreign Affairs on April 15, 2008, asking whether new information had come to light regarding the question of reduction in supply of electricity to Gaza. The Council received a response from the Ministry of Foreign Affairs on the same day. Norway's representation office in Al Ram here explained that there are no reductions in the direct electricity supply from Israel to Gaza. It is also advised that Israeli restrictions on energy supply are once more imposed on fuel delivery to the Gaza power plant. These restrictions were imposed following the attack on the Nahal Oz terminal, the main terminal for transfer of fuel to Gaza, on April 9, 2008.

The Council's assessment

The Council recognises that there have been numerous and serious violations of international law in the conflict between Israel and the Palestinians. For example, the UN Security Council has passed several resolutions in which settlements in occupied territories are considered violations of international humanitarian law, and the International Court of Justice has, in an advisory opinion, found the security wall which Israel has constructed to be illegal. There have also been violations of international humanitarian law committed by the Palestinians, i.a. by attacks against civilians. A thorough discussion of the many aspects of international and humanitarian law raised by this conflict is beyond the scope of this letter. It is the role of the Council on Ethics to consider the behaviour of companies, not possible violations of international law conducted by states or other parties.

The Council assumes that IEC acts under orders from Israeli authorities. This has, however, no bearing on the outcome of the Council's assessment. Companies' motives for acts or omissions are, as a general point of departure, not relevant to the Council's deliberations.

Also, the Council assumes that the reduction in IEC's electricity supply to Gaza is not ongoing. It has been specified from both Palestinian and Israeli officials that a limited reduction did take place for a period earlier this year, but that the supply of electricity to Gaza from IEC is now normal. Palestinian authorities have confirmed that the supply of electricity is not reduced as a consequence of reduced supplies by IEC. The escalation plan, which was suggested in the OCHA report, has not been implemented.

According to the Fund's ethical guidelines, breaches of norms must be ongoing or there must be an unacceptable risk of future breaches for the exclusion mechanism to be used. As the reduction in supply of electricity has ceased, this cannot be considered an ongoing breach of norms. The Council assumes that, although the humanitarian situation in Gaza is very alarming, this cannot be attributed to the previous, temporary, reduction by 0.5 % in IEC's deliveries.

The question which faces the Council is whether there is an unacceptable risk of the Fund's future contribution, through its investments in bonds issued by IEC, to grave breaches of norms. Such contribution largely depends on whether IEC will again introduce reductions in the electricity supply to Gaza. The Council finds it difficult to have a clear opinion on the likelihood of such possible, future reductions in the supply of electricity to Gaza. Companies' past actions can, however, give indications to future behaviour. Considering the situation in general and the repeated rocket attacks against Israel, it cannot be ruled out that future

situations could arise where IEC again is instructed to reduce the electricity supply to Gaza. Assuming, however, that there did exist a plan to escalate the rate of reductions in electricity supply, as suggested in the OCHA report, it seems clear that this plan has not been implemented. It also seems clear that there have been no repetition of the power cuts.

The Council on Ethics will therefore, given the current situation, not recommend exclusion of IEC from the Fund.

If future reductions in the electricity supply to Gaza, causing unacceptable humanitarian conditions for the civilian population, are introduced by IEC, the Council may renew its assessment of the Fund's investment in IEC.

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