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To info@unfccc.int
From leo.perkowski@pd-forum.net
Date 12 August 2011
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Subject **Letter concerning delays in the publication of rejection reasons**

Honourable Members of the CDM Executive Board,
Dear Mr. Hession,

The project developer community welcomes the increased explanation of the reasons and rationale for rejected requests for registration and issuance since the implementation of the 'Procedure for review of requests for issuance of CERs' and the 'Procedure for review of requests for registration.' Where a rejection occurs, project developers are keen to understand the reason for rejection in order to make decisions on whether to re-apply for registration or request approval to re-submit an issuance request. The developers need to understand the reasons and how to address the concerns raised by the EB, and as such, the information notes containing final rulings in rejection cases are very useful sources of information. The reasons and rationale are essential to the project developers when deciding whether to resubmit rejected submissions, they also help project developers and DOEs understand whether the concerns that led to the rejection also apply to other projects. We are therefore concerned by the time taken to publish the reasons and rationale following a rejection.

In accordance with the procedures, reasons and rationale of rejection decisions should be made public in the final ruling within 31 days of the final decision¹. However, project developers have recently experienced this process taking 2 months or more.

In the case of a rejected registration request, the decision to proceed with a new PDD cannot start until the reasons and rationale for rejection are fully understood and reassessment of the project cannot begin until the reasons and rationale have been published. If the project is ultimately registered, the delay in publishing the reasons and rationale could be needlessly depriving the project of CERs that are additional.

In the case of a rejected issuance request, the project developer has to wait for several weeks for the reasons for rejection to be released and then (after assessing the reasons and deciding to re-apply for issuance) has to request approval from the EB to submit a new request for issuance. Depending on the timing of the next EB meeting, this could add a further 1-2 months delay to the process. In some cases, a

¹ From the 'Procedure for review of requests for issuance of CERs': 'Within three weeks of the final decision of the Executive Board, the secretariat will provide the Chair of the Executive Board with an information note, which shall contain a proposed final ruling incorporating the final decision' (EB55 Annex 41, para 27) and 'The proposed final ruling shall become the final after 10 days, unless a member of the Executive Board objects to the proposed final ruling' (EB55 Annex 41, para 29) this gives a total timeline of 31 days unless a member of the EB objects.

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project developer that has an issuance request rejected may have to wait 4 months or more following the rejection before being able to re-open the verification. In addition to delaying issuance from the monitoring period in question, increasing the time between the decisions being made and the rationale and reasons being published can cause delays to the verification of subsequent monitoring periods and also cause delays to verifications on similar projects due to the uncertainty created by rejecting a project without explaining reasons and rationale.

Furthermore, the EB31 Meeting Report states "The Board agreed that requests for permission to resubmit requests for issuance for previously rejected requests for issuance should be submitted within 60 days from the date of rejection." Thus, the information note is required within 60 days to allow adequate time for the PP to consider the reason, decide upon a resubmission and to communicate with a DOE.

From a legal perspective, the "final ruling" provides in fact the grounds for the decision, i.e the rationale/reasoning/finding. It has to be assumed that the rationale that is provided in the proposed final ruling formed the base for the decision to reject. However, this final ruling itself undergoes a procedural and material review process. Here the proposed final ruling may be amended by the Executive Board however the actual decision can't be changed at this time. From a procedural and material justice perspective it is difficult to accept that a decision is final but that the rationale on which the decision was based on may be amended. This is further complicated by the fact that the affected party would not know the content of the initial proposal.

Project developers respect the decisions taken by the EB in their role as regulator of the carbon market however, the process and time that this is taking for the EB to publish information notes seems to be coming increasingly protracted. We would like to see an enhancement of the CDM process regarding the publication of information notes to enable project developers to make more timely commercial decisions regarding the future of their projects.

There is still some room for improvement with regards to providing carbon market participants with due process, particularly in the area of the rejection of CDM projects. In particular, we would like to suggest the following improvements:

- In cases where there is a joint Secretariat/RIT decision to reject and that decision becomes final, the information notes are released within 3 working days. The justification for this is that the cases have been presented and the information note detail should already be available in the two submissions from the Secretariat and RIT. Given that the decision follows these recommendations, the reasons should be available for public release.
- In cases where the EB decide to reject a project / issuance during an EB meeting, the information notes are prepared and released within 6 working days of decisions being announced (i.e. publication of the EB Meeting Report). The additional time recognizes that an EB discussion may have led to the rejection reason and this is not readily available for release.

We welcome the opportunity to develop further dialogue with the UNFCCC secretariat and EB in order to address the issues outlined above and look forward to receiving your feedback in due course.

Kind regards,



Leo Perkowski
Co Vice Chair of the PD Forum