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To cdm-info@unfccc.int
From rachel.child@pd-forum.net
Date 13th May 2011
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Subject **Prior consideration issues following EB60 discussions**

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

The Project Developer Forum (PD Forum) would like to provide input on the subject of “continuing and real actions” that was discussed in agenda item 3f/3g at EB 60, as introduced by the secretariat (http://unfccc4.meta-fusion.com/kongresse/110411_cdm60_Bangkok/pdf/3fg_paras70and74_%20Policy-discussion-on-continuing-and-real-actions-v2-after-RBC.pdf) and as summarised in the meeting report para 94¹, in order to aid the secretariat in proposing options to revise and strengthen the Guidelines for the demonstration and assessment of prior consideration of the CDM. We would also like to request clarity on further issues encountered by our members with regard to the wider issue of prior consideration, which may be considered at the same time.

First, we would like to commend the EB and the secretariat for the continued learning-by-doing through discussing policy issues encountered during the assessment of recent experience. However, we would also like to express our concerns about some of the particular observations that the secretariat presented, and are looking forward to seeing the further detail the EB requested.

Real and continuing actions

We agree that, in general, simply signing and subsequently cancelling consultant contracts cannot be considered continuing and real actions to secure CDM status, and therefore we support the further investigations into these occurrences. However, in the case of individual projects, there may be good reasons for these actions and they may be representative of continuing action to secure CDM status. This should be determined by the DOE on the basis of the regional and sectoral expertise.

One of the questions raised in the discussions between EB members was whether the issued guidance itself caused the occurrence of the observed action. While the PD Forum does not have

¹ “The Board discussed policy issues encountered through the experience of the assessment of cases related to continuing and real actions taken to secure the CDM status. The Board requested the secretariat to further assess options to revise and strengthen the Guidelines for the demonstration and assessment of prior consideration of the CDM to be considered by the Board at a future meeting.”

information on the specific projects that the secretariat may be referring to, it is clear that the existing guidance is likely to lead to perverse outcomes in some circumstances / host countries / sectors. Often real and ongoing action does not result in documentary evidence that DOEs feel they can accept.

For example, where a government has put all tariff negotiations for renewable energy projects on hold for over a year, the project is likely to be stalled until the government re-opens these negotiations and concludes what tariff will be offered – and it may take a significant amount of time to reach this conclusion. While other actions to secure CDM may be possible, the commercial reality is that projects are likely to be placed completely on hold in such circumstances as they are fundamental to the project's viability.

Similarly, some requests for LOA have taken well over a year to be approved, as DNAs are still establishing themselves. This can also result in a lack of documentary evidence that is acceptable to the DOE, despite the fact that real action was definitely continuing during this period of time.

The PD Forum believes that the DOE is best placed to assess whether real and continuing actions were taken based on their regional and sectoral expertise and in-depth familiarity of the project they are validating. They should be able to fulfil this role without the current need for overly-rigid interpretation (arguable due to the DOEs' attempt to anticipate a perceived, rigid EB stance) of what evidence may be permissible, and of the strict timeframes in the guidance, both of which are likely to disadvantage projects in under-represented host countries where experience is still small.

Format of the notification

For project activities that were governed by version 01 of the Guidelines for the demonstration and assessment of prior consideration of the CDM (EB41 Annex 46), valid from 2 August 2008 until 17 July 2009, a notification is requested for project activities with a starting date on or after 2 August 2008 by informing "a Host Party DNA and/or the UNFCCC secretariat in writing of the commencement of the project activity and of their intention to seek CDM status." However, this version of the Guidelines did not include a standardized form for notifications.

While the secretariat considers that it is the responsibility of the DOE to judge on a case-by-case basis whether a notification was made, PD Forum members have experienced that some DOEs are reluctant to accept anything other than a pure stand-alone notification letter as evidence.

However, in the absence of an unambiguous definition, some project developers took both the request for host country approval and the publication of the PDD for global stakeholder consultation within six months of the project activity start date as a notification under version 01 of the guideline. The PD Forum would like to request that the EB confirms that these events and others should be considered by the DOE as a notification of prior consideration under version 01 of the Guidelines.

The PD Forum believes that both events comply with the conceptual underpinnings of the requirement to notify the DNA and/or the secretariat in order to evidence the intent of the project of aspiring CDM registration, because:

- an official third party is engaged, either the host country DNA or the DOE (and international community);
- all project information, required by the prior consideration form, is included in the request for approval or publication of the PDD;
- the intent to achieve CDM status is made, and related costs are incurred; and
- publication of the PDD for global stakeholder consultation or a proposal for a new methodology is considered in the Guidelines to be proof of prior consideration (para 2).

DOE demands vs actual guidelines

The Guidelines on the demonstration and assessment of prior consideration of the CDM make clear that for new projects (paras 2-5) the prior consideration notification to the secretariat and Host Party DNA is the only evidence required for prior notification. Where a PDD has been published for global stakeholder consultation or a new methodology proposed to the Executive Board for a specific project before the project activity start date, these notifications are not required, and the prior consideration is established by the fact of that publication of the PDD. However, many DOEs demand detailed timelines and proofs of every action taken, while these are not required according to the guidelines for new projects – only for the existing project activities (paras 6-9) – adding to the transaction costs and delays.

The PD Forum would like to request that the EB confirms that such detailed information for the demonstration of prior consideration is superfluous, when the requirements of the guidelines have already been met through other evidence.

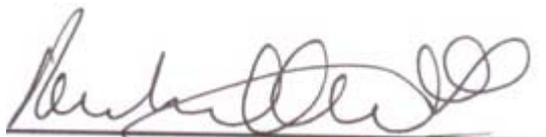
Repeat notifications

The Guidelines on the demonstration and assessment of prior consideration of the CDM requests (para 5) that for project activities for which a PDD has not been published for global stakeholder consultation or a new methodology proposed or request for revision of an approved methodology is requested, every subsequent two years after the initial notification the project participants shall inform the UNFCCC secretariat of the progress of the project activity.

The PD Forum would like to request clarity on the form this repeat notification needs to have, and about the interpretation of the timeline. Please confirm whether a simple email notification that projects are still continuing is sufficient. With a strict interpretation of the timeframe, we believe many projects – even if they are showing real and continuing actions – may be caught out. Strict interpretation therefore may be eliminating real additional CDM projects.

Should there be any questions as regards to our comments, please do not hesitate to contact me through the contact details provided above.

With kind regards,



Rachel Child
Co-Vice Chair of the PD Forum