

Head and Members of the CDM Executive Board
Mr. Clifford Mahlung
Chairman
UNFCCC Secretariat
Martin-Luther-King-Strasse 8
D 53153 Bonn
Germany

Project Developer Forum Ltd.
100 New Bridge Street
UK London EC4V 6JA

Mailing address:
Schulstrasse 25
CH 3256 Dieterswil BE

t: +44 20 3286 2520
office@pd-forum.net
www.pd-forum.net

CHAIRMAN

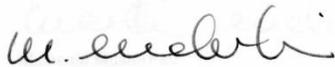
Your contact:
Martin Enderlin
m: +41 79 459 81 18

To cdm-info@unfccc.int
From martin.enderlin@pd-forum.net
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Honourable Members of the CDM Executive Board,
Dear Mr. Mahlung,

The Project Developer Forum (PD Forum) would like to provide input on a number of subjects listed on the annotated agenda to EB 55. Since the annotated agenda was only released on 12 July, we were not able to submit the letter within the official deadline for formal submissions to EB55. Nonetheless, we believe that our comments might be of value and therefore hope that they can be taken into account by the EB during the discussions at the coming meeting.

Kind regards,



Martin Enderlin
Chair of the PD Forum

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Para 2

We would like to sincerely thank the outgoing Vice-Chair Mr Pedro Martins Barata for his dedicated, hard work on several issues which are of importance to project developers, and we wish him well in the future.

Para 7 (Annex 1) – VVM

The PD Forum appreciates the regular updates of the VVM. The Forum believes however, that updates to this important document should follow CMP4 guidance¹ and the general rule of law according to which new rules or regulations introduced by the regulator shall not have retrospective application.

In addition to the above statement, the Forum would appreciate some clarification on the following paragraphs of the new VVM:

Para 68: Please clarify whether the Board is now restricting the validity of the methodologies. A previous version of the methodology may be used for submissions within 8 months of the date of the revision. Given the frequency of the revisions by the EB, and the time required for validation, this 8 month grace period should be maintained and perhaps even extended, but it should not under any circumstances be shortened.

Para 69: A grace period for the application of newly adopted EB guidance should be applied, in analogy to what already happens for methodology revisions, to ensure that the new guidance is not applied retroactively.

Para 16 (i) / para 20 – ACM0008

We welcome the revision (ii) to allow the measurement of pre-mining and post-mining CMM to be carried out together, correcting a recent change in interpretation on this issue which is currently causing many requests for review. When the methodology was developed, the pre- and post-mining CMM parameters were introduced in order to differentiate between pre- and post mining in cases where virgin CBM was extracted, and therefore the timing was important (the methane can only be counted when mined through). In mines extracting virgin CBM, pre- and post-mining drainage are likely to take place several years apart, and generally through different systems / boreholes. However, in normal cases where no virgin CBM is extracted, pre-mining CMM takes place within weeks of mining and pre- and post-mining extraction is physically the same system. This has been clearly adopted in the majority of registered projects, and has been accepted by the EB.

However, recently the interpretation by the EB changed without explanation and without any physical justification, and it has been demanded that these parameters are monitored separately, and reviews requested, even where the PDD was clearly stating these parameters are measured together (or the systems are the same) and where previous monitoring reports were also accepted.

In order to avoid large amounts of unnecessary requests for review, requests for deviations etc. and thus to avoid much additional work for the EB and secretariat which has no environmental benefit, we hope the EB will accept projects that have previously monitored these parameters together in line with their registered PDD and previous accepted monitoring reports, rather than

¹ 2/CMP.4, p. 6, § 14

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retroactively applying this new interpretation and forcing numerous requests for deviation. This is not a matter of deviating from the methodology, but a matter of retrospectively changed interpretations, which are not justified and which were not intended by the original methodology. The proposed new version of the methodology clearly states that pre- and post-mining CMM can be measured together or separately and that project participants need to justify their choice – PPs did make their choice previously and this was accepted, and this choice should not be retroactively challenged and rejected.

Para 48 (Annex 5) – PoA erroneous inclusion

The revised draft Procedures for Erroneous Inclusion of a CPA are beginning to meet the intent of decision 2/CMP.5.. We support the proposed definition of “erroneous inclusion” as not meeting CPA eligibility criteria.² We also welcome and support the proposed changes to paragraph 5 that limit the time period during which a new CPA can be challenged for erroneous inclusion. Yet, this limitation must be applied consistently throughout the procedures if it is expected to truly limit DOE liability.

We have a major concern that the revised procedures retain a situation where liabilities for erroneous inclusion are unbounded, because the review process can be extended to all CPAs. Paras 10, 13(b), 16(b,c), and 17 retain the risk for project developers that – following the review of inclusion of a recently added CPA – all CPAs in the PoA may be subjected to a review, regardless of when they had been included. As a result, a validating DOE may become liable for all CERs issued by the PoA up to this point, which amounts to a potentially unlimited liability. In summary, the welcome changes to paragraph 5 will be ineffective and purely cosmetic unless the review process is similarly adapted.

As outlined in previous submissions to the EB, the PD-Forum proposes that the review of included CPA should only be extended to CPAs that had been included within 1 year preceding the request for review or 6 months after their first issuance, whichever is earlier. Under this approach, investors in CPAs would have the certainty that included CPAs are treated like registered stand-alone projects after a suitably long period for requesting reviews has been passed. This principle would be simple, consistent with common CDM practice, and strike an appropriate balance between an adequate liability for erroneous inclusion and the possibility to put the further inclusion of CPAs to the PoA on hold, as well as ensuring predictability for project promoters and calculable liabilities for the DOEs. We have provided a mark-up of the text showing how this option could be implemented, see annex to this letter.

Para 48 (Annex 6) – PoA registration and issuance

We welcome the new provision (para 12) to allow for changes in the coordinating/managing entity (CME).

We strongly suggest that the following changes previously proposed by the PD-Forum be included in this revision (c.f. PD-Forum presentation on PoA issues):

- Clarification of the additionality proof for PoAs (should additionality be established at PoA level, at CPA level or both?)
- Provision for “natural combinations” of methodologies that can be combined in a CPA

² However, this support is predicated on the understanding that DOEs and the EB will support clear and bounded eligibility criteria that address the material conditions for eligibility for a PoA and not more. If the scope of eligibility is extended to include non-material aspects, then the new definition of erroneous inclusion may once again become unacceptably broad and fuzzy.

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Para 53, 56, 66 & 67 – Revision of review procedures

At EB54, the Board decided to prioritise the discussion of cases under review at EB55 and to defer requests for reviews to EB56. However, the processing of requests for review at EB56 is also stated to be conditional to the adoption of revised review procedures at EB55. Other than the draft procedures released together with the annotated agenda for EB52³ no revised procedures have been published. This leaves us to assume that the procedures will either not be adopted at EB55, which will mean further delay of the processing of requests for review (currently 35 registration requests and 19 issuance requests), or that those revised procedures will be approved without giving stakeholders an opportunity to comment on them.

The PD Forum submitted an unsolicited letter to the EB⁴ outlining its concerns with the two options of the review procedures as presented during the CDM Roundtable on 12 July. The PD Forum finds in this letter that the proposed procedures do not lead to an improvement of the processes but are more time and resource intensive than current procedures. The Forum therefore recommends to open a call for public input in order to take due account of stakeholders' concerns and proposals.

However, providing stakeholders the opportunity to comment on the procedures should not result in further delays to the cases that have been deferred to EB56. These requests – and any new requests - should be processed as soon as possible according to existing procedures and existing timelines, until the new procedures are adopted.

Para 55 (Annex 7) – Draft “Guidelines on the treatment of national and sectoral policies in the demonstration and assessment of additionality”

The PD Forum welcomes the EB's continued efforts to provide clarity on the treatment of E-/E+ policies, which since early 2009 been an increasingly polemic issue. Unfortunately, we do not believe that the guidance presented resolves the issue. The current draft rather contradicts fundamental principles of the EB22 decision and further increases uncertainty within the CDM market.

We would like to bring to your attention the comments that we made on the previous draft version of these guidelines (annex 3 of the EB 54 agenda) in our letter dated 17 May 2010⁵. A number of our concerns have been addressed in the draft to be considered at EB55, in particular the definition of 'policy' in section B of the guidelines. However, a number of our concerns remain to be addressed, these are summarized below:

Change in policy vs new policy

The draft guidelines define a policy as a 'set of decisions which are oriented towards a long term purpose.' We would interpret this to mean that all decisions related to a subsidy or a feed-in tariff for a renewable energy technology would constitute a single policy. Such a subsidy would give a comparative advantage to a less emissions intensive technology, so it would therefore constitute an E- policy in accordance with EB22 Annex 3. A decision to reduce a specific subsidy for a renewable energy technology would be part of the policy to subsidise

³ <http://cdm.unfccc.int/EB/052/eb52annagan5.pdf> and <http://cdm.unfccc.int/EB/052/eb52annagan10.pdf>

⁴ Para 82, other stakeholders, item (c) or <http://www.pd-forum.net/files/2c80be85ea4878a60a03c904074a54eb.pdf>

⁵ <http://pd-forum.net/files/2d8e4f788d8c2b81fd593b84c686f855.pdf>

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renewable energy, therefore the policy should still be considered to be an E- policy. We are therefore concerned that in paragraph 9 'decrease in tariff for renewable energy' is given as an example of an E+ policy. If a decrease in tariff came about because of the reduction of a subsidy, this would constitute a change to an E- policy and not a new E+ policy. In some circumstances the reduction in subsidy over time may be defined in the original design of the subsidy (e.g. to take into account expected technology development) and in such cases a reduction in subsidy would not even reflect a change in policy. In other cases a decrease in tariff for a specific renewable energy technology might lead to tariffs that are still above tariffs for conventional, more GHG intensive technologies, reaffirming the E- character of the policy. Certainly, as long as the feed in tariff is above tariffs for more GHG intensive technologies or the general market rate, the feed in tariff cannot be interpreted as an E+ policy in accordance with EB22 Annex 3. Additionally, this interpretation is likely to lead to a situation where a tariff for a new renewable energy technology has been somewhat reduced since 11 Nov 2001, and thus considered an E+ policy, while the technology was not even used at all as at 11 Dec 1997, and thus no tariffs existed at all as at 11 Dec 1997. ***As such it is not correct to assume that any reduction in tariff for renewable energy is automatically an E+ policy as is implied in paragraph 9, and we urge the EB to reject this misguided interpretation.***

We have in several previous submissions highlighted the likely impact of such an interpretation: this punishes early movers who were serious about supporting their new renewable energy industry and would discourage any developing country from introducing any new support policies, as the EB has shown that it accepts any reduction in support irrespective of technology and cost development and growth in the sector. This is likely to rule out any renewable energy or energy efficiency project in many countries in the world (especially in countries where inflation has been relatively low since 2001 and/or technology has improved / costs have reduced) and creates – rather than resolves – perverse incentives for the adoption of policies which contribute to the ultimate goal of the Convention.

Demonstration and ODA-funded projects and immature technologies

The guidance does not allow for any differentiation for demonstration projects, ODA funded projects, rapidly growing sectors or technologies.

No definition of 'market prices'

The PD Forum would like to note again that the definition of "market prices" (paragraph 6) is a challenging concept in cases where markets are not totally liberalised and where prices are fixed by governmental entities without a very explicit link to policies.

Requirement to assess each parameter of the investment analysis

The demand that each parameter applied needs to be separately assessed to confirm whether it is directly determined by a policy is going to create significant additional work for PPs and DOEs and thus also for the secretariat/EB. Such a requirement will significantly increase the uncertainty and the transaction costs for CDM projects.

Counterfactual is difficult to prove

Paragraph 9 of the draft guidelines requires project participants to amend parameters and that 'project proponents shall provide to the DOE all relevant evidences to ensure that the value proposed for the determined parameter represent what it would be currently if policy before 11

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December 1997 was currently in place'. Such counterfactual situations would, in many situations, be difficult or impossible to define or to validate. In fact, such hypothetical scenarios would be very subjective and prone to high uncertainty levels; they could turn the additionality assessment into a piece of pure fiction with no bearing on any reality.

It is important to keep in mind that developing and emerging countries typically go through rapid changes in regulations and policies. In most cases, such changes do not explicitly target a reduction (E- policy) or increase (E+ policy) in GHG emissions. They often pursue economic growth by, for example, increasing the overall efficiency within a specific sector or allowing for a stronger involvement of the private sector (i.e. market liberalisation or privatisation with the aim to increase competition or allow for foreign investment). Such market reforms have usually a significant and transformative impact on fundamental characteristics of a particular economic sector, affecting both "E-" and "E+" technologies or measures. It can be thus very challenging and subjective to define a hypothetical scenario based on policies that existed prior to such comprehensive market reforms.

Baseline alternatives

A number of methodologies prescribe the baseline scenario so no alternatives are discussed, in line with the VVM (para 104). We therefore suggest that the following text is added to the end of paragraph 10 of the draft guidelines: "unless the methodology applied prescribes the required baseline scenario. In this case, the credibility test does not need to be applied".

Para 58 – Highest tariffs

We welcome the publication of the list of tariffs, while we are still of the opinion that this is not an appropriate proxy to be used for the assessment of additionality. The PD Forum has commented on the note in two separate unsolicited letters⁶, showing inaccuracies and inconsistencies in the data published. We expect these submissions to be taken into account and the data to be corrected.

Para 71 (Annex 8) – Recruitment Strategy for Vacant Posts in SDM

The PD Forum welcomes the information note on the recruitment strategy as it provides valuable information as to how the recruitment process will be adapted to the challenges the SDM of the Secretariat is facing due to the high workload. We in particular welcome the fact that the work experience required for P2 positions has no longer to be directly related to project based mechanisms and that more emphasis lies on internal training, i.e. learning on the job.

Para 74 (Annex 10) – Timelines

The PD Forum welcomes the work carried out by the Executive Board to address the CMP request to adopt revised procedures for registration and issuance. The PD Forum however, notes with mounting concern the significant increase of the registration and issuance timelines the new procedures are causing. Only a few weeks after the introduction of the new procedures, it is now becoming clear that while they provide some clarity on the expected timelines for projects to complete the 2-step preliminary checks (completeness check and information and reporting check), the timelines are still not being met and the overall time

⁶ Letter submitted to EB55 on Chinese Hydro Tariffs dated 11 July 10, to be found at <http://pd-forum.net/files/196d7347e41f50a03bd36ce37f082790.pdf> and letter submitted to EB55 on Chinese Wind Tariffs dated 11 July 10, to be found at <http://pd-forum.net/files/0be74ab648713381bb267005dc7e208e.pdf>

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between the submission of the request and the registration/issuance date has significantly increased, when compared to the procedures previously in place. The shocking reality is that issuance or registration requests will now have to wait, untouched, for 100 or more days before any work is scheduled to start. A project requesting registration today is now unlikely to get registered before the end of 2010.

In addition to this, project proponents now have to bear the additional risk of substantial delay because submissions that are deemed to be incomplete are being sent right back to the beginning of the queue, even those which had already been in the queue prior to the implementation of the new processes. The PD Forum feels that this is a disproportionate penalty for project proponents, especially when many incomplete messages relate to minor, editorial or formatting non conformities, or even typos, that have no material impact whatsoever on the emission reduction volume, additionality or environmental integrity. Punishing such circumstances with an additional three months plus of delay is both unfair and unnecessary. Especially when such minor departures from perfection could be easily addressed through a short teleconference between the stakeholders involved.

The PD Forum would urge the Board to reconsider the new procedures in light of the fact that instead of providing more efficient solutions to processing requests for registration and issuance as requested by CMP.5, they are indeed having the opposite effect of adding additional time and uncertainty to the already lengthy registration and issuance process.

The PD Forum would also like to note that the target durations shown in the graph on page 9 are incorrect. EB54 Annex 28 specifies that the completeness check will be completed within 7 calendar days and the information and reporting check within 23 calendar days. The total therefore is 30 calendar days, not 30 working days.

Para 80 – Relations with stakeholders

Despite frequent requests for interactions and communications, the PD Forum notes with concern that little is being done to enhance communications with Project Participants (PP) and stakeholders. As defined in the CDM Glossary of terms, a PP is a Party or organization authorized to participate in a CDM project. Stakeholders are defined as the public likely to be affected by the proposed project activity or actions leading to its implementation. Apart from the meeting highlighted in §80(a), no project participants or stakeholders, as previously defined, were invited to four out of the other five events noted. For the most part, DOEs and DNAs are neither PPs or stakeholders as they are not authorized to participate in a project not are they likely to be affected by the project. The majority of the activities listed in the annotated agenda were not open to stakeholders other than DOEs and DNAs. For example, the VVM Workshop, which the PD Forum has been requesting for over two years to be open to project developers, was again closed to project participants. The PD Forum urges the Board to allow for much greater interaction with the project developers, including allowing participation to specific training sessions, so that participants and stakeholders can improve their performance and calibrate each others' expectations. The VVM workshop is not only relevant to DOEs, but is particularly relevant to PPs as well. The EB has, on numerous occasions cast blame on the project participants for not providing quality documentation, yet nothing has been done to make training all inclusive. By including participants from all stages of the CDM project implementation cycle, the EB/Secretariat may also increase its understanding of the realities of investment and foster an increased alignment between the CDM's procedures and the reality of

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its stakeholders.

Para 82 (p) – Unsolicited letters

The PD Forum would appreciate feedback from the EB/Secretariat on whether the efforts to provide comments on the annotated agenda are useful and are taken into consideration by the EB members in approaching the EB meeting for which they are intended.

Moreover, the Forum would like to invite the EB to officially accept comments concerning the annotated agenda within the 2 week period before the start of the meeting. The JISC generally welcomes and officially encourages such comments and inputs from the PD Forum, and we would welcome the EB doing the same.

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Mark-up of para 10-17 of annex 5 to annotated agenda of EB55 – Draft Procedures for review of erroneous inclusion of a CPA (Version 02)

10. A DOE, that has not performed validation, registration, inclusion or verification functions with regard to this PoA, shall conduct the review referred to in paragraph 9, by assessing a random sample of 10% of ~~all~~ the CPAs ~~currently included that meet at least one of two conditions: (i) the CPA's first issuance occurred no more than six months ago, or (ii) the CPA's inclusion occurred no more than 12 months ago~~ and submitting a report to Board within eight weeks.
11. An assessment team shall be established by the Board to analyse the DOE review report and make a recommendation to the Board within two weeks. The assessment team may discuss the findings of the review report and seek comments from the co-ordinating entity and validating DOE, as appropriate. Based on this assessment, the assessment team shall make a finding as to whether any CPAs have been erroneously included into the PoA.
12. The Board shall consider the review at the next Board meeting for which the report has been made available within the two week document deadline.
13. The Board shall decide:
- Whether to exclude any of the CPAs from the POA, and if so;
 - Whether to extend the review of the inclusion of CPAs to ~~the POA~~ all CPAs that meet at least one of two conditions: (i) the CPA's first issuance occurred no more than six months ago, or (ii) the CPA's inclusion occurred no more than 12 months ago.
14. The Board may decide to exclude a CPA under review from the PoA, if it determines that a CPA was erroneously included into the PoA.
15. The consequences of the exclusion are that:
- (a) The CPA that has been excluded shall not be re-included again in that or any other PoA, or qualify as a CDM project activity;
 - (b) The DOE that included the CPA, shall acquire and transfer, within 30 days of the exclusion of the CPA, an amount of reduced tonnes of carbon dioxide equivalent to the amount of CERs issued for the CPA as a result of the CPA having been included, to a cancellation account maintained in the CDM registry by the Board. The period covered shall be from the date of the erroneous inclusion of the CPA into the PoA to the date of exclusion of the CPA from the PoA.
16. The consequences of the extension of the review are that:
- (a) The further inclusion of new CPAs and issuance of CERs shall be put on hold for all to that PoA-CPAs that meet at least one of two conditions: (i) the CPA's first issuance occurred no more than six months ago, or (ii) the CPA's inclusion occurred no more than 12 months ago; shall be put on hold;
 - (b) A further sample of 15% of ~~included~~ CPAs that meet at least one of two conditions: (i) the CPA's first issuance occurred no more than six months ago, or (ii) the CPA's inclusion occurred no more than 12 months ago shall be reviewed in accordance with the modalities contained in paragraphs 10 to 13;

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- (c) If this second review also leads to the exclusion of further CPAs, the Board may decide to extend the review to all ~~included~~ CPAs that meet at least one of two conditions: (i) the CPA's first issuance occurred no more than six months ago, or (ii) the CPA's inclusion occurred no more than 12 months ago.

17. Only once the Board has decided not to extend the review and all required cancellations have been confirmed, the hold described in paragraph 16 (a) shall be lifted.

* * *