PROJECT
DEVELOPER
FORUM

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Date	8 October 2010
Page	1/7
Subject	**Unsolicited communication regarding annotated agenda to EB57**

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 57. Since the annotated agenda was only released on 29 September, we were unable to submit the letter within the official deadline for formal submissions to EB57. 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,

Leo Perkowski
Vice-chair of the PD Forum

Para 3: Draft terms of reference for membership of the Board (annex 1)

Upon brief review of Annex 1 the Project Developer Forum wishes to suggest listing the responsibilities of the EB in order of importance, with the regulatory functions being the primary role of the EB.

Para 5: DOE liability / excessive issuance

The Project Developer Forum has submitted a separate response to the call for public input on this issue and hopes the EB take full account of these inputs.

Para 6: Public availability of DOE performance indicators

The PDF believe all information regarding DOE performance should be publicly available and should not be considered confidential information. We further suggest to apply the concept of materiality to the performance assessment, where immaterial 'failures' do not affect the conclusion regarding the DOE performance. Similarly, we hope that the issues for the performance monitoring are checked for credibility, where issues that are proven to have been raised erroneously during the completeness check or review process are not included in the performance assessment.

Para 7: Criteria related to the inclusion of CPAs in POAs (annex 2)

Further to our previous submissions we would like to submit the comments in Annex 2 below.

Para 8: First-of-its-kind and common practice

Using the general principles presentation at EB56, the PDF would like to make the following observations and suggestions:

The PDF agrees with the definition of "Demonstration Project" given in the presentation, but for the avoidance of doubt in the interpretation, we want to highlight here that this definition includes demonstration projects that test new technologies, as well as ODA-funded projects, as these are generally intended for testing or promoting new policies or helping where private funding is not (sufficiently) available. Therefore, projects that receive ODA funds are defined as demonstration project here.

The applicable region for first-of-its-kind (FOIK) should be the same as used in the common practice analysis or baseline determination. For example, the analysis for a grid-connected renewable energy installation could use either the project electricity system or the same region from the common practice. In smaller countries, these regions are the whole host country as suggested in the EB56 presentation. But in larger host countries, these smaller regions are more appropriate, without the burden of proof to "establish that the output of the project will be typically distributed to areas of other sizes". There should also be the provision for project-by-project assessment if the project wants to deviate from these general definitions. As an example, the electricity grid boundary may not be always appropriate as the economic and political realities can change a lot from region to region, independently from the technical specifications defining the grid boundary.

Slide 6 suggests that 2 projects can claim to be FOIK. The PDF believe that in some sectors this number would be too small.

With regards to electricity sector projects, slide 8 suggests that only in regions where more than 10% of electricity from renewable sources are 2 projects from each of the categories of

RE considered FOIK. The PDF believe that each category of RE should always be treated separately irrespective of fuel shares in the grid.

"Annex I" presumably refers to the annex I in MP34 report annex 10. Several renewable energy categories are missing, in particular marine energy technologies.

Para 9: Compliance with indicative timelines

The PDF is disappointed that despite the CMP.5 decision, the actual delays experienced by project participants have increased compared to a year ago, and are far longer than the target timelines. The resources do not seem to be in place to catch up with the backlog and speed up the process in line with the management plan.[1] Further, previous PDF submissions have pointed out that the actual number of requests for issuance that should be expected is far higher than the number accounted for in the management plan. We understand that the quality of submissions needs to be improved as well but we have numerous examples of erroneous incompleteness messages or issues that pertain merely to the required level of reporting and could thus have been easily solved via an on-the-record direct two-way communication between the secretariat and the DOE's headquarter. Therefore, we hope the EB will take serious steps to recruit the required staff and improve the procedures to reduce delays.

Para 13 / 15 / 15 (i): Communication with PPs

The PDF submits notes on the annotated agenda prior to the EB meeting. As the annotated agenda is only released 2 week before the meeting, it is impossible for our comments to be submitted prior to the normal deadline for any communication to be considered. However, we hope the EB will formally accept such comments to the annotated agenda after the normal deadline in the light of the CMP decision 2/CMP.5 that the EB should enhance its communications with stakeholders.

[1] There are 65 empty posts as reported by Point Carbon on 29 September 2010.

Para 7: Criteria related to the inclusion of CPAs in POAs (annex 2)

Further to our previous submissions we would like to submit the comments below:

Issue #1: DOE liability

With regard to EB55 on DOE liability, we accept and support that market participants should be held liable for errors they make, and that penalties ought to be high in cases of wilful and serious misconduct or fraud. We are, however, concerned that the trigger point for liability involves a subjective assessment that is subject to change over time and that may be applied retroactively.

In our view, the current rules governing the liability for erroneous inclusion—and by implication the entire PoA modality—are inoperable because of three interrelated reasons:

1. **Unclear trigger for liability**: The trigger point for invoking liability is partially subject to subjective assessments and elements beyond the control of PoA promoters. For example, the additionality assessment can be challenged by the EB at some point in the future and trigger DOE liability. Since the application of additionality tests by the EB have undergone significant changes in recent years, further changes in the assessment of additionality are likely. Clearly, it is impossible for market participants to bear liabilities derived from erroneous inclusion of CPAs. Likewise, the liability trigger is not limited to fraud and gross wilful misconduct by the DOE or PoA promoters. So market participants can be held liable for all CERs on the basis of non-material errors. Given the potential scale of the liability (see below), this creates an unmanageable risk.
2. **Trigger that can evolve over time**: The EB is likely to further change the PoA rules at some point in the future and may then apply new standards to the PoA at the time of a revision for “erroneous inclusion”. Several precedents exist where the EB does retroactively apply new standards. So it is not possible to exclude a scenario where different standards are applied ex-post to the PoA review process, and nothing in the PoA rules precludes such an eventuality. And since market participants cannot take any recourse to decisions made by the EB, they are unable to bear this political risk.
3. **Unquantifiable liabilities**: The liability can be triggered at any point during the lifetime of a PoA. If the programme is large the liability can become vast and impossible to determine ex-ante since volumes may be high and CER prices might increase substantially in the near future.

Issue #2: PoA additionality

We followed the discussions during EB56 regarding the draft guidelines on eligibility criteria (EB56). It seems apparent that, guided by personal opinion, each EB member and the Secretariat has his/her own personal vision of what a PoA should be and as a consequence of what PoA additionality should be.

Given the above, the PDF is naturally concerned that a subjective and constantly changing vision of PoA, rather than a well-defined one, dominates this debate.

PoA is a powerful tool that can be shaped in ways that have not yet been fully explored. From our perspective, many features can influence the way the PoA additionality tool is designed:

- number or CPAs can be known or unknown ex-ante
- precise design of CPAs can be known or unknown ex-ante
- CPAs can have different degrees of standardization (e.g., high for CFL; low for hydro)

- CME can/cannot implement the CPAs
- All CPAs can be implemented at the same time or spread out over many years
- Type of barriers used to demonstrate additionality

It is, therefore, important to design the PoA additionality guidelines in a way that guarantees the environmental integrity of PoAs but puts no limits on PoA application potential.

During EB56 discussion, concerns were raised that it is sometimes difficult to demonstrate PoA additionality at PoA level. EB members identified that the level of standardization of the CPA is the main key to decide whether to put the centre of gravity of the additionality demonstration at the CPA or PoA level. If standardized (CFL type PoA), the additionality can be demonstrated at PoA level and some basic assumptions retested at CPA level. If not standardized (large EE measure PoA type), a full assessment at CPA level is preferred.

On the basis of comments heard during the meeting, we are concerned that the EB links the "level of standardization" to the size of the measure to implement. At first sight it appears to be a simple and fair rule, but we think it is too rigid and simplistic. What is small is not always simple. What is big is not always complicated.

To take one example, small-hydro projects usually fall under the 1% small-scale threshold but are highly site specific, and could require an individual assessment. Demonstrating the additionality of a small-hydro project at PoA level is extremely difficult (if not impossible).

As suggested in EB47, it is important to let the PPs decide on the most appropriate additionality demonstration strategy. The PPs should have the choice between a PoA and CPA level approach:

- PoA level additionality: the demonstration of additionality is done for the PoA as a whole as procedures provided in the methodology. At CPA level, the PPs shall test the assumptions formulated at PoA level.
- CPA level additionality: at PoA level, the PPs shall describe the barrier(s) faced by CPAs and should explain how they will be assessed at CPA level. The PPs could propose a generic barrier test adapted to the type of measure supported by the PoA and to its context. At CPA level, the test described in the PoA-DD is performed. For PoAs that demonstrate additionality through a financial analysis, a pre-defined Excel could be prepared. At CPA level, the PPs would need to fill in the pre-defined Excel tool.

Issue #3: Combination of methodologies

It remains unclear for the PDF how limiting various methodologies impacts the environmental integrity of the PoA. We believe that it places unnecessary limits on PoA application potential. Why? Two reasons stand out.

First, it is an unfair rule. Why can a CDM combine in one PDD several technologies and methodologies while a PoA cannot do the same? If the EB wants to avoid broad PoAs that can accommodate any type of project, the EB should limit the PoA to "one measure" and allow the CME to use any combination of methodologies applicable to this "measure".

Second, the combination of methodologies does not have to be applied consistently to all CPAs. This is a burdensome limitation because it prevents the development—under the same PoA—of applications that are both stand alone (AMS-I.A) and grid connected (AMS-I.D). Consider a PoA where biogas is used for electricity generation and the primary measure is wastewater treatment (AMS-III.H). Under existing rules and methodologies, the CME is required to set-up one PoA for the stand-alone activity and another PoA for the grid connected activity. In our view, this rule is an obstacle to progress; it is outdated, backward looking, and impractical.

Issue #4: Application of VSSC additionality guidelines under the PoA

After being announced during an EB54 press conference as being non-applicable in the context of PoA, some EB members requested that the applicability of the guidelines for the demonstration of VSSC additionality (EB54, annex 15) be put on the EB agenda.

Once more, we encourage the EB not to create biases between “normal CDM” and PoA rules. In our opinion, if each CPA is below the 1% SSC threshold and complies with the debundling rules there is no reason not to extend the application of the additionality guidelines for VSSC to PoA.

Instead of a single PoA, the application of these new guidelines on CDM only will encourage a project developer to register several independent CDM activities. The result will be the same: it will just complicate UNFCCC’s work and the project developer’s life.

Issue #5: Absence of a PoA project start date definition

According to actual rules, the CPA start date cannot be prior to PoA validation start. Once more, PoA developers are facing a rule that unnecessarily limits the PoA potential. This is especially true for technologies that do not require substantial pre-project preparation as “CFL type PoA”. Indeed in this case, finding a carbon consultant willing to prepare the PoA documentation and a DOE willing to the validation could take longer than programme implementation on the ground.

PoA documentation preparation should not be a limitation to programme implementation on the ground. We believe that a CPA cannot start at any point of time and proof should be provided that it is implemented as a result of the PoA.

A fair and simple solution would be to define a “PoA project start date” as the first real action towards the PoA, and then limit the PoA to CPAs that have a project start date after the PoA project start date. If a PoA desires to include CPAs that have a project start date prior to validation start, the list of these CPAs should be indicated in the PoA-DD at time of submission of the PoA for validation.

Issue #6: Absence of sampling guidelines

Attaining a large economy of scale under a PoA is predicated, in part, on employing sampling procedures during verification. Without sampling procedures, all CPAs have to be visited by the DOE, resulting in enormous verification costs. We believe that the EB should act promptly to solve this issue. Without this rule, economy of scale can only be realized at validation/registration time but not at verification.

In the absence of UNFCCC guidance on sampling, we invite the EB to allow project proponents to use, as a temporary replacement option, JI procedures (paragraph 49 to 52 of "Procedures For Programmes Of Activities Under The Verification Procedure Under The Joint Implementation Supervisory Committee" version 1) or Clause A.2.4.6.4, ISO 14064-3:2006.

Issue #7: absence of time limitation on PoA debundling rule

Despite the recent improvements in the PoA debundling rule, the PDF is deploring that PoA debundling rules are more restrictive than for single projects. Indeed, stand-alone projects have a 2-year limitation from start of registration, which is absent in PoA rules. As for Issue #7 this bias between PoA and CDM rules will only encourage a project developer to register several independent CDM activities.

As for CDM, two CPAs undertaken at the same site using the same technology should only be seen as debundling components of a bigger activity only if they are undertaken within two years one from the other.

Issue #8: International PoAs

Because of its high level of complexity, PoA development costs are far above normal CDM ones. Setting up international PoAs offer therefore great potential for small countries and LDCs where project activity density is low.

However it is still unclear how international PoAs could be set-up and especially if a country can join a regional PoA in the middle of a validation.

Issue #9: Absence of eligibility criteria definition

There are some uncertainties surrounding the definition of eligibility criteria. According to the draft guidance on eligibility criteria, the use of eligibility criteria seems to be limited to the demonstration of the additionality of the CPA. In the PoA-DD form (section A.4.2.2.), eligibility criteria—defined as the condition "for enrolling the CPA"—have a broader role. This point should be clarified by the EB and "eligibility criteria" should be defined under the glossary of CDM terms.

From our understanding of PoAs, eligibility criteria underpin Programmatic CDM and should not be restricted to additionality but could also be used to:

- meet the eligibility criteria of the methodology/methodologies employed
- limit the options offered in the methodology to identify the baseline scenario and/or estimate emission reductions
- make sure that the CPA applies the policy/measure supported by the PoA
- other limitations that the project proponents wants to introduce (e.g., to meet some DNA's or stakeholders' requirements)