

To
The CDM Executive Board

In the “DRAFT PROCEDURES FOR AN APPEAL PROCESS AGAINST DOES BY PROJECT PARTICIPANTS,” Paragraph 9 reads as follows:

“9. The Board may therefore wish to consider allowing for appeals directly to the Board by PPs regarding validation/verification opinions from a DOE under following conditions:

“(a) Allow a PP to file an appeal to the Executive Board against the validation/verification decision of a DOE on its project activity where the PP is not satisfied with the related decision of an appeal panel of the DOE. The scope of the appeal shall, however, be limited to the technical aspects with respect to the application of requirements of the CDM agreed by the Board, and /or the independence and/or qualification of the appeal panel constituted by the DOE for the specific case(s);

“(b) An appeal shall only be submitted together with the decision in question of the appeal panel of the DOE ;

“(c) An appeal shall only be submitted after a PP has exhausted those opportunities already provided by the DOE.s system of complaints, disputes and appeals. ”

Our comments are as follows:

There could be a variety of situations resulting in an appeal:

1. Where the PP is not satisfied by the procedure followed by the DOE.
2. Where the PP is satisfied by the procedure followed by the DOE but is not satisfied with the validation report of the DOE as the DOE may not have taken into consideration all the information provided as a part of the validation process.
3. Where there is a difference of opinion between the PP and DOE about the interpretation of CDM rules.

We have been told on several occasions by one DOE we work with that its (the DOE’ s) system of complaints, disputes and appeals only deals with case 1 above and not with cases 2 and 3. Besides, the appeal panel is constituted from a separate section of the same DOE, without a specific knowledge of CDM, and therefore is not in a position to evaluate the second and third situations.

Thus the DOE’ s appeal process *only deals with procedural issues*. On the other hand, the “Draft procedures for an appeal process” cited above, is correctly *“limited to the technical aspects with respect to the application of requirements of the CDM”* .

The proposed appeal process hence suffers from the following deficiencies:

1. There is no system for resolving technical or interpretation issues if the DOE appeal panel is only responsible for looking at procedural issues.

2. Constituting an appeal panel consisting of members of a separate section of the same DOE with which there is a conflict presents a conflict of interest situation.
3. If the PP is satisfied with the procedure followed but wishes to appeal against technical decisions or interpretation issues, he has to unnecessarily go through the DOE appeal process (covering *procedural* issues) causing loss of time and money.

The following suggestions for modifications in the procedure are submitted for consideration:

1. Ideally, the appeal panel should be an independent panel consisting of members from a different DOE or specialists appointed or accredited by UNFCCC.
2. The appeal panel must look at *technical aspects with respect to the application of requirements of the CDM*, if these are disputed between PP and the DOE.
3. Alternatively, the PP should be allowed to appeal directly to the CDM EB, without going through the DOE appeal procedure, if the issues are technical or interpretation issues. The costs of the appeal should be recovered in equal shares from the DOE and the PP.

Thank you for your consideration.

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