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M2M7/Doc.6

## **Update on UNFCCC Observer Status**

### **Discussion Paper**

#### **1. Purpose**

This paper provides an overview of the process of becoming an observer organization to the United Nations Framework Convention on Climate Change (UNFCCC), the Administrative Support Group's (ASG's) efforts to date to obtain observer status, the UNFCCC Secretariat's response to the Partnership's application, and recommended next steps for securing observer status.

#### **2. Background on UNFCCC Observer Status**

Non-governmental and intergovernmental organizations (NGOs and IGOs) can participate in UNFCCC sessions as official observers. In defining "observer" status, the Convention states "Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object."<sup>1</sup>

Observer applications are typically reviewed by the Secretariat twice a year, once the spring in advance of the interim negotiating sessions,<sup>2</sup> and once in the fall in advance of the meeting of the Conference of Parties (COP). Once admitted, observers can be actively involved in UNFCCC meetings, including the annual COP, as well as display material, have a booth, and host side events inside the official COP area. They can also provide badges to members and guests of their organization to enter the official COP area. Currently, Methane to Markets cannot do these things without the direct sponsorship of one of the M2M Partners, which has limited the ASG's ability to raise awareness of the Partnership amongst this important stakeholder community.

#### **2. Background on Partnership Efforts to Obtain Observer Status**

The decision to seek UNFCCC observer status for Methane to Markets was made as a result of the January 2009 discussion in Monterrey, Mexico, at which the Steering Committee directed the ASG to raise awareness of the Partnership among the international climate community, especially the UNFCCC. Greater awareness among the UNFCCC stakeholders of the Partnership's activities and accomplishments could result in greater support among Partner countries for the Partnership's efforts and additional resources for project development.

At the request of the Steering Committee, the ASG submitted an application for Observer Status to the Secretariat in February 2009 (see Appendix 1 for application contents). In April 2009, the ASG received the Secretariat's denial of the application based on lack of "juridical personality," which the Secretariat

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<sup>1</sup> Article 7, paragraph 6, of the Convention.

<sup>2</sup> Interim sessions are generally held at the Secretariat in May or June.

defines as non-profit status in a member country (see Appendix 2 for Secretariat Guidelines). The Secretariat noted that proof of non-profit status must come from Government authorities (e.g., in the case of the United States, the Internal Revenue Service) and not the applicant itself. The Secretariat also highlighted the lack of a consolidated reporting mechanism for participating Partners conducting activities at their respective own costs. The Secretariat did note that it appeared as though the Partnership was well qualified in matters pertaining to the Convention.

### **3. Options Moving Forward at the 32<sup>nd</sup> Meeting of the UNFCCC Subsidiary Bodies in June 2010**

Since the September 2009 Steering Committee meeting, the ASG has reviewed the Secretariat's decision and has consulted with multiple stakeholders with good knowledge of the Convention and its negotiation process. While the Secretariat claims that the guidelines have been endorsed by the Parties, in fact, the Parties only "took note" of them. Therefore, there is some legal uncertainty regarding the ability to use these guidelines as a basis for rejecting the Partnership.

A recommended course of action moving forward would be to attempt to have the guidelines governing observer status modified to allow for the inclusion of organizations like Methane to Markets. This would include adding language that would apply to organizations representing international partnerships with formal terms of reference negotiated and agreed upon by multiple countries, but lacking secretariats with non-profit status. The issue will need to be raised by a UNFCCC Member Country at a UNFCCC Subsidiary Body for Implementation (SBI) meeting, and ideally supported by several other Member Countries making interventions. Specifically, this could work as follows:

ASG could circulate proposed revised guideline language and recommended language for supporting interventions to the Partners in advance of the next SBI meeting, which will take place in Bonn, Germany from 31 May – 11 June 2010.

A Methane to Markets Partner country would need to make a proposal during the opening session of the SBI to add this topic to the agenda under "Other Matters."

Steering Committee members would need to ensure that delegates from their countries participating in the negotiations are aware of the issue and prepared to support the proposed changes to the guidelines.

### **4. Next Steps**

**Approach:** Does the Steering Committee wish to make an attempt to modify the guidelines governing UNFCCC observer status in the manner outlined by the ASG?

**Identification of Partner(s):** If so, which Partner should make the initial proposal? Are there other countries willing to make supportive interventions?

**Points of Contact:** Do the Steering Committee delegates agree to arrange the necessary support for this process amongst the UNFCCC negotiators from their respective governments?

## **Appendix 1: M2M Observer Application Contents**

In support of the observer application, the ASG submitted the following information:

Letter of Application.

The Terms of Reference as the official document containing the mandate, scope, and governing structure of the Partnership.

A letter from the ASG explaining the Partnership and ASG funding structure in lieu of evidence of Methane to Markets non-profit and/or tax-exempt status.

Information on the Partnership's activities that indicate its competence in matters related to the Climate Change Convention (e.g., fact sheets, action plans, meeting minutes).

The 2008 U.S. Government's annual report on the Partnership and a letter from the ASG explaining the approximate make up of country support and leveraged project network funds, in lieu of an annual financial report.

Information on the affiliation with other NGOs or institutions involved in climate change activities (e.g., a list of Project Network members who also have observer status).

Methane to Markets brochures, newsletters, and other publications related to the Convention process.  
ASG contact details.

## **Appendix 2: Guidelines for Observer Status**

The guidelines for obtaining observer status to the UNFCCC are in the summary for "Promoting effective participation in the Convention Process," 20<sup>th</sup> session of the Subsidiary Body for Implementation (SBI20), Bonn, 16 – 25 June 2004, <http://www.un-ngls.org/orf/UNFCC.pdf>:

UNFCCC procedures state that "observer organizations shall provide, inter alia:

- (a) A statement of competence in Convention matters.
- (b) Confirmation of independent juridical personality.
- (c) Confirmation of non-profit and/or tax-exempt status in a State member of the United Nations.

Entities which cannot provide the necessary documentation are not considered eligible for admission as observer organizations. Organizations which fulfil [sic] the criteria are included in a list of organizations which the Secretariat recommends, through the Bureau, to the COP for admission as observers."

These procedures further state that:

- "(a) Multilateral agreements that do not establish an independent juridical entity are not considered eligible for admission;
- (b) Organizations which have been established by, and report to, governments and carry out government-mandated activities, but which cannot provide evidence of independence from government, are not considered eligible for admission. They are encouraged to participate as part of government delegations;
- (c) Organizations which carry out functions on behalf of governments, including activities relating to the flexible mechanisms, provided that they meet the criteria listed...above and that their governance structure is independent of governments, are considered eligible for admission."