

**COMMENTS OF
CONTOURGLOBAL
ON OVERSEAS PRIVATE INVESTMENT CORPORATION'S
DRAFT ENVIRONMENTAL AND SOCIAL POLICY STATEMENT**

March 22, 2010

ContourGlobal submits these comments on the Overseas Private Investment Corporation's ("OPIC") Draft Environmental and Social Policy Statement ("Policy Statement"). ContourGlobal develops and operates energy projects around the globe, including electric generation and combined heat and power ("CHP"), or "cogeneration," projects. ContourGlobal's focus is on developing new energy projects in high-growth, under-served markets, and it often partners with bilateral and multilateral institutions to bring innovative projects to the poorest of countries.

OPIC's support of U.S. energy companies that develop projects in the developing world is critical both to those companies' ability to compete in the global energy market and to the satisfaction of OPIC's mission to bring innovative power and infrastructure projects to developing nations. Indeed, ContourGlobal has been able to bring important new projects to developing markets – thanks in large part to OPIC's support.

For example, OPIC is providing financing and political risk insurance for ContourGlobal's 100 MW tri-fuel power project in Togo, which was recently awarded African Private Power Deal of the Year 2009 by Euromoney's Project Finance magazine. The project will help Togo overcome an electricity shortage that has inhibited its economic growth and represents the largest foreign investment in the country's history, as well as the largest power project in West Africa in twenty-five years.

ContourGlobal has also applied for financing for its innovative portfolio of energy efficient CHP plants in Nigeria, Romania, Russia, Slovakia, Ukraine, and other OPIC eligible countries. These facilities are being developed "inside-the-fence" of various Coca-Cola Hellenic Bottling Company beverage bottling facilities. ContourGlobal's CHP projects include the capture of 95% of each plant's carbon dioxide ("CO₂") emissions and will result in cumulative reductions of hundreds of thousands of tons per year of CO₂ emissions. Recognizing the importance of these projects to emerging markets, in October 2009, ContourGlobal and OPIC executed a memorandum of understanding pledging to work together to support similar power projects across the world.

The following key points from these comments are discussed in greater detail below:

- ***OPIC's Proposed Annual Transactional Emissions Cap Will Limit OPIC Support For Thermal Power Projects To Several Hundred Megawatts Per Year.*** OPIC's statutory mission is to mobilize private U.S. investment in less developed countries and areas. ContourGlobal seeks to develop efficient new thermal power projects in areas that are critically underserved. OPIC's proposed annual transactional emissions cap, however, will effectively limit its support for thermal power projects to several hundred MW per year, effectively shutting down its support for new projects in the least developed areas that need the projects the most. Moreover, OPIC's proposal ignores the fact that such new projects will displace higher emitting emission sources and result in cumulative net reductions in greenhouse gas emissions. OPIC has no legal obligation to impose an annual transactional emissions cap, which is fundamentally inconsistent with OPIC's

statutory mission to facilitate investment in poorer nations. OPIC should eliminate this mechanism from its final Policy Statement, and also clarify that it will credit emission reductions resulting from displacement of higher emitting sources by the new projects OPIC supports.

- ***OPIC Should Broadly Interpret The Term “Clean Energy Technologies.”***
Under the proposed Policy Statement, “clean energy technologies” would be assigned a greenhouse gas emission value of zero. Such technologies, however, would include only those sited where there is a comparable technology in widespread use in the host country. As discussed below, in some areas of world, there may be no “comparable technology in widespread use,” such that a clean energy technology may not otherwise qualify as such under OPIC’s policy. In that regard, OPIC’s policy may have the unintended effect of discouraging investments in clean energy technologies in less developed areas, with the result being the development of higher greenhouse gas emitting sources. Accordingly, OPIC’s Policy Statement should clarify that “clean energy technologies” are not limited to those sited where there are already comparable technologies in widespread commercial use. Furthermore, OPIC should interpret “clean energy technologies” to include those that result in a net reduction of greenhouse gas emissions through displacement of higher emitting sources.
- ***OPIC Should Calculate Greenhouse Gas Emissions In Its Portfolio According To The Pro Rata Level Of OPIC’s Financial Commitment To The Project.***
Under OPIC’s proposal, no matter how low the level of OPIC’s financial commitment to a particular project may be in comparison to the total costs of the project, the draft Policy Statement would require OPIC to assume 100% of the direct emissions associated with that project. Adhering to such an “in for a dime, in for a dollar” policy artificially inflates the level of greenhouse gas emissions associated with OPIC’s commitments and diverges from internationally accepted accounting methods under the Greenhouse Gas Protocol. Thus, for the reasons described below, OPIC should refine its calculation of the greenhouse gas emissions of the projects within its portfolio to account for the pro rata level of its financial commitment to a particular project – possibly even as a percentage of total project capitalization.

A. OPIC’s Proposed Transactional Cap Will Eliminate OPIC Support For New Thermal Projects.

1. OPIC’s Proposed Annual Transactional Emissions Cap Punishes the Least Developed Nations.

OPIC’s draft Policy Statement proposes to establish an annual transactional emissions cap for all new projects within a given year with significant, direct greenhouse gas emissions (defined as over 100,000 tons CO_{2eq} per year). Stuningly, OPIC’s proposed transactional cap would limit OPIC support for thermal projects to no more than several hundred MW per year, thus excluding from OPIC’s consideration nearly all meritorious thermal projects.

As a result, OPIC's proposed Policy Statement would effectively shut down its support for thermal power projects in the world's least developed countries. In order for OPIC to satisfy its mandate to participate in economically viable projects in countries that are in need of energy infrastructure projects, OPIC should apply its Policy Statement to individual projects flexibly and in a manner focused primarily upon its mission to catalyze development in the world's least developed countries. As currently drafted, OPIC's Policy Statement and its interpretation of its greenhouse gas emission reduction targets directly conflicts with its mission statement and has the unintended effect of punishing societies that are least able to afford purely renewable energy.

OPIC's draft Policy Statement proposes to apply an annual aggregate CO₂ equivalent ("CO_{2eq}") emissions cap to new transactions. But this cap is far too low for OPIC to continue to support energy infrastructure projects in the developing world, particularly in sub-Saharan Africa where less than 20% of the population has access to electricity. OPIC should not refuse to support important new projects that would exceed the annual transactional emissions cap. Doing so would violate its own mission statement and substitute reducing absolute greenhouse gas emissions for development as its primary objective.

OPIC's draft Policy Statement and its proposed annual aggregate CO₂ emissions cap for new transactions is also extraordinarily regressive, proposing to eliminate support for thermal energy projects that are far more affordable than electricity generated using renewable technologies. Renewable energy technologies are more expensive by a factor of between 3 and 10 times that of conventional energy technologies. Renewable energy in developed markets such as the United States and Europe depends upon comprehensive and extremely generous subsidy measures that have the impact of protecting consumers from the price impacts that would otherwise be associated with the more costly renewable energy projects. Given OPIC's mission statement, it is ironic that OPIC's draft Policy Statement has the effect of eliminating support for the most affordable generating technologies in the world's poorest countries. Countries like Togo, where the per capita GDP is less than \$500 US dollars, have no hope of instituting renewable energy subsidy programs that even countries like the United States with a per capita GDP of approximately \$45,000 are having a difficult time supporting.¹ OPIC's draft Policy Statement will have the effect of removing a significant source of development capital for electrifying parts of the planet where three of every four people do not have access to such a basic necessity.

It is imperative that OPIC craft a greenhouse gas emission reduction policy that treats as preeminent (rather than ignores) OPIC's overall mission "to mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies."² There is ample room for a policy that both (a) supports OPIC's statutory mandate to facilitate new energy projects in emerging markets (which, in turn, will help facilitate the global transition to a low-carbon economy) *and* (b) satisfies OPIC's statutory and other legal obligations to reduce overall portfolio greenhouse gas emissions in the future.

¹ United Nations Statistics Division – Demographic and Social Statistics, Social Indicators, <http://unstats.un.org/unsd/demographic/products/socind/inc-eco.htm> (last visited Mar. 22, 2010).

² 22 U.S.C. § 2191.

2. OPIC Does Not Have A Statutory Or Other Legal Obligation To Impose An Artificial Annual Transactional Emissions Cap.

OPIC does not have either a statutory or other legal obligation to establish any such annual cap, let alone a cap that will shut down OPIC support for new thermal projects in less developed nations. Moreover, as noted above, implementing a rigid annual transactional emissions cap would directly contradict OPIC's broader mission to support development in poorer nations.

First, while OPIC has a statutory obligation to implement a revised climate change mitigation plan to reduce greenhouse gas emissions associated with projects and sub-projects in the agency's portfolio by 2018 and 2023 target dates,³ that statutory mandate does not direct OPIC to establish yearly transactional caps that would eliminate from OPIC's consideration new projects that would serve less developed nations. That statute does not dictate how OPIC must achieve its emission reduction obligations by the June 30, 2018 and 2023 deadlines.

Second, OPIC's settlement agreement with Friends of the Earth, et al. last year also does not preclude OPIC's ability to support new thermal projects. Under that settlement, OPIC agreed to reduce by 20 percent over the next ten years the greenhouse gas emissions associated with projects that emit more than 100,000 tons of CO_{2eq} per year in OPIC's portfolio (as of 2008). While OPIC agreed to limit new investment in projects that emit greenhouse gases, it is in no sense precluded from supporting such projects. Moreover, the settlement agreement clearly states that it is not meant to trump or cause OPIC to take actions inconsistent with its statutory mandate. Therefore, the settlement agreement also does not obligate OPIC to establish an annual transactional cap.

Third, a firm annual transactional emissions cap that acts as an unnecessary barrier to OPIC's support of new thermal projects is fundamentally inconsistent with OPIC's mission and U.S. policy objectives to foster American investment in less developed markets throughout the world. 22 U.S.C. § 2191 (stating that OPIC's mission to mobilize the participation of United States private capital in less developed nations is "thereby complementing the development assistance objectives of the United States."); 42 U.S.C. § 17334 ("It is the sense of Congress that [OPIC] should promote greater investment in clean and efficient energy technology by . . . providing greater flexibility in supporting projects that involve the investment or utilization of clean and efficient energy technologies, including financing, insurance and other assistance."); 22 U.S.C. § 2293 (establishing long-term assistance for sub-Saharan Africa, including use of assistance to encourage private sector development "to promote sustained economic growth"); 22 U.S.C. § 2296b (establishing program to develop infrastructure necessary for regional cooperation among the countries of the South Caucasus and Central Asia, including through "[t]he provision of insurance, reinsurance, financing, or other assistance by [OPIC].").

As discussed above, however, OPIC's proposed transactional cap would needlessly eliminate OPIC participation in many low CO₂-emitting thermal energy projects and would not permit OPIC to take into account that in most of sub-Saharan Africa, as well as other severely underdeveloped regions, the population simply cannot afford renewable energy.

³ 22 U.S.C. § 2191b.

Notwithstanding the absence of any statutory or other legal obligation to do so, by implementing a transactional cap OPIC could also undermine the competitiveness of U.S. businesses, which must compete for capital in the global marketplace with non-U.S. energy companies that are not constrained from securing home-country support to develop projects in developing nations. That outcome not only will frustrate OPIC's statutory mandate to mobilize participation of U.S. private capital and skills in the economic and social development of less developed countries and areas, but also it may indirectly encourage and enable less efficient and higher emitting generation assets – thereby defeating the objectives that OPIC's policy is meant to achieve. OPIC should not adopt an artificial barrier to new thermal projects that is unnecessary, and appears to sacrifice critical business and strategic objectives.

3. OPIC's Proposal Should -- But Does Not -- Take Emission Displacement Effects Into Account.

It appears that OPIC's proposed Policy Statement would not permit OPIC to take credit for greenhouse gas emission reductions through displacement of higher emitting power sources by efficient new thermal power projects that OPIC supports. It is axiomatic that new low carbon emitting energy projects (such as ContourGlobal's Togo and CHP projects) will displace less efficient, higher emitting energy sources in these underserved areas – whether such displacement relates to current generation (e.g., older gas, coal, oil, or biomass) or potential new sources of generation that would otherwise be installed to serve need (e.g., coal). More generally, OPIC's portfolio mix by the 2018 and 2023 statutory deadlines will certainly reflect the gradual transition to a low-carbon economy, and a corresponding dramatic reduction in portfolio emissions relative to June 30, 2008 portfolio levels. In other words, OPIC's support for new, state-of-the-art gas-fired projects will, over time, replace the higher emitting fuel mix within its portfolio.

If a new thermal project will result in a net reduction of 500,000 tons of CO_{2eq} annually, such an emission reduction should be credited to that project (and OPIC's portfolio emissions). OPIC's approach, however, would artificially inflate overall greenhouse gas emissions from new projects and within its portfolio to the extent that no credit would be taken for the higher emissions displaced by the new projects. Consequently, OPIC's proposed annual transactional emissions cap would have the absurd effect of *precluding* the development of efficient new projects and thereby *increasing* overall greenhouse gas emissions from less developed areas.

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For the foregoing reasons, ContourGlobal strongly recommends that OPIC eliminate its proposed annual transactional emissions cap from its revised Policy Statement. ContourGlobal also strongly recommends that OPIC clarify in its Policy Statement that it intends to take credit for the displacement (or net reduction) of greenhouse gas emissions associated with the efficient new thermal power projects its support. More broadly, OPIC's implementation of its greenhouse gas emission reduction policy must be flexible enough to support a balanced approach that takes into account all environmental, social, and economic concerns to determine a project's overall merit. There is no reason why OPIC cannot manage its portfolio in a way that satisfies its statutory and other legal obligations to reduce portfolio emissions by 2018 and 2023 without

sacrificing its support for important new projects that are facilitating a global transition to a low-carbon economy.

B. To Foster Deployment Of Clean Energy Technologies, OPIC Should Assign Such Technologies A Greenhouse Gas Emission Level Of Zero, Regardless Of Whether There Are Comparable Technologies In Widespread Commercial Use In The Host Country.

OPIC's draft Policy Statement proposes to assign to "clean energy technology" projects an emissions level of zero for purposes of the policy.⁴ The draft Policy Statement proposes to define "clean energy technology" projects as "an energy supply or end use technology which, *compared to similar technology already in widespread commercial use in a host country*, will reduce emissions of greenhouse gases or decrease the intensity of energy usage."⁵

ContourGlobal concurs with OPIC's view regarding the vital role that clean energy technology plays as a transition strategy to promote responsible and sustainable energy development in emerging countries. Assigning clean energy technology projects a greenhouse gas emission level of zero sends precisely the right market signal by encouraging U.S. businesses to bring innovative and clean development projects to less developed areas.

OPIC's proposal is overly limited, however, in that it appears to limit application of the policy to only those clean energy technologies that will reduce greenhouse gas emissions "compared to a similar technology already in widespread commercial use in a host country." OPIC's proposal could effectively eliminate deployment of clean energy technologies and thus render meaningless the proposed preferential treatment of such technologies under the policy. As a broad policy matter, OPIC's mission is to support development in less developed areas where, by definition, critical infrastructure may be missing altogether, let alone not "already in widespread commercial use." Consider, for instance, a prospective borrower who seeks OPIC support for a clean energy technology (such as CHP) in a sub-Saharan nation where virtually *no* comparable technology exists. Under OPIC's proposal, the borrower's technology may be not be a "clean energy technology" there, while it may be a "clean energy technology" in another nation where a comparable technology is already in widespread use.⁶ OPIC's draft policy would encourage investment in the more developed nation, rather than the less developed nation where the need for new clean energy technologies is acute. Therefore, ContourGlobal recommends that OPIC eliminate the language "in a host country" from the definition of "clean energy

⁴ OPIC, Draft Environmental and Social Policy Statement, Section 8.5 (emphasis added).

⁵ *Id.* Section 8.5, Glossary.

⁶ ContourGlobal notes that what constitutes a technology in "widespread commercial use" may be misleading. For example, the electrical grids of many developing countries (e.g., in Africa) are interconnected to one another, and a particular project that otherwise qualifies for treatment as a "clean energy technology" project under OPIC's proposal may in fact be comparable with other technologies in widespread use that serve the same grid, albeit located in another country.

technology.” If OPIC wants to retain the comparison concept, OPIC should change the words “in a host country” to “globally” or “in the relevant region.”⁷

Moreover, as with all new thermal power projects it supports, if a clean thermal energy technology project (e.g., CHP) leads to a net cumulative reduction in greenhouse gas emissions, OPIC should credit that reduction against the total greenhouse gas emissions of projects in its active portfolio. As discussed above, OPIC’s support of new thermal projects (like ContourGlobal’s CHP and Togo projects) will result in a reduction of greenhouse gas emissions on a relative basis because they will displace emissions from less efficient units or replace higher emitting units that may otherwise be developed. As OPIC has estimated, ContourGlobal’s proposed development of CHP projects⁸ at various Coca-Cola Hellenic Bottling Company locations will result in a relative (and cumulative) reduction of approximately 200,000 tons of greenhouse gases per year. Those emission reductions should be credited against OPIC’s overall portfolio greenhouse gas emissions.

For the foregoing reasons, ContourGlobal respectfully submits that OPIC’s Policy Statement should clarify that “clean energy technologies” are not limited to those sited where there are already comparable technologies in widespread commercial use.⁹

⁷ A policy that encourages development of new energy technologies, such as CHP, is not only consistent with OPIC’s long-range environmental objectives, it is consistent with its U.S. policy and OPIC’s statutory mandate to foster development of innovative and clean technologies in developing nations. *See* 42 U.S.C. § 17334 (stating that “[OPIC] should promote the greater investment in clean and efficient energy technologies” and include in its annual report an explanation of why it did or did not carry out activities to implement that statutory directive). Indeed, the Energy Independence and Security Act of 2007 calls on OPIC and other agencies to support the “development and implementation of programs, policies, and initiatives in developing countries to promote the adoption and deployment of clean and efficient energy technologies, with an emphasis on those developing countries that are expected to experience the most significant growth in energy production and use over the next 20 years.” 42 U.S.C. § 17336(c)(1)(A).

⁸ CHP is a well-recognized “clean energy technology.” *See, e.g.*, Department of Energy, “Combined Heat and Power: Effective Energy Solutions for a Sustainable Future” at 4 (Dec. 2008) (stating that the “cost-effectiveness and near-term viability of CHP development establishes this exciting technology as a leader among other clean energy technologies such as wind, solar, clean coal, biofuels, and nuclear power”). ContourGlobal’s proposed portfolio of “quad-generation” CHP projects at various beverage bottling facilities around the world provides a relevant example of the type of projects that are uniformly considered to be “clean energy technology” projects. ContourGlobal’s CHP plants at the beverage bottling facilities are technologically advanced facilities that use clean natural gas to generate electricity and capture the heat emanating from the engine to provide additional energy that is used in the bottling plant. By capturing heat that otherwise would be wasted, ContourGlobal’s CHP plants substantially increase the efficiency of the bottling process while at the same time significantly lowering CO₂ emissions for use in industrial and commercial processes. Additionally, ContourGlobal’s CHP plants capture more than 95% of their CO₂ emissions for use in industrial and commercial processes. As noted above, the portfolio is estimated to result in a cumulative reduction of CO₂ emissions of approximately 200,000 tons per year.

⁹ Such a clarification also would be consistent with the Department of State’s statutory goal of “reducing greenhouse gas intensity in developing countries” by focusing on “increasing capacity, infrastructure, and training.” 22 U.S.C. § 7902(a)(1).

C. OPIC’s Policy Statement Should Clarify That OPIC Will Calculate The Greenhouse Gas Emissions Associated With Projects In Its Portfolio According To The Pro Rata Level Of OPIC’s Financial Commitment To The Project.

The draft Policy Statement’s proposed definition of “active portfolio” includes “all insurance contracts in force and guaranty and direct loans with an outstanding principal balance,” without regard for how the level of OPIC’s financial involvement in a particular project compares to that project’s total cost.

OPIC has thus proposed an unusually broad scope of its portfolio that captures the direct, on-site emissions from all projects in which OPIC has any involvement as of June 30, 2008 whose direct emissions exceed 100,000 tons of CO_{2eq} per year.¹⁰ In other words, no matter how low the level of OPIC’s financial commitment to a particular project may be in comparison to the total costs of the project, the draft Policy Statement would require OPIC to assume *all* the direct emissions associated with that project. Adhering to such an “in for a dime, in for a dollar” policy artificially inflates the level of greenhouse gas emissions associated with OPIC’s commitments and diverges from internationally accepted accounting methods under the Greenhouse Gas Protocol. This overly conservative approach effectively would likely preclude OPIC from providing support to otherwise important energy infrastructure projects, which would be inconsistent with OPIC’s statutory mission to mobilize participation of U.S. private capital and skills in the economic and social development of less developed countries and areas.

ContourGlobal believes that OPIC should (and could, consistent with its statutory and other legal obligations) refine its calculation of the greenhouse gas emissions of the projects within its portfolio to account for the pro rata level of its financial commitment to a particular project – possibly even as a percentage of total project capitalization. This approach would also be somewhat conservative, because internationally recognized greenhouse gas emissions accounting and reporting methods (under the Greenhouse Gas Protocol¹¹) rely upon equity shares (rather than shares of total capitalization) to report consolidated greenhouse gas data.¹²

Using a pro-rata share of total capitalization to account for OPIC’s share of greenhouse gas emissions in its portfolio more appropriately takes into consideration OPIC’s total commitment for each project on a dollar-for-dollar basis, rather than assuming a 100% interest in a project for OPIC’s lower level of participation. Using such an approach would be more consistent with internationally accepted greenhouse gas emission accounting standards than OPIC’s current method, and more importantly, would increase OPIC’s flexibility to provide modest financial commitments to a greater number of beneficial energy projects without exceeding its proposed annual transactional emissions cap.

¹⁰ OPIC, Draft Environmental and Social Policy Statement, Sections 8.1 – 8.2.

¹¹ The draft Policy Statement in Section 8.6 states that OPIC already tracks greenhouse gas emissions associated with OPIC office operations in accordance with the accounting and reporting methods of the Greenhouse Gas Protocol.

¹² World Resources Institute and World Business Council for Sustainable Development, “The Greenhouse Gas Protocol – A Corporate Accounting and Reporting Standard” at 17 (Mar. 2004).

D. Additional Issues

1. Rollover Of Remaining Emissions Capacity Under the Annual Transactional Emissions Cap Each Year

ContourGlobal supports OPIC's proposal that, for years in which the annual emissions associated with OPIC committed projects are less than the annual cap for that year, the remaining capacity may be allocated to subsequent years.¹³ As discussed above, ContourGlobal supports flexible approaches to the implementation of OPIC's greenhouse gas reduction policies. To that end, ContourGlobal also recommends that OPIC consider clarifying in its Policy Statement that it may exercise its discretion to allocate emissions from later years to current projects in order to bring desirable projects to the less developed markets without running into artificial cap constraints.

2. Aggregation of Smaller Projects for Screening Purposes

The draft Policy Statement does not address whether or how OPIC will screen and categorize a group of projects for which a sponsor seeks OPIC support. OPIC presumably will evaluate and screen each project on an individual basis rather than aggregating them for purposes categorizing the projects for review purposes or for counting emissions for cap purposes. Aggregating a bundle of smaller projects across a sponsor's portfolio could have the unintentional effect of discouraging developers from seeking OPIC support for a portfolio of proposed projects (e.g., on the basis that OPIC is cap-constrained from supporting the projects, whereas it may be in a position to support at least several of the projects on an individual basis because emissions from the abbreviated group may remain under the cap).

3. Inclusion of Biomass in the Definition of "Renewable Energy"

The draft Policy Statement's definition of "renewable energy" includes "various forms of biomass."¹⁴ ContourGlobal seeks clarification from OPIC as to exactly what forms of biomass generation facilities would qualify as renewable energy projects. The final Policy Statement should make this point clear to provide the necessary assurance for developers of power generation facilities that wish to take advantage of the Policy Statement's favorable treatment of renewable energy and clean energy technology projects fueled by biomass.

¹³ OPIC, Draft Environmental and Social Policy Statement, Section 8.4.

¹⁴ OPIC, Draft Environmental and Social Policy Statement, Section 8.5, Glossary.