



International Rivers' Critique of the Xiaoxi World Commission on Dams Compliance Report

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International Rivers appreciates the opportunity to comment on the Xiaoxi Hydropower Project World Commission on Dams Compliance Report submitted by TÜV SÜD to the German Emissions Trading Authority in January 2008.¹ International Rivers is a U.S.- based non-profit organization working to protect rivers and rights, and to promote real solutions for meeting water, energy and flood management needs. We are submitting these comments as part of our ongoing effort to improve the process of assessing World Commission on Dams (WCD) compliance for hydropower projects in accordance with European Union Linking Directive 11b (6).²

International Rivers has serious concerns with how WCD compliance is being assessed for dams such as the Xiaoxi Hydropower Project.

The following assessment by International Rivers compares the compliance report for the Xiaoxi project to the Strategic Priorities of the WCD, as well as the German Emissions Trading Authority Guideline for Determination of Compliance with the recommendations of the WCD. We begin with background on the report. We then provide a summary of our main observations and a detailed critique of the report. We end with conclusions and recommendations.

Background

In the framework of the Kyoto Protocol, European governments and companies in EU countries have committed to reduce their carbon emissions. The Protocol allows them to fulfil some of their reduction commitments by buying emission reduction certificates (CERs) from low emission projects in developing countries.

¹ The WCD compliance report for the Xiaoxi project can be downloaded here: http://www.dehst.de/cln_006/mn_476694/DE/JI_CDM/CDM/WCD_Berichte/WCD_Berichte_node.html?_nnn=true

² The European Union Linking Directive, Article 11b, 6 states: “In the case of hydro–electric power production project activities with a generating capacity exceeding 20MW, Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams year 2000 Final Report, will be respected during the development of such project activities.”

German-based power utility RWE is one of the biggest CO₂ emitters in Europe, with emissions of more than 120 million tonnes of CO₂ per year, mainly from coal-fired power plants. RWE has to reduce its carbon emissions, however, at the time of writing of this report, RWE's reduction commitments for the second trading period of the Kyoto Protocol from 2008 until 2012 were not yet publicly available.

RWE seeks to buy CERs representing average reductions of 442,720 tonnes of CO₂ per year from the Xiaoxi hydropower project on the Zishui River in China's Hunan Province. RWE has commissioned TÜV SÜD, a certification company with accreditation from the CDM, to write a WCD compliance report for the 135 MW Xiaoxi project. EU as well as German law requires hydropower projects above 20MW that want to sell carbon credits in the EU Emissions Trading Scheme (ETS) to comply with the WCD recommendations.

The German Emissions Trading Authority (DEHSt) is the national authority entrusted with the implementation of emissions trading in the framework of the Kyoto Protocol. The DEHSt has concluded that CERs from the Xiaoxi project are eligible for the EU ETS, on the basis of TÜV SÜD's WCD compliance report.

Main Observations and Conclusions

The WCD compliance report written by TÜV SÜD for the Xiaoxi Hydropower Station fails to evaluate the project against the WCD recommendations and does not fulfil the criteria of the DEHSt evaluation and compliance report "Guideline for Determination of Compliance with the Recommendations of the World Commission on Dams." The report does not prove that the Xiaoxi project respects the criteria of the WCD, as required by the European Union Linking Directive Article 11b, 6. Based on TÜV SÜD's WCD compliance report, the German Emissions Trading Authority and the German government should not have accepted the project as WCD compatible.

The report does not prove WCD compatibility of the Xiaoxi hydropower project for the following two reasons:

1. The report does not assess the project against the WCD's seven strategic priorities and disregards most of the corresponding policy principles. This is contrary to the DEHSt guideline, which states "The structure of the main part of the report must follow the seven strategic priorities and their underlying principles. Each of the priorities must be validated individually." (DEHSt, page 9)

Key WCD strategic priorities, including priorities two and three on "Comprehensive Options Assessment" and "Addressing Existing Dams," are not addressed in the compliance report. In the discussion of priority two, "Comprehensive Options Assessment," the report does not mention any process where alternatives to the Xiaoxi plant, based not only on financial and technical criteria, but also on social and environmental criteria, were assessed. In the discussion of priority three, "Addressing Existing Dams," the report does not mention existing dams in the river basin, but instead talks about the safety levels of the Xiaoxi project. This does not correspond to strategic priority three, which demands that outstanding social and environmental issues from existing dams be addressed and that benefits from existing projects be maximized.

2. The report concludes, and the German government accepts, that the Xiaoxi project is WCD compatible, even though it has shown that central WCD priorities have not been fulfilled.

The project was approved as WCD compatible by TÜV SÜD, even though their report contends: “The concerned villages, and even more the concerned farmers, were not involved in the decision process and only informed when a decision had already been reached.” This is in direct conflict with WCD strategic priority one, “Gaining Public Acceptance.” Further, no mention is made of whether indigenous and tribal peoples, women, or other vulnerable groups are amongst the stakeholders, nor whether their rights have been recognized and their special risks addressed. This is also contrary to WCD strategic priority one, as well as the DEHSt WCD compliance guideline that states: “Stakeholders must be consulted within the framework of an environmental impact assessment.” The DEHSt guideline specifies: “Indigenous populations and other economically and politically vulnerable groups are of particular importance.”

The report acknowledges that villagers and farmers were not involved in the decision-making processes, yet argues: “We conclude that in this case, despite the violation of some WCD guidelines, the more important effect of “no social or cultural disadvantages” has been achieved and therefore the essence of the WCD guidelines is still fulfilled.”

For these two reasons, as well as other issues detailed below, it is unlawful for European governments to approve the purchase of carbon credits from the Xiaoxi Hydropower Project.

Detailed Analysis: Compliance of the Xiaoxi Hydropower Project with the WCD Seven Strategic Priorities

Strategic Priority 1: Gaining Public Acceptance

- **Stakeholder identification:** The report says that stakeholders have been identified, and mentions: “apart from the project owner and the local/regional government, the obvious stakeholders for operational issues are the villages affected by the project.” It is likely that the report means villagers when it talks about villages. However, the report does not go into any detail regarding the villagers, and no mention is made of whether indigenous and tribal peoples, women, or other vulnerable groups are amongst the stakeholders, nor whether their rights have been recognized and their special risks addressed. This is contrary to the DEHSt guideline, which specifies in chapter 4.1. on “crucial issues”: “Indigenous populations and other economically and politically vulnerable groups are of particular importance.”
- **Involvement in decision-making processes:** The report clearly states: “The concerned villagers and their leaders were not involved in the decision process. [...]” This is a deviation from several guidelines in the WCD report as well as the DEHSt guideline, which spells out: “One of the key demands made by the WCD is the inclusion of stakeholders and gaining public acceptance. The Commission believes that democratic principles must be applied to rational project planning, which means that all stakeholders and their representatives must be included in the decision-making process.”
- **Recognising rights, addressing risks and safeguarding entitlements:** In order to gain public acceptance, the WCD suggests a rights-and-risks-based approach. “Acceptance emerges from recognising rights, addressing risks, and safeguarding the entitlements of all groups of affected people [...]” The chapter on “Gaining Public

Acceptance” in the compliance report does not, however, mention rights, entitlements, and risks. Instead, the report states that improving local roads and constructing resettlement villages with electricity supply are appropriate measures to gain public acceptance. This interpretation of how to gain public acceptance does not correspond with the spirit or letter of the WCD report and cannot be accepted as a validation of a central element of the WCD.

Strategic Priority 2: Comprehensive Options Assessment

- **A development response is identified from a range of options:** This strategic priority is discussed in two paragraphs. The report states that because the Chinese economy is growing and Chinese electricity production is mainly coal-based while the national Chinese energy strategy promotes hydropower, the Xiaoxi project is the best option. “There is no doubt that medium-sized hydropower is one of the most preferred options for China” contend the authors of the report. This does not correspond to the options assessment process as suggested by the WCD. The WCD requires a balanced and comprehensive assessment of all options, giving social and environmental aspects the same significance as technical, economic and financial factors.
- **Selection of the best option:** The report does not mention any selection process.

Strategic Priority 3: Addressing Existing Dams

- The half-page discussion of existing dams concludes that the project complies with the relevant WCD recommendations; however, it does not mention existing dams, optimizing their benefits, addressing their outstanding social issues, or strengthening environmental mitigation for existing dams. It talks only about the safety of the Xiaoxi Dam. It therefore does not validate strategic priority three, as required by the DEHSt guideline.

Strategic Priority 4: Sustaining Rivers and Livelihoods

- **Avoiding impacts and minimizing harm:** WCD strategic priority four demands to prioritize projects that either avoid impacts or minimize or mitigate harm to the river system. The report assesses that because Chinese regulations stipulate that the EIA should be implemented by a qualified institute, the avoidance or minimization of negative impacts of the project on the environment can be ensured. The report does not assess whether the project documents demonstrate that everything possible has been done to avoid impacts and minimize harm. Instead, it states that because all necessary documentation exists and good institutions are in place, everything *should be* fine. The EIA requirement is new to China, and it is yet to be perfectly implemented. Rather than accepting at face value project documents, WCD compliance assessors should take extra care to ensure the facility’s EIA process accurately accounts for risks to river system.
- **Environmental flows:** The assessment report says that environmental flows have been determined in the EIA and that the feasibility report ensures that the environmental flow requirements will be implemented. But the newness of the concept of environmental flows to China, the weakness of the country’s EIA process, and the lack of a stated monitoring system for the project (see below, “Strategic Priority Six”) raise concerns that environmental flows can be implemented for this project.

Strategic Priority 5: Recognizing Entitlements and Sharing Benefits

- **Joint negotiations with adversely affected people:** The WCD requirement for joint negotiations with adversely affected people has not been carried out for this project. The DEHSt guideline states in chapter 4.1.: “The commission believes that democratic principles must be applied to rational project planning, which means that all stakeholders and their representatives must be included in the decision-making process.” The report states: “The concerned villages and even more the concerned farmers were not involved in the decision process and only informed when a decision had already been reached. The relevant documentation was made available to them, but was not easy to access due to the bad traffic conditions, bad communication conditions, and the low level of education of the local people. This is a deviation from several guidelines of the WCD report.” The report nevertheless concludes: “[T]hat in this case, despite the violation of some WCD guidelines, the more important effect of ‘no social or cultural disadvantages’ has been achieved and therefore the essence of the WCD guidelines is still fulfilled.” The phrase “no social or cultural disadvantages” is not found in the WCD strategic priorities or DEHSt. Neither the DEHSt guideline nor the EU Linking Directive mentions that WCD priorities can be disregarded once “no social or cultural disadvantages” can be reported. If, as has been assessed in this case, stakeholders have not been included in the decision-making processes, then the project is in clear violation of both the Linking Directive as well as the DEHSt guideline.
- **Improving livelihoods:** The WCD requires that the mitigation and development provisions of a project improve the livelihoods and quality of life of the affected people. Whether the “compensation agreements” mentioned in the report will lead to an improvement in the lives of the people affected by the Xiaoxi dam, or will only compensate them for their losses, was not addressed.
- **Adversely affected people:** The report’s section on strategic priority five discusses the affected people living in the reservoir area. Yet, the WCD requirement on entitlements and benefit sharing clearly stipulates that all people, “in the reservoir, upstream, downstream, and in catchment areas whose properties, livelihoods, and non-material resources are affected” must be counted as project-affected.

Strategic Priority 6: Ensuring Compliance

- **Guidelines to ensure compliance and independent review of compliance:** The World Commission on Dams requests that institutions and mechanisms are set up so that governments, developers, and operators satisfy the commitments they have made to the affected people. The DEHSt guideline states that “appropriate measures must be in place to ensure compliance with commitments and agreements.” The Xiaoxi report does not mention whether any such mechanisms have been set up.

Strategic Priority 7: Sharing Rivers for Peace, Development and Security:

- The report says that the project is located on the Zishui River and does not have any transboundary implications.

Conclusion and Recommendations

The German government should not have accepted the Xiaoxi project as WCD compliant based on the findings of the TÜV SÜD report. The report shows that strategic priority one was violated during the decision-making process. The report does not discuss WCD priorities two and three on Options Assessment and Addressing Existing Dams. It is therefore not possible to determine based on the report that the project complies with these priorities. Further, the report does not discuss whether or not the project was selected based on a basin-wide assessment of the river ecosystem and an attempt to avoid significant impacts to threatened and endangered species, as required by WCD priority four. The report admits that the project does not comply with priority five since joint negotiations with the affected people have not taken place. The report does not discuss the measures to ensure compliance with the commitments and agreements by the government and the developers, as requested in the Sixth Priority. The strategic priority seven does not apply since the river does not cross a national boundary.

In conclusion, of six applicable strategic priorities, the report misinterprets four and admits that the project violates two. The two priorities the project violates are those related to the affected people. International Rivers therefore concludes that the TÜV SÜD compliance report cannot be a basis for approving the project as WCD compatible. We recommend that the Xiaoxi project be re-assessed.