
LOAN NUMBER 2461 - IND

PROJECT AGREEMENT

(Himachal Pradesh Clean Energy Development Investment Program - Tranche 1)

between

ASIAN DEVELOPMENT BANK

and

STATE OF HIMACHAL PRADESH

HIMACHAL PRADESH POWER CORPORATION LIMITED

DATED 10 NOVEMBER 2008

PAL: IND 41627

PROJECT AGREEMENT

PROJECT AGREEMENT dated 10 November 2008 between ASIAN DEVELOPMENT BANK (hereinafter called "ADB"), the State of Himachal Pradesh, acting by its Governor (hereinafter called the "State") and Himachal Pradesh Power Corporation Ltd. (hereinafter called "HPPCL").

WHEREAS

(A) by a Loan Agreement of even date herewith between India (hereinafter called the "Borrower") and ADB, ADB has agreed to make to the Borrower a loan of one hundred and fifty million Dollars (\$150,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that an amount of one hundred and forty seven million Dollars (\$147,000,000) from the proceeds of the Loan be made available to the State and subsequently to HPPCL, and that the State and HPPCL agree to undertake certain obligations towards ADB as hereinafter set forth; and

(B) the State and HPPCL, in consideration of ADB entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement, the term "the Project" means Components (i) through (iii), as described in Schedule 1 to the Loan Agreement.

ARTICLE II

Particular Covenants

Section 2.01. (a) The State shall cause HPPCL to carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and hydropower generation practices.

(b) In the carrying out of the Project and operation of the Project facilities, the State and HPPCL shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to the State and HPPCL and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. The State and HPPCL shall make available, promptly as needed, the funds, facilities, services, equipment, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of Project activities funded with proceeds of the Loan, the State shall cause HPPCL to employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all Goods, Works and Consulting Services shall be procured in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where Goods, Works or Consulting Services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. The State shall cause HPPCL to carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The State shall cause HPPCL to furnish to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) The State shall cause HPPCL to take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the State shall cause HPPCL to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. The State shall cause HPPCL to maintain records and accounts adequate to identify the Goods, Works, Consulting Services and other items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB, the State and HPPCL shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The State and HPPCL shall promptly inform ADB and the Borrower of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement and/or the Onlending Arrangements, or the accomplishment of the purposes of the Loan.

(c) ADB, the State and HPPCL shall from time to time, at the request of any such party, exchange views through their representatives with regard to any matters relating to the Project and the Loan.

Section 2.08. (a) The State shall cause HPPCL to furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Goods, Works, Consulting Services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of HPPCL; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the State shall cause HPPCL to furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project facilities, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, the State and HPPCL shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project facilities, including their costs, the performance by the State and HPPCL of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) HPPCL shall (i) maintain separate accounts for the Project and for its overall operations; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 9 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the covenants of the Loan Agreement as well as on the use of the procedures for statement of expenditures), all in the English language. HPPCL shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) HPPCL shall enable ADB, upon ADB's request, to discuss HPPCL's financial statements and its financial affairs from time to time with HPPCL pursuant to Section 2.09(a) hereabove.

Section 2.10. HPPCL shall enable ADB's representatives to inspect the Project facilities, the Goods, the Works, and any relevant records and documents relating to the Project.

Section 2.11. (a) HPPCL shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) HPPCL shall at all times conduct its business in accordance with sound administrative, financial, environmental and hydropower generation practices, and under the supervision of competent and experienced management and personnel.

(c) HPPCL shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, hydropower generation, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, HPPCL shall not sell, lease or otherwise dispose of any of its assets related to the Project, if such disposal may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, HPPCL shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works and Consulting Services are used exclusively in the carrying out of the Project.

Section 2.14. (a) Except as ADB may otherwise agree, the State shall duly perform all its obligations under the financing arrangements with the Borrower referred to in Section 3.01(a) of the Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the financing arrangements.

(b) Except as ADB may otherwise agree, HPPCL shall duly perform all its obligations under the Onlending Arrangements, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Onlending Arrangements.

Section 2.15. HPPCL shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its charter and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify the State and HPPCL of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension of withdrawals under the Loan Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2338.

For the State

MPP & Power Department
Principal Secretary
HP Secretariat
Shimla-171 002
Himachal Pradesh

Facsimile Number:

+91 177 2621562
+91 177 2621563

For HPPCL

Himachal Pradesh Power Corporation Limited
Managing Director
Himfed Bhawan, Panjri, Bye-Pass Road (Tuti Kandi)
Shimla-171 005
Himachal Pradesh

Facsimile Number:
+91 177 2633813.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of the State, may be taken or executed by the Principal Secretary of MPPPD or by such other person or persons as he or she shall so designate in writing notified to ADB.


(b) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of HPPCL, may be taken or executed by its Managing Director or by such other person or persons as he or she shall so designate in writing notified to ADB.

(c) The State and HPPCL shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) and paragraph (b) of this Section, together with the authenticated specimen signature of each such person.


Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

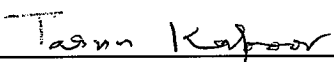
ASIAN DEVELOPMENT BANK

By 
TADASHI KONDO
Country Director
India Resident Mission

STATE OF HIMACHAL PRADESH

By 
AJAY MITTAL
Authorized Representative

HIMACHAL PRADESH POWER
CORPORATION LIMITED

By 
TARUN KAPOOR
Authorized Representative

SCHEDULEDebt service coverage ratio of HPPCL

1. Except as ADB shall otherwise agree, as of the date of commencement of commercial operations of the first Project facility, HPPCL shall not incur any Debt unless a reasonable forecast of the revenues and expenditures of HPPCL shows that the estimated Free Cash Flows of HPPCL for each fiscal year during the term of the Debt to be incurred shall be at least 1.2 times the estimated debt service requirements of HPPCL in such year on all borrowings of HPPCL including the Debt to be incurred and no event has occurred since the date of the forecast which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition of future operating results of HPPCL.

For the purposes of this paragraph:

- a. The term "Debt" means any indebtedness of HPPCL maturing by its terms more than one year after the date on which it is originally incurred.
- b. "Free Cash Flows" means the difference between:
 - (A) the sum of revenues from all sources, after making adequate provisions for uncollectible Debts; and
 - (B) the sum of all expenses related to HPPCL's operations including administration, maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges, movements in Working Capital, and interest and other charges on debt.
- c. The term "Working Capital" means the difference between Current Assets and Current Liabilities at the end of each Fiscal Year.
- d. The term "Current Assets" means all assets which could in the ordinary course of business be converted into cash within twelve months.
- e. The term "Current Liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months.