PROJECT AGREEMENT

(Power Distribution Enhancement Investment Program –
Tranche 1, Investment Project and Support Project)

between

ASIAN DEVELOPMENT BANK

and

PAKISTAN ELECTRIC POWER COMPANY (PRIVATE) LIMITED

DATED 29 NOVEMBER 2008
PROJECT AGREEMENT

PROJECT AGREEMENT dated 29 November 2008 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and PAKISTAN ELECTRIC POWER COMPANY (PRIVATE) LIMITED (hereinafter called PEPCO).

WHEREAS

(A) by an agreement of even date herewith (hereinafter called the Ordinary Operations Loan Agreement) between ADB and ISLAMIC REPUBLIC OF PAKISTAN (hereinafter called the Borrower), ADB has agreed to make to the Borrower a loan (hereinafter called the Ordinary Operations Loan) of two hundred forty-two million Dollars ($242,000,000) for financing various investment subprojects described in Schedule 1 to the Ordinary Operations Loan Agreement (hereinafter called the Investment Project) on the terms and conditions set forth in the Ordinary Operations Loan Agreement;

(B) by an agreement of even date herewith between the Borrower and ADB (hereinafter called the Special Operations Loan Agreement), ADB has agreed to make to the Borrower a loan (hereinafter called the Special Operations Loan) of six million one hundred thirty two thousand Special Drawing Rights (SDR6,132,000) for financing the support activities required for the preparation, implementation, and monitoring subprojects under the Investment Program to be financed under the Facility, as described in Schedule 1 to the Special Operations Loan Agreement (hereinafter called the Support Project) on the terms and conditions set forth in the Special Operations Loan Agreement;

(C) ADB has agreed to make the Special Operations Loan only on the condition that (i) the proceeds of the Special Operations Loan be made available to PEPCO; and (ii) PEPCO as the Project Executing Agency for both the Investment Project and the Support Project agree to undertake certain obligations towards ADB as hereinafter set forth; and

(D) PEPCO, in consideration of ADB entering into the Loan Agreements with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. (a) Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Ordinary Operations Loan Agreement, the Special Operations Loan Agreement (hereinafter called the Loan Agreements), and in the Loan Regulations (as defined in each of the Loan Agreements) have the respective meanings therein set forth, except for the purposes of this Project Agreement, (i) the term “Loan” means the Special Operations Loan together with the Ordinary Operations
Loan; and (ii) the term “Project” means the Investment Project together with the Support Project.

(b) In addition to the terms referred to in paragraph (a) of this Section, the term “DISCO Project Agreement”, whenever used in this Project Agreement, means the Project Agreement as defined in the Ordinary Operations Loan Agreement, unless the context otherwise require.

ARTICLE II

Particular Covenants

Section 2.01. (a) PEPCO shall carry out the Support Project and shall cause the DISCO to carry out the Investment Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and social safeguard practices.

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

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

Section 2.03. (a) In the carrying out of the Support Project, PEPCO shall employ competent and qualified consultants, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all consulting services to be financed out of the proceeds of the Special Operations Loan shall be procured in accordance with the provisions of Schedule 4 to each of this Loan Agreement. ADB may refuse to finance a contract where 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. PEPCO shall carry out, and/or cause to be carried out, the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. PEPCO shall furnish, or cause to be furnished, 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) PEPCO shall cause insurance of the Goods to be taken out and maintained with responsible insurers, or other arrangements satisfactory to ADB to be made for insurance of the Goods, 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, PEPCO shall cause DISCO to undertake to ensure the Goods to be imported and to be financed out of the proceeds of the Ordinary Operations Loan 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. PEPCO shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods, Works and 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 and PEPCO shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) PEPCO shall promptly inform, or cause to be informed, ADB 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 or the Relending Agreement, or any obligations under the DISCO Project Agreement or the DISCO Relending Agreements, or the accomplishment of the purposes of the Loan.

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

Section 2.08. (a) PEPCO shall furnish, or cause to be furnished, 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 and consulting services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of PEPCO; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, PEPCO shall furnish, or cause to be furnished, to ADB quarterly reports on the execution of the Projects 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, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, PEPCO shall prepare and furnish, or cause to be prepared and furnished, 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, including their costs, the performance by PEPCO of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) PEPCO shall, or cause to, (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 six (6) 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 proceeds of the Loan, compliance with the covenants of the Loan Agreements and the management letter from the auditors to PEPCO), all in the English language. PEPCO shall furnish, or cause to be furnished, 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) PEPCO shall enable, or cause to enable, ADB, upon ADB's request, to discuss PEPCO financial statements and its financial affairs from time to time with the auditors appointed by PEPCO pursuant to Section 2.09(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of PEPCO unless PEPCO shall otherwise agree.

Section 2.10. PEPCO shall enable, or cause to enable, ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of the PEPCO and any relevant records and documents.

Section 2.11. (a) PEPCO 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) PEPCO shall at all times conduct its business in accordance with sound administrative, financial, engineering, environmental and social safeguards practices, and under the supervision of competent and experienced management and personnel.

(c) PEPCO 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, social safeguards, maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, PEPCO shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, PEPCO shall apply, or cause to be applied, the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreements, the DISCO Project Agreement, and this Project Agreement, and shall ensure, and cause to be ensured, that all Goods, Works and consulting services financed out of the proceeds of the Loan are used exclusively in the carrying out of the Project.
Section 2.14. Except as ADB may otherwise agree, PEPCO shall duly perform all its obligations under the Relending 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 Relending Agreement.

Section 2.15. PEPCO shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its charter or license 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 Special Operations Loan Agreement shall come into force and effect. ADB shall promptly notify PEPCO 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 under the Special Operations 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, telegram, telex, facsimile or radiogram 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) 636-2428
For Pakistan Electric Power Company (Private) Limited

Chief Executive Officer
725-WAPDA House,
Shahrah-e-Quaid-e-Azam,
Lahore-54000

Facsimile Number:
(92) 42-920-2402

Section 4.02. 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 

RUNE STROEM
Country Director
Pakistan Resident Mission

PAKISTAN ELECTRIC POWER COMPANY (PRIVATE) LIMITED

By 

Authorized Representative
Project Executing Agency

1. PEPCO as the Project Executing Agency shall be responsible for (a) carrying out the Support Project, and (b) monitoring and coordinating activities under the Investment Project and the entire Facility with the DISCO, and communicating with ADB. PEPCO shall ensure that the implementation consultants are recruited and mobilized within three (3) months of the Effective Date to assist each DISCO in the implementation of subprojects. The implementation consultants shall report to PEPCO on administrative matters and to the DISCO on operational matters.

Policy Dialogue

2. PEPCO shall keep ADB informed of any development in the Borrower’s policies, programs and investment plans related to the power generation, transmission and power distribution that may materially affect the financial viability of PEPCO, the DISCO, and the Project.

Governance

3. PEPCO shall establish, within two (2) months of the Effective Date, a clear and transparent mechanism for setting and collecting the management fee to ensure its financial viability.

Anticorruption Measures

4. PEPCO shall ensure that ADB’s Anticorruption Policy (1998, as amended to date) is followed throughout the implementation of the Project, it being understood that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project. All bidding documents and contracts in connection with the Project shall include provisions specifying the right of ADB to audit and examine the records and accounts of and all contractors, suppliers, consultants and other service providers as they relate to the Project. PEPCO shall extend full cooperation and all necessary assistance, including access to all relevant contracts, accounting and bookkeeping records, as well as engagement of independent experts that may be needed for satisfactory completion of such investigations. An independent audit of procurement activities shall be carried out as required by ADB during the implementation of the Project, and any external costs related to such audit/investigations are be borne by PEPCO.

Project Review

5. PEPCO shall participate in semi-annual meetings between the Borrower, the DISCO and ADB to review and discuss the implementation progress under the Project. A comprehensive midterm review of the Project shall be conducted two (2) years after the Effective Date. The midterm review shall focus on and evaluate the compliance with
the covenants set forth in the Loan Agreements, the DISCO Project Agreement, and this
Project Agreement.

Project Performance Management System

6. PEPCO shall establish, within three (3) months of the Effective Date, a PPMS in a
form and substance acceptable to ADB, in accordance with the Project performance
indicators and targets stipulated in the design and monitoring framework. PEPCO shall
consolidate for submission to ADB quarterly progress reports prepared by the DISCO
providing (a) a narrative description of progress made during the period (progress on
compliance with environmental and social requirements); (b) changes in the implementation
schedule; (c) problems or difficulties encountered; and (d) work to be carried out in the next
period. The progress reports shall also include a summary financial account for the
subproject components, consisting of expenditures during the period, total expenditures to
date, and benefit monitoring in accordance with procedures and details acceptable to ADB.

Accounting, Auditing and Reporting

7. PEPCO shall maintain its internal controls in accordance with the national accounting
standards of the Borrower and set up within four (4) months of the Effective Date its
independent internal audit department.