
LOAN NUMBER 2324-IND

PROJECT AGREEMENT

(Madhya Pradesh Power Sector Investment Program – Project 2 [Distribution Efficiency Enhancement])

between

ASIAN DEVELOPMENT BANK

and

STATE OF MADHYA PRADESH

MADHYA PRADESH POORV KSHETRA VIDYUT VITARAN COMPANY LIMITED

DATED 12 April 2007

PAL:IND 32298

PROJECT AGREEMENT

PROJECT AGREEMENT dated 12 April 2007 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) on the one part and the STATE OF MADHYA PRADESH, acting by its Governor (hereinafter called the State), and MADHYA PRADESH POORV KSHETRA VIDYUT VITARAN COMPANY LIMITED (hereinafter called DISCOM-E) on the other part.

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 forty five million Dollars (\$45,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the proceeds of the Loan be made available to the State and DISCOM-E, and that the State and DISCOM-E agree to undertake certain obligations towards ADB as hereinafter set forth; and

(B) the State and DISCOM-E, 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.

ARTICLE II

Particular Covenants

Section 2.01. (a) The State and DISCOM-E shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and power sector development practices.

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

Section 2.02. The State and DISCOM-E 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 the Project, the State and DISCOM-E shall 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 to be financed out of the proceeds of the Loan 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 and DISCOM-E shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods mutually acceptable to the State, DISCOM-E and ADB. The State and DISCOM-E 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) The State and DISCOM-E shall 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 and DISCOM-E undertakes to insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the 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. The State shall cause DISCOM-E to 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, the State and DISCOM-E shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The State and DISCOM-E shall promptly inform 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 Onlending Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB, the State and DISCOM-E 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, the State, DISCOM-E and TRANSCO and the Loan.

Section 2.08. (a) The State and DISCOM-E shall 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 and consulting services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of The State and DISCOM-E; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the State and DISCOM-E shall 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, 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 DISCOM-E 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, including its cost, the performance by the State and DISCOM-E of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) The State shall cause DISCOM-E to (i) maintain separate accounts for the Project; (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 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 Loan proceeds and compliance with the covenants of the Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language. The State and DISCOM-E 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) The State and DISCOM-E shall enable ADB, upon ADB's request, to discuss the State's and DISCOM-E's financial statements and its financial affairs from time to time with the auditors appointed by the State and DISCOM-E, 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 the State and DISCOM-E, unless the State and DISCOM-E shall otherwise agree.

Section 2.10. The State and DISCOM-E shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 2.11. (a) The State and DISCOM-E shall, promptly as required, take all action within their powers to maintain DISCOM-E's 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) The State shall cause DISCOM-E at all times conduct its business in accordance with sound administrative, financial, environmental and power sector development practices, and under the supervision of competent and experienced management and personnel.

(c) The State shall cause DISCOM-E 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, power sector development, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, the State shall ensure that DISCOM-E 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, the State shall ensure that DISCOM-E 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 financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, the State and DISCOM-E shall duly perform all its obligations under the Onlending 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 Onlending Agreement.

Section 2.15. The State shall ensure that DISCOM-E promptly notifies 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 DISCOM-E 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 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, cable, 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

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

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

For the State

Principal Secretary (Energy)/Secretary (Energy)
Energy Department, Government of Madhya Pradesh
Mantralaya, Vallabh Bhawan
Bhopal, Madhya Pradesh

Facsimile Number:

0755-2441642.

For DISCOM-E

Chairman and Managing Director
Block No.7, Shakti Bhawan, Rampur,
Jabalpur, Madhya Pradesh

Facsimile Number:

0761-2666070.


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 and DISCOM-E may be taken or executed by Principal Secretary or Secretary, Energy Department of the State and Chairman and Managing Director, respectively, or by such other person or persons as he shall so designate in writing notified to ADB.

(b) The State and DISCOM-E shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) 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 MADHYA PRADESH

By 
SANJAY BANDOPADHYAYA
Secretary
Energy Department

MADHYA PRADESH POORV KSHETRA
VIDYUT VITARAN COMPANY LIMITED

By 
PANKAJ AGRAWAL
Chairman and Managing Director