

No. 7763

**INTERNATIONAL DEVELOPMENT ASSOCIATION
and
BOLIVIA**

Development Credit Agreement—*ENDE Power Project* (with related letter, annexed Development Credit Regulations No. 1, Project Agreement between the Association and the Corporación Boliviana de Fomento and Memorandum of Understanding between the Association, the Inter-American Development Bank and the Government of Bolivia). Signed at Washington, on 24 July 1964

Official text: English.

Registered by the International Development Association on 11 May 1965.

**ASSOCIATION INTERNATIONALE
DE DÉVELOPPEMENT**

**et
BOLIVIE**

Contrat de crédit de développement — *Projet ENDE relatif à l'énergie électrique* (avec lettre y relative et, en annexe, le Règlement n° 1 sur les crédits de développement et le Contrat relatif au Projet entre l'Association et la Corporación Boliviana de Fomento ainsi que le Mémoire d'accord entre l'Association, la Banque interaméricaine de développement et le Gouvernement bolivien). Signé à Washington, le 24 juillet 1964

Texte officiel anglais.

Enregistré par l'Association internationale de développement le 11 mai 1965.

No. 7763. DEVELOPMENT CREDIT AGREEMENT¹ (*ENDE POWER PROJECT*) BETWEEN THE REPUBLIC OF BOLIVIA AND THE INTERNATIONAL DEVELOPMENT ASSOCIATION. SIGNED AT WASHINGTON, ON 24 JULY 1964

AGREEMENT, dated July 24, 1964, between REPUBLIC OF BOLIVIA (hereinafter called the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

WHEREAS (A) The Borrower is engaged in the carrying out of a power development program for the construction and expansion of power facilities in its territories and has requested the Association and certain lenders in addition to the Association to assist in the financing of such power development program;

(B) By agreement of even date herewith² (hereinafter called the BPC Credit Agreement) the Association has agreed to make a credit (hereinafter called the BPC Credit) to the Borrower in an amount in various currencies equivalent to five million dollars (\$5,000,000) on the terms and conditions set forth in such BPC Credit Agreement, for the purpose of assisting in the financing of a portion of such power development program;

(C) By agreement of even date herewith (hereinafter called the IDB Loan Agreement), the Inter-American Development Bank (hereinafter called the IDB) has agreed to make a loan (hereinafter called the IDB Loan) to the Borrower in an amount in various currencies equivalent to three and one half million dollars (\$3,500,000) on the terms and conditions set forth in such IDB Loan Agreement, for the purpose of assisting in the financing of a portion of such development power program;

WHEREAS the Association has agreed, upon the basis of the foregoing, to provide a credit to the Borrower upon the terms and conditions hereinafter set forth for the purpose of assisting in the financing of a portion of such power development program;

NOW THEREFORE the parties hereto agree as follows :

¹ Came into force on 25 August 1964, upon notification by the Association to the Government of Bolivia.

² See p. 171 of this volume.

Article I

CREDIT REGULATIONS; SPECIAL DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of Development Credit Regulations No. 1 of the Association dated June 1, 1961,¹ with the same force and effect as if they were fully set forth herein subject, however, to the following modifications thereof (said Development Credit Regulations No. 1 as so modified being hereinafter called the Regulations):

(a) Section 3.01 is deleted and the following new Section is substituted therefor:

“SECTION 3.01. *Currencies in which Cost of Goods is to be Paid and Proceeds of the Credit are to be Withdrawn.* (a) Except as the Borrower and the Association shall otherwise agree, the cost of goods financed out of the proceeds of the Credit shall be paid in the respective currencies of the countries from which such goods are acquired.

“ (b) The proceeds of the Credit shall be withdrawn from the Credit Account:

“ (i) on account of expenditures in currency of the Borrower or for goods produced in (including services supplied from) the territories of the Borrower, in such currency or currencies as the Association shall from time to time reasonably select;

“ (ii) in all other cases, in the currency in which the cost of the goods financed out of such proceeds has been paid or is payable.

“ (c) The Borrower and the Association may from time to time agree on any other currency in which withdrawals shall be made. ”

(b) A new Section 3.04 is inserted after Section 3.03 as follows:

“SECTION 3.04. *Purchase of Currency of Withdrawal with Other Currency.* If withdrawal shall be made in any currency which the Association shall have purchased with another currency for the purpose of such withdrawal, the portion of the Credit so withdrawn shall be deemed to have been withdrawn from the Credit Account in such other currency for the purposes of Section 3.03. ”

(c) Section 3.04 is renumbered as Section 3.05.

(d) The words “or the ENDE Project Agreement” are inserted in Section 6.02 after the words “the Development Credit Agreement”.

¹ See p. 226 of this volume.

Section 1.02. Whenever used in this Agreement or in any Schedule thereto, unless the context shall otherwise require, the following terms shall have the following meanings :

(a) The term “ Company ” shall mean Empresa Nacional de Electricidad, S.A., a company to be established and organized under the laws of the Borrower pursuant to Section 4.05 of this Agreement;

(b) The term “ Statutes ” shall mean the *Estatutos Sociales* of the Company and the term “ management ” shall mean collectively the Presidente del Directorio and the Gerente General of the Company or either one of them individually;

(c) The term “ CBF ” shall mean Corporación Boliviana de Fomento, an agency of the Borrower, acting through its power department, the Empresa Nacional de Electricidad;

(d) The term “ Beneficiary ” shall mean CBF until CBF’s obligations under the ENDE Project Agreement shall have terminated in accordance with Section 2.10 (b) thereof, and thereafter it shall mean the Company;

(e) The term “ ENDE Project Agreement ” shall mean the agreement (and any schedule thereto) between the Association and Corporación Boliviana de Fomento of even date herewith,¹ and shall include any amendment thereof made by agreement between the Association and the Beneficiary;

(f) The term “ DINE ” shall mean Dirección Nacional de Electricidad, an agency of the Borrower established pursuant to Supreme Decree No. 05997 of the Borrower dated February 9, 1962;

(g) The term “ COMIBOL ” shall mean Corporación Minera de Bolivia, an autonomous agency of the Borrower;

(h) The term “ Letter of Intention ” shall mean the agreement dated February 25, 1964 between CBF and COMIBOL;

(i) The term “ foreign currency ” shall mean any currency other than currency of the Borrower;

(j) The terms “ BPC ”, “ Subsidiary Loan Agreement ”, “ General Agreement ”, and “ Interconnection Letter ” shall have the respective meanings set forth in the BPC Credit Agreement;

(k) The term “ Rate of Return ” shall mean a rate of return computed *mutatis mutandis* in the same manner as the rate of return on BPC’s assets provided for in the General Agreement; and

(l) The term “ subsidiary ” shall mean any corporation of which at least a majority of the outstanding voting stock shall be owned, or which shall be effectively controlled, by the Company or by one or more subsidiaries of the Company or by the Company and one or more of its subsidiaries.

¹ See p. 226 of this volume.

Article II

THE CREDIT

Section 2.01. The Association agrees to make available to the Borrower, on the terms and conditions in this Agreement set forth or referred to, a development credit in an amount in various currencies equivalent to ten million dollars (\$10,000,000).

Section 2.02. The Association shall open a Credit Account on its books in the name of the Borrower and shall credit to such Credit Account the amount of the Credit. The amount of the Credit may be withdrawn from the Credit Account as provided in, and subject to the rights of cancellation and suspension set forth in, this Development Credit Agreement.

Section 2.03. The Borrower shall be entitled, subject to the provisions of this Development Credit Agreement, to withdraw from the Credit Account (i) the equivalent of such percentage as may from time to time be agreed between the Borrower and the Association of such amounts as shall have been paid for the reasonable cost of goods to be financed out of the proceeds of the Credit; and (ii), if the Association shall so agree, the equivalent of a like percentage of such amounts as shall be required to meet payments to be made for the reasonable cost of such goods; provided, however, that no withdrawals shall be made from the Credit Account on account of expenditures incurred prior to June 1, 1963.

Section 2.04. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time. The Borrower shall also pay to the Association a service charge at the same rate on the principal amount of any special commitment entered into by the Association pursuant to Section 4.02 of the Regulations and outstanding from time to time.

Section 2.05. Service Charges shall be payable semi-annually on May 1 and November 1 in each year.

Section 2.06. The Borrower shall repay the principal amount of the Credit in semi-annual installments payable on each May 1 and November 1 commencing November 1, 1974 and ending May 1, 2014, each installment to and including the installment payable on May 1, 1984 to be one-half of one per cent ($\frac{1}{2}$ of 1%) of such principal amount, and each installment thereafter to be one and one-half per cent ($1\frac{1}{2}$ %) of such principal amount.

Article III

USE OF PROCEEDS OF THE CREDIT

Section 3.01. The proceeds of the Credit shall be applied exclusively to financing the cost of goods required to carry out the Project described in the

Schedule to this Agreement. The specific goods to be financed out of the proceeds of the Credit and the methods and procedures for procurement of such goods shall be determined by agreement between the Association and the Beneficiary, subject to modification by further agreement between them.

Section 3.02. Except as the Association and the Beneficiary shall otherwise agree, all goods financed out of the proceeds of the Credit shall be used by the Beneficiary exclusively in the carrying out and operation of the Project.

Article IV

PARTICULAR COVENANTS

Section 4.01. (a) The Borrower shall take or cause to be taken all action which shall be necessary on its part to enable the Beneficiary to perform all the covenants and agreements on the part of the Beneficiary to be performed as set forth in the ENDE Project Agreement and shall not take, cause or permit to be taken any action that would prevent or interfere with the performance by the Beneficiary of such covenants and agreements.

(b) The Borrower shall at all times make or cause to be made available to the Beneficiary, promptly as needed, all sums which shall be required for the carrying out of the Project, all such sums to be made available on terms and conditions satisfactory to the Borrower and the Association.

Section 4.02. (a) The Borrower and the Association shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Credit. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower and the international balance of payments positions of the Borrower.

(b) The Borrower and the Association shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Credit and the maintenance of the service thereof. The Borrower shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit or the maintenance of the service thereof.

(c) The Borrower shall afford all reasonable opportunity for accredited representatives of the Association to visit any part of the territories of the Borrower for purposes related to the Credit.

Section 4.03. The Borrower shall cause COMIBOL duly to perform its obligations under the Letter of Intention. Except as the Association shall

otherwise agree, the Borrower shall not take, cause or permit to be taken any action which would have the effect of amending, abrogating or waiving any provision of such instrument.

Section 4.04. Except as the Association shall otherwise agree, the Borrower shall from time to time, so long as the ENDE Project Agreement shall not have terminated in accordance with its terms, grant or cause to be granted to the Beneficiary and maintain or cause to be maintained, electric tariffs designed to produce to the Beneficiary revenues sufficient to provide the Rate of Return.

Section 4.05. The Borrower undertakes that :

(a) not later than January 1, 1965, it shall :

- (i) establish the Company, or cause the Company to be established as a *Sociedad Anónima* functioning under Statutes in form and substance satisfactory to the Association, with competent and experienced management, and having such powers, resources and capital structure as, in the opinion of the Association, are necessary to enable it to carry out its responsibilities efficiently;
- (ii) make arrangements satisfactory to the Association for the subscription of capital stock of the Company and payment therefor in an amount not less than the equivalent of the aggregate amount of all sums theretofore withdrawn from the Credit Account;
- (iii) on the terms and conditions set forth in Section 2.08 of the ENDE Project Agreement, cause CBF to make, or cause to be made, the transfers referred to in such Section and cause the Company to accept such transfers;

(b) not later than the Closing Date as specified in Section 7.01, the Borrower shall make arrangements satisfactory to the Association for the subscription of capital stock of the Company and payment therefor in an amount not less than the equivalent of the balance between the aggregate amount of all sums theretofore withdrawn from the Credit Account and the aggregate amount theretofore paid pursuant to paragraph (a) (ii) of this Section for subscribed capital stock of the Company;

(c) not later than the date of repayment of the first maturity payable by BPC to CBF under the Subsidiary Loan Agreement, the Borrower shall make arrangements, satisfactory to the Association, under which the Company shall receive or be entitled to receive, in payment of capital stock of the Company all amounts payable by BPC to CBF on account of principal and interest pursuant to such Subsidiary Loan Agreement, as such amounts are paid by BPC.

(d) except as the Association shall otherwise agree, the Borrower shall not permit or cause the Statutes of the Company to be amended.

Section 4.06. The Borrower undertakes that it shall, on terms and conditions satisfactory to the Association, organize DINE as a regulatory authority responsible for approving tariffs for all entities engaged in the production or distribution of power for sale to the public within the territories of the Borrower. To provide technical advice and assistance for the organization of DINE and the formulation of its tariff policies, the Borrower shall employ competent and experienced consultants satisfactory to the Borrower and the Association, upon terms and conditions satisfactory to the Borrower and the Association.

Section 4.07. The principal of, and service charges on, the Credit shall be paid without deduction for, and free from, any taxes, and free from all restrictions, imposed under the laws of the Borrower or laws in effect in its territories.

Section 4.08. This Agreement and the ENDE Project Agreement shall be free from any taxes that shall be imposed under the laws of the Borrower or laws in effect in its territories on or in connection with the execution, delivery or registration thereof.

Article V

REMEDIES OF THE ASSOCIATION

Section 5.01. (i) If any event specified in paragraph (b) of Section 5.02 of this Agreement shall occur, or (ii) if any event specified in paragraphs (a) or (c) of Section 5.02 of the Regulations shall occur and shall continue for a period of thirty days, or (iii) if any event specified in paragraph (b) of Section 5.02 of the Regulations or in paragraphs (c), (d) or (e) of Section 5.02 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower, then at any subsequent time the Association, at its option, may declare the principal of the Credit then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately anything in this Agreement to the contrary notwithstanding.

Section 5.02. The following additional events are specified for the purposes of paragraph (j) of Section 5.02 of the Regulations :

(a) The right of the Borrower to withdraw amounts under the IDB Loan Agreement shall have been suspended;

(b) The IDB shall, in accordance with the terms of the agreements concerned, demand payment from the Borrower of moneys lent to the Borrower prior to the agreed maturity thereof;

(c) A default shall have occurred in the performance of any covenant or agreement on the part of the Borrower under the BPC Credit Agreement other

than in respect of the payment by the Borrower of the principal or service charges or any other payments required under said Agreement;

(d) A default shall have occurred in the performance of any covenant or agreement on the part of the Beneficiary under the ENDE Project Agreement or under any undertaking entered into by the Company in accordance with the provisions of Section 2.08 of the ENDE Project Agreement at the time of, or in connection with, the transfer referred to in said Section 2.08 of the ENDE Project Agreement; and

(e) any amendment or repeal of any of the provisions of Supreme Decrees No. 05997 and No. 05999 dated February 9, 1962, and No. 06892 and No. 06893 dated June 9, 1964 of the Borrower shall have come into force without prior agreement between the Borrower and the Association.

Article VI

EFFECTIVE DATE; TERMINATION

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 8.01 (b) of the Regulations, namely :

(a) all conditions precedent to initial disbursement of the IDB Loan under the IDB Loan Agreement shall have been fulfilled;

(b) the BPC Credit Agreement shall have become effective in accordance with its terms;

(c) the execution and delivery of the ENDE Project Agreement on behalf of CBF shall have been duly authorized or ratified by all necessary corporate and governmental action.

Section 6.02. The following are specified as additional matters, within the meaning of Section 8.02 (b) of the Regulations, to be included in the opinion or opinions to be furnished to the Association, namely :

(a) that the ENDE Project Agreement has been duly authorized or ratified, and executed and delivered on behalf of, CBF and constitutes a valid and binding obligation of CBF in accordance with its terms;

(b) that the Letter of Intention has been duly authorized or ratified by, and executed and delivered on behalf of, CBF and COMIBOL, respectively, and constitutes a valid and binding obligation of CBF and COMIBOL in accordance with its terms.

Section 6.03. A date 60 days after the date of this Agreement is hereby specified for the purposes of Section 8.04 of the Regulations.

Article VII

MISCELLANEOUS

Section 7.01. The Closing Date shall be December 31, 1968 or such other date as may from time to time be agreed between the Borrower and the Association.

Section 7.02. The following addresses are specified for the purposes of Section 7.01 of the Regulations.

For the Borrower :

Ministerio de Economia Nacional
La Paz, Bolivia

Alternative address for cablegrams and radiograms :

Mineconomia
La Paz

For the Association :

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cablegrams and radiograms :

Indevas
Washington, D.C.

Section 7.03. (a) The Minister of National Economy of the Borrower is designated for the purposes of Section 7.03 of the Regulations.

(b) The Borrower irrevocably designated the Beneficiary for the purposes of taking any action required or permitted to be taken by the Borrower under the provisions of Section 2.03 of this Agreement, and Article IV of the Regulations.

Section 7.04. If any notice is given by the Association to the Borrower under the provisions of Sections 5.02 and 5.03 of the Regulations, copy of the same shall be promptly dispatched by the Association to the Beneficiary.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Development Credit Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Bolivia :

By Eduardo ARAUCO PAZ
Authorized Representative

International Development Association :

By G. M. WILSON
Vice President

SCHEDULE

DESCRIPTION OF PROJECT

The Project consists of the initial organization of the Company and of the construction of the Corani hydroelectric plant and the transmission lines and substations to deliver the power from this plant to the town of Cochabamba and to the Oruro Group of Mines at the Catavi Mine. It includes :

- (1) The construction of a main earth fill dam, about 24 meters high, across the lower end of the Corani valley and an auxiliary dam and spillway to create an 82 million cubic meter reservoir.
- (2) The construction of a pipeline, tunnel and penstock to utilize the head and to lead the water from the reservoir to the powerhouse located in the adjacent valley of the River Santa Isabel.
- (3) The construction of the powerhouse and the installation therein of two 13,500 kw generators driven by two 18,750 HP impulse turbines.
- (4) The construction of about 150 km of 115 kv transmission line and the associated substations at the Corani plant, at Cochabamba and at Catavi to deliver power from the plant to the latter two locations.
- (5) The construction of distribution system improvement and extensions of the Cochabamba system.

It is expected that the Project will be completed by April 1967.

LETTER RELATED TO THE DEVELOPMENT CREDIT AGREEMENT

EMBAJADA DE BOLIVIA¹

WASHINGTON

July 24, 1964

International Development Association
1818 H Street, N.W.
Washington, D. C. 20433

*Credit No. 61 BO (ENDE Power Project)
Currency of Repayment*

Dear Sirs :

We refer to the Development Credit Agreement (*ENDE Power Project*) of even date² between Republic of Bolivia and International Development Association and to Section 3.02 of the Regulations referred to therein.

Pursuant to such Section, we hereby request your agreement as follows :

¹ Embassy of Bolivia.

² See p. 204 of this volume.

- (i) Except hereinafter provided, the principal amount of, and service charges on, the Credit provided for in such Agreement shall be payable in the currency of the United States of America.
- (ii) If at any time we shall desire that, commencing with a given future payment date, such principal and service charges shall be payable in an eligible currency other than that specified in (i) or than one theretofore designated pursuant to this clause (ii) or selected pursuant to clause (iv) we shall deliver to the Association, not less than three nor more than five months prior to such payment date, a notice in writing to that effect and designating such other eligible currency, whereupon the currency so designated shall, commencing with such payment date, be the currency in which such principal and service charges shall be payable.
- (iii) If at any time the Association shall determine that a currency payable pursuant to the provisions of this letter is not an eligible currency, the Association shall so notify us in writing and furnish us with a list of eligible currencies.
- (iv) Within thirty days from the date of such notice, we shall notify the Association in writing of our selection of a currency from such list in which payment shall be made, failing which the Association shall select a currency for such purpose from such list, whereupon, in either case, such principal and service charges shall, commencing with the payment date next succeeding such thirty-day period, be payable in the currency so selected.
- (v) For the purposes of this letter, "eligible currency" means any currency of a member of the Association which the Association at the relevant time determines to be freely convertible or freely exchangeable by it for currencies of other members of the Association for the purposes of its operations.

Please indicate your agreement with the foregoing by signing the form of confirmation on the enclosed copy of this letter and returning it to us.

Very truly yours,

Republic of Bolivia :
By Eduardo ARAUCO PAZ
Authorized Representative

Confirmed :

International Development Association :

By Alfred E. MATTER

INTERNATIONAL DEVELOPMENT ASSOCIATION

DEVELOPMENT CREDIT REGULATIONS No. 1, DATED 1 JUNE 1961

REGULATIONS APPLICABLE TO DEVELOPMENT CREDIT AGREEMENTS WITH MEMBER GOVERNMENTS

[Not published herein. See United Nations, Treaty Series, Vol. 415, p. 68.]

PROJECT AGREEMENT
(ENDE POWER PROJECT)

AGREEMENT, dated July 24, 1964, between the INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association) and CORPORACIÓN BOLIVIANA DE FOMENTO, an agency of the Republic of Bolivia (hereinafter called CBF).

WHEREAS by a development credit agreement of even date herewith¹ (hereinafter called the Development Credit Agreement) between Republic of Bolivia (hereinafter called the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to ten million dollars (\$10,000,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that CBF agree to undertake certain obligations to the Association as hereinafter in this Project Agreement set forth; and

WHEREAS CBF, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations herein-after set forth;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

DEFINITIONS

Section 1.01. Wherever used in this Project Agreement, unless the context shall otherwise require, the several terms defined in the Development Credit Agreement shall have the respective meanings therein set forth.

Article II

PARTICULAR COVENANTS

Section 2.01. (a) CBF shall carry out the Project with due diligence and efficiency and in conformity with sound engineering and financial practices.

¹ See p. 204 of this volume.

(b) To assist CBF in carrying out the Project and planning for future expansion of its power system, CBF shall employ competent and experienced consultants satisfactory to, and upon terms and conditions agreed between, the Association and CBF.

(c) CBF shall furnish to the Association, promptly upon their preparation, the plans, specifications and the construction schedule for the Project and any material modifications subsequently made therein, in such detail as the Association shall from time to time request.

(d) CBF shall maintain or cause to be maintained records adequate to identify the goods financed out of the proceeds of the Credit, 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 practices the operations and financial condition of CBF; shall enable the Association's representatives to inspect the Project, the goods and any relevant records and documents and all other plants, sites, works, properties and equipment of CBF utilized for the generation, transmission and distribution of electric power; and shall furnish to the Association all such information as the Association shall reasonably request concerning the expenditures of the proceeds of the Credit, the Project, the goods, and the administration, operations and financial condition of CBF.

Section 2.02. (a) The Association and CBF shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request.

(b) The Association and CBF shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Credit and to the administration, operations and financial condition of CBF. CBF shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit or the performance by CBF of its obligations under this Agreement or the obligations to be performed by CBF pursuant to the provisions of the Credit Agreement, or which shall increase or threaten to increase materially the estimated cost of the Project.

Section 2.03. (a) As provided in Section 3.01 of the Development Credit Agreement, the specific goods to be financed out of the proceeds of the Credit and the methods and procedures for procurement of such goods shall be determined by agreement between the Association and CBF, subject to modification by further agreement between them.

(b) Except as the Association shall otherwise agree, CBF : (i) shall use, or cause to be used, all goods financed out of the proceeds of the Credit exclusively in the carrying out of the Project; (ii) shall obtain title to all such goods free and clear of all encumbrances; and (iii) shall not sell or otherwise dispose (except for the purposes of Section 2.08 of this Agreement) of any goods financed out of the proceeds of the Credit, other than such goods as shall have become worn out or obsolete.

Section 2.04. (a) CBF shall insure or cause to be insured with responsible insurers all imported goods financed out of the proceeds of the Credit. Such insurance shall cover

such marine, transit and other hazards incident to purchase and importation of such goods into the territories of the Borrower and delivery thereof to the site of the Project, and shall be for such amounts, as shall be consistent with sound commercial practices. Such insurance shall be payable in the currency in which the cost of the goods insured thereunder shall be payable or in dollars.

(b) In addition, CBF shall insure against such other risks and in such amounts as shall be consistent with sound public utility and business practices.

Section 2.05. Except as the Association shall otherwise agree, CBF shall take all steps necessary or desirable to obtain and maintain such electric tariffs as will produce revenues sufficient to provide the Rate of Return.

Section 2.06. CBF shall promptly make and carry out arrangements, satisfactory to the Association, with BPC pursuant to the principles set forth in the Interconnection Letter.

Section 2.07. Except as the Association shall otherwise agree, CBF shall not undertake or execute, for its own account or for the account of any other party or parties, any major power projects or developments other than the Project.

Section 2.08. Except as the Association shall otherwise agree, CBF shall, on a date not later than January 1, 1965 and on terms and conditions satisfactory to the Association transfer, or cause to be transferred, to the Company : (i) all its electric facilities, all assets and current liabilities relating thereto, and its rights and obligations under the IDB Loan Agreement (except for an amount of \$50,000) but no other liabilities; (ii) the functions and responsibilities of its power department and its rights and obligations under any arrangements made, pursuant to the Interconnection Letter; and (iii) all its rights and obligations under this Agreement.

Section 2.09. As part of the terms and conditions to be satisfied pursuant to Section 2.08 of this Agreement, CBF shall cause the Company to undertake that :

(a) The Company shall at all times maintain its existence and right to carry on operations and shall, except as the Association shall otherwise agree, take all steps necessary to acquire, maintain and renew all rights, powers, privileges and franchises which are necessary or useful in the conduct of its business.

(b) The Company shall (i) operate and maintain all its plants, equipment and property and from time to time make all necessary renewals and repairs thereof, all in accordance with sound engineering and public utility practices; (ii) at all times manage its affairs, operate its plants and equipment and maintain its financial position in accordance with sound business and public utility practices under competent and experienced management; and (iii) take out and maintain insurance against such risks and in such amounts as shall be consistent with sound business and public utility practices.

(c) Except as the Association shall otherwise agree, the Company shall not sell, lease, transfer or assign any of its property or assets, except in the normal course of its business and shall not engage in any activity other than power generation, transmission and distribution.

(d) Except as the Association shall otherwise agree, the Company shall not incur any indebtedness unless the net consolidated revenues of the Company and its subsidiaries (if any) in the twelve consecutive months immediately preceding such incurrence shall be at least 1.5 times the estimate maximum debt service requirements for any succeeding twelve-month period following such incurrence on all indebtedness of the Company and its subsidiaries (if any), including the indebtedness proposed to be incurred. For the purposes of this paragraph :

- (i) the term "indebtedness" shall include the assumption and guarantee of indebtedness and shall mean all indebtedness of the Company and its subsidiaries (if any) maturing by its terms more than one year after the date of its incurrence, but excluding any indebtedness between the Company and its subsidiaries (if any) or between such subsidiaries;
- (ii) indebtedness shall be deemed to be incurred on the date of execution and delivery of the contract or loan agreement providing for such indebtedness;
- (iii) the term "net consolidated revenues" shall mean gross revenues from all sources, excluding any revenues arising from the transactions between the Company and its subsidiaries (if any) or between such subsidiaries, adjusted to take account of electric tariffs in effect at the time of incurrence of indebtedness even though they were not in effect during the twelve consecutive months to which such revenues related, less operating and administrative expenses including provision for taxes, if any, but before provision for depreciation and interest and other charges on debt;
- (iv) the term "debt service requirements" shall mean the aggregate amount of amortization (including sinking fund contributions), interest and other charges on debt; and
- (v) whenever for the purposes of this paragraph it shall be necessary to value, in terms of the currency of the Borrower, indebtedness payable in another currency, such valuation shall be made on the basis of the prevailing rate of exchange at which such other currency is, at the time of such valuation, lawfully obtainable for the purposes of servicing such indebtedness.

(e) The Company shall have its accounts regularly audited by an independent accountant or accounting firm acceptable to the Association and shall furnish to the Association, promptly upon their preparation, its annual financial statements (balance sheet and profit and loss statement) certified by such accountant or accounting firm.

Section 2.10. The obligations to be assumed by the Company pursuant to the provisions of Section 2.08 and 2.09 of this Agreement shall be applicable to any subsidiary of the Company as though such obligations were binding on any such subsidiary, and the Company shall cause any such subsidiary to carry out such obligations.

Section 2.11. (a) Promptly after the transfers referred to in Section 2.08 of this Agreement shall have been made and the conditions set forth or referred to in such Sec-

tion 2.08 and in Section 2.09 of this Agreement shall have been satisfied, CBF shall furnish, and shall cause the Company to furnish, to the Association an opinion or opinions of counsel acceptable to the Association showing that : (i) the Company is duly organized and existing under the laws of the Borrower and has full power to own the properties and to carry on the business which it owns and carries on; (ii) all the transfers herein referred to have been duly authorized or ratified by, and made on behalf of and accepted by, CBF and the Company, as the case may be; (iii) the assumption by the Company of the obligations of CBF under this Agreement constitutes a valid and binding obligation of the Company in accordance with its terms; and (iv) the undertakings of the Company pursuant to the provisions of Section 2.09 of this Agreement constitute valid and binding obligations of the Company in accordance with their respective terms.

(b) The obligations of CBF under this Agreement shall continue in full force and effect until, and the obligations of the Company hereunder shall take effect only on, such date as the Association shall dispatch to CBF and the Company notice : (i) of its acceptance of the opinion or opinions referred to in paragraph (a) of this Section; and (ii) of its satisfaction that all other terms and conditions referred to in Section 2.08 of this Agreement have been fulfilled.

Article III

EFFECTIVE DATE; TERMINATION

Section 3.01. This Agreement shall come into force and effect on the Effective Date. If, pursuant to Section 8.04 of the Regulations, the Association shall terminate the Development Credit Agreement, the Association shall promptly notify CBF or the Company, as the case may be, of such termination and, upon the giving of such notice, this Agreement and all obligations of the parties hereunder shall forthwith cease and determine.

Section 3.02. This Agreement shall terminate and all obligations of the Association and CBF or the Company, as the case may be, hereunder shall cease and determine on the date on which the Development Credit Agreement shall terminate or on a date twenty-five years after the date of this Agreement, whichever shall be the earlier.

Article IV

MISCELLANEOUS PROVISIONS

Section 4.01. Any notice, demand or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this 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 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 :

- (a) For the Association :
 International Development Association
 1818 H Street, N.W.
 Washington, D.C. 20433
 United States of America
 Alternative address for cablegrams or radiograms :
 Indevas
 Washington, D.C.
- (b) For CBF :
 Empresa Nacional de Electricidad
 Casilla 565
 Cochabamba, Bolivia
 Alternative address for cablegrams or radiograms :
 ENELECTRIC
 Cochabamba

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement or the Development Credit Agreement on behalf of CBF may be taken or executed by the *Presidente* of CBF or such other person or persons as he shall designate in writing.

(b) Any action required or permitted to be taken and any document required or permitted to be executed, under this Agreement or the Development Credit Agreement, on behalf of the Company after the event specified in Section 2.11 (b) shall have occurred, shall be taken or executed by the *Presidente* and/or the *Gerente General*, as the case may be, or such person or persons as either one or both of them shall designate in writing.

Section 4.03. CBF (and the Company after the event specified in Section 2.11 (b) shall have occurred) shall furnish to the Association sufficient evidence of the authority of the person or persons who will, on behalf of CBF or the Company, take any action or execute any documents required or permitted to be taken or executed by CBF or the Company, as the case may be, pursuant to any of the provisions of the Development Credit Agreement or this Agreement and the authenticated specimen signature of each such person.

Section 4.04. This Agreement may be executed in several counterparts, each of which shall be an original and all collectively but one instrument.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed in their respective names by their representatives thereunto duly authorized and delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Development Association :

By G. M. WILSON
 Vice President

Corporación Boliviana de Fomento :

By Adolfo LINARES
 Roberto CAPRILES
 Authorized Representatives

MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNATIONAL DEVELOPMENT ASSOCIATION, THE INTER-AMERICAN DEVELOPMENT BANK AND THE GOVERNMENT OF BOLIVIA (HEREINAFTER CALLED THE PARTIES)

(Bolivia|ENDE Power Project)

1. To assist the Republic of Bolivia (hereinafter called the Borrower) in financing the construction of a 27,000 kilowatt hydroelectric plant on the Corani River and other electric facilities relating thereto (hereinafter called the Project) International Development Association (hereinafter called IDA) has agreed to make available to the Borrower a credit in the amount of \$10,000,000 equivalent, and Inter-American Development Bank (hereinafter called IDB) has agreed to lend to the Borrower the amount of \$3,500,000 equivalent, all as more fully set forth in the respective credit and loan agreements of even date herewith.

2. The Parties, being cognizant of their common interest in the success of the Project, desire to cooperate closely in the administration of their financing to the Borrower and in the supervision of the execution of the Project. To that end the Parties will keep each other currently informed of the progress of the Project and will exchange views periodically. Each party will inform the other if any event comes to its knowledge which materially affects the progress of the Project or threatens to impede it, and will consult with the other concerning the action that it proposes to take in respect thereof. The Parties further agree to consult each other before taking any measure of common interest, including in particular the waiving of any provision of the credit or loan agreements and the exercise of any right of action which could lead to the suspension, cancellation or prematuring of the credit or the loan or any part thereof. If there is a difference of view about what action should be taken, each party will use its best efforts promptly to reach a mutually acceptable resolution of the difference before acting.

3. As a result of the separate agreements concluded between the Parties and the Borrower, the approval of each party is required with respect to certain actions and documents pertaining to the Project and each party has the right to receive reports on and to inspect the Project. To avoid duplication of effort, IDB contemplates that IDA, to the extent possible, will review matters of common interest to the Parties with a view to suggesting appropriate action in such matters as approval of consultants, award of contracts, form of contracts, end-use inspection and any other matter of common interest with respect to the carrying out of the Project and, to the extent practicable, will act as coordinator in dealing with the Borrower.

4. (a) The Parties will keep each other currently informed of all amounts disbursed. To that end, the Parties will send each other copies of all notifications of charges to the respective loan or credit accounts.

(b) The following procedures will apply to the financing of the common items in the Lists of Goods supplementing the respective credit and loan agreements :

- (i) All contracts of a value of \$50,000 equivalent or more to be financed by the Parties will be awarded on the basis of international competitive bidding and will be subject to review by the Parties.

- (ii) Where possible all payments will be made by the Borrower. The Borrower will present simultaneously to each party a separate application for reimbursement in the following percentages :

IDA : 76%

IDB : 24%

Upon being satisfied that the applications conform with the respective credit and loan agreements, each party will, independently and in accordance with the provisions of his agreement with the Borrower, reimburse the Borrower for such percentage. In the event the Borrower is unable to follow the procedure set out above, the Parties agree to enable payment to be made to meet suppliers, bills directly in amounts corresponding to the above percentages.

5. The Parties agree that the bidding and contracting procedures to be followed for the procurement of the goods and services required to carry out the Project shall be as set forth in the Memorandum attached hereto as Annex A.¹

6. The Parties will consult each other before (a) notifying the Borrower that the respective agreements have become effective or that the conditions precedent to initial disbursements have been fulfilled, as the case may be; and (b) the conclusion of any final agreement with the Borrower under Section 4.06 of the IDA Development Credit Agreement (*ENDE Power Project*) and under Section 5.07 of the IDB Loan Agreement.

7. The Borrower has been consulted about the proposed collaboration between the Parties and approves the principles set forth in this Memorandum and Annex hereto.

International Development Association :

By G. M. WILSON
Vice President

Inter-American Development Bank :

By Felipe HERRERA
President

Approved for the Republic of Bolivia :

By Eduardo ARAUCO PAZ
Authorized Representative

Attachment :

Annex A

Dated at Washington, D.C., July 24, 1964

¹See p. 242 of this volume.

ANNEX A

GUIDELINES RELATING TO PROCUREMENT UNDER BANK LOANS AND IDA CREDITS

1. *Purposes and Objective*

The International Bank for Reconstruction and Development (the Bank) and the International Development Association (IDA) are required by their Articles of Agreement to insure that the proceeds of their loans and credits are used with due attention to considerations of economy and efficiency. For this reason, and as cooperative international institutions, the Bank and IDA require their borrowers to obtain goods and services (other than consultants' services) on an international competitive basis unless another procedure, more appropriate to the circumstances, has been agreed between the Bank or IDA and the borrower. The Bank and IDA believe that it is in the interest both of borrowers and their suppliers that certain guidelines should be generally followed in the bidding and contracting procedures relating to cases where international competitive bidding is involved. This statement sets forth those guidelines. It is intended that this statement will be made applicable, as appropriate, to procurement under Bank loans and IDA credits.¹

2. *International Competition and Advertising*

In order to insure widespread international competition, all appropriate member countries of the Bank and Switzerland should be canvassed for bids. To this end, invitations to bid or to prequalify should be transmitted to local official representatives of these countries and advertised in at least one newspaper of general circulation in the borrower's country. For large and important contracts advertisements should be placed in well known technical magazines and trade publications of wide circulation.

3. *Prequalification of Bidders*

When contracts are to be sought for large or complex projects involving considerable expense for the preparation of bids, it is desirable to establish a list of prequalified bidders, thus saving the cost of bid preparation to those who would fail to qualify in any case. Prequalification, if employed as a procedure, should be based entirely upon ability to perform satisfactorily, taking into account: (i) the experience of the firm on similar work, (ii) its capabilities with respect to personnel, equipment and plant, and (iii) its financial position. Advertisement of the prequalification procedure should be carried out along the lines of the procedure described in Paragraph 2. Abbreviated specifications should be made available to contractors desiring to be considered for qualification.

¹ Borrowers are free to use the proceeds of Bank loans and IDA credits to make purchases in any member country and Switzerland. The arrangements between the Bank or IDA and the borrower regarding the use of the proceeds of the particular loan or credit, the contracts which are to be financed, the currency or currencies to be supplied by the Bank or IDA, and the extent to which procurement documents are subject to Bank/IDA review or approval will be set forth in each case in the contractual documents for the loan or credit.

4. *Time Interval between Advertising and Bid Opening*

The time allowed for preparation of bids will depend to a large extent upon the magnitude and complexity of the contract involved and the remoteness of the project from areas from which bids may be expected. Where large civil works are involved, generally about 90 days should be allowed for contractors to conduct investigations at the site. The time allowed, however, should be governed by the circumstances relating to each project.

5. *Size of Contracts*

In order to foster widespread competition individual contracts, whenever feasible, should be of a size sufficiently large so as not to discourage potential bidders. On the other hand, if the project can easily be divided into contracts of a specialized character,¹ it should be so divided. Except in special cases, turnkey contracts² are unacceptable.

6. *References to Bank or IDA*

If it is necessary and appropriate to refer to the Bank or IDA in bidding documents the following language is suggested :

“... (name of borrower)... has received (or in appropriate cases ‘has applied for’) a loan (credit) from the International Bank for Reconstruction and Development (International Development Association) in various currencies equivalent to \$... towards the cost of (name of project), and it is intended that proceeds of this loan (credit) will be applied to payments under the contract (contracts) for which this invitation to bid is issued. Payments by the International Bank for Reconstruction and Development (International Development Association) will be made only upon approval by the International Bank for Reconstruction and Development (International Development Association) of an application presented by (name of borrower) in accordance with the terms and conditions of the Loan (Credit) Agreement and will be subject in all respects to the terms and conditions of that Agreement.”

7. *Currency Clauses*

(a) *Currency Used for Payments.* The Bank and IDA require that their borrowers make reasonable efforts to assure that payment for goods and services procured under Bank loans and IDA credits be made in the currency of the country of origin.

(b) *Indication of Currencies.* Whenever expenditures in both local currency and foreign currency are involved, the tender documents should require that the amounts of these expenditures be shown separately.

(c) *Currency Equivalents for Bid Comparison.* Under contracts requiring expenditures in more than one currency or in cases where it is expected that bidders from

¹ Such as a power, water supply or large industrial project where it is feasible to invite bids separately for civil works and equipment or different types of equipment.

² Turnkey contract is a term used to describe a contract where the engineering, the equipment and the construction are all provided as a package by one party.

several countries will submit bids expressed, in part or in whole, in their national currencies it will be necessary that, for the purpose of comparison of bids, all currencies be converted into one specified currency at a specified rate (or rates) of exchange. Such rates should be fixed as of a reasonable date (say 30 days) prior to the date fixed for the opening of the bids and the borrower should make arrangements whereby all prospective bidders may receive notification of such rates a reasonable time before (say 15 days) the date fixed for the opening of the bids.

(d) *Exchange Risks.* It is desirable that where a payment to be made to a contractor or supplier is based upon a conversion of local currency into foreign currency, the exchange risk should not be borne by the contractor or supplier. The manner in which this can best be effected will depend on the precise payment provisions of the contract and this statement of guidelines does not attempt to deal with the different ways in which this can be handled.

8. *Clarity of Specifications*

Every effort should be made by the borrower to ensure that specifications and conditions of contract are clearly drawn to include all necessary details and conditions and that plans are consistent therewith. They should be so worded as to permit and encourage free and full international competition.

9. *Standards*

If national standards to which equipment or materials must comply are cited, the specifications should state that goods meeting other authoritative standards, which insure an equal or higher quality than the standards mentioned, will also be accepted.

10. *Use of Brand Name and Phrase "or equal"*

Descriptions contained in specifications should not prescribe brand names, catalogue numbers, or types of equipment of a specific manufacturer unless it has been determined that this is necessary to insure inclusion of certain essential features. In such a case the reference should be followed by the words "or equal." The specifications should, as a rule, permit offers of alternative equipment, articles or materials which have similar characteristics and provide equal performance and quality to those specified.

11. *Language Interpretation*

In cases where tender invitations, specifications and contracts are prepared in more than one language, it is desirable to indicate the ruling language.

12. *Settlement of Disputes*

It is desirable that provisions dealing with the settlement of disputes be included in contract documents, but the Bank or IDA should not be named arbitrator nor asked to name an arbitrator.

13. *Advance Payments*

The percentage of the total payment to be made in advance upon signature of the contract for mobilization expenses should be reasonable. Other advances to be made, as for example for materials delivered to the site for incorporation in the works, should also be clearly described in the contract documents.

14. *Escalation Clauses*

In appropriate cases, provision may be made for adjustment (upwards or downwards) in the contract price in the event that changes occur, over which the contractor has no control, in the prices of the major cost constituents of the contract, such as labor and important materials.

15. *Insurance*

The specifications should state precisely the types of insurance, if any, to be provided by the successful bidder.

16. *Retention Money*

The percentage of the total payment to be held as retention money and the conditions for its ultimate payment should be stipulated in contract documents.

17. *Penalty Clauses*

Provisions for penalty, sometimes called liquidated damage clauses, should be contained in contracts when delays in completion will result in extra cost or inconvenience to the borrower.

18. *Bid Bonds*

If used, bid bonds or other bidding guarantees should not be set so high as to discourage able bidders. Bid bonds or guarantees should be released to unsuccessful bidders as soon as possible after the bids have been opened.

19. *Performance Bonds*

Specifications for civil works should require performance bonds or other surety adequate to guarantee that the work will be carried on to completion. The amount required varies with the type of work, but it should be sufficient to protect the borrower in case of default by the contractor in performance. The life of the bonds or surety should extend sufficiently beyond completion of the contract to cover a reasonable warranty period. If desired, nominal performance bonds or sureties may be required in connection with contracts for the supply of equipment.

20. *Bid Opening Procedures*

The date, hour and place of bid opening shall be announced in the invitations and all bids shall be opened publicly at the stipulated time. Bids received after this time shall be returned unopened. The amounts of each bid shall be read aloud and recorded.

21. *Clarifications or Alterations of Bids*

No bidder shall be permitted to alter his bid after the bids have been opened, but clarifications not changing the substance of the bid may be accepted. The borrower may ask any bidder for a clarification of his bid but shall not ask any bidder to change the substance of his bid.

22. *Examination of Bids*

Following the opening, it shall be ascertained whether material errors in computation have been made in the bids, whether the bids are fully responsive to the terms of the specifications, whether the required guarantees and sureties have been provided, whether documents have been properly signed and whether the bids are otherwise generally in order. If a bid does not substantially conform to the specifications or is not otherwise substantially responsive to the invitation, it shall be rejected. A technical analysis shall then be made to evaluate each responsive bid and to enable bids to be compared.

23. *Evaluation of Bids*

In analyzing bids factors other than price, such as the efficiency and reliability of the equipment offered by various bidders, the time of delivery, the time of completion of construction and the availability of service and spare parts, should also be taken into consideration (being expressed in monetary terms wherever possible) for the purpose of determining the lowest evaluated bid.

24. *Postqualification of Bidders*

In the absence of prequalification, the borrower shall determine whether the bidder whose bid has been evaluated the lowest has the capability and financial responsibility effectively to carry out the contract concerned. If the bidder does not meet that test, his bid shall be rejected.

25. *Award of Contract*

The award of a contract should be made to the bidder whose bid has been determined to be the lowest evaluated bid and who meets the appropriate standards of capability and financial responsibility. Such bidder shall not be required, as a condition of award, to undertake responsibilities or work not stipulated in the specifications.

June 5, 1964