

II

Treaties and international agreements

filed and recorded

from 14 February 1969 to 23 February 1969

No. 644

Traités et accords internationaux

classés et inscrits au répertoire

du 14 février 1969 au 23 février 1969

No 644

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**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT and INTERNATIONAL
DEVELOPMENT ASSOCIATION**

and

EMPRESA NACIONAL DE ENERGÍA ELÉCTRICA

**Project Agreement—Rio Lindo Hydroelectric Project.
Signed at Washington on 12 June 1968**

Authentic text : English.

*Filed and recorded at the request of the International Bank for Reconstruction
and Development and the International Development Association on
14 February 1969.*

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et ASSOCIATION INTERNATIONALE
DE DÉVELOPPEMENT**

et

EMPRESA NACIONAL DE ENERGÍA ELÉCTRICA

**Contrat relatif au projet — *Projet hydro-électrique du Lindo.*
Signé à Washington le 12 juin 1968**

Texte authentique : anglais.

*Classé et inscrit au répertoire à la demande de la Banque internationale pour la
reconstruction et le développement et de l'Association internationale de
développement le 14 février 1969.*

PROJECT AGREEMENT ¹

AGREEMENT, dated June 12, 1968, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association), parties of the first part, and EMPRESA NACIONAL DE ENERGÍA ELÉCTRICA (hereinafter called ENEE), party of the second part.

WHEREAS by a Loan Agreement ² of even date herewith between the Republic of Honduras and the Bank (hereinafter called the Loan Agreement) the Bank has agreed to make a Loan to the Republic of Honduras (hereinafter called the Borrower) in various currencies in an amount equivalent to seven million five hundred thousand dollars (\$7,500,000) on the terms and conditions set forth in the Loan Agreement, to be relented to ENEE, but only on condition that ENEE agree to undertake certain obligations toward the Bank as hereinafter provided ;

WHEREAS by a Development Credit Agreement ³ of even date herewith between the Borrower and the Association (hereinafter called the Development Credit Agreement) the Association has agreed to make a Credit to the Borrower in various currencies in an amount equivalent to four million dollars (\$4,000,000) on the terms and conditions set forth in the Development Credit Agreement, to be relented to ENEE, but only on condition that ENEE agree to undertake certain obligations toward the Association as hereinafter provided ; and

WHEREAS ENEE, in consideration of the Bank's and the Association's entering into the Loan and Development Credit Agreements with the Borrower, has agreed to undertake the obligations hereinafter set forth ;

NOW THEREFORE the parties hereto hereby agree as follows:

Article I

DEFINITIONS

Section 1.01. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement and

¹ Came into force on 13 September 1968, the date of entry into force of the Loan Agreement of 12 June 1968 between the International Bank for Reconstruction and Development and Honduras (see p. 75 of this volume), in accordance with section 3.01.

² See p. 75 of this volume.

³ See p. 99 of this volume.

in the Development Credit Agreement shall have the respective meanings therein set forth.

Article II

PARTICULAR COVENANTS

Section 2.01. (a) ENEE shall carry out the Project, described in the Loan and Development Credit Agreements, with due diligence and efficiency and in conformity with sound engineering and financial practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(b) To assist it in carrying out the Project, ENEE shall employ consultants acceptable to, and to an extent and upon terms and conditions satisfactory to, the Bank, the Association and ENEE.

(c) In carrying out the Project, ENEE shall employ contractors acceptable to and to an extent satisfactory to, the Bank, the Association and ENEE, employed under contracts satisfactory to the Bank, the Association and ENEE.

Section 2.02. ENEE shall apply the proceeds of the Loan and the Credit lent to it by the Borrower under the Subsidiary Loan Agreement exclusively to financing the cost of goods required to carry out the Project and, except as the Bank and the Association shall otherwise agree, shall cause all goods financed out of such proceeds to be used exclusively in the carrying out of the Project.

Section 2.03. (a) ENEE shall furnish to the Bank and the Association upon request by the Bank and the Association from time to time, promptly upon their preparation, the plans, specifications and construction schedules for the Project and any material modifications subsequently made therein, in such detail as the Bank and the Association shall from time to time request.

(b) ENEE shall maintain records adequate to identify the goods financed out of the proceeds of the Loan and 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 ENEE; shall enable the Bank's and the Association's representatives to inspect the Project, the goods and all facilities operated by ENEE and any relevant records and documents; and shall furnish to the Bank and the Association all such information as the Bank and the Association shall reasonably request concerning

the expenditure of the proceeds of the Loan and the Credit, the Project, the goods and the administration, operations and financial condition of ENEE.

(c) ENEE shall have its financial statements (balance sheet and related statement of earnings and expenses) audited annually by an independent accountant or accounting firm, acceptable to the Bank and the Association, and shall promptly after their preparation and not later than four months after the close of ENEE's fiscal year transmit to the Bank and the Association, certified copies of such audited statements and a signed copy of such accountant's or such firm's report. The provisions of this Section supersede all prior agreements between the Bank and ENEE relating to the audit of the financial statements of ENEE and the furnishing to the Bank of such statements.

Section 2.04. (a) The Bank, the Association and ENEE shall cooperate fully to assure that the purposes of the Loan, the Credit and this Agreement shall 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 Project.

(b) The Bank, the Association and ENEE shall from time to time exchange views through their representatives with regard to matters relating to the Loan, the Credit, the Project, the administration, operations and financial condition of ENEE and the matters covered by this Agreement and the Subsidiary Loan Agreement. ENEE shall promptly inform the Bank and the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan, the Credit, the Project or the performance by ENEE of its obligations under this Agreement or the Subsidiary Loan Agreement.

Section 2.05. ENEE shall effect from time to time such adjustments in its rates for the sale of electricity as shall be necessary to provide revenues sufficient to : (i) cover operating expenses, including taxes and levies, if any, adequate maintenance and depreciation, and (ii) produce a reasonable return on its total net fixed assets in operation. The provisions of this Section supersede all prior agreements between the Bank and ENEE relating to such adjustments by ENEE.

Section 2.06. (a) Except as the Bank and the Association shall otherwise agree, ENEE shall not incur any debt unless ENEE's net revenue for the fiscal year, or a later twelve consecutive months' period, immediately preceding the date of such incurrence, whichever is the greater, shall be not less than 1.5 times the maximum debt service requirement for any succeeding

fiscal year on all ENEE's debt, including the debt to be incurred. For the purposes of this Section :

- (i) the term " debt " means all debt except debt incurred in the ordinary course of business and maturing by its terms on demand or less than one year after its incurrence ;
- (ii) the term " incur " with reference to any debt includes any modification of the terms of payment of such debt. Debt shall be deemed to be incurred : (i) under a contract or loan agreement, on the date it is drawn down pursuant to such contract or loan agreement, and (ii) under a guarantee agreement, on the date the agreement providing for such guarantee shall have been entered into ;
- (iii) the term " net revenue " means gross operating revenue, adjusted to take account of rates in effect at the time of the incurrence of debt even though they were not in effect during the fiscal year or twelve-month period to which such revenue relates, less all operating expenses, including adequate maintenance, taxes, if any, and administrative expenses, but before provision for depreciation and debt service requirement ;
- (iv) the term " debt service requirement " means the aggregate amount of amortization (including sinking fund payments, if any), interest and other charges on debt ;
- (v) whenever it shall be necessary to value in the currency of the Borrower debt payable in another currency, such valuation shall be made on the basis of the rate of exchange at which such other currency is obtainable by ENEE, at the time such valuation is made, for the purposes of servicing such debt or, if such other currency is not so obtainable, at the rate of exchange that will be reasonably determined by the Bank and the Association.

(b) The provisions of this Section supersede all prior agreements between the Bank and ENEE limiting the incurring, assumption or guaranteeing of debt by ENEE.

Section 2.07. (a) ENEE shall at all times carry out its functions in accordance with sound management principles.

(b) ENEE shall at all times maintain its existence and right to carry on its operations and shall, except as the Bank and the Association shall

otherwise agree, take all steps necessary to maintain and renew all rights, powers, privileges and franchises which are necessary or useful in the conduct of its business.

(c) ENEE shall operate and maintain its plants, equipment and other property, and from time to time make all necessary renewals and repairs thereof, all in accordance with sound engineering practices ; and shall at all times operate such plants, equipment and property and maintain its financial position in accordance with sound business and public utility practices.

(d) ENEE shall not, without the consent of the Bank and the Association, sell or otherwise dispose of all or substantially all of its property and assets or all or substantially all of the property included in the Project or of any plant the cost of which is financed in whole or in part out of the proceeds of the Loan or the Credit.

Section 2.08. (a) ENEE shall take out and maintain with responsible insurers, or make other provisions satisfactory to the Bank and the Association for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, ENEE undertakes to insure or cause to be insured the imported goods to be financed out of the proceeds of the Loan and the Credit against marine, transit and other 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 by ENEE to replace or repair such goods.

Section 2.09. ENEE shall pay or cause to be paid all taxes or fees, if any, imposed under the laws of the Borrower or laws in effect in the territories of the Borrower on or in connection with the execution, issue, delivery or registration of this Agreement, the Loan Agreement, the Development Credit Agreement or the Bonds, or the payment of principal, interest or other charges thereunder ; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Borrower.

Section 2.10. ENEE shall pay or cause to be paid all taxes and fees, if any, imposed under the laws of the country or countries in whose currency the Loan, the Credit and the Bonds are payable or laws in effect in the territories of such country or countries on or in connection with the execution,

issue, delivery or registration of this Agreement, the Loan Agreement, the Development Credit Agreement or the Bonds.

Section 2.11. Except as the Bank and the Association shall otherwise agree, ENEE shall not create or permit to be created any mortgage, pledge, charge or other lien on any of its property or assets ; provided, however, that the foregoing provision of this Section shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property, and (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

Article III

EFFECTIVE DATE ; TERMINATION

Section 3.01. This Agreement shall come into force and effect on the Effective Date of the Loan Agreement. If, pursuant to Section 7.03 of the Loan Agreement or Section 6.02 of the Development Credit Agreement, the Loan Agreement and the Development Credit Agreement shall be terminated, the Bank and the Association shall promptly notify ENEE of this event and, upon the giving of such notice, this Project Agreement and all obligations of the parties hereunder shall forthwith terminate.

Section 3.02. This Agreement shall terminate and all obligations of the parties hereunder shall cease and determine : (i) on the date on which both the Loan Agreement and the Development Credit Agreement shall have terminated, or (ii) on the date on which all principal, interest and other charges payable by ENEE to the Borrower under the Subsidiary Loan Agreement shall have been paid, whichever shall be the earlier.

Article IV

MISCELLANEOUS PROVISIONS

Section 4.01. No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under this 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.

Section 4.02. Any notice or request required or permitted to be given or made under this Agreement or any other 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 :

For the Bank and the Association :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address :

Intbafrad
Washington, D.C.

For ENEE :

Empresa Nacional de Energía Eléctrica .
Apartado 99
Tegucigalpa, D.C.
Honduras

Cable address :

ENEE
Tegucigalpa, D.C.

Section 4.03. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement, the Loan Agreement or the Development Credit Agreement on behalf of ENEE may be taken or executed by the *Gerente* of ENEE or such person or persons as he shall designate in writing.

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, acting through their representatives thereunto duly authorized, have caused this 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.

International Bank for Reconstruction and Development
and International Development Association :

By J. Burke KNAPP
Vice President

Empresa Nacional de Energía Eléctrica :

By Ernesto CRESPO
Authorized Representative
