

## II

### *Treaties and international agreements*

*filed and recorded*

*from 24 November 1970 to 2 December 1970*

*No. 660*

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### *Traités et accords internationaux*

*classés et inscrits au répertoire*

*du 24 novembre 1970 au 2 décembre 1970*

*N° 660*

No. 660

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**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
and INTERNATIONAL DEVELOPMENT  
ASSOCIATION,  
and  
EMPRESA NACIONAL DE ENERGÍA ELÉCTRICA**

**Project Agreement—*Fourth Power Project*. Signed at Wash-  
ington on 24 June 1970**

*Authentic text: English.*

*Filed and recorded at the request of the International Bank for Reconstruction and  
Development and the International Development Association on 2 December 1970.*

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**BANQUE INTERNATIONALE POUR  
LA RECONSTRUCTION ET LE DÉVELOPPEMENT  
et ASSOCIATION INTERNATIONALE  
DE DÉVELOPPEMENT,  
et  
EMPRESA NACIONAL DE ENERGÍA ELÉCTRICA**

**Contrat relatif au Projet — *Quatrième projet relatif à l'éner-  
gie électrique*. Signé à Washington le 24 juin 1970**

*Texte authentique: anglais.*

*Classé et inscrit au répertoire à la demande de la Banque internationale pour la recon-  
struction et le développement et de l'Association internationale de développement le  
2 décembre 1970.*

## PROJECT AGREEMENT<sup>1</sup>

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AGREEMENT, dated June 24, 1970, 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 of even date herewith<sup>2</sup> (hereinafter referred to as the Loan Agreement) between the Republic of Honduras (hereinafter called the Borrower) and the Bank, and by a development credit agreement of even date herewith<sup>3</sup> (hereinafter referred to as the Development Credit Agreement) between the Borrower and the Association, the Bank and the Association have each respectively agreed to make available to the Borrower an amount in various currencies equivalent to five million five hundred thousand dollars (\$5,500,000), on the terms and conditions respectively set forth in the Loan and the Development Credit Agreements, but only on condition that ENEE agree to undertake such obligations toward the Bank and the Association as hereinafter set forth;

WHEREAS by a subsidiary loan agreement to be entered into between the Borrower and ENEE pursuant to Sections 3.01 (b) of the Loan and the Development Credit Agreements (hereinafter referred to as the Subsidiary Loan Agreement), the proceeds of the loan and of the credit provided for under the Loan and the Development Credit Agreements will be made available to ENEE on the terms and conditions therein set forth; and

WHEREAS ENEE, in consideration of the Bank's and the Association's entering into the Loan and the 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, in the

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<sup>1</sup> Came into force on 30 October 1970, in accordance with section 6.01.

<sup>2</sup> United Nations, *Treaty Series*, vol. 759, p. 101.

<sup>3</sup> *Ibid.*, vol. 758, p. 279.

Development Credit Agreement and in the General Conditions (as so respectively defined) have the respective meanings therein set forth.

## Article II

### EXECUTION OF THE PROJECT

*Section 2.01.* ENEE shall carry out the Project described in Schedule 2 to the Loan and Development Credit Agreements with due diligence and efficiency and in conformity with sound administrative, financial, engineering and public utility practices.

*Section 2.02.* ENEE shall apply the proceeds of the Loan and the Credit relented to it by the Borrower under the Subsidiary Loan Agreement exclusively to financing the cost of goods and services required to carry out the Project.

*Section 2.03. (a)* In order to assist ENEE in (i) the design, and preparation of plans, specifications and bidding documents for the 138 kV and 69kV transmission lines and substations and the supervision of construction thereof; (ii) the procurement of communications and maintenance equipment; and (iii) the carrying out of feasibility studies in respect of the Humuya River and/or the Ulua River power projects and tariff studies, ENEE shall employ consultants acceptable to the Bank and Association under terms and conditions satisfactory to the Bank and the Association.

*(b)* ENEE shall: (i) employ competent and experienced engineers to assist ENEE's staff in the carrying out of the Project and in the training of ENEE's personnel; and (ii) whenever necessary, arrange courses of training abroad for such personnel.

*(c)* ENEE shall submit promptly for review by the Bank and the Association the results of the studies carried out by the consultants referred to in paragraph *(a)* hereof.

*Section 2.04. (a)* In carrying out Parts A, B, C and D of the Project, ENEE shall employ contractors acceptable to the Bank and the Association upon terms and conditions satisfactory to the Bank and the Association.

*(b)* ENEE shall not proceed with the construction of the La Ceiba Aguan Valley transmission line and associated facilities nor with the installation of the transformer at El Progreso substation unless and until ENEE produces evidence satisfactory to the Bank and the Association that there is sufficient economic justification for the works.

*Section 2.05. (a)* Except as the Bank and the Association shall otherwise agree, (i) the goods and services (other than services of consultants) required for the Project and to be financed out of the proceeds of the Loan

and Credit relent to ENEE by the Borrower shall be procured on the basis of international competitive bidding in accordance with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with such other procedures supplementary thereto as are set forth in the Schedule to this Agreement or as shall be agreed between the Bank, the Association and ENEE, and (ii) contracts for the procurement of all goods and services to be financed out of such proceeds of the Loan and the Credit shall (except as otherwise provided in such Schedule) be subject to the prior approval of the Bank and the Association.

(b) ENEE undertakes to insure or make adequate provision for insurance of the imported goods to be financed out of the proceeds of the Loan and the Credit relent to it by the Borrower 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.

(c) Except as the Bank and the Association may otherwise agree, ENEE shall cause all goods and services financed out of the proceeds of the Loan and the Credit relent to it by the Borrower to be used exclusively for the Project.

*Section 2.06.* (a) ENEE shall furnish to the Bank and the Association, promptly upon their preparation, the plans, specifications and construction schedules for the Project, and any material modifications or additions thereto, in such detail as the Bank and the Association shall reasonably request.

(b) ENEE: (i) shall maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Loan and the Credit relent to it by the Borrower, and to disclose the use thereof in the Project; (ii) shall enable the Bank's and the Association's representatives to inspect the Project, the goods financed out of such proceeds and any relevant records and documents; and (iii) shall furnish to the Bank and the Association all such information as the Bank and the Association shall reasonably request concerning the Project, the expenditure of the proceeds of the Loan and the Credit so relent to it and the goods and services financed out of such proceeds.

*Section 2.07.* ENEE shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank and Association shall other-

wise agree, ENEE shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving any provision of the Subsidiary Loan Agreement.

### Article III

#### MANAGEMENT AND OPERATIONS OF ENEE

*Section 3.01.* (a) Except as the Bank and the Association shall otherwise agree, ENEE shall at all times 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) ENEE shall: (i) at all times conduct its operations under competent and experienced management, in accordance with sound administrative, financial, engineering and public utility practices and with the assistance of adequate competent and experienced staff; and (ii) without limiting its obligations under the preceding provisions of this paragraph, carry out its functions under the direction of a competent and experienced *Gerente* mutually satisfactory to the Bank, the Association and ENEE.

(c) ENEE shall at all times operate, maintain, renew and repair its facilities, plants, equipment and machinery in accordance with sound engineering and management practices.

(d) 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 amount as shall be consistent with sound public utility practices.

### Article IV

#### FINANCIAL COVENANTS

*Section 4.01.* ENEE shall maintain records adequate to reflect its operations and financial condition in accordance with consistently maintained sound accounting practices.

*Section 4.02.* ENEE shall: (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with sound auditing principles consistently applied, by independent auditors acceptable to the Bank and the Association; (ii) furnish to the Bank and the Association as soon as available, but in any case not later than four months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors, of such scope and in

such detail as the Bank and the Association shall have reasonably requested; and (iii) furnish to the Bank and the Association such other information concerning the accounts and financial statements of ENEE and the audit thereof as the Bank and the Association shall from time to time reasonably request.

*Section 4.03.* (a) ENEE shall effect from time to time such adjustments in its rates for the sale of electricity as shall be necessary to provide revenue sufficient to cover operating expenses, including taxes and levies, if any, adequate maintenance and depreciation and yield a rate of return on the average value of its total net fixed assets in operation of at least ten per cent (10%) per annum.

(b) For the purposes of this Section:

- (i) the rate of return in respect of any fiscal year will be calculated by relating ENEE's net income from operations for that year to the average value of the total net fixed assets in operation during that fiscal year;
- (ii) the term "net income from operations" means gross operating revenues from electric power, less all operating, administrative and overhead expenses including adequate straight-line depreciation, taxes and levies, if any, or any payments in lieu thereof, but without deduction of interest or other charges on debt;
- (iii) the term "total net fixed assets in operation" means the gross value of such assets, determined in accordance with methods of valuation or re-valuation acceptable to the Bank and the Association, less accumulated depreciation; and
- (iv) the "average value" of the total net fixed assets in operation will be determined by adding the value of the total net fixed assets in operation at the end of a fiscal year to the value of the total net fixed assets in operation at the beginning of that year and dividing the total by two.

(c) Until the Project is completed, any adjustments in ENEE's rates for the sale of electricity produced in its interconnected system from the levels in effect during February 1970 shall be made only with the agreement of the Bank and the Association.

(d) The provisions of this Section shall supersede all prior agreements between the Bank, the Association and ENEE relating to such adjustments in rates by ENEE or to rates of return.

*Section 4.04.* (a) ENEE shall make best efforts to ensure that adequate funds are available at all times for the financing of the local costs of the Project by (i) issuing bonds, as and when required, to obtain such funds, or (ii) the making of other provisions satisfactory to the Bank and the Association for financing such costs.

(b) Except as the Bank and the Association shall otherwise agree, ENEE undertakes to retain until the Project is completed all of its earnings from its power services for reinvestment in its power facilities.

*Section 4.05.* (a) 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 provisions 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.

(b) Except in the ordinary course of business, ENEE shall not, without the consent of the Bank and the Association, sell or otherwise dispose of any of the property or plant financed in whole or in part out of the proceeds of the Loan or the Credit or necessary to its operations.

*Section 4.06.* (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 1.4 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;
- (iii) debt shall be deemed to be incurred on the date of execution and delivery of a loan contract or agreement providing for such debt or, in the case of a guarantee of debt, on the date of execution and delivery of the contract providing for such guarantee;
- (iv) the term "net revenue" means gross operating revenue, adjusted to take account of rates in effect at the time of incurrence of debt even though such rates 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 interest and other charges on debt;



- (v) the term “debt service requirement” means the aggregate amount of amortization (including sinking fund payments, if any), interest and other charges on debt;
- (vi) 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 purpose 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, the Association and ENEE limiting the incurring, assumption or guaranteeing of debt by ENEE.

### *Article V*

#### CONSULTATION AND INFORMATION

*Section 5.01.* The Bank, the Association and ENEE shall cooperate fully to assure that the purposes of the Loan and Credit will be accomplished. To that end, the Bank, the Association and ENEE shall from time to time, at the request of either party, exchange views through their representatives with regard to the performance of their respective obligations under this Agreement, the administration, operations and financial condition of ENEE and other matters relating to the purpose of the Loan and the Credit.

*Section 5.02.* The Bank, the Association and ENEE shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan and the Credit, or the performance by any of them of its obligations under this Agreement or the performance by the Borrower and ENEE of their respective obligations under the Subsidiary Loan Agreement.

*Section 5.03.* ENEE shall furnish to the Bank and the Association all such information as the Bank and the Association shall reasonably request concerning the operations and financial condition of ENEE.

### *Article VI*

#### EFFECTIVE DATE; TERMINATION; CANCELLATION AND SUSPENSION

*Section 6.01.* This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective. If the Loan or Development Credit Agreement terminates pursuant to Section 8.03 thereof, the Bank and the Association shall promptly notify ENEE of this event and, upon

the giving of such notice, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

*Section 6.02.* This Agreement and all obligations of the Bank, the Association and of ENEE thereunder shall terminate on the earlier of the following two dates:

- (a) the date on which both the Loan Agreement and the Development Credit Agreement shall terminate in accordance with their terms; or
- (b) the later of (i) the date on which the Subsidiary Loan Agreement shall terminate in accordance with its terms and (ii) a date 20 years after the date of this Agreement.

*Section 6.03.* All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan or Development Credit Agreement.

### *Article VII*

#### MISCELLANEOUS PROVISIONS

*Section 7.01.* Any notice 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, telex or radiogram to the party to which it is required or permitted to be given or made at such party's 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:

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 the Association:

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

Cable address:

Indevas  
Washington, D.C.

For ENEE:

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

Cable Address:

ENEE  
Tegucigalpa, D.C.

*Section 7.02.* No delay in exercising, or omission to exercise, any right, power or remedy accruing to either 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 7.03.* Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of ENEE may be taken or executed by the *Gerente* of ENEE or such other person or persons as ENEE shall designate in writing.

*Section 7.04.* ENEE shall furnish to the Bank and the Association sufficient evidence of the authority and the authenticated specimen signature of the person or persons who will, on behalf of ENEE, take any action or execute any documents required or permitted to be taken or executed by ENEE pursuant to any of the provisions of this Agreement.

*Section 7.05.* Any modification or amplification of the provisions of this Agreement which substantially increases the obligations of the Borrower under Section 3.01 (*d*) of the Loan Agreement or of the Development Credit Agreement may only be agreed to by ENEE with the consent of the Borrower.

*Section 7.06.* 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:

*By* J. BURKE KNAPP  
Vice President

International Development Association:

*By* J. BURKE KNAPP  
Vice President

Empresa Nacional de Energía Eléctrica:

*By* E. CRESPO M.  
Authorized Representative

#### SCHEDULE PROCUREMENT

With respect to contracts, any part of which is to be financed out of the proceeds of the Loan and the Credit (excepting contracts for consultants' services), the following procedures shall apply:

1. Contracts involving expenditures expected to amount to the equivalent of \$50,000 or more will be subject to the following rules:

- (a) Before bids are invited, ENEE will, except as the Bank and the Association shall otherwise agree, send to the Bank and the Association for approval the invitations to bid, specifications, the proposed terms and conditions of contracts and other tender documents, together with a description of advertising procedures.
- (b) After bids have been received and analyzed, the analysis of bids, the recommendations of ENEE's engineering consultants and ENEE's proposals for awards, together with the reasons for such proposals, will be sent by ENEE to the Bank and the Association for review and approval prior to making any award of contract or issuing any letter of intent.
- (c) If the final contract or letter of intent is to differ substantially from the terms and conditions contained in the respective documents approved by the Bank and the Association under the preceding provisions of this paragraph, the text of the proposed changes will be sent to the Bank and the Association for review and

approval prior to the execution of such contract or issuance of such letter of intent.

(d) One conformed copy of any letter of intent issued and of any contract executed under this paragraph will be sent to the Bank and the Association promptly upon its issuance or execution.

2. For contracts involving an amount of less than \$50,000 equivalent ENEE will furnish to the Bank and the Association an invitation to bid, bid evaluation report as well as one conformed copy of any such contract and any other material relevant thereto as the Bank and the Association shall request, promptly after execution of any such contract and prior to the sending to the Bank and/or the Association of the first application for withdrawal from the Loan and the Credit Accounts in respect of such contract.