

No. 12269

**INTERNATIONAL DEVELOPMENT ASSOCIATION
and
ECUADOR**

Development Credit Agreement—*Third Power Project* (with schedules and General Conditions Applicable to Development Credit Agreements). Signed at Washington on 15 February 1972

Authentic text : English.

Registered by the International Development Association on 22 January 1973.

**ASSOCIATION INTERNATIONALE
DE DÉVELOPPEMENT**

et

ÉQUATEUR

Contrat de crédit de développement — *Troisième Projet d'électrification* (avec annexes et Conditions générales applicables aux contrats de crédit de développement). Signé à Washington le 15 février 1972

Texte authentique : anglais.

Enregistré par l'Association internationale de développement le 22 janvier 1973.

DEVELOPMENT CREDIT AGREEMENT¹

AGREEMENT, dated February 15, 1972, between REPUBLIC OF ECUADOR (hereinafter called the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

WHEREAS (A) The Borrower has requested the Association to assist in the financing of a part of the foreign exchange cost of the Project described in Schedule 2 to this Development Credit Agreement by extending the Credit as hereinafter provided;

(B) The Project will be carried out by Empresa Eléctrica “ Quito ” S.A. with the Borrower’s assistance and, as part of such assistance, the Borrower will make available to Empresa Eléctrica “ Quito ” S.A. the proceeds of the Credit as hereinafter provided; and

(C) The Association is willing to make the Credit available upon the terms and conditions set forth hereinafter and in a project agreement of even date herewith² between the Association and Empresa Eléctrica “ Quito ” S.A.

NOW THEREFORE the parties hereto hereby agree as follows :

Article I. GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Development Credit Agreement accept all the provisions of the General Conditions Applicable to Development Credit Agreements of the Association, dated January 31, 1969,³ with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said General Conditions Applicable to Development Credit Agreements of the Association, as so modified, being hereinafter called the General Conditions) :

(a) Section 5.01 is deleted;

(b) Section 6.02 (h) is deleted and Section 6.02 (i) becomes 6.02 (h); and

(c) the words “ the Project Agreement ” are inserted after the words “ the Development Credit Agreement ” wherever they occur in Section 6.06 and 8.02.

Section 1.02. Wherever used in this Development Credit Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings :

(a) “ Project Agreement ” means the agreement between the Association and Empresa Eléctrica “ Quito ” S.A. of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(b) “ Subsidiary Loan Agreement ” means the agreement to be entered into between the Borrower and Empresa Eléctrica “ Quito ” S.A. pursuant to Section 3.01 (c) of this Development Credit Agreement, as the same may be amended from time to

¹ Came into force on 15 December 1972, upon notification by the Association to the Government of Ecuador.

² The said Agreement entered into force on 15 December 1972. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Association as document CN 286 EC, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Development Credit Agreement.

³ See p. 169 of this volume.

time, and such term includes all schedules and agreements supplemental to the Subsidiary Loan Agreement;

(c) “The Company” means Empresa Eléctrica “Quito” S.A., an instrumentality of the Borrower, established and authorized to do business in accordance with the laws of the Borrower, on October 25, 1955;

(d) “*Escritura*” means the *Escritura de Constitución* of the Company, a public deed dated September 29, 1955, providing for the creation of the Company;

(e) “*Estatutos*” means the *estatutos* of the Company, dated October 25, 1955;

(f) “Prior Loan Agreements” means the loan agreements between the Bank and the Company, dated March 29, 1956¹ and September 20, 1957,² respectively; and

(g) “Mortgage” means an “*hipoteca de primer grado*” under the laws of the Borrower, provided for in Section 4.04 of the Project Agreement.

Article II. THE CREDIT

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions in this Development Credit Agreement set forth or referred to, an amount in various currencies equivalent to six million eight hundred thousand dollars (\$6,800,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Development Credit Agreement, as such Schedule shall be amended from time to time, for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed under this Development Credit Agreement; provided, however, that, except as the Association shall otherwise agree, no withdrawal shall be made on account of expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in, or services supplied from, such territories.

Section 2.03. Except as the Association shall otherwise agree, the goods and services required for the Project and to be financed out of the proceeds of the Credit shall be procured pursuant to the provision set forth or referred to in Section 2.04 of the Project Agreement.

Section 2.04. The Closing Date shall be December 31, 1974, or such other date as shall be agreed between the Borrower and the Association.

Section 2.05. 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.

Section 2.06. Service charges shall be payable semi-annually on March 15 and September 15 in each year.

Section 2.07. (a) The Borrower shall repay the principal amount of the Credit withdrawn from the Credit Account in semi-annual installments payable on each March 15 and September 15 commencing March 15, 1982, and ending September 15, 2021, each installment to and including the installment payable on September 15, 1991 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.

¹ United Nations, *Treaty Series*, vol. 292, p. 291.

² *Ibid.*, vol. 293, p. 135.

(b) In the event the Company repays to the Borrower any portion of the proceeds of the Credit relented under the Subsidiary Loan Agreement in advance of maturity, the Borrower shall promptly notify the Association and shall repay to the Association on the next following payment date an amount of the principal of the Credit equal to the portion of the proceeds so repaid.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. The Company is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Development Credit Agreement and Article V of the General Conditions.

Article III. EXECUTION OF THE PROJECT

Section 3.01. (a) The Borrower shall cause the Company to carry out the Project with due diligence and efficiency, under competent management and in conformity with sound financial, engineering and public utility practices, and shall provide, or cause the Company to be provided with, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(b) Without limiting the generality of the foregoing, the Borrower shall obtain, or enable the Company to obtain, from time to time whenever necessary, such other loans or other financial accommodations, on terms and conditions acceptable to the Association, to finance such expenditures to be incurred by the Company in the carrying out of the Project as shall not be financed out of the proceeds of the Credit.

(c) The Borrower shall relend the proceeds of the Credit to the Company under a subsidiary loan agreement to be entered into between the Borrower and the Company under terms and conditions which shall have been approved by the Association.

(d) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit and, except as the Association shall otherwise agree, the Borrower shall not assign, nor amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

(e) The Borrower shall take and shall cause all its agencies to take all action which shall be necessary on their part to enable the Company to perform all of its obligations under the Project Agreement and the Subsidiary Loan Agreement and shall not take or permit to be taken any action which might interfere with such performance.

Article IV. OTHER COVENANTS

Section 4.01. (a) The Borrower shall take all steps necessary on its part to enable the Company to maintain such rates for the sale of electric power as shall be required for the Company to comply with the provisions of Section 4.05 (a) of the Project Agreement.

(b) Without limiting the generality of the foregoing, and except as the Association shall otherwise agree, the Borrower shall not, before June 30, 1974, cause the Company to reduce such rates for the sale of electric power as were in effect on January 1, 1972.

(c) The provisions of this Section shall supersede all prior agreements between the Borrower and the Bank concerning the Company's rates for the sale of electric power.

Article V. CONSULTATION, INFORMATION AND INSPECTION

Section 5.01. The Borrower and the Association shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, the Borrower and the Association shall from time to time, at the request of either party :

- (a) exchange views through their representatives with regard to the performance of their respective obligations under the Development Credit Agreement and the Subsidiary Loan Agreement, the performance by the Company of its obligations under the Project Agreement and the Subsidiary Loan Agreement, the administration, operations and financial condition, resources and expenditures of the Company and, in respect of the Project, of the departments or agencies of the Borrower other than the Company responsible for carrying out the Project or any part thereof, and other matters relating to the purposes of the Credit; and
- (b) 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, including its balance of payments, and the external debt of the Borrower, of any of its political subdivisions and of any agency of the Borrower or of any such political subdivision.

Section 5.02. (a) The Borrower shall furnish or cause to be furnished to the Association all such information as the Association shall reasonably request concerning the operations and financial condition, resources and expenditures of the Company and, in respect of the Project, of the departments or agencies of the Borrower other than the Company responsible for carrying out the Project or any part thereof.

(b) The Borrower and the Association shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit, the maintenance of the service thereof or the performance by either of them of their respective obligations under this Development Credit Agreement, or the performance by the Borrower or the Company of its obligations under the Project Agreement and the Subsidiary Loan Agreement.

Section 5.03. The Borrower shall afford all reasonable opportunity for accredited representatives of the Association to inspect all plants, installations, sites, works, buildings, property and equipment of the Company and any relevant records and documents and to visit any part of the territories of the Borrower for purposes related to the Credit.

Article VI. TAXES AND RESTRICTIONS

Section 6.01. The principal of, and service charges on, the Credit shall be paid without deduction for, and free from, any taxes imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.02. This Development Credit Agreement, the Project Agreement and the Mortgage shall be free from any taxes on or in connection with the execution, delivery or registration thereof, imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.03. The payment of the principal of, and service charges on, the Credit shall be free from all restrictions, regulations, controls and moratoria of any nature imposed under the laws of the Borrower or laws in effect in its territories.

Article VII. REMEDIES OF THE ASSOCIATION

Section 7.01. If any event specified in Section 7.01 of the General Conditions or in Section 7.03 of this Development Credit Agreement shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Association, at its option, may by notice to the Borrower declare the principal of the Credit then outstanding to be due and payable immediately together with the service charges thereon and upon any such declaration such principal and service charges shall become due and payable immediately, anything to the contrary in this Development Credit Agreement notwithstanding.

Section 7.02. For the purposes of Section 6.02 of the General Conditions, the following additional events are specified :

(a) a default shall have occurred in the payment of principal or interest or any other payment required under the Subsidiary Loan Agreement;

(b) a default shall have occurred in the performance of any other obligation (i) on the part of the Company, under the Project Agreement or under the Subsidiary Loan Agreement, or (ii) on the part of the Borrower, under the Subsidiary Loan Agreement;

(c) the Company shall have become unable to pay its debts as they mature or any action or proceeding shall have been taken by the Company or by others whereby any of its property or assets shall or may be distributed among, or administered for the benefit of, its creditors;

(d) any creditor of the Company shall have demanded payment of monies lent to the Company, prior to the agreed maturity of any loan having an original maturity of one year or longer, in accordance with the terms of such loan;

(e) the Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of the Company or for the suspension of its operations;

(f) the *Decreto Supremo* No. 86 of the Borrower, dated January 20, 1971, shall have been amended, suspended, abrogated, repealed or waived in such a way as to materially and adversely affect the ability of the Company to carry out the covenants, agreements and obligations set forth in the Project Agreement and the Subsidiary Loan Agreement;

(g) an extraordinary situation shall have arisen which shall make it improbable that the Company will be able to perform its obligations under the Project Agreement or under the Subsidiary Loan Agreement.

Section 7.03. For the purposes of Section 7.01 of the General Conditions, the following additional events are specified :

(a) Any event specified in paragraph (a) of Section 7.02 of this Development Credit Agreement shall occur and shall continue for a period of thirty days after notice thereof shall have been given by the Association to the Borrower and the Company;

(b) Any event specified in paragraph (b) or in paragraph (f) of Section 7.02 of this Development Credit 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 and the Company;

(c) Any event specified in paragraph (c), or in paragraph (d), or in paragraph (e) of Section 7.02 of this Development Credit Agreement shall occur.

Article VIII. EFFECTIVE DATE; TERMINATION

Section 8.01. The following events are specified as additional conditions to the effectiveness of this Development Credit Agreement within the meaning of Section 10.01 (b) of the General Conditions :

(a) The execution and delivery of the Project Agreement on behalf of the Company have been duly authorized or ratified by all necessary corporate and governmental action.

(b) The execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and the Company, respectively, have been duly authorized or ratified by all necessary corporate and governmental action.

(c) Contractual arrangements, satisfactory to the Association, providing for financing as required by Section 3.01 (b) of this Development Credit Agreement and by Section 2.01 (b) of the Project Agreement have been made initially to satisfy the provisions of such Sections.

(d) The consultants referred to in Section 2.02 (a) (ii) and (iii) of the Project Agreement have been employed by the Company.

(e) The *Escritura* and the *Estatutos* have been mentioned by the Company's shareholders in accordance with the proposal referred to in Section 3.03 of the Project Agreement and such amendments have been duly authorized or ratified by all necessary corporate and governmental action.

(f) The Mortgage has been created, filed, registered and recorded as provided in Section 4.04 (a) and (b) of the Project Agreement.

(g) Arrangements satisfactory to the Association, to enter into force not later than January 1, 1972, have been made concerning the provision by the Company of street lighting service within the city of Quito and payment therefor to the Company.

(h) Contractual arrangements between the Municipalidad de Quito and the Company, on terms and conditions satisfactory to the Association, concerning the transfer, after December 31, 1970, of all power distribution facilities of the Municipalidad de Quito to the Company have been made and all acts, consents and approvals required in connection therewith have been duly and validly performed or given.

(i) The condition of the Company, as represented or warranted to the Association at the date of this Development Credit Agreement, has undergone no material adverse change between such date and the date agreed upon between the Association and the Company for the purposes of this Section.

Section 8.02. The following are specified as additional matters, within the meaning of Section 10.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association :

(a) That the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Company, and constitutes a valid and binding obligation of the Company in accordance with its terms.

(b) That the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and the Company, respectively, and constitutes a valid and binding obligation of the Borrower and the Company in accordance with its terms.

(c) That the contractual arrangements referred to in Section 8.01 (c) of this Development Credit Agreement have been duly authorized or ratified by, and executed and delivered on behalf of, the Company and all other parties thereto, respectively, and constitute valid and binding obligations of the Company and such parties in accordance with their respective terms.

(d) That the Mortgage has (i) been duly executed and delivered; (ii) been duly filed, registered and recorded in all jurisdictions or offices; and (iii) created a valid lien in favor of the Bank under the laws of the Borrower, enforceable in accordance with its terms, all in accordance with Section 4.04 (a) and (b) of the Project Agreement; and that as of the date of filing, registration or recording thereof the company had valid title to the property included therein free of all liens and encumbrances other than the lien arising therefrom.

Section 8.03. The date of May 15, 1972, is hereby specified for the purposes of Section 10.04 of the General Conditions.

Section 8.04. The obligations of the Borrower under Sections 4.01 (b), 4.02 and 5.02 of this Development Credit Agreement and the provisions of Sections 7.02 and 7.03 of this Development Credit Agreement shall cease and determine on the date on which this Development Credit Agreement shall terminate or on the date when the Subsidiary Loan, together with interest and all other charges accrued thereon, shall have been paid, whichever shall be the earlier.

Article IX. REPRESENTATIVE OF THE BORROWER; ADDRESSES

Section 9.01. The Ministro de Finanzas of the Borrower is designated as representative of the Borrower for the purposes of Section 9.03 of the General Conditions.

Section 9.02. The following addresses are specified for the purposes of Section 9.01 of the General Conditions :

For the Borrower :

Ministerio de Finanzas
Quito, Ecuador
Cable address :
Minfinanzas
Quito, Ecuador

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.

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 to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Ecuador :
By A. SALGADO G.
Authorized Representative

International Development Association :
By M. SHOAB
Vice President

SCHEDULE 1

WITHDRAWAL OF THE PROCEEDS OF THE CREDIT

1. The table below sets forth the categories of items to be financed out of the proceeds of the Credit, the allocation of amounts of the Credit to each category and the percentage of eligible expenditures so to be financed in each category :

<i>Category</i>	<i>Amount of the Credit Allocated (Expressed in Dollar Equivalent)</i>	<i>% of Expenditures to be Financed</i>
I. Civil Works		
(a) Nayón plant	900,000	36% of total expenditures (representing the estimated foreign expenditure component)
(b) Cumbayá by-pass	400,000	40% of total expenditures (representing the estimated foreign expenditure component)
(c) Equipment, materials and tools . .	100,000	100% of foreign expenditures
II. Diesel Plant		
Equipment, materials and associated services	2,600,000	100% of foreign expenditures
III. Transmission and Distribution System		
Line switching and substation equipment including transformers; cement, reinforcing steel and structural steel for poles; distribu- tion and street lighting equipment, including transformers; and materials and associated services :	1,450,000	
(a) produced outside the territories of the Borrower		100% of foreign expenditures
(b) produced within the territories of the Borrower		40% of local expenditures (representing the estimated foreign expenditure component)
IV. Consultants' Services		
(a) Engineering supervision for civil works	170,000	100% of foreign expenditures
(b) Consultant services for studies and management assistance	580,000	100% of foreign expenditures
V. Unallocated	600,000	
TOTAL	6,800,000	

2. For the purposes of this Schedule :

(a) The term "foreign expenditures" means expenditures for goods produced in, or services supplied from, the territories, and in the currency, of any country other than the Borrower;

(b) The term "local expenditures" means expenditures in the currency of the Borrower, or for goods produced in, or services supplied from, the territories of the Borrower; and

(c) The term "total expenditures" means the aggregate of foreign and local expenditures.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of :

- (a) expenditures prior to the date of this Development Credit Agreement, except that withdrawals may be made in respect of Categories I (a) and II on account of expenditures incurred after March 15, 1971, in an aggregate amount not exceeding the equivalent of \$1,400,000; and
- (b) payments for taxes imposed under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof. To the extent that the amount represented by the percentage set forth in the third column of the table in paragraph 1 above in respect of any Category would exceed the amount payable net of all such taxes, such percentage shall be reduced to ensure that no proceeds of the Credit will be withdrawn on account of payments for such taxes.

4. Notwithstanding the allocation of an amount of the Credit set forth in the second column of the table in paragraph 1 above :

- (a) if the estimate of the expenditures under any Category shall decrease, the amount of the Credit then allocated to such Category and no longer required therefor will be reallocated by the Association by increasing correspondingly the unallocated amount of the Credit;
- (b) if the estimate of the expenditures under any Category shall increase, the percentage set forth in the third column of the table in paragraph 1 above in respect of such expenditures shall be applied to the amount of such increase, and a corresponding amount will be allocated by the Association, at the request of the Borrower, to such Category from the unallocated amount of the Credit, subject, however, to the requirements for contingencies, as determined by the Association, in respect of any other expenditures.

5. Notwithstanding the percentages set forth in the third column of the table in paragraph 1 above, if the estimate of total expenditures under Category I (a) and (b) or of local expenditures under Category III (b) shall increase and no proceeds of the Credit are available for reallocation to such Category, the Association may, by notice to the Borrower, adjust the percentage then applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project consists of the following Parts :

- A. Construction of a hydro-electric plant on the Río San Pedro at Nayón with an installed generating capacity of about 30 MW, comprising intake, tunnel, headtank, penstock, power house, tailrace and personnel housing; and the Cumbayá by-pass, comprising access road, intake, tunnel, sedimentation basin and outlet.
- B. Construction of a new diesel plant in the city of Quito with an installed generating capacity of about 18 MW.
- C. Construction of a 46 kV transmission line from the Nayón plant to Cumbayá and the city of Quito and the completion of the 46 kV ring system around the city of Quito, including substations; conversion from 22 kV to 46 kV of the existing transmission line from Los Chillos to Guangopolo; and improvement of the existing 46 kV transmission line from Guangopolo to Quito.
- D. The Company's 1971-1974 program of renovation, strengthening and expansion of the distribution system in the Cantón Quito, including street lighting in the city of Quito and village electrification in the Nono-Gualea-Pacto and the San José de Minas areas.
- E. 1. A study for the next stage of the Company's generation program.
2. Review of the Company's tariffs structure.

3. Technical assistance to the Company in the fields of management and administration.
4. A network and load dispatch center feasibility and preliminary engineering study.
5. Such phases of the village electrification study, referred to in Section 2.09 of the Project Agreement, as the Association and the Company shall agree to include in the Project.

The Project is expected to be completed by June 30, 1974.

INTERNATIONAL DEVELOPMENT ASSOCIATION

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO DEVELOPMENT CREDIT AGREEMENTS

[*Not published herein. See United Nations, Treaty Series, vol. 703, p. 244.*]
