

LOAN NUMBER 3024 IN

(Nathpa Jhakri Power Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

NATHPA JHAKRI POWER CORPORATION LIMITED

Dated May 18, 1989

PROJECT AGREEMENT

AGREEMENT, dated May 18, 1989, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and NATHPA JHAKRI POWER CORPORATION LIMITED (the Corporation), a company established under the Companies Act, 1956, of the Borrower.

WHEREAS (A) by the Loan Agreement of even date herewith between India, acting by its President (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to four hundred eighty-five million dollars (\$485,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Corporation agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and the Corporation, part of the proceeds of the Loan provided for under the Loan Agreement will be made available to the Corporation on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS the Corporation, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement, the Preamble to this Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. The Corporation declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out Part A of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of the Schedule to this Agreement.

Section 2.03. The Corporation shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Part A of the Project.

Section 2.04. The Corporation shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, the Corporation shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) The Corporation shall, at the request of the Bank, exchange views with the Bank with regard to progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) The Corporation shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by the Corporation of its obligations under this Agreement and under the Subsidiary Loan Agreement.

Section 2.06. The Corporation shall, not later than June 30, 1989, issue a letter of intent to the consultants selected for the detailed design and supervision of construction in respect of the power station to be constructed under Part A of the Project, and shall, within 60 days thereafter, conclude the appointment of said consultants.

ARTICLE III

Management and Operations of the Corporation

Section 3.01. The Corporation shall carry on its operations and conduct its affairs in accordance with sound administrative, financial, engineering and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. The Corporation shall at all times operate and

maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and public utility practices.

Section 3.03. The Corporation shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.04. Without limiting the generality of the foregoing provisions of this Article, the Corporation shall under arrangements satisfactory to the Bank cause the dams and related structures constructed under Part A of the Project to be periodically inspected in accordance with sound engineering practice in order to determine whether there are any deficiencies in the condition of such structures, or in the quality and adequacy of maintenance or methods of operations of the same, which may endanger their safety. To this end, the Corporation shall propose to the Bank appropriate arrangements for the Bank's review no later than one year before the expected completion of such structures.

Section 3.05. (a) The Corporation shall, during the implementation of the Project, maintain a Panel of Experts under terms of reference satisfactory to the Bank.

(b) In order to facilitate recruitment of temporary and permanent members of the Panel of Experts, the Corporation shall maintain a roster of specialists in different disciplines. To that end, the Corporation shall furnish to the Bank by June 30, 1989 for its comments the proposed roster and the qualifications of the candidates.

Section 3.06. The Corporation shall establish a Project Design and Supervision Unit comprising staff from the Central Electricity Authority, the Central Water Commission, the Geological Survey of India, the Board and consultants as needed. The organization chart, description of the duties, staffing and responsibilities in the Unit shall be furnished to the Bank for its review by June 30, 1989.

Section 3.07. The Corporation shall furnish each year to the Bank for its review an updated five year investment program, commencing financial year 1990/91, and shall not undertake additional investments not included in said plan as agreed with the Bank which in the Bank's opinion would be detrimental to the financial viability of the Corporation.

Section 3.08. The Corporation shall:

- (i) carry out, by December 31, 1990, on terms of reference satisfactory to the Bank, a study to establish the price of electricity to be sold by the Corporation;
- (ii) furnish to the Bank a detailed report on the findings of said study for comment by the Bank; and
- (iii) establish by March 31, 1994, bulk supply contracts, incorporating therein (A) appropriate tariff structures based on, inter alia, the criteria mutually agreed upon between the Bank and the Corporation established on the basis of findings of said study, with State Electricity Boards and other major purchasers of power to be generated under the Project; and (B) the requirement that purchasers under such contracts shall at all times maintain an irrevocable letter of credit payable on demand to the Corporation, in an amount equivalent at least to one month's average consumption estimated for the following financial year.

Section 3.09. The Corporation shall, prior to implementing any substantial changes in its organizational structure or in the organization of its in-field Project Implementation Unit, afford the Bank an opportunity to comment on such changes.

Section 3.10. The Corporation shall furnish to the Bank by June 30, 1989, a staffing plan, including qualifications and timetable for appointments to key positions.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Corporation shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) The Corporation shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each financial year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than seven 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 shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.02. (a) The Corporation shall take from time to time all such measures as may be necessary including, if necessary, adjustment of tariffs of the Corporation to ensure that the total revenues in any financial year shall, after meeting: (i) all expenses properly chargeable to revenues, including operating, maintenance and management expenses; (ii) taxes on income and profits; and (iii) depreciation; produce such surplus before interest as is not less than 6% in financial year 1997/98 and 12% thereafter, of the average net fixed assets of the Corporation in service at the beginning and at the end of such year.

(b) For the purposes of this Section:

- (i) "total revenues" means revenues of the Corporation from the sale of electricity and other services, miscellaneous income, and subventions in respect of extraordinary costs which are borne by the Corporation and which are not passed on to customers of the Corporation;
- (ii) "expenses" means the cost of power purchased, fuel, operating, maintenance, management and administrative expenses, and all taxes and duties accruing during the financial year, other than taxes on income and profits of the Corporation;
- (iii) "taxes on income and profits" consists of income taxes and other levies accrued by the Corporation according to the provisions of any legislation or regulation applicable in this respect;

- (iv) "depreciation" means a provision derived in accordance with the straight-line method based on the useful life of assets as stipulated in the Borrower's notification G.S.R. No. 1330 (E) dated December 12, 1986, issued under the provisions of Section 68 of the Electricity (Supply) Act 1948, of the Borrower, based on the gross value of the Corporation's fixed assets in service at the beginning of each year; and
- (v) "net fixed assets of the Corporation in service" means the original cost of such fixed assets, as reduced by the aggregate of the cumulative depreciation in respect of such assets.

Section 4.03. The Corporation shall furnish to the Bank by December 31 each year a report of the Corporation's forecast of operational and financial performance for the ensuing five financial years. Commencing December 31, 1996, such reports shall specify the actions that will be taken to ensure fulfillment of the requirements of Section 4.02 of this Agreement.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of the Corporation thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify the Corporation thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. 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.

Telex:

440098 (ITT)
248423 (RCA) or
64145 (WUI)

For the Corporation:

Nathpa Jhakri Power Corporation Limited
Kumar House
Shimla, Himachal Pradesh
India

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of the Corporation may be taken or executed by its Chairman or such other person or persons as the Corporation shall designate in writing, and the Corporation shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. 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 duly authorized representatives, have caused this Agreement to be signed in their respective names 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 /s/ Attila Karaosmanoglu
Regional Vice President
Asia

NATHPA JHAKRI POWER CORPORATION LIMITED

By /s/ Anil Kumar
Authorized Representative

SCHEDULE

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

Except as provided in Part D hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines).

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in India may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A hereof, a margin of preference to domestic contractors may be granted in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

1. Contracts for survey equipment, laboratory instruments and equipment, office engineering equipment, and computer hardware and software, upto an aggregate amount not exceeding the equivalent of \$5,000,000, may be procured under contracts awarded on the basis of comparison of price quotation solicited from a list of at least three suppliers in accordance with procedures satisfactory to the Bank.

2. Contracts for civil works estimated to cost the equivalent of \$10,000,000 each or less may be awarded on the basis of competitive bidding advertised locally in accordance with procedures satisfactory to the Bank.

Part E: Review by the Bank of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for civil works and equipment estimated to cost the equivalent of \$10,000,000 and \$1,000,000 each or more, respectively, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, said procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Bank has authorized withdrawals from the Loan Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.01 (a) (ii) of the Loan Agreement.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

In order to assist the Corporation and the Board in carrying out the Project, consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank shall be employed. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

