

CONFORMED COPY

LOAN NUMBER 3361 YU

(Kolubara B Thermal Power and Lignite Mine Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

and

ELECTRICITY GENERATION COMPANY OF SERBIA

Dated September 12, 1991

LOAN NUMBER 3361 YU

EP(S) AGREEMENT

AGREEMENT, dated September 12, 1991, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and ELECTRICITY GENERATION COMPANY OF SERBIA (EP(S)).

WHEREAS (A) by the Loan Agreement of even date herewith between Electroprivreda of Serbia (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to three hundred million dollars (\$300,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that EP(S) agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by an agreement (the Agreement with Serbia) of even date herewith between the Bank and the Republic of Serbia (Serbia), Serbia has agreed to undertake such obligations toward the Bank as are set forth in the Agreement with Serbia;

(C) on the basis of Article 11 of the Electricity Act (Official Gazette of Serbia No. 59/89), Article 141 of the statutes of the Borrower and Article 37 of the statutes of EP(S), the

Borrower and EP(S) have entered into an agreement (the Transfer Agreement) dated August 16, 1990, pursuant to which the Borrower has agreed to construct the Kolubara B thermal power plant and Tamnava West Mine and, following completion of construction of the respective facilities, to transfer said facilities to EP(S) for their operation and maintenance; and

WHEREAS, in consideration of the Bank's entering into the Loan Agreement with the Borrower, EP(S) 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

##### Obligations of EP(S)

Section 2.01. EP(S) shall, following completion of construction of the facilities under Parts A and B of the Project and in accordance with the provisions of the Transfer Agreement, operate and maintain said facilities in accordance with sound administrative, financial and engineering practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 2.02. EP(S) shall, together with the Borrower in accordance with the provisions of Section 3.11 of the Loan Agreement:

(a) prepare, on the basis of the on-going study on underground mines in Serbia being carried out by the Belgrade Mining Institute and the Belgrade Institute for Economic Efficiency, an action program for restructuring said underground mines; and

(b) by March 31, 1992, furnish to the Bank for review and comment the findings and recommendations of said study, together with said proposed action program.

Section 2.03. EP(S) shall:

(a) by June 30, 1992, carry out, on the basis of terms of reference satisfactory to the Bank, the study included in Part D (2) of the Project to identify the measures necessary to improve its accounting and financial management system and furnish to the Bank for review and comment the findings and recommendations of said study; and

(b) thereafter, put into effect, on a timetable satisfactory to the Bank, the recommendations agreed with the Bank for improving its accounting and financial and management system.

Section 2.04. EP(S) shall, by October 31 of each year, beginning with its fiscal year ending on December 31, 1992, furnish to the Bank for review and comment, its proposed investment program, together with the associated financing plan, for each of EP(S)'s 1992 through 1996 fiscal years.

Section 2.05. EP(S) shall:

(a) beginning with the fiscal year commencing on January 1, 1993, furnish to the Bank for review and comment, by November 30 of each year, the proposed agreement with EP(S) for the allocation to the Borrower and EP(S) of revenues received by the Borrower and

EP(S) from their respective operations, for each of its 1992 through 1996 fiscal years; and

(b) thereafter, enter into said proposed agreement for each respective year, taking into consideration the Bank's comments thereon.

#### ARTICLE III

##### Management and Operations of EP(S)

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

Section 3.02. EP(S) 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. EP(S) 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.

#### ARTICLE IV

##### Financial Covenants

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

(b) EP(S) shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by a competent and experienced independent auditing organization acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than five 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) Except as the Bank shall otherwise agree, EP(S) shall produce, for each of its fiscal years after its fiscal year ending on December 31, 1991, funds from internal sources equivalent to not less than 35% of the annual average of EP(S)'s capital expenditures incurred, or expected to be incurred, for that year and the 1992 and 1993 fiscal years.

(b) Before October 31 in each of its fiscal years, EP(S) shall, on the basis of forecasts prepared by EP(S) and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Bank a copy of such review upon its completion.

(c) If any such review shows that EP(S) would not meet the requirements set forth in paragraph (a) for EP(S)'s fiscal years covered by such review, EP(S) shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The term "funds from internal sources" means the difference between:
  - (A) the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction, net non-operating income and any reduction in working capital other than cash; and
  - (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures.
- (ii) The term "net non-operating income" means the difference between:
  - (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (iii) The term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.
- (iv) The term "current assets excluding cash" means all assets other than cash which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.
- (v) The term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
- (vi) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vii) The term "capital expenditures" means all expenditures on account of fixed assets, including interest charged to construction, related to operations.

- (viii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.03. (a) Except as the Bank shall otherwise agree, EP(S) shall not incur any debt unless a reasonable forecast of the revenues and expenditures of EP(S) shows that the estimated net revenues of EP(S) for the 1992 fiscal year, 1993 fiscal year and 1994 fiscal year and thereafter, respectively, shall be at least 2, 2.5 and 3 times the estimated debt service requirements of EP(S) in such year on all debt of EP(S), including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of EP(S) maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (iii) The term "net revenues" means the difference between:
  - (A) the sum of revenues from all sources related to operations and net non-operating income; and
  - (B) the sum of all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
  - (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vi) The term "reasonable forecast" means a forecast prepared by EP(S) not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and EP(S) accept as reasonable and as to which the Bank has notified EP(S) of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future

to have, a material adverse effect on the financial condition or future operating results of EP(S).

- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

#### 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 EP(S) thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify EP(S) 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:

197688 (TRT),  
248423 (RCA),  
64145 (WUI) or  
82987 (FTCC)

For EP(S):

Electricity Generation Company of Serbia  
Carice Milice 2  
Belgrade  
Yugoslavia

Telefax:

011/620-694

Telex:

11281

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 EP(S), may be taken or executed by the General Manager or such other person or persons as he shall designate in writing, and he 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/ W. Wapenhans  
Regional Vice President  
Europe, Middle East and North Africa

ELECTRICITY GENERATION COMPANY OF SERBIA

By /s/ D. Mujezinovic  
Authorized Representative

