

CONFORMED COPY

LOAN NUMBER 3980 CHA

Project Agreement

(Henan (Qinbei) Thermal Power Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

ELECTRIC POWER OF HENAN

Dated January 23, 1997

LOAN NUMBER 3980 CHA

PROJECT AGREEMENT

AGREEMENT, dated January 23, 1997, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and ELECTRIC POWER OF HENAN (EPH).

WHEREAS (A) by the Loan Agreement of even date herewith between People's Republic of China (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount equal to four hundred and forty million dollars (\$440,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that EPH 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 EPH, the proceeds of the loan provided for under the Loan Agreement will be made available to EPH on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS EPH, 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. (a) EPH 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 the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and power utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and EPH shall otherwise agree, EPH shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods 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 Schedule 1 to this Agreement.

Section 2.03. (a) EPH 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.

(b) For the purposes of Section 9.08 of the General Conditions and without limitation thereto or upon the provisions of paragraph (a) of this Section, EPH shall:

(i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Bank and EPH, a plan for the future operation of the Project; and

(ii) afford the Bank a reasonable opportunity to exchange views with EPH on said plan.

Section 2.04. EPH shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, EPH 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) EPH 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) EPH 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 EPH of its obligations under this Agreement and under the Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of EPH

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

Section 3.02. EPH 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, environmental and power utility practices.

Section 3.03. EPH 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) EPH shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) EPH 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 independent auditors acceptable to the Bank;

(ii) furnish to the Bank as soon as available, but in any case not later than six (6) 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.

(c) Without limitation upon the provisions of paragraph (b) of this Section, EPH shall furnish to the Bank, for its review and comment, not later than three (3) months after the end of each fiscal year referred to in said paragraph, a copy of the proposed audit plan for the undertaking of the auditing of its financial statements for such fiscal year.

Section 4.02. (a) EPH shall take all necessary measures, including, without limitation, adjustments of the structure or the levels of its tariffs, to ensure that its internal cash generation of each fiscal year during the term of any debt to be incurred shall be at least 1.5 times its estimated debt service requirements in such year on all its debt including the debt to be incurred.

(b) Except as the Bank shall otherwise agree, EPH shall from time to time take, or cause to be taken, all such measures (including, without limitation, adjustments of the levels and structure of its electricity tariffs) as shall be required to produce:

(i) for its fiscal year 1996, net cash surplus equivalent to not less than 25 percent of its average annual investment program;

(ii) for each of its fiscal years 1997, 1998 and 1999, net cash surplus equivalent to not less than 30 percent of said investment program; and

(iii) for each fiscal year thereafter, net cash surplus equivalent to not less than 35 percent of said investment program.

(c) For the purposes of this Section:

(i) The term "debt" means any indebtedness of EPH 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 "internal cash generation" means the difference between: (A) the sum of revenues from all sources related to operations and net non-operating income, excluding receipts for consumer connection charges; and (B) the sum of all expenses related to operations, including administration, provision of maintenance special fund, and sales and income taxes and payments in lieu of taxes, but excluding provision for depreciation, 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, excluding capitalized interest during construction.

(vi) The term "net cash surplus" means total operating income minus the sum of (A) cash operating expenses; and (B) financial obligations.

(vii) The term "total operating income" means the sum of revenues from all sources related to operations and net non-operating income.

(viii) The term "cash operating expenses" means the sum of expenses related to operations, including maintenance and administration but excluding depreciation.

(ix) The term "financial obligations" means interest and other charges on debt (excluding interest during construction); repayment of loans (including sinking fund payments, if any); all taxes or payments in lieu of taxes; allocations to special funds and other cash distributions of surplus funds (including mandatory transfers to the Borrower); and any other cash outflows (other than capital expenditures) related to operations.

(x) The term "average annual investment program" means, for any year, the three year average of the capital expenditures incurred or to be incurred in such year, the prior year and the following year.

(xi) Whenever for the purposes of Section 4.02 it shall be necessary to value, in terms of the currency of the Borrower, 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. EPH shall prepare and furnish to the Bank for its review and comment, by April 30 of each year, a rolling long-term financial plan containing, inter alia, projected income statements, sources and uses of funds and balance sheets for each of the next eight years.

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 EPH hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify EPH 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:

248423 (MCI)
64145 (MCI)

For EPH:

Electric Power of Henan
No. 11 South Songshan Road
Zhengzhou
Henan Province 450052
People's Republic of China

Cable address:

0626
Zhengzhou

Telex:

716 460151 HPBFO CN

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 EPH, or by EPH on behalf of the Borrower under the Loan Agreement, may be taken or executed by the President of EPH or such other person or persons as said President shall designate in writing, and said President 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/ Nicholas C. Hope

Acting Vice President
East Asia and Pacific

ELECTRIC POWER OF HENAN

By /s/ Li Daoyu

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: General

Goods shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. With respect to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B, the provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

Part C: Other Procurement Procedures

1. Limited International Bidding

Goods estimated to cost less than \$300,000 equivalent per contract, up to an aggregate amount not to exceed \$6,000,000 equivalent, and goods which can only be purchased from a limited number of suppliers, regardless of the cost thereof, may be procured under contracts awarded in accordance with the provisions of paragraph 3.2 of the Guidelines.

2. International or National Shopping

Goods which are readily available off-the-shelf or are standard specification commodities and which are estimated to cost less than \$300,000 equivalent per contract, up to an aggregate amount not to exceed \$2,500,000 equivalent, may be procured under contracts awarded on the basis of: (i) international shopping procedures for up to an aggregate amount not to exceed \$2,000,000 equivalent, or (ii) with the prior agreement of the Bank, national shopping procedures for up to an aggregate amount not to exceed \$500,000 equivalent, in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. Direct Contracting

Goods which the Bank agrees (i) should be procured as an extension of an existing contract, or (ii) must be purchased from the original supplier to be compatible with existing equipment, or (iii) are of a proprietary nature, and which cost \$500,000 equivalent or less in the aggregate, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

With respect to (i) each contract for goods estimated to cost the equivalent of \$5,000,000 or more, and (ii) the first three contracts during Project implementation for goods estimated to cost less than US\$5,000,000 equivalent, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts awarded in accordance with the provisions 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 (the Consultant Guidelines). For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications thereto as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Bank shall be used.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Bank review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts, shall not apply to (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each or (b) contracts for the employment of individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Bank review shall not apply to (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Bank, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 2

Implementation Program

A. Monitoring and Reporting

EPH shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Bank, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about April 30 and October 30 of each year, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, at such time as the Bank shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of said report and the Bank's views on the matter.

B. Parts A and B of the Project: Environment, Land Acquisition and Resettlement

1. EPH shall carry out Parts A and B of the Project in conformity with environmental standards and guidelines, including the environmental regulations and guidelines issued by the National Environmental Protection Agency of the Borrower and the Henan Provincial Environmental Protection Bureau, satisfactory to the Bank. To that end, EPH shall implement the Environmental Management Program in a manner satisfactory to the Bank.

2. (a) EPH shall ensure that:

(i) all proposed land acquisitions, under Parts A and B of the Project are reviewed by the relevant provincial, prefectural or county land administration bureau in accordance with existing national regulations of the Borrower; and

(ii) all persons who are involuntarily resettled, or whose rights to land and other assets are compulsorily acquired, under the Project receive adequate compensation in accordance with LARP-I.

(b) To that end, EPH shall:

(i) notify the Bank of any proposed involuntary resettlement of people or any acquisition of land and other assets which will result from Parts A and B of the Project;

(ii) prior to undertaking any such resettlement or acquisition, submit to the Bank for its approval a detailed land acquisition and relocation plan relative to such resettlement or acquisition; and

(iii) implement the approved detailed land acquisition and relocation plan.

C. Part C of the Project: Energy Conservation

1. Under Part C of the Project, EPH shall ensure that each Energy Conservation Investment shall be made in accordance with procedures and on terms and conditions agreed to by the Bank, which shall include those set forth in paragraph 2 of this Part C.

2. (a) EPH shall make Energy Conservation Investments in Energy Conservation Sub-projects selected by agreement between the Bank and EPH;

(b) The financing of Energy Conservation Sub-projects carried out by Energy Conservation Entities which are consumers of energy produced by EPH shall be at commercial rates which shall be not less than the published state commercial bank lending rate for comparable maturities, plus a margin of 3%.

(c) EPH shall ensure that all Energy Conservation Sub-projects will include adequate provisions for the measurement and verification of energy savings satisfactory to the Bank;

(d) EPH shall enter into contractual arrangements with each Energy Conservation Entity whereby the latter undertakes, inter alia, to:

(i) carry out its respective Energy Conservation Sub-project with due diligence and efficiency in accordance with sound managerial, engineering and industry practices acceptable to the Bank, and provide promptly as needed the funds and other resources required for the purposes, and maintain adequate records and accounts;

(ii) utilize the proceeds of the Energy Conservation Investment exclusively in the carrying out of its respective Energy Conservation Sub-project;

(iii) take out and maintain such insurance, against such risk and in such amounts, as shall be consistent with sound business practice;

(iv) enable EPH and the Bank to inspect the goods, facilities and sites included in its respective Energy Conservation Sub-project, the operation thereof and any relevant records and documents;

(v) at all times maintain and operate the equipment and facilities included in its respective Energy Conservation Sub-project, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and industry practices; and

(vi) furnish to EPH and the Bank all such information as EPH or the Bank may reasonably request relating to the foregoing.

3. EPH shall:

(a) exercise its rights in relation to each Energy Conservation Sub-project in such manner as to protect the interests of the Borrower, the Bank and EPH, comply with its obligations under this Agreement and achieve the purposes of the Project; and

(b) not assign, amend, abrogate or waive any of its agreements providing for Energy Conservation Investment, or any provision therefor, without the prior approval of the Bank.

D. Part D of the Project: Reform Implementation Plan

1. EPH shall:

(a) carry out the Reform Implementation Plan in accordance with the provisions thereof; and

(b) commence, not later than October 31, 1996, the carrying out of a time-bound action plan, satisfactory to the Bank, for establishing an appropriate mechanism for the periodic adjustment of EPH's electricity rates, so as to enable EPH to: (i) meet its obligations under Sections 4.02 and 4.03 of this Agreement; and (ii) not later than January 1, 1999, apply for each customer category, a uniform electricity tariff rate to all its consumers belonging thereto.

2. EPH shall:

(a) by February 1, 1997, engage financial management consultants in accordance with the provisions of Section II of Schedule 1 to this Agreement and under terms of reference agreed to by the Bank, to assist in the development and implementation of: (i) improved accounting and financial management information systems; and (ii) accounting practices consistent with international accounting standards;

(b) by June 1, 1998, furnish to the Bank for review and comment a proposed time-bound action program for the implementation of the recommendations of said consultants; and

(c) promptly after receipt of said comments, carry out said program with due diligence and efficiency, taking into account the Bank's comments thereon.

3. EPH shall carry out management development and training in accordance with a program acceptable to the Bank.

