

Public Disclosure Authorized

CONFORMED COPY

LOAN NUMBER 7791-UA

Loan Agreement

(Additional Financing for the Hydropower Rehabilitation Project)

between

UKRAINE

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Dated February 3, 2010

LOAN NUMBER 7791-UA

LOAN AGREEMENT

Agreement dated February 3, 2010, between the UKRAINE (“Borrower”) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (“Bank”) for the purpose of providing additional financing to finance part of the cost of the activities under Part A of the Project (the Project) described in Schedule 2 to the Agreement of 2005 (as defined in the Appendix to this Agreement). The Borrower and the Bank hereby agree as follows:

ARTICLE I - GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II - LOAN

- 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, the amount of sixty million dollars (\$60,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.07 of this Agreement (“Loan”), for additional financing of the Project.
- 2.02. The Borrower may withdraw the proceeds of the Loan in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Front-end Fee payable by the Borrower shall be equal to one-quarter of one percent (0.25%) of the Loan.
- 2.04. The interest payable by the Borrower for each Interest Period shall be at a rate equal to LIBOR for the Loan Currency plus the Variable Spread; provided, that upon a Conversion of all or any portion of the principal amount of the Loan, the interest payable by the Borrower during the Conversion Period on such amount shall be determined in accordance with the relevant provisions of Article IV of the General Conditions. Notwithstanding the foregoing, if any amount of the Withdrawn Loan Balance remains unpaid when due and such non-payment continues for a period of thirty (30) days, then the interest payable by the Borrower shall instead be calculated as provided in Section 3.02(d) of the General Conditions.

- 2.05. The Payment Dates are February 15 and August 15 in each year.
- 2.06. The principal amount of the Loan shall be repaid in accordance with the provisions of Schedule 3 to this Agreement.
- 2.07. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management: (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency; (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan from a Variable Rate to a Fixed Rate, or vice versa; and (iii) the setting of limits on the Variable Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on the Variable Rate.
- (b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by the Bank shall be considered a "Conversion", as defined in the General Conditions, and shall be effected in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.

ARTICLE III - PROJECT

- 3.01. The Borrower, through the Ministry of Fuel and Energy, declares its commitment to the objectives of the Project and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, shall, through the Ministry of Fuel and Energy, cause the Project Implementing Entity to perform in accordance with the provisions of Article V of the General Conditions and the Project Agreement all the obligations of the Project Implementing Entity therein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable the Project Implementing Entity to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Borrower and the Bank shall otherwise agree, the Borrower shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV - REMEDIES OF THE BANK

- 4.01 The additional event of suspension consists of the following, namely, that the Project Implementing Entity's Legislation has been amended, suspended, abrogated, repealed or waived so as to materially and adversely affect the ability of the Project Implementing Entity to perform any of its obligations under the Project Agreement.
- 4.02 The additional Event of Acceleration consists of the following, namely, that the event referred to in Section 4.01 of this Agreement occurs.

ARTICLE V – EFFECTIVENESS; TERMINATION

- 5.01. The additional Condition of Effectiveness consists of the following, namely, that the Subsidiary Loan Agreement has been executed by the Ministry of Finance, the Ministry of Fuel and Energy, the NERC, and the Project Implementing Entity.
- 5.02 The Additional Legal Matter consists of the following, namely, that the Subsidiary Loan Agreement has been duly authorized or ratified by the Ministry of Finance, the Ministry of Fuel and Energy, the NERC, and the Project Implementing Entity, and is legally binding on the Ministry of Finance, the Ministry of Fuel and Energy, the NERC, and the Project Implementing Entity in accordance with its terms.
- 5.03. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.
- 5.04. Any amendment to this Agreement shall be executed by agreement of the parties hereto in accordance with the provisions of Section 10.02 of the General Conditions. Such amendment shall become effective as set forth in the amending agreement.

ARTICLE VI - REPRESENTATIVE; ADDRESSES

- 6.01. The Borrower's Representative is its Minister of Finance.
- 6.02. The Borrower's Address is:

Ministry of Finance
12/2 Hrushevsky St.
Kyiv, 01008
Ukraine

Telex:

Facsimile:

131450

(380-44) 253-82-43

6.03. The Bank's Address is:

International Bank for Reconstruction
and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

Facsimile:

INTBAFRAD
Washington, D.C.

248423(MCI) or
64145(MCI)

(1-202) 477-6391

AGREED at Kyiv, Ukraine, as of the day and year first above written.

UKRAINE

By /s/ Yuri Prodan

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Martin Raiser

Authorized Representative

SCHEDULE 1

Project Objectives

The objectives of the Project are: (i) to improve operational stability and reliability of power supply through increased regulating capacity, efficiency and safety of hydroelectric plants; (ii) to enhance the institutional development of UHE; and (iii) to support the MFE and NERC in developing and implementing an energy sector reform and development program, including the Wholesale Electricity Market concept.

SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Safeguards

The Borrower, through the Ministry of Fuel and Energy, shall take all measures necessary on its behalf to carry out or to enable the Project Implementing Entity to carry out, the measures identified under the Environmental Action Plan at all times in a timely manner, ensuring that adequate information on the implementation of said measures is suitably included in the Project progress reports to be prepared pursuant to the provisions of Section II of this Schedule.

B. Subsidiary Loan Agreement

(a) To facilitate the carrying out of the Project by the Project Implementing Entity, the Borrower shall make the proceeds of the Loan allocated from time to time to Category (1) available to the Project Implementing Entity under a Subsidiary Loan Agreement to be entered into among the Borrower, represented by the Ministry of Finance and Ministry of Fuel and Energy, the NERC and the Project Implementing Entity, under terms and conditions which shall have been approved by the Bank and which shall include those stipulated in the Annex to this Schedule 2.

(b) The Borrower, through the Ministry of Finance, shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

C. Anti-Corruption

The Borrower, through the Ministry of Fuel and Energy, shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

Section II. Project Monitoring Reporting and Evaluation

A. Project Reports

1. The Borrower, through the Ministry of Fuel and Energy, shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 5.08 of the General Conditions and on the basis of the MFE

Monitoring and Evaluation Indicators. Each Project Report shall cover the period of one (1) calendar semester, and shall be furnished to the Bank not later than one (1) month after the end of the period covered by such report.

B. Financial Management, Financial Reports and Audits

1. The Borrower, through the Ministry of Fuel and Energy, shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 5.09 of the General Conditions.

2. Without limitation upon the provisions of Part A of this Section, the Borrower, through the Ministry of Fuel and Energy, shall prepare and furnish to the Bank as part of the Project Report not later than forty-five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Bank.

3. The Borrower, through the Ministry of Fuel and Energy, shall have its Financial Statements audited in accordance with the provisions of Section 5.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one (1) fiscal year of the Borrower. The audited Financial Statements for each such period shall be furnished to the Bank not later than six (6) months after the end of such period.

Section III. Procurement

A. General

1. **Goods and Services (Other than Consultants' Services).** All goods and services (other than consultants' services) required for the Project and to be financed out of the proceeds of the Loan shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.

2. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Bank of particular contracts refer to the corresponding method described in the Procurement Guidelines.

B. Particular Methods of Procurement of Goods and Services (Other than Consultants' Services)

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and services (other than consultants' services) shall be procured under contracts awarded on the basis of International Competitive Bidding procedures.

2. **Other Methods of Procurement of Goods and Services (Other than Consultants' Services).** The following table specifies the methods of procurement, other

than International Competitive Bidding, which may be used for goods and services (other than consultants' services). The Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method	
(a)	Shopping
(b)	Direct Contracting

C. Review by the Bank of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Bank's Prior Review. All other contracts shall be subject to Post Review by the Bank.

Section IV. Withdrawal of Loan Proceeds

A. General

1. The Borrower may withdraw the proceeds of the Loan in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Bank shall specify by notice to the Borrower (including the "World Bank Disbursement Guidelines for Projects" dated May 2006, as revised from time to time by the Bank and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.

2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Loan ("Category"), the allocation of the amounts of the Loan to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category.

Category	Amount of the Loan Allocated (expressed in USD)	Percentage of Expenditures to be Financed
(1) Goods and services (other than consultants' services) under Part A of the Project	59,850,000	100%
(2) Front-end Fee	150,000	Amount payable pursuant to Section 2.03 of this Agreement in accordance with Section 2.07 (b) of the General Conditions
TOTAL AMOUNT	<u>60,000,000</u>	

B. Withdrawal Period

The Closing Date is June 30, 2012.

**ANNEX
TO
SCHEDULE 2**

**Terms and Conditions of
the Subsidiary Loan Agreement**

1. Except as the Bank and the Borrower shall otherwise agree, the terms and conditions set forth or referred to in this Annex shall apply and be included, as appropriate, in the Subsidiary Loan Agreement being entered in accordance with paragraph B of Section 1 of Schedule 2 to this Agreement.

2. The principal amount of the Subsidiary Loan repayable to the Borrower under the Subsidiary Loan Agreement shall: (i) be denominated in dollars; and (ii) be the equivalent in dollars (determined as of the date or respective dates of repayment of the principal amount of the Loan specified in Schedule 3 to this Agreement) of the value of the currency or currencies withdrawn from the Loan Account or paid out of the Designated Account for Part A of the Project on account of the cost of goods and services (other than consultants' services) for Part A of the Project to be financed under the Subsidiary Loan out of the proceeds of the Loan allocated from time to time to Category (1).

3. The Project Implementing Entity shall pay to the Borrower: (i) interest on the principal amount of the Subsidiary Loan withdrawn and outstanding from time to time at the rate applicable from time to time to the Loan pursuant to the provisions of Section 2.04 of this Agreement, plus a margin at a rate to be determined according to the terms of the Subsidiary Loan Agreement; and (ii) a front-end fee in the amount determined according to the provisions of Section 2.03 of this Agreement, to be deducted from the amount of the Subsidiary Loan.

4. The Project Implementing Entity shall repay to the Borrower the principal amount of the Subsidiary Loan in accordance with an amortization schedule not exceeding the maturity of the Loan, inclusive of a grace period not exceeding six (6) years.

SCHEDULE 3

Amortization Schedule

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (“Installment Share”). If the proceeds of the Loan have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by the Bank by multiplying: (a) Withdrawn Loan Balance as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayable amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Principal Payment Date	Installment Share (Expressed as a Percentage)
On each February 15 and August 15 Beginning on February 15, 2016 through February 15, 2021	8.33%
On August 15, 2021	8.37%

2. If the proceeds of the Loan have not been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:
- (a) To the extent that any proceeds of the Loan have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the Withdrawn Loan Balance as of such date in accordance with paragraph 1 of this Schedule.
 - (b) Any amount withdrawn after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by the Bank by multiplying the amount of each such withdrawal by a fraction, the numerator of which is the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (“Original Installment Share”) and the denominator of which is the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such amounts repayable to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. (a) Amounts of the Loan withdrawn within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.
 - (b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, if at any time the Bank adopts a due date billing system under which invoices are issued on or after the respective Principal Payment Date, the provisions of such sub-paragraph shall no longer apply to any withdrawals made after the adoption of such billing system.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the Withdrawn Loan Balance to an Approved Currency, the amount so converted in the Approved Currency that is repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by the Bank by multiplying such amount in its currency of denomination immediately prior to the Conversion by either: (i) the exchange rate that reflects the amounts of principal in the Approved Currency payable by the Bank under the Currency Hedge Transaction relating to the Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.
5. If the Withdrawn Loan Balance is denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

APPENDIX

Section I. Definitions

1. “Agreement of 2005” means the Loan Agreement (Hydropower Rehabilitation Project) between Ukraine and the Bank dated September 19, 2005, Loan No. 4795-UA.
2. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
3. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
4. “Designated Account” means an account into which the Bank may, at the Borrower’s request, deposit amounts withdrawn from the Loan Account for the purpose of paying for Eligible Expenditures as they are incurred.
5. “Environmental Action Plan” means the Borrower’s environmental management plan dated March 9, 2005, describing the environmental, mitigation, monitoring and institutional measures to be undertaken under Parts A and B of the Project to ensure that all environmental concerns are adequately taken into account in the carrying out of the works and activities thereunder.
6. “fiscal year” means the twelve (12) month period corresponding to any of the Borrower’s fiscal years, which period commences on January 1 and ends on December 31 in each calendar year.
7. “General Conditions” means the “International Bank for Reconstruction and Development General Conditions for Loans”, dated July 1, 2005 (as amended through February 12, 2008) with the modifications set forth in Section II of this Appendix.
8. “Ministry of Fuel and Energy” means the Borrower’s Ministry of Fuel and Energy, established and functioning pursuant to the provisions of its charter approved by Decree No. 598 of the President of Ukraine dated April 14, 2000, or its legal successor.
9. “MFE Monitoring and Evaluation Indicators” means the agreed performance indicators set forth in a letter of even date herewith to be utilized by the Borrower to measure the progress in the implementation of Parts D and E of the Project and the degree to which the objectives thereof are being achieved.

10. “Ministry of Finance” means the Borrower’s Ministry of Finance established and functioning pursuant to the provisions of the Regulation of the Borrower’s Cabinet of Ministers No. 1837 dated December 27, 2006, or its legal successor.
11. “NERC” means the National Electricity Regulation Commission, the Borrower’s central executive agency responsible for energy regulation and functioning in accordance with the provisions of its charter approved by Decree No. 1167 of the President of Ukraine dated October 30, 2000, or its legal successor.
12. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October 2006.
13. “Procurement Plan” means the Borrower’s procurement plan for the Project, dated April 29, 2009, and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
14. “Project Agreement” means the agreement between the Bank and the Project Implementing Entity 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.
15. “Project Implementing Entity” or “UHE” means UkrHydroEnergo, a fully state-owned open joint-stock company formed as a result of a merger of the Borrower’s two state-owned companies operating hydropower plants on the Dnipro and Dnister rivers and being a legal entity established by the Project Implementing Entity’s Legislation.
16. “Project Implementing Entity’s Legislation” means Order No. 831 of the Borrower’s Ministry of Power and Electrification dated December 31, 2003 under which UHE is established and operating.
17. “Subsidiary Loan” means the subsidiary loan proposed to be made by the Borrower out of the proceeds of the Loan to the Project Implementing Entity for the purposes of carrying out Part A of the Project.
18. “Subsidiary Loan Agreement” means the agreement referred to in Section I.B of Schedule 2 to this Agreement pursuant to which the Borrower shall make the proceeds of the Loan available to the Project Implementing Entity.
19. “UHE Monitoring and Evaluation Indicators” means the agreed performance monitoring and evaluation indicators set forth in a letter of even date herewith to be utilized by the Project Implementing Entity to measure the progress in the

implementation of Parts A, B and C of the Project and the degree to which the objectives thereof are being achieved.

Section II. Modifications to the General Conditions

The modifications to the General Conditions are as follows:

1. Paragraph (a) of Section 2.07 is modified to read as follows:

“Section 2.07. Refinancing Preparation Advance; Capitalizing Front-end Fee and Interest

(a) If the Loan Agreement provides for the repayment out of the proceeds of the Loan of an advance made by the Bank or the Association (“Preparation Advance”), the Bank shall, on behalf of such Loan Party, withdraw from the Loan Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Loan Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Bank shall pay the amount so withdrawn to itself or the Association, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.”

2. Paragraph (l) of Section 7.02 is modified to read as follows:

“Section 7.02. Suspension by the Bank

... (l) *Ineligibility.* The Bank or the Association has declared the Borrower (other than the Member Country) or the Project Implementing Entity ineligible to receive proceeds of any financing made by the Bank or the Association or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the Bank or the Association, as a result of a determination by the Bank or the Association that the Borrower or the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by the Bank or the Association.”

3. The following terms and definitions set forth in the Appendix are modified or deleted as follows, and the following new terms and definitions are added in alphabetical order to the Appendix as follows, with the terms being renumbered accordingly:

- (a) The definition of the term “Conversion Date” is modified to read as follows:

“‘Conversion Date’ means, in respect of a Conversion, the Execution Date (as herein defined) or such other date as requested by the Borrower and accepted by the Bank, on which the Conversion enters into effect, and as further specified in the Conversion Guidelines.”