

CONFORMED COPY

CREDIT NUMBER 2724 VN

Project Agreement

(Power Sector Rehabilitation and Expansion Project)

among

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

POWER COMPANY NO.2

and

POWER COMPANY NO.3

Dated July 11, 1995

CREDIT NUMBER 2724 VN

PROJECT AGREEMENT

AGREEMENT, dated July 11, 1995, among INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and POWER COMPANY NO.2 (PC2) and POWER COMPANY NO.3 (PC3).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Socialist Republic of Viet Nam (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to one hundred and ten million, six hundred thousand Special Drawing Rights (SDR 110,600,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that PC2 and PC3 agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and each of PC2 and PC3, a portion of the proceeds of the Credit provided for under the Development Credit Agreement will be relented to each of PC2 and PC3 on the terms and conditions set forth in said subsidiary loan agreements; and

WHEREAS PC2 and PC3, in consideration of the Association's

entering into the Development Credit Agreement with the Borrower, have each 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 Development Credit Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. PC2 and PC3 each declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, (i) PC2 shall carry out Part A of the Project and (ii) PC3 shall carry out Part B of the Project, in each case with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and environmental and resettlement practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Parts A and B of the Project, respectively.

Section 2.02. Without limitation upon the provisions of Section 2.01 and except as the Association and PC2 or PC3, as the case may be, shall otherwise agree:

(a) PC3 shall carry out the resettlement and rehabilitation of Affected Persons in accordance with the Transmission RAP in a manner satisfactory to the Association;

(b) each of PC2 and PC3 shall prepare their respective Distribution Phase 2 RAPs in a timely manner and, upon approval of said RAPs by the Borrower and the Association, promptly thereafter take all such actions as are required under said RAPs with respect to the Affected Persons; and

(c) PC2 shall (i) carry out Part A.1 of the Project in accordance with the measures described in the Environmental Assessment; (ii) without limitation or restriction on the preceding provisions of this Section 2.02 (c), take timely action to ensure that any adverse environmental impact of Part A.1 of the Project is effectively mitigated in a manner which is acceptable to the Association; and (iii) provide timely and adequate compensation, determined in accordance with criteria satisfactory to the Association, to the Affected Persons whose rights or interest in shrimp farms are compulsorily acquired under Part A.1 of the Project, or whose capability for carrying on their business, occupation or work in shrimp farms is adversely affected under said Part of the Project.

Section 2.03. Without limitations on the provisions of Section 2.01 and except as the Association may otherwise agree, PC2 and PC3 shall each:

(a) not sell, lease, assign or otherwise dispose of any of its assets which shall be required for the efficient performance of its operations or which may prejudice its ability to perform satisfactorily any of its obligations under this Agreement; and

(b) not: (i) amend, suspend or repeal any provision of its respective Charter; or (ii) make any change in its structure,

organization, powers or responsibilities which may materially and adversely affect (A) its ability to perform any of its obligations under this Agreement or (B) the operation of the facilities established under its respective Part of the Project.

Section 2.04. Except as the Association shall otherwise agree, procurement of the goods and consultants' services required for Parts A and B of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.05. (a) PC2 and PC3 shall each carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 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 Parts A and B of the Project respectively.

(b) Without limitation upon the provisions of Article IX of the General Conditions, each of PC2 and PC3 shall:

(i) prepare and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan, of such scope and in such detail as the Association shall reasonably request, for the future operation of its respective Part of the Project;

(ii) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan; and

(iii) thereafter, carry out said plan with due diligence and efficiency and in accordance with appropriate practices, taking into account the Association's comments thereon.

Section 2.06. PC2 and PC3 shall each duly perform all its obligations under their respective Subsidiary Loan Agreements. Except as the Association shall otherwise agree, PC2 and PC3 shall each not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving their Subsidiary Loan Agreements or any provision thereof.

Section 2.07. (a) PC2 and PC3 shall each, at the request of the Association, exchange views with the Association with regard to the progress of its respective Part of the Project, the performance of its obligations under this Agreement and under the respective Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) PC2 and PC3 shall each promptly inform the Association of any condition which interferes or threatens to interfere with the progress of its respective Part of the Project, the accomplishment of the purposes of the Credit, or the performance by PC2 or PC3 of their obligations under this Agreement and under the Subsidiary Loan Agreements.

ARTICLE III

Management and Operations of PC2 and PC3

Section 3.01. PC2 and PC3 shall each carry on its operations and conduct its affairs in accordance with sound public utility, administrative, financial, engineering, environmental and resettlement practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. PC2 and PC3 shall each 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. PC2 and PC3 shall each take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.04. PC3 shall prepare by no later than December 31, 1995, and thereafter implement, an action plan, satisfactory to the Association, for the progressive reduction of its non-technical losses to a maximum level of 3% of electricity generated and transmitted.

ARTICLE IV

Financial Covenants

Section 4.01. (a) PC2 and PC3 shall each maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) Without limitation upon the provisions of paragraph (a) of this Section 4.01, PC2 and PC3 shall each maintain, for each of its fiscal years commencing fiscal year 1995, records and accounts, that shall (i) consolidate the accounts and financial statements of its operation and construction divisions; (ii) be on an accrual basis; (iii) provide no depreciation for assets which have been written off; (iv) apply a single depreciation rate for normal depreciation charges; (v) write off obsolete stock; (vi) reflect actual profits and losses; and (vii) make adequate provision for bad debts.

(c) PC2 and PC3 shall each:

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

Section 4.02. (a) Except as the Association shall otherwise agree, PC2 shall produce, for each of its fiscal years after its fiscal year ending on December 31, 1995, funds from internal sources equivalent to not less than 25 % of the annual average of PC2's capital expenditures incurred, or expected to be incurred, for that fiscal year, the previous fiscal year and the next fiscal year.

(b) Before March 31 in each of its fiscal years after that ending on December 31, 1995, PC2 shall, on the basis of forecasts prepared by PC2 and satisfactory to the Association, review whether it would meet the requirements set forth in

paragraph (a) of this Section in respect of such fiscal year and the next following fiscal year and shall furnish to the Association a copy of such review upon its completion.

(c) If any such review shows that PC2 would not meet the requirements set forth in paragraph (a) of this Section for PC2 fiscal years covered by such review, PC2 shall promptly take all necessary measures, including, without limitation, adjustments to the structure or levels of its tariffs, in order to meet such requirements.

Section 4.03. (a) Except as the Association shall otherwise agree, PC3 shall maintain, for each of its fiscal years after its fiscal year ending on December 31, 1995, a ratio of total operating expenses to total operating revenues not higher than 100%.

(b) Before March 31 in each of its fiscal years after that ending on December 31, 1995, PC3 shall, on the basis of forecasts prepared by PC3 and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) of this Section in respect of such year and the next following fiscal year, and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that PC3 would not meet the requirements set forth in paragraph (a) of this Section for PC3's fiscal years covered by such review, PC3 shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its tariffs) in order to meet such requirements.

Section 4.04. (a) Before December 31, 1995, PC3 shall prepare an action plan, satisfactory to the Association, for the reduction of its net accounts receivable.

(b) PC3 shall take all measures necessary to ensure that on and after December 31, 1996, accounts receivable (after allowances for accounts receivable determined to be uncollectible) shall not exceed four months of sales revenue.

Section 4.05. (a) Except as the Association shall otherwise agree, each of PC2 and PC3 shall not incur any debt unless a reasonable forecast of its revenues and expenditures shows that its estimated net revenues for each fiscal year during the term of the debt to be incurred shall be at least 1.5 times with respect to PC2, and 1.3 times with respect to PC3, its estimated debt service requirements in such year on all its debt including the debt to be incurred.

Section 4.06. For the purposes of Sections 4.02, 4.03, 4.04 and 4.05 of this Agreement:

- (a) The term "funds from internal sources" means the difference between:
 - (i) 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
 - (ii) 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.

- (b) The term "net non-operating income" means the difference between:
 - (i) revenues from all sources other than those related to operations; and
 - (ii) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The term "capital expenditures" means all expenditures on account of fixed assets, including interest charged to construction, related to operations.
- (h) The term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation on a straight-line basis at a rate of not less than 5% per annum of the average current gross value of PC3's fixed assets in operation, or other basis acceptable to the Association, but excluding interest and other charges on debt.
- (i) The term "total operating revenues" means revenues from all sources related to operations.
- (j) The term "accounts receivable" means amounts due from all sources related to electricity sold in the normal course of business for which payment has not been received.
- (k) The term "debt" means any indebtedness of PC2 or PC3, as the case may be, maturing by its terms more than one year after the date on which it is originally incurred.
- (l) Debt shall be deemed to be incurred: (i) 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 (ii) under

a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

- (m) The term "net revenues" means the difference between:
 - (i) the sum of revenues from all sources related to operations and net non-operating income; and
 - (ii) 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.
- (n) The term "net non-operating income" means the difference between:
 - (i) revenues from all sources other than those related to operations; and
 - (ii) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (i) above.
- (o) The term "reasonable forecast" means a forecast prepared by each of PC2 and PC3 not earlier than twelve months prior to the incurrence of the debt in question, which both the Association and PC2 or PC3, as the case may be, accept as reasonable and as to which the Association has notified PC2 or PC3, as the case may be, 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 PC2 or PC3, as the case may be.
- (p) Whenever for the purposes of this Article 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 Association.

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 Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of PC2 and PC3 thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or

(ii) the date twenty (20) years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify PC2 and PC3 of this event.

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 Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

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

Power Company No. 2
72, Hai Ba Trung
Ho Chi Minh City
Viet Nam

Telex: 811220 VPC2VT

Power Company No. 3
16 Le Thanh Ton Street
Da Nang City
Viet Nam

Telex: 515724 PCHVT

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 each of PC2 and PC3 may be taken or executed by the Director General of PC2 and the General Director of PC3 or such other person or persons as each said officer shall designate in writing, and each of PC2 and PC3 shall furnish to the Association 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 Hanoi, Socialist Republic of Viet Nam, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Russell Cheetham
Regional Vice President
East Asia and Pacific

POWER COMPANY NO. 2

By /s/ Pham Van Binh
Authorized Representative

POWER COMPANY NO. 3

By /s/ Ta Canh
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods

Part A: International Competitive Bidding

Except as provided in Part C hereof, goods 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 1992 (the Guidelines), and in accordance with the following additional procedures:

(a) When contract award is delayed beyond the original bid validity period, such period may be extended once, subject to and in accordance with the provisions of paragraph 2.59 of the Guidelines, by the minimum amount of time required to complete the evaluation, obtain necessary approvals and clearances and award the contract. The bid validity period may be extended a second time only if the bidding documents or the request for extension shall provide for appropriate adjustment of the bid price to reflect changes in the cost of inputs for the contract over the period of extension. Such an increase in the bid price shall not be taken into account in the bid evaluation. With respect to each contract made subject to the Association's prior review in accordance with the provisions of Part D of this Section, the Association's prior approval will be required for (i) a first extension of the bid validity period if the period of extension exceeds sixty (60) days and (ii) any subsequent extension of the bid validity period.

(b) In the procurement of goods in accordance with this Part A, PC2 and PC3 shall each use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Association shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, PC2 and PC3 shall each use bidding documents based on other internationally recognized standard forms agreed with the Association.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in the Socialist Republic of Viet Nam 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: Other Procurement Procedures

Special testing and measuring equipment estimated to cost the equivalent of \$200,000 or less per contract, up to an aggregate amount equivalent of \$1,200,000, may be procured under contracts awarded in accordance with procedures acceptable to the Association through limited international bidding procedures on the basis of evaluation and comparison of bids obtained from at least three qualified suppliers eligible under the Guidelines and in accordance with procedures set forth in Sections I and II of the Guidelines (excluding paragraphs 2.8, 2.9, 2.55, 2.56); provided, however, that such goods estimated to cost the equivalent of \$50,000 or less per contract, up to an aggregate amount equivalent of \$400,000 may be procured on the basis of comparison of price quotations obtained from at least three suppliers from at least three different countries eligible under the Guidelines, in accordance with procedures acceptable to the Association.

Part D: Review by the Association of Procurement Decisions

1. With respect to each contract for goods, 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 a Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of said Special Account in respect of such contract.

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

Section II. Employment of Consultants

1. In order to assist each of PC2 and PC3 in carrying out Parts A and B of the Project, respectively, PC2 and PC3 shall each employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association 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 (the Consultant Guidelines). For complex, time-based assignments, PC2 and PC3 shall employ such consultants under contracts using the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Association. Where no relevant standard contract documents have been issued by the Bank, PC2 and PC3 shall each use other standard forms agreed with the Association.