

CONFORMED COPY

CREDIT NUMBER 1973 KE

Development Credit Agreement

(Geothermal Development and Energy Preinvestment Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated February 13, 1989

CREDIT NUMBER 1973 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated February 13, 1989, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Borrower has requested from overseas Development Administration of the United Kingdom, the Government of Japan, the Federal Republic of Germany through Kreditanstalt fur Wiederaufbau (KfW) , Canada and the Republic of Finland, Grants in amounts approximately equivalent to nine million five hundred thousand dollars (\$9,500,000) to assist in financing Part B of the Project;

(C) Part A of the Project will be carried out by the Kenya Power Company Limited (KPC) with the assistance of the Borrower and of the Kenya Power and Lighting Company Limited (KPLC) pursuant to the provisions of the Management Agreement dated November 18, 1980, between KPC and KPLC which, inter alia, appoints KPLC as corporate manager of KPC;

(D) as part of the aforementioned assistance, the Borrower will make available to KPC the proceeds of the Credit for Part A of the Project as hereinafter provided; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the Joint Project Agreement of even date herewith among the Association, KPC and KPLC;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the last sentence of Section 3.02 deleted (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Joint Project Agreement" means the agreement among the Association, KPC and KPLC 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 Joint Project Agreement;

(b) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and KPC pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement;

(c) "KPC" means The Kenya Power Company Limited, a limited liability company, incorporated and operating under the laws of the Borrower;

(d) "KPLC" means The Kenya Power and Lighting Company Limited, a limited liability company, incorporated and operating under the laws of the Borrower; and

(e) "Power Companies" means KPC, KPLC and any other Kenyan entity engaged in the generation, importation, supply, transmission or distribution of electric energy for sale to consumers in Kenya.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to thirty-one million six hundred thousand Special Drawing Rights (SDR 31,600,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit.

Section 2.03. The Closing Date shall be June 30, 1994, or such later date as the Association shall establish. The Association shall promptly notify the

Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from a date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date or at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied as of the next payment date in that year specified in Section 2.06 of this Agreement, except that the rate set as of June 30, 1988, shall be applied as of July 1, 1988.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on January 15 and July 15 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each January 15 and July 15 commencing January 15, 1999, and ending July 15, 2023. Each installment to and including the installment payable on July 15, 2008, shall be one and one-fourth percent (1-1/4%) of such principal amount, and each installment thereafter shall be two and one-half percent (2-1/2%) of such principal amount.

(b) Whenever: (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years, and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant

element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to the end, shall carry out Part B of the Project through its Ministry of Energy, with due diligence and efficiency and in conformity with appropriate administrative, financial and engineering practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(b) Without any limitation or restriction upon any of its other obligations under this Agreement the Borrower shall cause KPC and KPLC to perform in accordance with the provisions of the Joint Project Agreement all the obligations of KPC and KPLC therein set forth, shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KPC and KPLC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(c) The Borrower shall relend the proceeds of the Credit allocated to Part A of the Project, except for an amount not exceeding SDR 7,600,000, to KPC under a subsidiary loan agreement to be entered into between the Borrower and KPC, under terms and conditions which shall have been approved by the Association, and which shall provide, inter alia, that the proceeds of the Credit shall be relent at an interest rate of at least 7.59% per annum, for a term of 20 years, including a grace period of seven years and KPC shall bear the risk resulting from fluctuations in the value of the currencies relent to it.

(d) The Borrower shall make available to KPC out of the Credit, the equivalent of SDR 7,600,000 as an equity contribution.

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

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of the Schedule to the Joint Project Agreement.

Section 3.03. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03 through 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 Part A of the Project, shall be carried out by KPC and KPLC pursuant to Section 2.03 of the Joint Project Agreement.

Section 3.04. The Borrower shall carry out the studies under Part B of the Project, under terms of reference mutually agreed between the Borrower and the Association.

Section 3.05, The Borrower shall, prior to the commencement of any geothermal drilling program in Kenya, inform the Association of such geothermal drilling program, whether funded by the Association or by others with the view to affording the Association an opportunity for review and comment.

ARTICLE IV

Financial Covenants

Section 4.01. (a) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditures, the Borrower shall:

- (i) maintain or cause to be maintained in accordance with sound accounting practices, records and accounts reflecting such expenditures;
 - (ii) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made; and
 - (iii) enable the Association's representatives to examine such records.
- (b) The Borrower shall:
- (i) have the records and accounts referred to in paragraph (a) (i) of this Section 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 eight months after the end of each such year the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested, including a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals; and

- (iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

Section 4.02. The Borrower shall take all necessary steps in order to enable the Power Companies to meet the requirements of Sections 6.02 through 6.06 of the Joint Project Agreement.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

(a) KPC or KPLC shall have failed to perform any of their obligations under the Joint Project Agreement.

(b) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that KPC or KPLC will be able to perform their respective obligations under the Joint Project Agreement.

(c) The Articles of Incorporation of KPC or KPLC shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of KPC or KPLC to perform any of its obligations under the Joint Project Agreement.

(d) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of KPC or KPLC or for the suspension of their operations.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

(a) the event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower; and

(b) the events specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Subsidiary Loan Agreement has been executed on behalf of the Borrower and KPC;

(b) KPC has made a recommendation for the award of a contract, satisfactory to the Association, for the purchase of the drill rig under Part A.2 of the Project;

(c) KPC has signed contracts, satisfactory to the Association, for the procurement packages of about half the drilling consumables and a third of the drilling

materials included under Part A.1 of the Project;

(d) the Coordinator of Geothermal Development referred to in Section 2.06 of the Joint Project Agreement has been appointed; and

(e) the second complement of KPLC drill crews have been recruited and their training commenced.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the Joint Project Agreement has been duly authorized or ratified by KPC and KPLC, and is legally binding upon KPC and KPLC in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KPC and is legally binding upon the Borrower and KPC in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representatives of the Borrower; Addresses

Section 7.01. The Minister at the time responsible for finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
P.O. Box 30007
Nairobi
Kenya

Cable address: Telex:

FINANCE 96322003
Nairobi

For the Association:

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

Cable address: Telex:

INDEVAS 440098 (ITT)
Washington, D.C. 248423 (RCA)

or

64145 (WUI)

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.

REPUBLIC OF KENYA

By /s/ D. D. Afande
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V. K. Jaycox
Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Civil Works	3,630,000	65%
(2) (a) Drilling, foreign equipment and materials	17,950,000	100% of expenditures and 55% of local expenditures
(b) Science equipment	820,000	100% of foreign expenditures
(c) Workshop tools and equipment	310,000	100% of foreign expenditures and 100% of local expenditures (ex-factory)
(3) Consultants' services and studies	1,020,000	100% of foreign expenditures
(4) Training	200,000	100%
(5) Unallocated	7,670,000	
TOTAL	31,600,000	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower; and

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods

or services supplied from the territory of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 200,000, may be made in respect of Category (3) on account of expenditures before that date but after July 1, 1988.

SCHEDULE 2

Description of the Project

The objectives of the Project are: (i) to assist the Borrower in preparing the necessary expansion of its electricity generating capacity at least cost, through utilization of indigenous energy resources; and (ii) to develop options for energy pricing policies, which encourage more efficient use of fuels and achieve savings and resource mobilization.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Geothermal Development

1. Provision of drilling supplies and materials for the drilling of about 32 wells.
2. Provision of a drill rig rated for drilling to at least 2,800 meters.
3. Provision of scientific equipment for geothermal research.
4. Construction of: (i) the Moi South Lake Road; and (ii) drill crew housing, repair shops and work shops including the provision of tools and equipment.
5. Provision of engineering supervision services for Part A.4.
6. Provision of technical assistance including well testing, drilling and scientific data analysis.
7. Training of newly recruited engineers, scientists and technicians.
8. Carrying out an engineering study of the 2 x 30 KW power plant at Olkaria.

Part B: Energy Preinvestment

1. Carrying out an optimization and feasibility study of the development of the Miriu-Sondu Basin and preparation of an engineering report for the Lower Miriu weir and power station.
2. Carrying out comparative reconnaissance, prefeasibility and optimization studies on several potential hydropower sites, including benefits of irrigation and flood control.
3. Carrying out an energy pricing study including policy options for pricing energy products.
4. Carrying out a study of liquefied petroleum gas in

Kenya,
with a view to alleviating shortages.

5. Carrying out a rural electrification cost
minimization study.

* * *

The Project is expected to be completed by December
31, 1993.

