

CONFORMED COPY

LOAN NUMBER 4488 CHA

Project Agreement

(Renewable Energy Development Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

SHANGHAI MUNICIPAL ELECTRIC POWER COMPANY

Dated June 26, 2001

LOAN NUMBER 4488 CHA

PROJECT AGREEMENT

AGREEMENT, dated June 26, 2001, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and SHANGHAI MUNICIPAL ELECTRIC POWER COMPANY (SMEPC).

WHEREAS (A) by the Loan Agreement of even date herewith between the People's Republic of China (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount equal to thirteen million Dollars (\$13,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that SMEPC 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 SMEPC, the proceeds of the loan provided for under the Loan Agreement will be made available to SMEPC on the terms and conditions set forth in said Subsidiary Loan Agreement;

(C) by the GEF Grant Agreement of even date herewith between the Borrower and the Bank, acting as an implementing agency of the GEF Trust Fund, GEF has agreed to provide a grant to the Borrower in an aggregate principal amount equivalent to twenty one million three hundred thousand Special Drawing Rights (SDR 21,300,000);

(D) by a subsidiary grant agreement to be entered into between the Borrower and SMEPC, a portion of the proceeds of the grant provided for under the GEF Grant Agreement will be made available to SMEPC on terms and conditions set forth in said

Subsidiary Grant Agreement; and

WHEREAS SMEPC, in consideration of the Bank's entering into the Loan Agreement and the GEF Grant 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) SMEPC 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 Parts A and B of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, environmental and technical 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 SMEPC shall otherwise agree, SMEPC shall carry out Parts A and B of 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 Parts A and B of the Project and to be financed out of the proceeds of the Loan or the GEF Trust Fund Grant shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. (a) SMEPC 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 and Parts A and B of the Project.

(b) For the purposes of Section 9.08 of the General Conditions and without limitation thereto, SMEPC 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 SMEPC, a plan for the continued achievement of the objectives of Parts A and B of the Project; and
- (ii) afford the Bank a reasonable opportunity to exchange views with SMEPC on said plan.

Section 2.04. SMEPC shall duly perform all its obligations under the Subsidiary Loan Agreement and the Subsidiary Grant Agreement. Except as the Bank shall otherwise agree, SMEPC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or Subsidiary Grant Agreement or any provision thereof.

Section 2.05. (a) SMEPC 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 the Subsidiary Grant

Agreement, and other matters relating to the purposes of the Loan and GEF Trust Fund Grant.

(b) SMEPC 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 GEF Trust Fund Grant, or the performance by SMEPC of its obligations under this Agreement and under the Subsidiary Loan Agreement and Subsidiary Grant Agreement.

ARTICLE III

Management and Operations of SMEPC

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

Section 3.02. SMEPC 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, environmental, financial and technical practices.

Section 3.03. SMEPC 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) SMEPC shall maintain and shall cause the Windfarm Company to maintain, records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition and to register separately the operations, resources and expenditures related to the Project.

(b) SMEPC shall:

- (i) (A) have its records and accounts referred to in paragraph (a) above for each fiscal year audited, and (B) cause the Windfarm Company to have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each year audited, in each case 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 said records and accounts and said Windfarm Company financial statements, reflecting the records and accounts referred to in paragraph (a) above, for such year as so audited and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.02. (a) Except as the Bank shall otherwise agree, SMEPC shall ensure that the Windfarm Company shall not incur any debt unless a reasonable forecast of its revenues and expenditures shows that the estimated net revenues of the Windfarm Company, for its first full fiscal year of operation and for each fiscal year thereafter during the term of the 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) For the purposes of this Section:

(i) The term "debt" means any indebtedness maturing by its terms more than one year after the date on which it is originally incurred.

(ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

(iii) The term "net revenues" means the difference between:

(A) the sum of revenues from all sources related to operations and net non-operating income, and

(B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.

(iv) The term "net non-operating income" means the difference between:

(A) revenues from all sources other than those related to operations; and

(B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.

(v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payment if any) of, and interest and other charges on, debt.

(vi) The term "reasonable forecast" means a forecast prepared by the Windfarm Company, not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and the Windfarm Company accept as reasonable and as to which the Bank has notified SMEPC 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 the Windfarm Company.

(vii) Whenever for the purposes of this Section 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. (a) Except as the Bank shall otherwise agree, SMEPC shall ensure that the Windfarm Company shall earn an annual return of not less than 10% of the average current value of the Windfarm Company's equity for its first full fiscal year of operation for each of its fiscal years thereafter.

(b) Before June 1 in each of its fiscal years, SMEPC shall ensure that the Windfarm Company shall, on the basis of forecasts prepared by the Windfarm Company and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Bank, through SMEPC, the results of such review upon its completion.

(c) If any such review shows that the Windfarm Company would not meet the requirements set forth in paragraph (a) of this Section for the fiscal years covered by such review, SMEPC shall ensure that the Windfarm Company shall promptly take all necessary measures (including, without limitation, adjustments of the structure or

levels of its tariffs) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The annual return shall be calculated by dividing the Windfarm Company's net income for the fiscal year in question by one half of the sum of the current book value of its equity at the beginning and at the end of that fiscal year.
- (ii) The term "equity" means the sum of the total unimpaired paid-in capital of the Windfarm Company not allocated to cover specific liabilities excluding consumer contributions.
- (iii) The term "net income" means the sum of total operating revenues and net non-operating income less the sum of total operating expenses and interest payments and other charges on debt.
- (iv) The term "total operating revenues" means revenues from all sources related to operations.
- (v) 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.
- (vi) 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 the Windfarm Company's fixed assets in operation, or other basis acceptable to the Bank, but excluding interest and other charges on debt.
- (vii) The term "net fixed assets" means the gross value of the fixed assets of the Windfarm Company less the amount of its accumulated depreciation, and "gross value of the fixed assets" means one half of the sum of the gross value of fixed assets at the beginning and at the end of each fiscal year.

Section 4.04. SMEPC shall cause the Windfarm Company to prepare and submit to the Bank no later than June 30 in each year commencing June 30, 2002, a rolling eight year financial plan, including projected income statements, funds flow statements and balance sheets for such Windfarm Company for each of the following 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 SMEPC thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify SMEPC thereof.

Section 5.03. All 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 facsimile 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, NW
Washington, DC 20433
United States of America

Cable address:	Telex:	Facsimile:
INTBAFRAD Washington, D.C.	248423 (MCI) or 64145 (MCI)	(202) 477-6391

For SMEPC:

Shanghai Municipal Electric Power Company
181 Nanjing Road East
Shanghai
People's Republic of China

Facsimile:
86-21-6324-8586

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 SMEPC, may be taken or executed by its President or such other person or persons as its President shall designate in writing, and SMEPC 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 Beijing, People's Republic of China, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Yukon Huang

Authorized Representative

SHANGHAI MUNICIPAL
ELECTRIC POWER COMPANY

By /s/ Wu Ping

Authorized Representative

SCHEDULE 1

Procurement

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 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the following provisions of Section I of this Schedule.

Part B: International Competitive Bidding

1. 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. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Prequalification

Bidders for the supply of wind turbines under Part A of the Project shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

(b) Preference for domestically manufactured goods

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 (other than goods manufactured in the Hong Kong Special Administrative Region of the Borrower).

(c) Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

Part C: 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 and works 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

(a) With respect to each contract for goods under Part A of the Project, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

(b) With respect to each contract for goods under Part B of the Project, the following procedures shall apply:

(i) prior to the selection of any supplier under shopping procedures, the Borrower shall provide to the Bank a report on the comparison and evaluation of quotations received;

(ii) prior to the execution of any contract procured under shopping procedures, the Borrower shall provide to the Bank a copy of the

specifications and the draft contract; and

- (iii) the procedures set forth in paragraphs 2(f), 2(g) and 3 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997 and January 1999 (the Consultant Guidelines) and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

1. Selection Based on Consultants' Qualifications

Services for training related to technical, financial and managerial aspects of windfarms under Part B of the Project estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

2. Single Source Selection

Services for collection, analysis and dissemination of data on windfarms under Part B of the Project estimated to cost less than US\$100,000 equivalent per contract, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.

3. Individual Consultants

Services for tasks that meet the requirements set forth in paragraph 5.01 of the Consultant Guidelines shall be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

Part D: Review by the Bank of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under 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 Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 1, 2 and (other than the third subparagraph of paragraph 2(a)) and 5 of

Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of consulting firms estimated to cost less than the equivalent of \$200,000, the procedures set forth in paragraphs 1, 2 (other than the second subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(c) With respect to each contract for the employment of individual consultants, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Bank for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

SCHEDULE 2

Implementation Program

1. SMEPC 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 Parts A and B 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 March 15 and September 15 in each year, commencing March 15, 2002, 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, within thirty days of submission to the Bank or such later date as the Bank shall request, the reports 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 the said report and the Bank's views on the matter.

2. (a) In carrying out Part A of the Project, SMEPC shall make a portion of the proceeds of the Loan available to the Windfarm Company, under an implementation agreement to be entered into between SMEPC and the Windfarm Company, under terms and conditions which shall have been approved by the Bank. Such terms and conditions shall include the following:

(i) the principal amount of the loan to the Windfarm Company shall be repaid by the Windfarm Company in Dollars to SMEPC over a period not exceeding twenty (20) years, including a grace period not exceeding five (5) years;

(ii) the principal amount of the loan repayable by the Windfarm Company shall be the equivalent in Dollars (determined as of the date, or respective dates, of repayment) of the value of the currency or currencies withdrawn from the Loan Account in respect of the Windfarm Company; and

(iii) the loan to the Windfarm Company shall be charged: (a) interest on the principal amount thereof withdrawn and outstanding from time to time, at a rate equal to the rate payable by the Borrower from time to time pursuant to Section 2.06(a) of the Loan Agreement; and (b) a commitment charge on the principal amount thereof not withdrawn from time to time at a rate equal to three fourths of one percent (3/4 of 1%) per annum.

(b) SMEPC shall exercise its rights under the implementation agreement with the Windfarm Company in such manner as to protect the interests of the Borrower, the Bank and SMEPC and to accomplish the purposes of the Loan, and, except as the Borrower

and the Bank shall otherwise agree, SMEPC shall not assign, amend, abrogate or waive the implementation agreement with the Windfarm Company or any provision thereof.

(c) The subsidiary loan to the Windfarm Company shall be made on terms whereby SMEPC shall obtain, by written contract with the Windfarm Company or by other appropriate legal means, rights adequate to protect the interests of the Bank, the Borrower and SMEPC, including the right to:

- (i) require the Windfarm Company to carry out Part A of the Project with due diligence and efficiency and in accordance with sound technical, financial, managerial and environmental standards and practices and to maintain adequate records;
- (ii) require that: (a) the goods to be financed out of the proceeds of the Loan shall be procured in accordance with Schedule 1 to this Agreement, and (b) such goods shall be used exclusively in the carrying out of Part A of the Project;
- (iii) inspect, by itself or jointly with representatives of the Bank if the Bank shall so request, such goods and the operation thereof and any relevant records and documents;
- (iv) require that: (a) the Windfarm Company shall take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with sound business practice; and (b) without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the Loan to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Windfarm Company to replace or repair such goods;
- (v) obtain all such information as the Bank, the Borrower or SMEPC shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Windfarm Company and to the benefits to be derived from Part A of the Project; and
- (vi) suspend or terminate the right of the Windfarm Company to the use of the proceeds of the Loan upon failure by the Windfarm Company to perform its obligations under its contract with SMEPC.

3. SMEPC shall:

- (a) ensure that resettlement and rehabilitation of Affected Persons under Part A of the Project is carried out by the Windfarm Company in accordance with the Resettlement Action Plans, acceptable to the Bank, in a manner satisfactory to the Bank;
- (b) prepare and furnish to the Borrower and the Bank an evaluation report promptly upon completion of the resettlement and rehabilitation of Affected Persons as described in the Resettlement Action Plans; and
- (c) carry out the environmental monitoring and mitigation program pursuant to the Environmental Management Program, in a manner satisfactory to the Bank.

4. SMEPC shall:

- (a) cause the Windfarm Company, within six (6) months of its establishment, but in any case no later than June 31, 2002, to enter into a power sales arrangement, satisfactory to the Bank, with respect to power generated or to be generated by the grid-connected windfarm installed by it under Part A of the Project; and
- (b) in carrying out Part B of the Project, develop (i) the program of institutional strengthening of the organizational structures, management practices and financial management systems of the Windfarm Company, (ii) the program of studies and collection and analysis of performance data, and (iii) the program of promotion of private sector participation, all under terms of reference satisfactory to the Bank and thereafter carry out such programs in accordance with a time-bound action plan satisfactory to the Bank.

