
LOAN NUMBER 3996 - IND

GRANT NUMBER 9213 -IND(EF)

PROJECT AGREEMENT

(Meghalaya Power Distribution Sector Improvement Project)

between

ASIAN DEVELOPMENT BANK

and

STATE OF MEGHALAYA

MEGHALAYA ENERGY CORPORATION LIMITED

DATED 01 December 2020

IND 47101

PROJECT AGREEMENT

PROJECT AGREEMENT dated 01 December 2020 between ASIAN DEVELOPMENT BANK ("ADB") on the one part, and the STATE OF MEGHALAYA acting by its Governor ("State") and MEGHALAYA ENERGY CORPORATION LIMITED ("MeECL") on the other part.

WHEREAS

(A) by a Loan Agreement of even date herewith between India ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of One hundred and thirty two million and eight hundred thousand Dollars (\$132,800,000) ("Loan") on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to the State and through the State to MeECL, and that the State acting through MeECL agrees to undertake certain obligations towards ADB set forth herein,

(B) by a Grant Agreement of even date herewith between the India as the Recipient and ADB, ADB has agreed to administer a grant financed by the Japan Fund for Poverty Reduction, in an amount of two million Dollars (\$2,000,000) ("Grant") on the terms and conditions set forth in the Grant Agreement, but only on the condition that the proceeds of the Grant be made available to the State and through the State to MeECL, and that the State acting through MeECL, agrees to undertake certain obligations towards ADB set forth herein; and

(C) the State and MeECL, in consideration of ADB entering into the Loan Agreement and the Grant Agreement, have agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement, the Loan Regulations (as so defined), the Grant Agreement and the Grant Regulations (as so defined) have the respective meanings therein set forth, except as follows: For the purposes of this Project Agreement (i) India as Recipient under the Grant Agreement is referred to as Borrower for the sake of brevity.

ARTICLE II**Particular Covenants**

Section 2.01. (a) The State and MeECL shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the State and MeECL shall perform all obligations set forth in the Loan Agreement and the Grant Agreement to the extent that they are applicable to the State and MeECL, respectively.

Section 2.02. The State and MeECL shall make available, promptly as needed, and on terms and conditions mutually acceptable to ADB and the Borrower, the funds, facilities, services, land, equipment and other resources as required, in addition to the proceeds of the Loan and the Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, the State and MeECL respectively, shall engage competent and qualified consultants and contractors, consistent with the Procurement Policy and Procurement Regulations, to an extent and upon terms and conditions mutually satisfactory to ADB and the Borrower.

(b) Except as ADB and the Borrower may otherwise agree, the State and MeECL shall procure all items of expenditures to be financed out of the proceeds of the Loan and the Grant in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. The State and MeECL shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods mutually acceptable to ADB and the Borrower. The State and MeECL shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) The State and MeECL, as appropriate, shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the State and MeECL as appropriate undertake to insure, or cause to be insured, the Goods to be procured including imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. The State and MeECL shall as applicable, maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan and Grant, to disclose the use thereof in the Project,

to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB, the State and MeECL shall cooperate fully to ensure that the purposes of the Loan and Grant will be accomplished.

(b) The State and MeECL shall promptly inform ADB through the Borrower, of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its respective obligations under this Project Agreement or the Financing Arrangements, or the accomplishment of the purposes of the Loan and/or the Grant.

(c) ADB, the State and MeECL shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, the State, MeECL, the Loan and the Grant.

Section 2.08. (a) In so far as it relates to the Project, the State and MeECL shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the Grant, and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial status of the State, and the financial condition of MeECL; and (v) any other matters relating to the purposes of the Loan and the Grant.

(b) Without limiting the generality of the foregoing, the State and/ acting through MeECL as applicable, shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, the State and MeECL shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by the State and MeECL of its respective obligations under this Project Agreement and the accomplishment of the purposes of the Loan and the Grant.

Section 2.09. (a) The State as applicable, and MeECL shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards prevalent in the country; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements, use of the Loan and the Grant proceeds, compliance with the financial covenants of the Loan Agreement and the Grant Agreement, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the

English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, MeECL shall (i) provide its annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements, compliance with the financial covenants of the Loan Agreement and the Grant Agreement; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) The State and MeECL shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and MeECL and their respective financial affairs where they relate to the Project with the auditors appointed by the State and MeECL respectively pursuant to subsections (a)(iii) and (c)(ii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the State and MeECL, as applicable, unless the State and MeECL, as applicable, shall otherwise agree.

Section 2.10. The State and MeECL shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) The State and MeECL respectively, shall, promptly as required, take all action within its powers to maintain its constitutional (in case of the State), and corporate existence (in respect of MeECL) respectively, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) In relation to the Project, the State and MeECL respectively, shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) In relation to the Project, the State and MeECL respectively, shall, at all times, operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, the State and MeECL respectively shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, in relation to the Project, the State and MeECL shall apply the proceeds of the Loan and the Grant to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement, the Grant Agreement, and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, the State shall duly perform all its obligations under the Financing Arrangements, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Financing Arrangements.

Section 2.15. The State and MeECL shall promptly notify ADB of any proposal to amend, suspend or repeal any provision the respective constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. The State and MeECL as applicable shall afford ADB an adequate opportunity to comment on such proposal in taking any action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement and Grant Agreement come into force and effect. ADB shall promptly notify the State and MeECL of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement and Grant Agreement shall terminate in accordance with their terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement and/or Grant Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated

by this Project 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, mail or facsimile to the party to which it is required or permitted to be given or made at its 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 ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

+63 2 8636-2444
+63 2 8636-2338

For the State of Meghalaya

Secretary
Planning Department
Government of Meghalaya
Main Secretariat Building
Shillong – 793001
Meghalaya

Facsimile Number:

(91) 364 - 2224201

For MeECL

Chairman cum Managing Director
MeECL
Lumjingshai
Short Road
Shillong
East Khasi Hills - 793003
Meghalaya

Facsimile Number:

(91) 364-2590355

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of (i) the State may be taken or executed by its Secretary Planning; and (ii) the MeECL

may be taken or executed by its Chairman cum Managing Director, or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The State and MeECL respectively shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.


Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names as of the day and year first above written, and to be delivered at the principal office of ADB.

ASIAN DEVELOPMENT BANK

By 
Takeo Konishi
Country Director

STATE OF MEGHALAYA

By 
Pravin Bakshi
Secretary to Government of Meghalaya
Power Department

SECRETARY
POWER DEPARTMENT
GOVT. OF MEGHALAYA

MEGHALAYA ENERGY CORPORATION LIMITED

By 
Arunkumar Kembhavi
Chairman and Managing Director
Chairman-cum- Managing Director
Meghalaya Energy Corporation Limited
Shillong