
LOAN NUMBER 4025-IND

PROJECT AGREEMENT

(Uttar Pradesh Power Distribution Network Rehabilitation Project – Tranche 1)

between

ASIAN DEVELOPMENT BANK

and

STATE OF UTTAR PRADESH

UTTAR PRADESH POWER CORPORATION LIMITED

DATED 18 December 2020

IND 51395

PROJECT AGREEMENT

PROJECT AGREEMENT dated 18 December 2020 between ASIAN DEVELOPMENT BANK ("ADB") on the one part, and STATE OF UTTAR PRADESH, acting by its Governor ("State") and UTTAR PRADESH POWER CORPORATION LIMITED ("UPPCL") 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 three hundred million Dollars (\$300,000,000) 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 UPPCL, and that the State acting through UPPCL agrees to undertake certain obligations towards ADB set forth herein; and

(B) the State and UPPCL, in consideration of ADB entering into the Loan Agreement with the Borrower, 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 and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) The State and UPPCL shall, and UPPCL shall cause the IAs to, 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 UPPCL shall, and UPPCL shall cause the IAs to, perform all obligations set forth in the Loan Agreement to the extent that they are applicable to the State, UPPCL and the IAs, respectively.

Section 2.02. The State and UPPCL shall, and UPPCL shall cause the IAs to, make available, promptly as needed, and on terms and conditions mutually acceptable

to ADB and the Borrower, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, the State and UPPCL, respectively, shall, and UPPCL shall cause the IAs to, 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 UPPCL shall, and UPPCL shall cause the IAs to, procure all items of expenditures to be financed out of the proceeds of the Loan 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 UPPCL shall, and UPPCL shall cause the IAs to, 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 UPPCL shall, and UPPCL shall cause the IAs to, 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. The State and/or UPPCL, as appropriate, shall, and UPPCL shall cause the IAs to, 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.

Section 2.06. The State and UPPCL shall, and UPPCL shall cause the IAs to, maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, 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 UPPCL shall, and UPPCL shall cause the IAs to, cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The State and UPPCL shall, and UPPCL shall cause the IAs to, 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 obligations under this Project Agreement or the Financing Arrangements, or the accomplishment of the purposes of the Loan.

(c) ADB, the State and UPPCL shall, and UPPCL shall cause the IAs to, 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, UPPCL, the IAs and the Loan.

Section 2.08. (a) In so far as it relates to the Project, the State and UPPCL shall, and UPPCL shall cause the IAs to, furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan 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 financial condition of UPPCL and the IAs; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the State, and/or acting through UPPCL and the IAs 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 UPPCL shall, and UPPCL shall cause the IAs to, 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 UPPCL of their respective obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) The State, as applicable, and UPPCL shall, and UPPCL shall cause the IAs to, (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 and the use of the Loan proceeds, 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 project financial statements referred to in subsection (a) hereinabove, UPPCL shall, and shall cause each IA to, (i) provide its respective annual entity level financial statements prepared in accordance with financing reporting standards acceptable to ADB; (ii) 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; and (iii) as part of each such audit, have the auditors' opinion(s) prepared on the financial statements. UPPCL shall also have the auditors of consolidated financial statements of UPPCL or the auditors of project financial statements referred to in subsection (a) hereinabove, prepare a separate audit

opinion on UPPCL's compliance with the financial covenants of the Loan Agreement with detailed calculations shown; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinions, 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 UPPCL shall, and UPPCL shall cause the IAs to, enable ADB, upon ADB's request, to discuss the financial statements for the Project, UPPCL, the IAs and their respective financial affairs where they relate to the Project with the auditors appointed by the State, UPPCL and the IAs, 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, UPPCL and the IAs, as applicable, unless the State, UPPCL and the IAs, as applicable, shall otherwise agree.

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

Section 2.11. (a) The State and UPPCL, respectively, shall, and UPPCL shall cause the IAs to, promptly as required, take all action within its powers to maintain its constitutional (in case of the State) and corporate (in case of UPPCL and the IAs) existence, 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 UPPCL, respectively, shall, and UPPCL shall cause the IAs to, 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 UPPCL, respectively, shall, and UPPCL shall cause the IAs to, 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 UPPCL, respectively, shall not, and UPPCL shall cause the IAs to not, sell, lease or otherwise dispose of any 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 UPPCL shall, and UPPCL shall cause the IAs to, apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan 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 respective 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 UPPCL shall, and UPPCL shall cause the IAs to, promptly notify ADB of any proposal to amend, suspend or repeal any provision of their 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 UPPCL shall, and UPPCL shall cause the IAs to, afford ADB an adequate opportunity to comment on such proposal in taking any affirmative 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 comes into force and effect. ADB shall promptly notify the State and UPPCL 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 shall terminate in accordance with its 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.

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:

(632) 8636-2444
(632) 8636-2338

For the State

Additional Chief Secretary, Energy
Government of Uttar Pradesh
Bapu Bhawan
Secretariat
Lucknow – 226001
Uttar Pradesh

Facsimile Number:

(00-91) 522-2235344

For UPPCL

Chairman
Uttar Pradesh Power Corporation Limited
Shakti Bhavan
14, Ashok Marg
Lucknow – 226001
Uttar Pradesh

Facsimile Number:

(00-91) 522-2287827

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 the Additional Chief Secretary, Energy; and (ii) UPPCL may be taken or executed by its Chairman, or in each case, by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The State and UPPCL 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

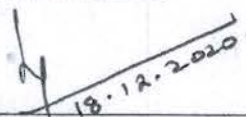
impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent 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.

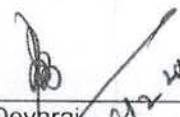
ASIAN DEVELOPMENT BANK

By 
Takeo Konishi
Country Director

STATE OF UTTAR PRADESH

By 
V K Singh
Special Secretary
Department of Energy

UTTAR PRADESH POWER CORPORATION LIMITED

By 
M Devaraj
Managing Director