

A.I.D. Project No. 391-0494
Dollar Appropriation No. 72-118/91037
Budget Plan Code: QES8-88-27391-KG13
Project Agreement No. 88-24

Local and Grant Agreements

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PROJECT GRANT AGREEMENT

BETWEEN

THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

AND THE

UNITED STATES OF AMERICA

FOR

PRIVATE SECTOR POWER

DATED: September 29, 1988

(CONFORMED COPY)

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PROJECT GRANT AGREEMENT FOR PRIVATE SECTOR POWER

Dated: September 29, 1988

Between

The President of the Islamic Republic of Pakistan (hereinafter referred to as the "Grantee")

and

The United States of America, acting through the Agency for International Development ("A.I.D").

Article 1: The Agreement

The purpose of this Agreement is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Grantee of the Project described below, and with respect to the financing of the Project by the Parties.

Article 2: The Project

SECTION 2.1. Definition of Project. The purpose of the Project is to mobilize private sector resources to finance, build, own and operate power plants. An arrangement for transfer of power plants can be made by mutual agreement. It is intended that the Project create a fund to serve as a catalyst for international donors, the private sector and the Government of Pakistan (GOP) and lenders on private world debt markets who would ultimately replace the donors.

The purpose of this Project will include, amongst other things, the financing of up to 30 percent of the cost of power plants producing approximately 800 Mw for Pakistan's grid; and the provision of technical assistance, training, and studies to strengthen Pakistan's capabilities to continue mobilizing private sector expertise and capital for additional power plants.

Annex 1, attached, amplifies the above definition of the Project. Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2 without formal amendment of this Agreement.

SECTION 2.2. Incremental Nature of Project.

(a) A.I.D.'s contribution to the Project will be provided in increments, the initial one being made available in accordance with Section 3.1 of this Agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to the mutual agreement of the Parties, at the time of each subsequent increment, to proceed.

(b) Within the overall Project Assistance Completion Date ("PACD") stated in this Agreement, A.I.D., based upon consultation with the Grantee, may specify in Project Implementation Letters appropriate time periods for the utilization of funds granted by A.I.D. under each individual increment of assistance.

Article 3: Financing

SECTION 3.1. The Grant. To assist the Grantee to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee under the terms of this Agreement not to exceed Nine Million United States ("U.S.") Dollars (\$9,000,000) ("Grant").

The Grant may be used to finance foreign exchange costs, as defined in Section 7.1 of this Agreement, and local currency costs, as defined in Section 7.2 of this Agreement, of goods and services required for the Project.

SECTION 3.2. Grantee Resources for the Project.

(a) The Grantee agrees to provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner.

SECTION 3.3. Project Assistance Completion Date (PACD).

(a) The PACD, which is September 30, 1998, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Grant for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 7.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Grantee, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4: Conditions Precedent

SECTION 4.1. Conditions Precedent to First Disbursement.

Except as A.I.D. may otherwise agree in writing, prior to any disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish or have furnished to A.I.D., in form and substance satisfactory to A.I.D.:

(a) a written opinion of Counsel acceptable to A.I.D that this Agreement has been duly authorized and/or ratified by, and executed on behalf of the Grantee, and that it constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms; and

(b) a written statement setting forth the names and titles of persons holding or acting in the Office of the Grantee and of any additional representatives, and representing that the named person or persons have the authority to act as the representative or representatives of the Grantee, together with a specimen signature of each such person certified as to its authenticity.

SECTION 4.2. Conditions Precedent to Disbursement for Component II.

Except as A.I.D. may otherwise agree in writing, prior to any disbursement for Component II of the Project, i.e., in support of the Private Sector Energy Development Fund, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish to A.I.D., in form and substance satisfactory to A.I.D.:

(a) Guidelines for the review and evaluation of private sector proposals by the GOP;

(b) Evidence of establishment and staffing of a Private Power Cell in the Ministry of Water and Power;

(c) Evidence of establishment and staffing of a Fund and the execution of an administration agreement between the Government of Pakistan and Fund (NDFC/PED); and

(d) Guidelines for the operation of the Fund, including guidelines for appraisal, approval and supervision of subproject loans by the Fund.

SECTION 4.3. Notification. When A.I.D. has determined that the conditions precedent specified in each of Sections 4.1 and 4.2 have been met, A.I.D. will promptly so notify the Grantee.

SECTION 4.4. Terminal Dates for Conditions Precedent.

(a) If all of the conditions specified in Section 4.1 have not been met within 90 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

(b) If all conditions specified in Section 4.2 have not been met within 240 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may cancel the then undisbursed balance of the Grant to the extent not irrevocably committed to third parties, and may terminate this Agreement by written notice to the Grantee.

Article 5: Covenants

SECTION 5.1. Project Evaluation. The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter:

(a) evaluation of progress towards attainment of the objectives of the Project;

(b) identification and evaluation of problem areas or constraints which may inhibit such attainment;

(c) preparation of reports and other information which permits the Parties to determine the Project's progress toward achievement of outputs and objectives.

(d) assessment of how such information may be used to help overcome such problems; and,

(e) evaluation, to the degree feasible, of the overall development impact of the Project.

SECTION 5.2. Adequate Resources For Participating Institutions

The Grantee shall provide adequate support during the entire life of the project to the various institutions which it is committed either to establish or to strengthen pursuant to this project.

SECTION 5.3 Availability of Rupee Financing Required For Private Sector Proposals.

The Grantee shall permit the raising of rupee funds in the capital market, or in the banking system in accordance with the normal rules and regulations established by the State Bank, for private sector proposals.

SECTION 5.4 Establishment of Fund as an Autonomous Finance Institution

The Grantee agrees to undertake or cause to be undertaken a study to assess the merit of establishing the Fund as an autonomous finance institution, and to review the recommendations of the study and to agree on a timetable for the implementation of the agreed recommendations.

SECTION 5.5 Compliance with Environmental Guidelines and Resettlement Requirements of the World Bank and USAID

The Grantee agrees to include provisions in all loans made by the Fund requiring compliance with environmental guidelines and resettlement requirements of the World Bank and USAID.

SECTION 5.6 Windfall Gains to Private Sector

The Grantee agrees, in the event a decision is made to establish the Fund as an autonomous entity, in the Private Sector, that no windfall gains will accrue to the ultimate owners.

SECTION 5.7 Loan Repayments

The Grantee agrees that loan repayments to the fund of interest and principal originally financed with A.I.D. project funds will be relent by the Fund for activities consistent with the objectives of the Private Sector Power Project.

Article 6: Special Condition - Cultivation of Opium Poppy and Processing of Opium into Heroin

The Government of Pakistan (GOP) agrees to undertake appropriate measures to prohibit the cultivation of opium poppy and/or the processing of opium into heroin or morphine base within any area benefiting from this Project. In the event that a determination is made that the cultivation of opium poppy and/or processing of opium into heroin is

occurring in an area programmed to benefit or benefiting from this Project, no assistance under this Project directly benefiting that area shall commence and, if commenced, such assistance shall be suspended until the prohibited activity is eliminated. If the prohibited activity found to exist is not fully eliminated within a specified period of time to be agreed upon by the United States Government and the GOP, all assistance under this Project directly benefiting that area may be terminated. If, prior to the Project Assistance Completion Date (PACD) established by A.I.D. for this Project, as it may be from time to time amended, it is determined that the prohibited activity is occurring in an area which has benefited from the Project, and the prohibited activity is not eliminated within a period of time to be agreed upon by the United States Government and the GOP, the GOP shall reimburse A.I.D. for all assistance that the GOP has received from A.I.D. under this Project, which has resulted in direct benefits to that village or area in which the prohibited activity is occurring.

Without limitation of other provisions applicable to termination and/or refund as set forth in this Project Agreement and Annexes thereto, if A.I.D. determines that A.I.D. is entitled to reimbursement under the provisions of this Article of the Agreement, A.I.D. may require the Grantee to refund the amount of any disbursements from the Grant for which there is an entitlement to reimbursement to A.I.D. in U.S. Dollars within 120 days after receipt of request therefor. Such refunds paid by the Grantee to A.I.D. shall be considered as a reduction in the amount of A.I.D.'s obligation under the Grant but may be made available for reuse under the Grant if so authorized by A.I.D. in writing.

Article 7: Procurement Source

SECTION 7.1. Foreign Exchange Costs. Except as A.I.D. may otherwise agree in writing, disbursements pursuant to Section 6.1 will be used exclusively as follows:

(a) to finance the costs of goods and services required for the Project having, with respect to goods, their source and origin, and with respect to services, their nationality in the United States (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services), except as provided in the Project Grant Standard Provisions Annex, Section C.1(b) with respect to marine insurance. ("Foreign Exchange Costs");

(b) to finance ocean transportation costs under the Grant only on vessels under flag registry of the United States.

SECTION 7.2. Local Currency Costs. Disbursements pursuant to Section 6.2 will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in Pakistan ("Local Currency Costs"). To the extent provided for under this Agreement, "Local Currency Costs" may also include the provision of local currency resources required for the Project.

Article 8: Disbursement

SECTION 8.1. Disbursement for Foreign Exchange Costs.

(a) In accord with requirements of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

(1) by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or services, or, (B) requests for A.I.D. to procure commodities or services in Grantee's behalf for the Project; or,

(2) by requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless Grantee instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Grant.

SECTION 8.2. Disbursement for Local Currency Costs.

(a) In accord with requirements of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for Local Currency Costs required for the Project in accordance with terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs;

(b) The local currency needed for such disbursements may be obtained:

(1) by acquisition by A.I.D. with U.S. dollars by purchase or from local currency already owned by the U.S. Government; or,

(2) by A.I.D., (A) requesting the Grantee to make available the local currency for such costs, and (B) thereafter making available to the Grantee, through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Grantee or its designee, an amount of U.S. dollars equivalent to the amount of local currency made available by

the Grantee, which dollars will be utilized for procurement from the United States under appropriate procedures described in Project Implementation Letters.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b) (1) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency, and in the case of subsection (b) (2) above, an amount calculated at the rate of exchange specified in the applicable Special Letter of Credit Implementation Memorandum hereunder as of the date of the opening or amendment of the applicable Special Letter of Credit.

SECTION 8.3. Other Forms of Disbursement. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 8.4. Rate of Exchange. Except as may be more specifically provided under Section 7.2, if funds provided under the Grant are introduced into Pakistan by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into currency of Pakistan at the highest rate of exchange which, at the time the conversion is made, is not unlawful in Pakistan.

Article 9: Miscellaneous

SECTION 9.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following addresses:

To the Grantee:

Mail Address: Economic Affairs Division
Ministry of Finance and Economic Affairs
Government of Pakistan
Islamabad (Pakistan)

Alternative address for cables: ECONOMIC ISLAMABAD

To A.I.D.:

Mail Address: USAID Mission to Pakistan
P.O. Box 1028
Ramna 5
Islamabad (Pakistan)

Alternative address for cables: USAIDPAK ISLAMABAD
for telexes: TELEX 54270 USAID PK

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice. The Grantee, in addition, will provide the USAID Mission/Pakistan with a copy of each communication sent to A.I.D.

SECTION 9.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Secretary, the Additional Secretary, the Joint Secretary and the Deputy Secretary for Economic Affairs Division and A.I.D. will be represented by the individual holding or acting in the Office of the Director, USAID Mission to Pakistan, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex 1. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 9.3. Standard Provisions Annex. A "Project Grant Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

Project Description

I. Project Goal and Purpose

The project goal is to promote socio-economic development in Pakistan through increased electricity generation. The project purpose is to mobilize private sector resources to finance, build, own and operate power plants. An arrangement for transfer can be made by mutual agreement.

II. Project Components

The AID Private Sector Power project is expected to form part of a multi-donor project, under World Bank sponsorship, entitled "Private Sector Energy Development Project". However, the AID PSP initiative has been designed to stand alone and operate in the absence of any other donor contributions.

The AID project has three components. The first is a four year institutional development effort that will require about \$20.6 million. The project will finance technical assistance, training and commodities to strengthen the staff of the institutions responsible for (1) the GOP's review and approval of private sector proposals and (2) operation of the Energy Development Fund.

The second component will consist of a \$125 million contribution to an Energy Development Fund to be administered by the National Development Finance Corporation (NDFC). The multi-donor project anticipates additional contributions from at least the World Bank, Japan, ODA, Italy and USAID. Procurement procedures for this component will be international competitive bidding, or such other procedures as may be agreed to by the GOP and A.I.D.

The Fund will cover up to 30% of the total cost of private sector subprojects. The Fund will lend to sub-borrowers at commercial interest rates, currently 14%, or at any other interest rate which may be agreed to in a Project Implementation Letter. Repayment will be for up to 23 years with up to eight years' grace. Reflows will be used to perpetuate the Fund beyond the life of the project and allow for continuing loans for private sector power.

The third component sets aside up to \$18.5 million for (1) financing special studies in support of the development of private sector power generation in Pakistan; (2) financial support for US and Pakistani firms submitting proposals to supply electricity to the GOP; and (3) project evaluations and audits. This amount should be used for funding support to U.S. and Pakistani engineering firms for preparing detailed feasibility reports for hydro and thermal projects which could later be tendered by the Private Power Cell of the Ministry of Water and Power for private sector power generation.

III. Implementation Plan

A. Implementation Schedule

The project will be implemented over ten years, beginning with the Project Agreement signing, estimated to be in September 1988, and ending on the PACD o/a of September 30, 1998.

For the institution building component, a Resident Advisory Team will be in place for four years; recruitment will begin with Project Agreement signing. Commodities will be ordered at the same time. If requested by the GOP, AID will consider financing the salaries of the relevant Pakistani staff of the Ministries of Water and Power and Petroleum and Natural Resources, and WAPDA, for a period of up to two years after which these salaries will become the responsibility of the GOP. This will, however, be subject to the following conditions:

- the GOP staff shall receive the salary checks from the GOP treasury;
- USAID will make arrangements to provide amounts equivalent to the salaries of the GOP staff to the GOP in advance;
- the salaries of the GOP staff shall be at par with similar positions in the GOP;

Training will take place over a ten year period.

After signature of the Project Agreement, a Project Implementation Letter will be prepared transmitting the terms and conditions for use of AID grant contributions to the Energy Development Fund. The Ministry of Finance will establish a line of credit through the Pakistan State Bank in the account of the NDFC for the first tranche of funds. This is expected to occur in March 1989 in the amount of \$50 million. Subsequent tranches will be made on the basis of the rate of subproject drawdowns.

B. Administrative Arrangements

1. USAID Responsibilities

The project will be managed by the Mission's office of Energy and Environment. USAID will have the following responsibilities:

- Negotiation with GOP on all matters related to the project including definition and review of financial and administrative arrangements;
- Coordination with other donor contributors to the Energy Fund; host or attend donor meetings as required;

- Initiation of periodic disbursements of funds for project implementation;
- Overall monitoring of project and subproject progress;
- With GOP, approval of Special Studies under Component 3;
- Procurement of local and expatriate technical assistance and contract personnel and management of these contracts, under advice of and in consultation with GOP to insure, in alia, maximum use of Pakistani consulting resources;
- Payment of certain staff salaries for up to two years, if specifically requested, and if pursuant to conditions specified in Section A above;
- Off-shore procurement of commodities for Component 1;
- Participation in project evaluations;
- Post audits of the Private Energy Division of the NDFC and subprojects, as needed.

2. GOP Responsibilities

The following summarizes the responsibilities of the GOP in implementing the project:

- technical review and approval of subprojects;
- monitoring of implementation of subprojects;
- administration of the Fund;
- approval of fund disbursements.

The responsibilities, modalities, and systems of administration will be determined in detail by the appropriate ministries and agencies of the GOP after in-depth study and consultation with AID giving due recognition to the desire of all parties to adopt a uniform system which will promote expeditious execution of the project.

IV. Budget

The budget for the project is summarized in the table on the following page.

SUMMARY OF PROJECT COSTS BY EXPENSE CATEGORY AND SOURCE OF FUNDING 1/
 (in 000s)

ILLUSTRATIVE

Annex 1
 Page 4

| EXPENSE CATEGORY | Cumulative FY 1988 | | Life of Project Funding 2/ | |
|---------------------------|----------------------|-----------------|----------------------------|-----------------|
| | AID Grant (in \$) | GOP (in Rs.) | AID Grant (in \$) | GOP (in Rs.) |
| Technical Assistance 3/ | 4,223 | - | 14,110 | - |
| Training | 130 | - | 885 | - |
| Commodities | 695 | - | 2,117 | 1,336 |
| Other Costs | 3,136 | - | 145,407 | 12,235 |
| Total | 8,184 | - | 162,519 | 13,571 |
| Contingency and Inflation | 816 | - | 7,481 | - |
| Total | 9,000 | - | 170,000 | 13,571 |

- 1/ Either party may unilaterally, with written notice to the other, adjust line items in this budget to a maximum of 15% per line item, provided, however, that the total obligated amount as shown in the budget is not exceed.
- 2/ Subject to the availability of funds to AID for this purpose and to mutual agreement of both parties to proceed at the time of each subsequent increment.
- 3/ Expatriate and local.