

AGREEMENT

among

ISLAMIC REPUBLIC OF AFGHANISTAN

KYRGYZ REPUBLIC

ISLAMIC REPUBLIC OF PAKISTAN

and

REPUBLIC OF TAJIKISTAN

for:

THE DEVELOPMENT OF

THE CASA 1000 POWER TRANSMISSION PROJECT

and:

THE FURTHER DEVELOPMENT OF

A CENTRAL ASIA-SOUTH ASIA

REGIONAL ELECTRICITY MARKET

AGREEMENT

This agreement (this “*Agreement*”) — for the Development of the CASA 1000 Power Transmission Project (the “*Project*”) and the further Development of a Central Asia-South Asia Regional Electricity Market (“*CASAREM*”) — is entered into by the following Governments:

The Islamic Republic of Afghanistan (“*Afghanistan*”);
The Kyrgyz Republic (“*Kyrgyz Republic*”);
The Islamic Republic of Pakistan (“*Pakistan*”); and
The Republic of Tajikistan (“*Tajikistan*”).

Preamble

WHEREAS the Parties, having met in Islamabad in May 2006, Dushanbe in October 2006, and Kabul in November 2007, together with multilateral financial institutions, bilateral agencies, and private investors, have resolved to engage, collectively and individually, in activities necessary to enable the overall development of CASAREM and, in particular, the CASA 1000 Project; and

WHEREAS the Parties in Dushanbe signed a Memorandum of Understanding on October 28, 2006 (“*Dushanbe MOU*”); and

WHEREAS the Parties in Kabul signed a Memorandum of Understanding on November 16, 2007 (“*Kabul MOU*”); and

WHEREAS the Parties in Kabul established an Inter-Governmental Council (“*IGC*”) and Secretariat pursuant to the Kabul MOU; and

WHEREAS the Parties intend that the CASA 1000 Project be realized and that the further development of CASAREM be facilitated;

NOW, THEREFORE, the Parties agree as follows:

Article 1 - Reaffirmation of Dushanbe MOU and Kabul MOU Principles

1.1 The Parties reaffirm that:

- 1.1.1** the CASA 1000 Project will be developed on the basis that it must be economically viable and sustainable for all parties;
- 1.1.2** the Project initially will include exports of electricity from Tajikistan and the Kyrgyz Republic to Afghanistan and Pakistan;

- 1.1.3 a Project Entity will be established to undertake such responsibilities, with regard to some or all of the Project Facilities, as may be required pursuant to a Concession Agreement and/or any other applicable agreement(s);
 - 1.1.4 there is a preference for significant investment from the private sector but, in the absence of the former, agreement exists to proceed on the basis of an entirely public sector financing;
 - 1.1.5 the Project will be financed on the basis of the cost of the Project Facilities located in each Country;
 - 1.1.6 IFIs and donors will be requested to finance the Project Facilities and to focus on mitigating the financial burden on Afghanistan; and
 - 1.1.7 the Project's transmission system will operate on an open access basis, and transmission pricing will follow international norms, including capacity (comprising, among other things, transit fees) and variable components.
- 1.2 The IGC's responsibilities shall include, *inter alia*:
- 1.2.1 taking decisions as may be necessary regarding the realization and subsequent operation of the Project;
 - 1.2.2 initiating and/or undertaking such activities as may be necessary regarding the realization and subsequent operation of the Project;
 - 1.2.3 establishing and implementing policies and procedures regarding, *inter alia*, such matters as:
 - i. the ongoing implementation of this Agreement;
 - ii. the IGC's decision-making process, including with respect to the development and approval of the IGC Secretariat's budget; *provided, however*, that, until such time as procedures for decision-making are adopted, all decisions of the IGC (including decisions with respect to adopting such procedures) shall require the unanimous approval of the Governments; *provided, further*, that the decision-making procedures that are adopted need not require unanimity;
 - iii. the further development of CASAREM, including rules for the accession of new countries; and
 - iv. any other matters regarding the Project or the development of CASAREM that may be necessary or useful.

- 1.3 The IGC Secretariat and the Executive Director of the IGC will be located in Kabul, Afghanistan.
-

Article 2 Definitions and Interpretation

2.1 Definitions.

The following terms shall have the following meanings when used in this Agreement:

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with that Person. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of a majority or controlling interest in the voting securities, equity or other ownership interest in a Person, by law or by agreement between Persons conferring such power or voting rights.

“Agreement” means, as provided in the heading hereof, this Inter-Governmental Agreement, including any Annexes, Appendices or Schedules attached hereto, as it may be amended, supplemented or otherwise modified from time to time.

“CASAREM” means the regional market for the trading of electricity among Afghanistan, Kyrgyz Republic, Pakistan, Tajikistan and other potential trading partners in Central Asia and South Asia, and the associated institutional, financial, and legal arrangements to facilitate that trade.

“Concession Agreement” means an agreement entered into by the Project Entity and one or more Governments in which the mutual rights and responsibilities of the parties are delineated regarding, *inter alia*, the construction and long-term operation of the Project Facilities.

“Country” means each of Afghanistan, Kyrgyz Republic, Pakistan, Tajikistan and any other country whose government becomes a Party.

“Dushanbe MOU” has the meaning provided in the Recitals hereto.

“Government” means the government of Afghanistan, Kyrgyz Republic, Pakistan, Tajikistan, or any other country whose government becomes a party to this Agreement.

“Government Authority” means any organ of a Government at any level of authority that exercises any legislative, executive, judicial or any other state functions, including, without limitation, all central, regional, municipal, local and judicial organs or any constituent element of such organs having the power to govern, adjudicate, regulate, levy or collect

taxes, duties or other charges, grant licenses or permits or approvals or otherwise affect the rights and obligations of any Project Participant, or its successors or permitted assignees, in respect of Project Activities.

“Government Entity” means any ministry, agency or instrumentality of a Government and any juridical Person in which, directly or indirectly, a Government has a controlling equity or ownership interest or similar economic interest or which the Government directly or indirectly controls. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of a majority or controlling interest in the voting securities, equity or other ownership interest in a Person, by law, or by agreement between Persons conferring such power or voting rights.

“IGC” means, as provided in the Preamble hereto, the Inter-Governmental Council established by the Parties pursuant to the Kabul MOU, including the IGC Secretariat.

“IFIs” means international financial institutions including the Asian Development Bank, the Islamic Development Bank, and the World Bank Group, and other multilateral and bilateral institutions.

“Incompatible Obligation” means, with respect to any Party, any domestic or international law, regulation, or agreement, that materially conflicts with, violates, impairs, interferes with, limits, abridges, or otherwise adversely affects the ability of that Party to implement this Agreement or to enter into or implement any other agreement in respect of the Project – including a Concession Agreement regarding the Project Facilities to which such Party is, or may become, a party – that is not resolved in the implementing documentation for the Project.

“Insurer” means any insurance company or other Person providing insurance coverage for all or a portion of the risks in regard to the Project, Project Activities, or a Project Participant.

“Kabul MOU” has the meaning provided in the Recitals hereto.

“Kabul MOU Resolution” means the “Resolution of Participating Governments in Support of the Development of the CASAREM and the CASA-1000 Project” annexed to, and adopted by the Parties pursuant to, the Kabul MOU.

“Land Rights” means, with respect to the territory of each Country, such rights as are required to carry out Project Activities, including rights of examination, testing, evaluation, and access for construction, operation, and maintenance of Project Facilities.

“Lender” means any financial institution providing any indebtedness, loan, financial accommodation, extension of credit or other financing to the Project Entity or to any Project Investor or any of its Affiliates in connection with the Project (including any refinancing thereof), and any successor or permitted assignee of any of them.

“Open Access” means that any available (non-contracted) transmission capacity is offered to all Persons on an equal basis, subject to open access implementation rules to be developed by the IGC and agreed among the Parties.

“Party” means any Government that is or becomes a party to this Agreement.

“Person” means any natural person or juridical entity, including any company, corporation, limited liability company, partnership, limited partnership, enterprise, joint venture, unincorporated joint venture, association, trust or other juridical entity duly organized under the laws of any country or any subdivision thereof, whether or not that country is a Party to this Agreement.

“Project” means, as provided in the heading hereof, the CASA 1000 Power Transmission Project consisting of the development, financing, construction and operation of the Project Facilities to enable the trading of electricity among the Parties, and the associated institutional, financial, and legal arrangements to facilitate that trade.

“Project Activities” means the activities conducted by the Project Participants in connection with the Project.

“Project Entity” means the special purpose entity (being a company, corporation, limited liability company, partnership, limited partnership, enterprise, joint venture, unincorporated joint venture, association, trust or other juridical entity) that has been duly established under the laws of any country or any subdivision thereof to undertake Project Activities in fulfillment of obligations under the Concession Agreement.

“Project Facilities” means such incremental electricity transmission facilities as may be required for the purpose of power exports and imports among the Countries, including all equipment and installations necessary for the operation of the Project.

“Project Investor” means any Person holding an equity investment in the Project Entity who is not a Government, Government Entity, or Government Authority.

“Project Participant” means any Project Investor, any Affiliate thereof, any operator, any power seller or purchaser using the Project Facilities, and any Lender or Insurer.

2.2 Interpretation

In this Agreement:

- i. the headings are for convenience only and shall not be considered in construing this Agreement;
- ii. the singular includes the plural and vice versa;
- iii. references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part; and
- iv. the words “include”, “includes”, and “including” are not limiting and shall be construed as meaning “without limitation.”

Article 3 Entry into Force; Term of Agreement

- 3.1** Each Party shall take such actions as may be necessary according to its applicable laws to ensure the effectiveness and enforceability of this Agreement as soon as practicable and shall endeavor to complete all such actions no later than three (3) months after the date of this Agreement.
- 3.2** The rights and obligations under this Agreement shall enter into force upon:
 - i. the signing of this Agreement by each of the Parties;
 - ii. the exchange of executed originals, in English and Russian, among the Parties; and
 - iii. the completion by each Party of the actions described in Section 3.1, as evidenced by a notice to that effect delivered by the appropriate authority of each Party to all other Parties.
- 3.3** This Agreement shall remain valid at least so long as any Concession Agreement, including any extensions thereof, remains in effect.

Article 4 No Conflict with this Agreement

- 4.1** Each Party confirms and warrants that it is not a party to or subject to any Incompatible Obligation.
- 4.2** No Party shall enact or enter into any Incompatible Obligation subsequent to signing this Agreement.

Article 5 Performance and Observance of this Agreement and Related Agreements

- 5.1 Each Party undertakes to fulfill and perform each of its obligations under this Agreement and all other agreements related to the Project to which it is, or becomes, a party.
- 5.2 Each Party agrees to provide, or ensure that the relevant Government Authority provides, all licenses, permits, rights-of-way, legal opinions and any approvals necessary for the Project in a timely manner.
- 5.3 Each Party shall fully support the implementation and execution of the Project Activities contemplated by this Agreement and shall ensure that its Government and/or Government Entities take all actions reasonably necessary for such implementation and execution.

Article 6 Cooperation Among the Parties

- 6.1 The Parties shall cooperate to establish and maintain necessary and favorable conditions for the implementation of the Project Activities.
- 6.2 The Parties shall cooperate for purposes of establishing:
 - 6.2.1 consistent technical, safety, and environmental standards as regards the construction, operation and maintenance of the Project;
 - 6.2.2 a harmonized administration of policies and regulations that would affect the Project;
 - 6.2.3 Open Access principles for the operation of the Project Facilities;
 - 6.2.4 a cooperative approach to security, where such may be necessary, for the Project Facilities and for the Persons responsible for Project preparation, construction, operation, and maintenance; and
 - 6.2.5 a cooperative approach to dealing with threats to or interruptions of Project Activities.
- 6.3 The Parties agree to maintain the IGC, or other suitable intergovernmental organization, for the duration of the Project Activities.
- 6.4 The Parties agree to amend or modify the responsibilities of the IGC (including the Kabul MOU Resolution) as necessary for the efficient and timely implementation of Project Activities or for the further development of CASAREM.

- 6.5** In order to enable and support Project Activities, each Party undertakes to meet in good faith at all reasonable times and places, and as often as reasonably necessary, for the purposes of:
- 6.5.1** enabling the IGC to fulfill its responsibilities;
 - 6.5.2** negotiating and entering into such other multilateral or bilateral agreements as may be appropriate between and among the Governments or Government Entities, or with other governments, international institutions, authorities or other Persons;
 - 6.5.3** consulting with, and providing information to, Project Investors, Lenders, IFIs, or Insurers; and
 - 6.5.4** addressing any other matters, as they may arise, that may significantly affect the ability of the Project Entity or any Party to carry out Project Activities.
- 6.6** Each Party shall cooperate in supporting all financing efforts by Project Investors within the framework of Project Activities, including, upon the reasonable request of any Project Investor, confirming or repeating in writing to any financial institution – including, but not limited to, multilateral lending agencies, export credit agencies, or bilateral development or investment-promotion agencies – any undertaking contained in any agreement related to the Project to which it is a Party.

Article 7 Rights to Land; Security

- 7.1** Upon agreement by a Party as to the technical details of the Project Facilities in its Country, such Party shall grant and maintain such Land Rights in accord with its applicable laws as may be reasonably necessary for the conduct of Project Activities under fair, transparent, legally enforceable and clear commercial terms and conditions.
- 7.2** Pursuant to the terms and conditions agreed by the Parties in the implementing documentation for the Project, each Party shall ensure such security as may be reasonably required to protect the Project Facilities and Project Activities and the persons responsible for Project preparation, construction, operation, and maintenance.

Article 8 Title to Electricity

- 8.1** No Party shall impose any condition with respect to the title to, or ownership of, the electricity carried by the Project Facilities that is inconsistent with the commercial agreements related to the Project.

Article 9 Non-Interruption of Project Activities

- 9.1 If any event occurs or any situation arises that reasonably appears to the Project Entity, a Project Investor or any Party as threatening to interrupt, curtail or otherwise impede Project Activities (a “**threat**” for purposes of this Article 9 of this Agreement), the Government of the Country in which the relevant threat has arisen shall use all lawful and reasonable means to eliminate or mitigate the threat.
- 9.2 If any event occurs or any situation arises that interrupts, curtails, or otherwise impedes Project Activities (an “**interruption**” for purposes of this Article 9), the Government of the territory in which the interruption has arisen shall immediately give notice to the other Parties and relevant Project Investors of such interruption, as well as reasonably full details of the reasons therefore, and shall use all lawful and reasonable means to eliminate or mitigate the reasons for the interruption so as to restore Project Activities at the earliest opportunity.
- 9.3 Subject to Section 9.4, and except as will be provided in the commercial agreements related to the Project, no Party shall interrupt, curtail, delay or otherwise impede the Project Activities in its territory.
- 9.4 Where there are reasonable grounds to believe that the continuation of the Project Activities in a Party’s territory creates or would create an unreasonable danger or hazard to public health and safety, property, or the environment, the Party may interrupt the Project Activities in its territory, but only to the extent and for the length of time necessary to remove such danger or hazard.

Article 10 Environmental and Safety Standards

- 10.1 Each Party shall:
- i. carry out Project Activities in a manner consistent with its applicable laws and Asian Development Bank and/or World Bank Group safeguard policies, which ever is more stringent, and with standards at least as stringent as the World Bank Group Environmental, Health, and Safety Standards and Guidelines;
 - ii. ensure its compliance with such standards and guidelines; and
 - iii. consult and cooperate with the other Parties as often as necessary so as to comply with clauses 10.1(i) and 10.1(ii).

Article 11 Taxes

- 11.1 The Parties agree to cooperate to ensure that there is a transparent, non-discriminatory, and stable tax regime applicable to the taxation of Project Investors, contractors, suppliers, and other Persons in connection with the development, financing, construction and operation of the Project.

Article 12 Non-Discrimination; National Treatment

- 12.1 Each Party shall accord all goods, works, technology and services associated, directly or indirectly, with any Project Activities treatment no less favorable than would be accorded to like goods, works, technology and services of like origin that are not associated with Project Activities.
- 12.2 No Party shall, in its territory (or any part thereof), subject any Project Participant to treatment less favorable than that which it accords to its own nationals or Entities incorporated or constituted under the laws then or subsequently in force.

Article 13 Dispute Resolution

- 13.1 Any dispute, controversy or claim amongst the Parties arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be brought, first, to the IGC for resolution.
- 13.2 The Parties, through the IGC, shall establish rules and procedures for the purposes of resolving disputes, controversies or claims pursuant to Section 13.1.
- 13.3 If the IGC is unable to resolve such a dispute, controversy or claim within sixty (60) days following referral to it, any Party may request that the dispute proceed to final and binding arbitration before an arbitral forum of international standing, and pursuant to such rules, as the Parties may agree.
- 13.4 In absence of an agreement by the Parties to the contrary, the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of this Agreement, shall govern any arbitration brought pursuant to Section 13.3.

Article 14 Accession

- 14.1 From the date this Agreement enters into force, this Agreement shall be open for accession by the governments of other countries, provided that all Parties to this Agreement consent to such accession. No acceding government may make any changes or reservations to this Agreement without the consent of all Governments then party to this Agreement.

Article 15 Amendment

15.1 An amendment or modification of this Agreement suggested by any Party shall be effective and binding on all Parties only if made in writing and signed by a duly authorized representative of each of the Parties.

Article 16 Withdrawal

16.1 A Party may withdraw from this Agreement only upon twelve months' prior written notice to all other Parties of its intention to withdraw.

Article 17 Entire Agreement

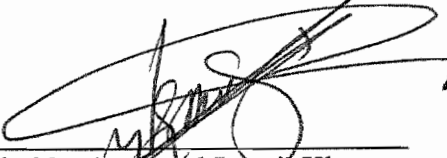
17.1 This Agreement supersedes and nullifies any prior agreement among the Parties with respect to the Project, to the extent that such prior agreement is inconsistent with this Agreement.

Article 18 Language


18.1 This Agreement is made in the Russian and English languages. In case of any discrepancy in the texts, or conflict in interpretation, the English text shall prevail.

In witness whereof, this Agreement is signed at Islamabad, Pakistan on 4th August 2008/1st Shaban 1429 A.H.

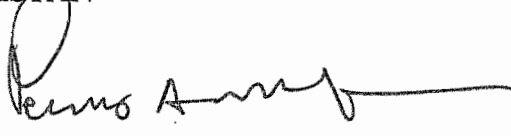
ON BEHALF OF THE GOVERNMENT
OF THE ISLAMIC REPUBLIC OF
AFGHANISTAN

By: 
Name: Alhaj Mohammed Ismail Khan
Title: Minister of Energy and Water


ON BEHALF OF THE GOVERNMENT
OF THE KYRGYZ REPUBLIC

By: 
Name: Saparbek Balkibekov
Title: Minister of Industry, Energy and
Fuel Resources

ON BEHALF OF THE GOVERNMENT
OF THE ISLAMIC REPUBLIC OF
PAKISTAN

By: 
Name: Raja Pervez Ashraf
Title: Minister for Water and Power

ON BEHALF OF THE GOVERNMENT
OF THE REPUBLIC OF TAJIKISTAN

By: 
Name: Farrukh Hamraliev
Title: Chairman, State Committee for
Investments and State Property
Management