
GRANT NUMBER 0376-TAJ (SF)

GRANT AGREEMENT
(Special Operations)

(Golovnaya 240 MW Hydropower Plant Rehabilitation Project)

between

REPUBLIC OF TAJIKISTAN

and

ASIAN DEVELOPMENT BANK

DATED *23 December 2013*

TAJ 46418

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 23 December 2013 between REPUBLIC OF TAJIKISTAN ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) the Project will be carried out by the Open Joint Stock Company Barki Tojik ("Barki Tojik"), and for this purpose the Recipient will make available to Barki Tojik the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and the Barki Tojik;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Grant Agreement, the several terms defined in the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Grant Agreement have the following meanings:

(a) "Barki Tojik" means Open Joint Stock Company Barki Tojik, or any successor(s) thereto acceptable to ADB;

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) "Consulting Services" means the services to be financed out of the proceeds of the Grant as described in subparagraph 2(b) of Schedule 1 to this Grant Agreement;

(d) "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(e) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(f) “FY” means the fiscal year of Barki Tojik and/or the Recipient, as the context may require, commencing 1 January and ending 31 December;

(g) “IEE” means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;

(h) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(i) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(j) “MW” means megawatt;

(k) “PAM” means the project administration manual for the Project dated 11 October 2013 and agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(l) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(m) “Procurement Plan” means the procurement plan for the Project dated 11 October 2013 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(n) “Project Executing Agency” for the purposes of, and within the meaning of, the Grant Regulations means Barki Tojik, which is responsible for the carrying out of the Project;

(o) “Project facilities” means the equipment and facilities to be installed, constructed or rehabilitated under the Project;

(p) “Somoni” means the currency of the Recipient;

(q) “Safeguards Monitoring Report” means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventative actions;

(r) “SPS” means ADB’s Safeguard Policy Statement (2009);

(s) “Subsidiary Loan Agreement” means the agreement to be entered into between the Recipient and Barki Tojik for purposes of relending the proceeds of the Grant as specified in Section 3.01(a) of this Grant Agreement; and

(t) “Works” means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related

services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of one hundred thirty-six million Dollars (\$136,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. (a) The Recipient shall relend the entire proceeds of the Grant to Barki Tojik under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise agree, the terms for relending the proceeds of the Grant shall include interest at the rate of 5% per annum (inclusive of foreign exchange risk) and a repayment period of 25 years including a grace period of 7 years.

(b) The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the Grant to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Grant Account in respect of Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

- (b) Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 January 2021 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement and the Project Agreement.

Section 4.02. The Recipient shall enable ADB's representatives to inspect the Project, the Works, and any relevant records and documents.

Section 4.03. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

Section 4.04. The Recipient shall take all actions which shall be necessary on its part to enable Barki Tojik to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Recipient shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations:

(a) The Recipient or Barki Tojik shall have failed to perform any of their respective obligations under the Subsidiary Loan Agreement, or the Subsidiary Loan

Agreement or any provision thereof shall have been transferred, assigned, amended, suspended, abrogated or waived without the prior approval of ADB; and

(b) Barki Tojik's organizational structure shall have been significantly altered in such a manner that in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities.

ARTICLE VI

Effectiveness

Section 6.01. A date 60 days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. The Recipient hereby designates Barki Tojik as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.06 of this Grant Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Grant Regulations.

Section 7.02. Any action taken or any agreement entered into by Barki Tojik pursuant to the authority conferred under Section 7.01 of this Grant Agreement shall be fully binding on the Recipient and shall have the same force and effect as if taken by the Recipient.

Section 7.03. The authority conferred on Barki Tojik under Section 7.01 of this Grant Agreement may be revoked or modified by agreement between the Recipient and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance
3, Akademikov Rajabovikh Avenue
734025 Dushanbe City, Tajikistan

Facsimile Numbers:

+992 (372) 213 329
+992 (372) 216 237.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2426.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant 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.

REPUBLIC OF TAJIKISTAN

By  _____
A.K. KURBONOV
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By  _____
C.C. YU
Country Director
Tajikistan Resident Mission

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to increase the operational efficiency of the Golovnaya Hydropower Plant.
2. The Project shall comprise the following activities:
 - (a) (i) rehabilitation of the electric power generation equipment of the Golovnaya Hydropower Plant (HPP) to increase its installed generation capacity from 240 MW to 252 MW and (ii) replacement of electric equipment and control systems for 220/110/10 kV switchyards of the Golovnaya HPP; and
 - (b) support for project implementation, including supervision, procurement, project monitoring and evaluation.
3. The Project is expected to be completed by 31 July 2020.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

Basis for Withdrawal from the Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Conditions for Withdrawals from Grant Account

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account until:

(a) the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, has been duly authorized or ratified by, and executed and delivered on behalf of, the Recipient (or its authorized government entity) and Barki Tojik, and is legally binding upon the parties thereto in accordance with its terms; and

(b) an appropriate legislation has been duly enacted to provide effective and enforceable exemption from taxes, duties and similar mandatory payments that accrue on the Project expenditures within the Recipient's territory or to allocate budgetary funds to Barki Tojik or appropriate government entity in an amount(s) sufficient to bear the cost of such taxes, duties or similar mandatory payments that accrue on the Project expenditures.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Golovnaya 240 MW Hydropower Plant Rehabilitation Project)			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Grant Account
1	Rehabilitation Works (Turnkey)	101,300,000	100 percent of total expenditure claimed*
2	Consulting Services	8,700,000	100 percent of total expenditure claimed*
3	Unallocated	26,000,000	
	Total	136,000,000	

* Exclusive of taxes and duties imposed within the territory of the Recipient.

SCHEDULE 3

Procurement of Works and Consulting Services

General

1. The procurement of Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Conditions for Award of Contract

5. The Recipient shall not award any Works contract which involves environmental impacts until:
 - (a) the IEE has been approved by the appropriate authority of the Recipient; and
 - (b) the Recipient has incorporated relevant provisions from the EMP into the Works contract.

Consulting Services

6. Except as ADB may otherwise agree, the Recipient shall apply quality-and cost-based selection for selecting and engaging Consulting Services.

Industrial or Intellectual Property Rights

7.
 - (a) The Recipient shall ensure that all Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.
 - (b) The Recipient shall ensure that all contracts for the procurement of Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

8. The Recipient shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

9. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

10. In the case of a contract for Works, which is subject to ADB's prior review, the Recipient shall seek ADB's prior approval of any modification or waiver of the terms and conditions of the contract, including:

(a) granting an extension of the stipulated time for completion of a contract for a period of 1 month or more, or which is likely to require an extension of the Grant Closing Date, and

(b) increasing in aggregate the original price by more than 5% (for the avoidance of doubt, such increase shall take into account any previous change under such contract).

11. In the case of a contract for Works, which is subject to ADB's post review, ADB shall review the required contract modification or waiver and respond to the Recipient as soon as practicable, but not later than 1 month after the receipt of the required document.

12. The Recipient shall provide to ADB copies of all time extensions, modifications or waivers to the contracts (including change orders) within 1 month following amendment of the contract.

SCHEDULE 4

Execution of Project; Financial Matters

Implementation Arrangements

1. The Recipient and Barki Tojik shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

Counterpart Funds

2. The Recipient shall ensure the availability and timely release of counterpart funding necessary for the timely implementation of the Project. As part of its counterpart funding commitment, the Recipient shall further ensure that no taxes, duties or similar mandatory payments are levied on the Project expenditures within its territory or that it allocates necessary amount of budgetary funds to Barki Tojik or appropriate government entity to bear the cost of such taxes, duties or similar mandatory payments that accrue on the Project expenditures.

Construction Quality

3. The Recipient shall cause Barki Tojik to ensure that the Project is carried out in accordance with the applicable design and technical specifications in accordance with national standards and satisfactory to ADB; and that the construction supervision, quality control, and contract management are in accordance with internationally accepted standards and practices.

Operational Covenants

4. The Recipient shall continue provision of asset replacement and system expansion in the power sector and to support Barki Tojik with respect to commercial, administrative and operational activities.

5. The Recipient shall ensure the availability of qualified and experienced staff to undertake the effective implementation and operation of the Project facilities.

6. The Recipient shall ensure that ADB is consulted on the key power sector policy and restructuring reforms including the tariff policy, and of the implementation progress of Barki Tojik's restructuring program.

7. The Recipient shall undertake all necessary measures to ensure that: (a) tariffs are increased by 25% in 2014, by 20% in 2015, by 15% in 2016, and, thereafter, will be adequately adjusted as necessary to enable Barki Tojik to recover the service costs including inflation and to comply with its financial covenants; and (b) public awareness programs are conducted to educate the public on the need for a rational electricity tariff scheme and the importance of energy conservation. The Recipient shall cause Barki Tojik to apply for the power tariff adjustment in a timely manner.

8. Without limiting the generality of paragraph 7 above, on or before 1 January 2017, the Recipient shall develop and introduce a new tariff methodology that eliminates cross customer subsidies.

9. The Recipient shall cause Barki Tojik to ensure the operation and maintenance of the power generation, transmission and distribution infrastructure in accordance with the technical standards and rules.

10. On or before 31 December 2013, the Recipient and Barki Tojik shall approve a detailed restructuring plan with clear milestones based on the recommendations developed by the program described in subparagraph 3(f) of Schedule 1 to the Grant Agreement for Grant Number 0213. The Recipient and Barki Tojik shall make all efforts to ensure that the implementation of Government Decree (No. 431), dated 30 August 2011, "On approval of individual restructuring plan of OJSHC 'BT' for the period of 2011-2018" and achievement of the agreed milestones.

11. Effective from 1 January 2016, the Recipient shall restrict Barki Tojik from incurring any short or long term borrowings from commercial banks without approval of the Supervisory Board established by Government Decree (No. 281) dated 31 May 2012.

12. The Recipient and Barki Tojik shall ensure that operations and management of Barki Tojik are conducted based on commercial principles upon completion of the part of the project described in subparagraph 3(f) of Schedule 1 to the Grant Agreement for Grant Number 0213.

Financial Covenants

13. The Recipient shall cause Barki Tojik to ensure compliance with the following:

(a) Barki Tojik's accounts receivables shall at all times be maintained at a level that does not exceed the equivalent of the aggregate amount of three months billing.

(b) Except as ADB shall otherwise agree, Barki Tojik shall not incur any debt during 2020 or any succeeding year unless its free cash flows for the twelve months prior to the date of such incurrence shall be at least 1.2 times the estimated maximum debt service requirements of Barki Tojik for the immediately succeeding year on all debt of Barki Tojik, including the debt to be incurred.

For the purposes of this subparagraph:

(i) the term "debt" means the aggregate (as of the relevant date of calculation) of all obligations of Barki Tojik then outstanding for the payment of money, including under any loan agreement, contract, bond, debenture, note or other agreement, whether secured or unsecured, except debt incurred in the ordinary course of business and maturing by its terms on demand or less than one year after its incurrence;

- (ii) the term “debt-service requirements” means the aggregate amount of repayments (including sinking-fund payments, if any) of, and interest and other charges on debt;
- (iii) the term “incur” includes, with reference to any debt, any modification of the terms of payment of such debt; debt shall be deemed to be incurred (1) under a contract or loan agreement, on the date such contract or loan agreement providing for such debt is entered into, and (2) under a guarantee agreement, on the date the agreement providing for such guarantee is entered into but shall only be counted to the extent that the underlying debt is outstanding;
- (iv) the term “free cash flows” means the difference between (1) the sum of revenues from all sources related to Barki Tojik’s operations and services, after making adequate provisions for uncollectible debts, adjusted to take account of Barki Tojik’s tariffs in effect at the time of incurrence of debt even though they were not in effect during the twelve-month period to which such revenues relate and net non-operating income, and (2) the sum of all expenses related to Barki Tojik’s operations and services including administration, maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges, movements in working capital, and interest and other charges on debt;
- (v) the term “net non-operating income” means the difference between (1) revenues from all sources other than those related to Barki Tojik’s operations and services, and (2) expenses including taxes and payments in lieu of taxes, incurred in the generation of revenues;
- (vi) the term “working capital” means the difference between current assets and current liabilities at the end of the relevant FY;
- (vii) the term “current assets” means all assets, which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next FY; and
- (viii) the term “current liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes, and payments in lieu of taxes, and dividends.

(c) Except as ADB may otherwise agree, Barki Tojik shall, for the FY commencing 1 January 2020 and each FY thereafter during the term of this Grant Agreement, generate cash from internal sources equivalent to not less than 20% of the average of Barki Tojik's capital expenditures incurred, or expected to be incurred, for the current FY, the previous FY, and the next FY.

For the purposes of this subparagraph:

- (i) the term "cash from internal sources" means the difference between (1) the sum of cash flows from all sources related to operations, plus cash generated from consumer deposits and consumer advances of any kind, sale of assets, cash yield of interest on investments, extraordinary gains, and net non-operating income, decrease in working capital other than cash, and other cash inflows; and (2) the sum of all expenses related to operations, including administration, adequate maintenance, and current taxes and payments in lieu of taxes (excluding provision for depreciation, other non-cash operating charges and taxes), debt service requirements, extraordinary losses, all cash dividends paid and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures;
- (ii) the term "net non-operating income" has the same meaning as defined in subparagraph (b)(v) of this paragraph 13;
- (iii) the term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each FY;
- (iv) the term "current assets excluding cash" means all assets other than cash which could in the ordinary course of business be converted into cash within 12 months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next FY;
- (v) the term "current liabilities" has the same meaning as defined in subparagraph (b)(viii) of this paragraph 13;
- (vi) the term "debt" has the same meaning as defined in subparagraph (b)(i) of this paragraph 13;
- (vii) the term "incur" has the same meaning as defined in subparagraph (b)(iii) of this paragraph 13;
- (viii) the term "debt service requirements" has the same meaning as defined in subparagraph (b)(ii) of this paragraph 13;

- (ix) the term “capital expenditures” means all expenditures incurred on account of fixed assets including interest charged to construction, related to operations;
- (x) the projections for the “next FY” will be based on Barki Tojik’s 10-year financial projects, updated at least annually, and will include its investment program, financial plan, income statements, cash flow and balance sheets with all its assumptions, provided annually to ADB as of 30 June of each FY; and
- (xi) in the event cash from internal resources is less than 20% as required hereinabove, any grant provided by the Recipient or additional equity capital raised by Barki Tojik (including any share premium) in the current and/or the previous FY to the extent paid up but not utilized from capital expenditures, may also be added to the cash from internal resources for purposes of computing such financial ratio.

(d) Except as ADB may otherwise agree, Barki Tojik’s operating ratio shall be maintained at less than 90% by 31 December 2015 and thereafter.

For the purposes of this subparagraph:

- (i) the term “operating ratio” means operating expenses divided by operating revenues;
- (ii) the term “operating expenses” means expenses, including taxes, depreciation, maintenance but excluding interest and charges on debt directly related to Barki Tojik’s operations and services; and
- (iii) the term “operating revenues” means revenues from all sources related to Barki Tojik’s operations, after making adequate provisions for uncollectible debts.

14. The Recipient shall ensure that all budgetary institutions and state-owned enterprises pay promptly for power services received from Barki Tojik.

15. The Recipient shall ensure that financial obligations between energy sector utilities are settled on a timely basis.

16. The Recipient shall ensure that: (a) by 30 June 2014, Barki Tojik and its major debtors (i.e. debtors with overdue liabilities in excess of Somoni 1 million to Barki Tojik) reconcile their respective overdue liabilities; and (b) Barki Tojik and each such debtor enter into an agreement, acceptable to ADB, whereby the net overdue liabilities determined in accordance with the foregoing shall be reduced by at least one third by 31 December 2014 and fully eliminated by 31 December 2017. Should there be difficulties in achieving the

foregoing targets and provided that there is adequate justification from the Recipient, these targets can be revisited between the Recipient and ADB during the review missions.

17. The Recipient shall take measures such that the Ministry of Land Reclamation and Water Resources and the Ministry of Agriculture (which include the entities and organizations under these ministries) pay to Barki Tojik in full their respective electricity bills for FY2013 and the subsequent years; and in the event that any payment target is not met, the Recipient shall take all necessary measures to settle between Barki Tojik and these fore-mentioned ministries the difference between the amounts paid by these ministries for the applicable FY and the target for that FY.

Environment

18. The Recipient shall cause Barki Tojik to ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Recipient relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

19. The Recipient shall cause Barki Tojik to ensure that (a) all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract; and (b) the Project does not have any land acquisition or resettlement impacts within the meaning of the SPS. If there are any such impacts, the Recipient shall cause Barki Tojik to ensure that all land acquisition and resettlement activities are implemented in compliance with (i) all applicable laws and regulations of the Recipient relating to land acquisition and involuntary resettlement; (ii) the Involuntary Resettlement Safeguards; and (iii) all measures and requirements set forth in the resettlement plan or any corrective or preventative actions set forth in a monitoring report on the implementation of the resettlement plan submitted by the Recipient to ADB.

Indigenous Peoples

20. The Recipient shall cause Barki Tojik to ensure that the Project does not cause any impact on indigenous peoples within the meaning of the SPS. If there is such an impact, the Recipient shall cause Barki Tojik to prepare, disclose and implement an indigenous peoples plan in accordance with all applicable laws and regulations of the Recipient relating to indigenous peoples and the SPS.

Human and Financial Resources to Implement Safeguards Requirements

21. The Recipient shall make available or cause Barki Tojik to make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

22. The Recipient shall cause Barki Tojik to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

(a) comply with the measures relevant to the contractor set forth in the IEE and the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report;

(b) make available a budget for all such environmental measures;

(c) provide Barki Tojik with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP;

(d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and

(e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

23. The Recipient shall cause Barki Tojik to do the following:

(a) submit semi-annual Safeguards Monitoring Reports to ADB;

(b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and

(c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

24. The Recipient shall ensure that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor and Health Standards

25. The Recipient shall cause Barki Tojik to ensure that Works contractors under the Project comply with all applicable labor laws and regulations and incorporate provisions that contractors: (a) do not use child labor; (b) provide equal opportunity to women and men; (c) disseminate information at worksites on the risks of sexually transmitted diseases and HIV/AIDS for those employed during construction; (d) are required not to differentiate

between men and women's wages or benefits for work of equal value; and (e) comply with legally mandated provisions on labor including health, safety, sanitation, and working conditions. Compliance with these provisions will be strictly monitored during implementation.

Governance and Anticorruption

26. The Recipient and Barki Tojik shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

27. The Recipient and Barki Tojik shall ensure that anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of Barki Tojik and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

28. The Recipient shall ensure that ADB's consent is obtained at least 6 months prior to the implementation of any of the following: (a) any change in ownership of any asset, facility or structure financed under the Project; (b) any sale, transfer, or assignment of interest or control in any asset, facility or structure financed under the Project; or (c) restructuring, reorganization, lease or other contract or modification of the functions and authority of Barki Tojik over operation and maintenance of any such asset, facility or structure financed under the Project. The Recipient shall ensure that any such changes will be carried out in a legal and transparent manner.