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July 5, 2011

VIA U.S. AND ELECTRONIC MAIL

Aviva Imhof
International Rivers
2150 Allston Way, Suite 300
Berkeley, CA 94704-1378 USA

Lewis Gordon
Environmental Defender Law Center
407 W. Koch St.
Bozeman, MT 59715 USA

Re: PNPCA Process for Xayaburi Dam

Dear Ms. Imhof and Mr. Gordon:

You asked whether the Director General of the Lao People's Democratic Republic Ministry of Energy and Mines ("Lao PDR") erroneously concluded that the government's responsibilities under the Procedures for Notification, Prior Consultation, and Agreement ("PNPCA") of the Mekong Agreement¹ to approve the construction of the Xayaburi Hydroelectric Power Project ("Xayaburi Dam") on the Lower Mekong River are complete. Lao PDR's conclusion is articulated in the attached letter to Xayaburi Power Company Limited.

Lao PDR's letter seems to rely on the view of its consulting firm, Pöyry Energy AG, to find that the prior consultation process for the Xayaburi Dam is complete and concludes that "any necessary step in relation to the 1995 Mekong Agreement has been duly taken in a spirit of cooperation and working together of all relevant parties." This conclusion is surprising given the fact that, on 19 April 2011, at a Mekong River Commission Joint Committee Special Session in Vientiane, all four governments that share this transboundary river – Cambodia, Lao PDR,

¹ The Mekong Agreement is formally known as the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, 34 I.L.M. 864 (1995).

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Thailand, and Viet Nam – agreed to defer the decision on the prior consultation process to a future ministerial-level meeting because they could not come to a conclusion on how to proceed with the project. To our knowledge, this future ministerial-level meeting has not yet occurred. While last April Lao PDR proposed to proceed with the dam, Cambodia, Thailand and Viet Nam all raised concern over the dam's transboundary impacts and the need for further study and consultation. Viet Nam recommended deferring the decision on all mainstream hydropower projects for at least ten years.² A review of the Mekong Agreement and the factual premises stated herein, leads to the following conclusions:

1. The Mekong Agreement precludes any unilateral decisions that will severely disrupt the ecological balance of the river or compromise the vital needs of people who rely on it.
2. Signatories to the Mekong Agreement intended that any individual decision to develop the river would be based on shared priorities, not unilateral actions that impose unmitigated transboundary impacts on other riparian countries.
3. One party to the Mekong Agreement cannot unilaterally declare for any other government body that the PNPCA process is complete, particularly here where the PNPCA process is not complete.

In summary, Lao PDR's unilateral action to prematurely terminate the PNPCA process, without allowing its neighbor countries to properly conclude that process, violates the Mekong Agreement, and therefore international law. This conclusion is supported by the following analysis of the government's responsibilities under this Treaty.

1. The Mekong Agreement precludes any unilateral decisions that will severely disrupt the ecological balance of the river or compromise the vital needs of people who rely on it.

The Mekong Agreement is the most significant environmental treaty forged between the four lower Mekong countries. As a party to the Vienna Convention on the Law of Treaties, Lao PDR is required to meet all of its treaty obligations in good faith with other member states.³ To this end, it is important to highlight several overriding principles of the Mekong Agreement, which are to be given effect by all member governments when deciding whether to approve a dam on the river's mainstream, how to amicably resolve disputes involving this river, and what reparations are required.

² Mekong River Commission, "Lower Mekong countries take prior consultation on Xayaburi project to ministerial level," 19 April 2011, http://www.mrcmekong.org/MRC_news/press11/Lower-mekong-countries-take-prior-consultation19April1.html

³ Vienna Convention on the Law of Treaties, Art. 26, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969).

Each signatory to this Treaty, signed over 15 years ago, recognized the interconnected ties between their nations and their river. Under this Treaty, the parties agreed to several principles⁴ that underscore what is evident for any transboundary river – the Mekong is a shared treasure with a destiny to be determined by shared decision-making. Under the Treaty, no country can make a unilateral decision to construct a dam that would otherwise destroy the multiple uses and benefits of the Mekong mainstream.

This overriding precept is affirmed in Articles 1 and 3 of the Mekong Agreement. Under Article 1, all four signatories are to "cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin ... in a manner to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities." Under Article 3, each signatory must "protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin."⁵ If there is a conflict between the duty to protect and some other use of the river, the Mekong Agreement does not vest the decision on conflicting uses with Lao PDR. Rather, the international expectation is that each signatory will resolve use conflicts to meet the vital human needs of affected communities – such as sustaining the fisheries and the livelihoods that depend on them.⁶

⁴ Under this Treaty, the parties were "RECOGNIZING that the Mekong River Basin and the related natural resources and environment are *natural assets of immense value to all the riparian countries* for the economic and social well-being and living standards of their peoples," "REAFFIRMING the determination to *continue to cooperate and promote* in a constructive and mutually beneficial manner in the sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources for navigational and non-navigational purposes, *for social and economic development and the well-being of all riparian States*, consistent with the needs to *protect, preserve, enhance and manage the environmental and aquatic conditions and maintenance of the ecological balance exceptional to this river basin*," and "AFFIRMING to promote or assist in the promotion of *interdependent sub-regional growth and cooperation among the community of Mekong nations*, taking into account the regional benefits that could be derived and/or *detriments that could be avoided* or mitigated from activities within the Mekong River Basin undertaken by this framework of cooperation." Mekong Agreement, Chp. I. Preamble, Clauses 4, 5, and 6 (emphasis added)

⁵ Importantly, the Article 3 duty to protect precedes Article 4's recognition that the signatories are "[t]o cooperate on the basis of sovereign equality and territorial integrity in the utilization and protection of the water resources of the Mekong River Basin." This duty to protect is a significant benchmark of transboundary river law. See Convention on the Law of the Non-Navigational Uses of International Watercourses Part IV. Art. 20, 36 I.L.M. 700 (1997) (hereafter "UIW") ("Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.").

⁶ See UIW, Part II, Art. 10 (emphasis added) (recognizing that "1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses. 2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7 [equitable and

In summary, no one signatory, including Lao PDR, can make a unilateral decision to develop any dam on the mainstream if the dam will destroy the multiple uses and benefits of the river. The duty to protect is the overriding objective of the Treaty and the Treaty's decision-making processes and dispute resolution procedures are intended to achieve this very objective on a consensus-basis. If Lao PDR proceeds unilaterally to develop the Xayaburi Dam in a way that will severely disrupt the ecological balance of the river or compromise the vital needs of people who rely on it, the decision would contravene the Mekong Agreement.

2. Signatories to the Mekong Agreement intended that any individual decision to develop the river would be based on shared priorities, not unilateral actions that impose unmitigated transboundary impacts on other riparian countries.

It is impossible to meaningfully deduce the impacts of any one development project without a basic understanding of how these impacts exacerbate any larger impacts already incurred (e.g., from tributary dams already built) or foreseeable impacts (e.g., from 10 more dams planned for on the mainstream Mekong). Article 2 of the Mekong Agreement is meant to facilitate a big picture understanding and prioritization of projects for all four governments, which is fundamental to sustainable development.⁷ This big picture view of shared priorities is critical to optimize the "mutual benefits of all riparians and to minimize the harmful effects that might result from ... man-made activities" (as required by Article 1) and "[t]o utilize the waters of the Mekong River system in a reasonable and equitable manner" (as required by Article 5).

The Xayaburi Dam was formally proposed on 20 September 2010, which was shortly before the release of the October 2010 Strategic Environmental Assessment of Hydropower on the Mekong Mainstream ("SEA"), prepared for the Mekong River Commission by the International Centre for Environmental Management. This strategic planning document is a lynchpin for continued support, cooperation, and coordination of hydropower development of the Mekong River. The SEA emphatically recommended a 10-year moratorium on mainstream dam construction to resolve major uncertainties and concerns about such developments.⁸ This is a loud alarm bell that foreshadows the likely adverse consequences of the Xayaburi Dam if the project proceeds, as proposed, without further public review, consultation, and analysis.

The SEA states it "directly enhances the baseline information and assessment framework for

reasonable utilization and participation; Factors relevant to equitable and reasonable utilization; Obligation not to cause significant harm], *with special regard being given to the requirements of vital human needs.*")

⁷ Mekong Agreement, Chp. III, Art. 2 (requiring the signatories to "promote, support, cooperate and coordinate in the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of Mekong River Basin waters")

⁸ SEA at 24.

subsequent government review of project-specific EIAs prepared by developers. It also informs how the MRC [Mekong River Commission] can best enhance its support to Member Countries when the formal process under the 1995 Mekong Agreement for prior consultation on any individual mainstream proposal is triggered (i.e., the Procedures for Notification, Prior Consultation and Agreement or PNPCA).⁹ Unfortunately, that did not occur here because the SEA was released *after* the development of the core decision documents for the Xayaburi Dam – the Feasibility Study, the Environmental Impact Assessment ("EIA"), and the Social Impact Assessment ("SIA"). Under the Mekong Agreement, site-specific decisions were to be informed and guided by basin-planning analyses and strategies such as the SEA, but this pivotal tool was not used to provide the “baseline information” or an “assessment framework” for the Xayaburi Dam or to evaluate the direct, indirect, and cumulative impacts of the dam. As such, there was no time to integrate any of the SEA’s findings to support an analysis of the transboundary effects of the dam, which is fundamental to the validity of the PNPCA process. Since this did not occur, there is a palpable disconnect between the findings of the SEA (calling for a 10-year moratorium on construction of any mainstream dams) and the Ministry’s letter (stating “any necessary step in relation to the 1995 Mekong Agreement has been duly taken.”)

Looking at the big picture, the SEA concluded that the perceived benefits of future hydroelectric dam projects along the Mekong mainstream would not be shared equitably among the signatories. Rather, the analysis predicts that Lao PDR will likely gain more from such developments at the expense of nations such as Cambodia and Viet Nam.¹⁰ In the case of the Xayaburi Dam, there is no indication that we are aware of that either Cambodia or Viet Nam will gain *any* “mutual benefits” from this dam and, to the contrary, both governments have clearly expressed concerns about the transboundary impacts of the dam. In light of these concerns, and the disproportionate impacts these countries will likely experience as a result of this dam, Lao PDR is required to re-engage in the PNPCA process and properly conclude the final step in that process – to reach an agreement in light of the signatories’ shared priorities.

3. One party to the Mekong Agreement cannot unilaterally declare for any other government body that the PNPCA process is complete, particularly here where the PNPCA process is not complete.

"Notification" to and "prior consultation" with treaty signatories and their citizenry is another affirmative duty Lao PDR must support under the Mekong Agreement with the "aim[]" at arriving at an agreement by the Joint Committee [composed of one member from each participating

⁹ SEA at 4.

¹⁰ SEA at 19.

riparian State at no less than Head of Department level]."¹¹ Arriving at the "agreement" is the whole point of this Treaty process, and proper "notification" and "prior consultation" are a prerequisite to any major "agreement" involving the use of the Mekong River mainstream.¹²

Under the Mekong Agreement, "prior consultation" means "*[t]imely notification plus additional data and information* to the Joint Committee ... that would allow the other member riparians to discuss and evaluate the impact of the proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement. Prior consultation is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights."¹³

The signatories appear to have interpreted this "prior consultation" requirement to include consultations among and between the affected governments and among and between the affected public. As to the government consultations, as noted above, the four members of the Joint Committee met on 19 of April 2011 and agreed, at that time, that a decision on the prior consultation process would be tabled for consideration at the ministerial level. Hence, while the Mekong Agreement does not specify how the "prior consultation" requirement is declared complete, it seems that all four governments have agreed to extend the process indefinitely.¹⁴

As to the public, there were eight stakeholder consultations held on the Xayaburi Dam (2 in Cambodia, 4 in Thailand, and 2 in Viet Nam) between January and February 2011.¹⁵ The determination as to when and whether these national consultations are complete is also not clear, but likely lies within the discretion of the government performing the consultations. Hence, Lao PDR cannot unilaterally determine when another party's national consultations are complete.

¹¹ Mekong Agreement, Chp. III, Art. 5, Cl. B) 1.a) (wet season use) and 2. a) (dry season use).

¹² Mekong Agreement, Chp. II, Clause 2 (emphasis added) ("Agreement under Article 5: A decision of the Joint Committee *resulting from prior consultation and evaluation on any proposed use* for inter-basin diversions during the wet season from the mainstream as well as *for intra-basin use* or inter-basin diversions of these waters *during the dry season*. The objective of this agreement is to *achieve an optimum use and prevention of waste of the waters through a dynamic and practical consensus* in conformity with the Rules for Water Utilization and Inter-Basin Diversions set forth in Article 26.")

¹³ Mekong Agreement, Chp. II, Cl. 6 (emphasis added).

¹⁴ Part 5.5 of the MRC's Procedures for Notification, Prior Consultation and Agreement (13 November 2003) ("PNPCA Procedures") provides the timing for prior consultation as follows: "5.5.1 The timeframe for Prior Consultation shall be six months from the date of receiving documents on Prior Consultation. 5.5.2 If necessary, an extended period shall be permitted by the decision of the MRC JC."

¹⁵ None of these stakeholder consultations occurred in Lao PDR, ostensibly because the government and the developer organized consultation activities on the project when developing the SIA between 2007 and 2010. MRC, Prior Consultation Project Review Report, V. 2 Stakeholder Consultations related to the proposed Xayaburi dam project, at 10, 15 (24 March 2011) ("MRC Prior Consultation Review Report").

The PNPCA Procedures help define the requirements of these "prior consultations."¹⁶ There are at least three main PNPCA requirements of significance:

- i. Under the PNPCA Procedures Part 3, "prior consultation" on the Xayaburi Project must occur according to the core principles of "respect for rights and legitimate interests," "good faith" and "transparency."

It is our understanding that only Lao PDR has concluded that the PNPCA process is complete. Cambodia explained in its PNPCA report, "[t]here is a recommended need for a comprehensive study and assessment of transboundary environmental impacts including the cumulative impact assessment."¹⁷ Thailand restated its stakeholder concerns that "the environmental impact assessment did not significantly delineate the impacts on ecosystem and the flow regime as well as the transboundary impacts to Thailand."¹⁸ Viet Nam's PNPCA report is perhaps the most striking indicator that the process is far from complete:

With these deep and serious concerns, Viet Nam found the limited timeframe of the Prior Consultation was not adequate to facilitate the achievement of the process's objectives. Based on the findings mentioned above, Viet Nam therefore strongly requests that the decision on the Xayaburi Hydropower Project as well as all other planned hydropower projects on the Mekong mainstream be deferred for at least 10 years, as overwhelmingly recommended by social communities, national and regional NGOs and many development partners. The deferment should be positively seen as a way to provide much-needed time for riparian Governments to carry out comprehensive and more specific quantitative studies on all possible cumulative impacts caused by the planned cascade of dams on the Mekong mainstream, especially those of trans-boundary nature to the Mekong River, including the Mekong Delta parts of Viet Nam.¹⁹

¹⁶ Mekong Agreement, Chp. VI, Art. 38 ("This Agreement shall consist of the Preamble and all provisions thereafter and amendments thereto, the Annexes, and all other agreements entered into by the Parties under this Agreement."); *see also* PNPCA Procedures Part 7 ("[t]he Procedures shall take effect among the member States on the date of the approval of the MRC Council."). The MRC's 31 August 2005 Guidelines on Implementation of the Procedures for Notification, Prior Consultation and Agreement ("G-PNPCA") are also to be followed "as a complimentary and supplementary document to the PNPCA" with the "purpose of these Guidelines is to facilitate the implementation of the PNPCA ... and they are to be applied in conjunction with the PNPCA." G-PNPCA at 3.

¹⁷ Cambodia Mekong River Commission Procedures for Notification, Prior Consultation and Agreement Form/Format for Reply to Prior Consultation, at 3 (13 April 2011).

¹⁸ Thailand Mekong River Commission Procedures for Notification, Prior Consultation and Agreement Form/Format for Reply to Prior Consultation, at 2 (April 2011).

¹⁹ Viet Nam Mekong River Commission Procedures for Notification, Prior Consultation and Agreement Form for Reply to Prior Consultation, at 3 (15 April 2011).

In sum, all three governments have highlighted concerns that not enough information is available to reasonably evaluate the transboundary impacts of the dam on the river. Under the Treaty, such information is pivotal to reasonably “discuss and evaluate the impact of the proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement.”²⁰ Thus, the “prior consultations” remain incomplete until they receive the information required and, like Lao PDR, can independently determine whether the Xayaburi Dam presents a “Reasonable and Equitable Utilization” of this transboundary river as envisioned under Article 5 of the Mekong Agreement.

As to the PNPCA process involving stakeholder consultations, multiple concerns were raised by stakeholders that the consultations were neither conducted in good faith nor transparent and did not involve members of the affected public. The MRC summarized some of the core feedback as follows: “[t]he stakeholder consultation process needs to be transparent, open and accountable. All documents related to the projects, especially the EIA need to be released to the public timely before the stakeholder consultations take place in order to allow effective involvement,” and “[t]he 6 months timeframe for the PC process is considered too short and needs to be reconsidered. More time is needed to allow further in-depth studies, and give more time to the Developer to incorporate recommendations accordingly,” “[t]here is a need for deeper study on the transbound[ary] impacts, in particular the impact on specific locations and on each downstream country,” and “[s]takeholder participation needs to be widened to involve community people who can possi[bly] be affected by proposed projects”²¹ Equally troubling, the EIA and the SIA were apparently not released to stakeholders prior to these consultations,²² so the affected public could not reasonably provide informed feedback on the contents or conclusions of these documents, which was presumably the core reason for the consultations.

- ii. Under the PNPCA Procedures Part 4.2.1, the “notification” is to include “all available data,” which the G-PNPCA clarifies to mean that “an effort be made to provide sufficient ‘relevant’ data, meaning the data necessary for the notified parties to be informed of and to understand the proposed project and use of water to determine impacts upon them, e.g., data relevant to the notified parties, not the notifying party.”²³

²⁰ Mekong Agreement, Chp. 2, Cl. 8.

²¹ MRC, Prior Consultation Project Review Report, Vol. 2 Stakeholder Consultations related to the proposed Xayaburi dam project, 17-18 (24 March 2011) (“MRC Prior Consultation Review Report”).

²² The main text of the Feasibility Study was apparently available for public download by 14 February 2011 under www.xayaburi.com. MRC Prior Consultation Review Report at 2. It is unclear how many of the affected publics were made aware of this posting or had reasonable access to www.xayaburi.com.

²³ G-PNPCA at 4, note 8 (emphasis in original).

Cambodia, Thailand, and Viet Nam all emphasized that not enough is known about the effects of the proposed dam on their respective territories. This is not surprising given that the Feasibility Study, EIA, and SIA all predated the release of the SEA. Since these governments have determined that they require additional information to evaluate the upstream and downstream effects of the project, the notification remains incomplete. The International Court of Justice has recognized that an environmental impact assessment should include a thorough analysis of the potential transboundary impacts of any proposed project that presents a serious risk of harm to neighboring countries. *See Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment of April 20, 2010, at 60-61, *available at* <http://www.icj-cij.org/docket/files/135/15877.pdf> (“it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the régime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.”) The Xayaburi Dam EIA study area was apparently limited to the watershed area of the proposed site, the downstream area about 10 km from the barrage site, and the impoundment area.²⁴

- iii. The PNPCA Procedures Part 5.4.3 require that "The notifying State(s) [here Lao PDR] shall not implement the proposed use without providing the opportunity of the other member States to discuss and evaluate the proposed use."

Adopting its consultant's view, the Ministry concludes in its letter that the PNPCA process is complete, even though all four governments agreed to defer the decision on the prior consultation process to a future ministerial-level meeting because they could not come to a conclusion on how to proceed with the project. This unilateral determination undercuts the ability of Cambodia, Thailand, and Viet Nam to discuss and evaluate the proposed use in the context of the PNPCA process. These concerns are magnified by the fact that there are reports that preparatory construction of the Xayaburi Dam is underway including construction on roads and transmission lines near the dam site, despite the fact that, on 14 February 2011, Lao PDR informed the Joint Committee Working Group that “[n]o construction of the project which may impact the Mekong River will be carried out unless and until the PNPCA process has been completed and the official approval of the Lao PDR Government has been granted.”²⁵ Part 5.4.3 of the PNPCA is meant to ensure that signatories are not put in a compromised position whereby

²⁴ EIA at 1-2.

²⁵ Statement by the Lao PDR Joint Committee Working Group on PNPCA, Vientiane, Lao PDR, at 2 (14 February 2011).

one signatory has already caused irreversible environmental impacts and committed irretrievable public resources before a sound, final, and consensus-based decision has been made to construct a dam. It is clear from the 19 April 2011 agreement to defer the decision on the prior consultation process to a future ministerial-level meeting that the signatories lacked sufficient “opportunity ... to discuss and evaluate the proposed use.” Based on the reports of preparatory construction, Lao PDR has violated the Mekong Agreement by commencing construction before the PNPCA process has concluded.

Conclusion

The Ministry’s letter concludes that Lao PDR has met its requirements under the PNPCA process and “confirm[s] that any necessary step in relation to the 1995 Mekong Agreement has been duly taken in a spirit of cooperation and working together of all relevant parties.” It is unclear whether the government suggests here that it has no further obligations under the Mekong Agreement with respect to the Xayaburi Dam. Clearly, one obligation is to go back to the three other governments and properly conclude the PNPCA process to reach a sustainable agreement by consensus.

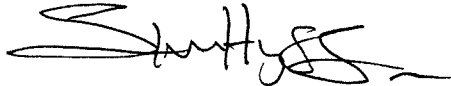
Irrespective of the PNPCA process, ongoing Treaty responsibilities will continue. For instance, the government has already agreed to resolve differences and disputes involving signatories to the Treaty pursuant to the dispute resolution procedures in Chapter V of the Treaty. Further, if the project proceeds, under Article 7 Lao PDR is “[t]o make every effort to avoid, minimize and mitigate harmful effects that might occur to the environment, especially the water quantity and quality, the aquatic (eco-system) conditions, and ecological balance of the river system, from the development and use of the Mekong River Basin water resources or discharge of wastes and return flows. Where one or more States is notified with proper and valid evidence that it is causing substantial damage to one or more riparians from the use of and/or discharge to water of the Mekong River, that State or States shall cease immediately the alleged cause of harm until such cause of harm is determined in accordance with Article 8 [State Responsibility for Damages].”

In summary, Lao PDR’s unilateral action to prematurely terminate the PNPCA process, without allowing its neighbor countries to properly conclude that process, violates the Mekong Agreement, and therefore international law. This letter has focused on the government’s responsibilities under the Mekong Agreement; however, Lao PDR has numerous related

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responsibilities under other international environmental and human rights laws that are implicated by its decision to unilaterally terminate the PNPCA process and to proceed to construct the dam.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Higgs", with a long horizontal flourish extending to the right.

Stephen J. Higgs

Enclosure



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity
000

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Department of Energy Promotion and Development
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No: /MEM-EDP
Date: 08 JUN 2011

Xayaburi Power Company Limited
215 Lane Xang Avenue
Vientiane, Lao PDR

Attn: Mr. Thanawat Trivisavet

Dear Mr. Thanawat

Re: Xayaburi Hydroelectric Power Project

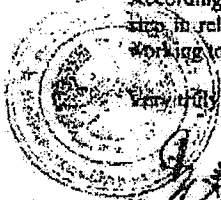
We refer to the Concession Agreement dated 29 October 2010 between the Government (the "GOL") of the Lao People's Democratic Republic (the "Lao PDR") and yourselves (the "Concession Agreement") and to the Prior Consultation process (the "Prior Consultation Process") pursuant to the 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (the "1995 Mekong Agreement") and the Procedures for Notification, Prior Consultation and Agreement (the "PNPCA") with respect to the proposed Xayaburi Hydroelectric Power Project (the "Xayaburi Project").

Acknowledging the concerns raised by other members of the Mekong River Commission (the "MRC") during the Prior Consultation Process, the GOL entered into a Consulting Services Agreement for Compliance Review with Pöyry Energy AG ("Pöyry"), an internationally acclaimed consulting firm, on May 5, 2011 pursuant to which Pöyry has conducted a study to determine whether the Lao PDR had fulfilled its obligations pursuant to the 1995 Mekong Agreement and the PNPCA on Xayaburi Project.

The GOL has now received a view on the Prior Consultation process from Pöyry on June 2, 2011, which states that the Lao PDR has complied with the 1995 Mekong Agreement and the PNPCA on the Prior Consultation Process. Pöyry notes that the Lao PDR has provided opportunity for each Member Country of the MRC to evaluate, discuss and comment on the Xayaburi Project, and taken all legitimate concerns from the Member Countries into consideration. It thereupon concludes that "the Prior Consultation of the Xayaburi Project has now been completed and the Prior Consultation process has ended at the MRC Joint Committee level" in accordance with the terms of the 1995 Mekong Agreement.

Accordingly, despite certain other remaining commitments, we hereby confirm that any necessary steps in relation to the 1995 Mekong Agreement has been duly taken in a spirit of cooperation and working together of all relevant parties.

Sincerely yours,



Xayasouth PHOMSOUHA
Director General