No. 8664

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
and
BRAZIL

Guarantee Agreement—*Jaguara Power Project* (with annexed Loan Regulations No. 4, Loan Agreement between the Bank and the Centrais Elétricas de Minas Gerais, S.A. and Project Agreement between the Bank and the State of Minas Gerais). Signed at Washington, on 15 March 1966

Agreement amending the above-mentioned Guarantee Agreement (with annexed Agreement between the Bank and the Centrais Elétricas de Minas Gerais, S.A. amending the above-mentioned Loan Agreement). Signed at Washington, on 19 December 1966

Official text: English.

Registered by the International Bank for Reconstruction and Development on 26 June 1967.

No. 8664. GUARANTEE AGREEMENT[1] (*JAGUARA POWER PROJECT*) BETWEEN THE UNITED STATES OF BRAZIL AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 15 MARCH 1966

AGREEMENT, dated March 15, 1966, between THE UNITED STATES OF BRAZIL (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and CENTRAIS ELETRICAS DE MINAS GERAIS, S.A. (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,[2] the Bank has agreed to make to the Borrower a loan in various currencies equivalent to forty-nine million dollars ($49,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided and that The State of Minas Gerais of the Guarantor undertake certain obligations to the Bank (including the provision of funds to the Borrower) as set forth in a project agreement also of even date herewith;[3] and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

WHEREAS the Guarantor represents and warrants that the giving of such guarantee is authorized by Law No. 1518 of December 24, 1951; Articles 22 and 23 of Law 1628 of June 20, 1952; and Law No. 4457 of November 6, 1964;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961,[4] subject, however, to the modifications thereof set forth in Section 1.01 of the Loan

[1] Came into force on 29 May 1967, upon notification by the Bank to the Government of Brazil.
[2] See p. 66 of this volume.
[3] See p. 92 of this volume.
[4] See p. 64 of this volume.

Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Guarantee Agreement, unless the context shall otherwise require, the terms defined in Section 1.02 of the Loan Agreement shall have the same meanings as therein set forth.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Guarantee Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds and the premium, if any, on the prepayment of the Loan or the redemption of the Bonds.

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan in the allocation or realization of foreign exchange. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods; or (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term " assets of the Guarantor " as used in this Section includes assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision, including Banco Central da República do Brasil and any other institution performing the functions of a central bank for the Guarantor.

Section 3.02. (*a*) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(*b*) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(*c*) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Section 3.03. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from any taxes imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 3.04. This Guarantee Agreement, the Loan Agreement, the Project Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Section 3.05. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Section 3.06. The Guarantor covenants that it will not take or permit any of its political subdivisions or any of its agencies (including Eletrobrás, and Banco Central da República do Brasil and any other institution performing the functions of a central bank for the Guarantor in respect of the allocation or realization of foreign exchange) or any agency of any political subdivision to take any action which would prevent or interfere with the performance by the Borrower or the State of any of the covenants, agreements and obligations of the Borrower and the State in the Loan Agreement and the Project Agreement contained, and will take or cause to be taken all reasonable action (including action by Electrobrás, and by Banco Central da República do Brasil and any other institution performing the functions of a central bank for the Guarantor in respect of the allocation or realization of foreign exchange) which shall be necessary in order to enable the Borrower and the State to perform such covenants, agreements and obligations.

Section 3.07. The Guarantor covenants that, except as the Bank and the Guarantor shall otherwise agree, it will :

(*a*) set and maintain or cause to be set and maintained rates for the sale of electricity at such levels as may be necessary to provide the CEMIG Group with revenues at least sufficient to : (i) cover all operating expenses of the CEMIG Group including all generating, transmission and distribution expenses, adequate maintenance and straightline depreciation based on the useful lives of the assets (but not less than 3% of its average gross revalued fixed assets in operation), administrative and general expenses and taxes (other than income tax and revaluation tax), but excluding charges for amortization or reversion of assets; and (ii) produce an annual rate of return of not less than 10% on its revalued net fixed assets in operation at the end of each calendar year;

(*b*) in case the CEMIG Group does not obtain such return in any particular calendar year, adjust or cause to be adjusted the rates of the CEMIG Group so that the CEMIG Group is compensated for the deficit during a twelve-month period running from the date on which the action referred to in paragraph (*c*) below is taken; and

(*c*) cause the agency or agencies of the Guarantor responsible for the setting and adjustment of such rates to act in respect thereof within a period of not more than 60 days after receipt of the Borrower's application therefor.

For the purposes of this Section :

1. The term " average gross revalued fixed assets in operation " means one-half the sum of the gross fixed assets in operation at the beginning of the calendar year and the gross fixed assets in operation at the end of the calendar year, both revalued on the basis of the latest official cost indices, such revaluation to be effected at least once a year in order to reflect a realistic value of the assets of the CEMIG Group.
2. The term " revalued net fixed assets in operation at the end of each calendar year " means gross fixed assets in operation less the depreciation reserve at the end of each calendar year, both revalued on the basis of the latest official cost indices, such revaluation to be effected at least once a year in order to reflect a realistic value of the assets of the CEMIG Group.
3. The term " annual rate of return " means the annual gross operating revenues less all operating expenses as stated in (*a*) (i) above, expressed as a percentage of the revalued net fixed assets in operation at the end of the calendar year.