

No. 9333

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
COLOMBIA**

Guarantee Agreement—*Third Expansion Program* (with annexed Loan Regulations No. 4, as amended, and Loan Agreement between the Bank and the Empresa de Energía Eléctrica de Bogotá, and related letter). Signed at Washington, on 3 June 1968

Official text : English.

Registered by the International Bank for Reconstruction and Development on 5 December 1968.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
COLOMBIE**

Contrat de garantie — *Troisième programme d'expansion* (avec, en annexe, le Règlement n° 4 sur les emprunts, tel qu'il a été modifié, le Contrat d'emprunt entre la Banque et la Empresa de Energía Eléctrica de Bogotá, et lettre connexe). Signé à Washington, le 3 juin 1968

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 5 décembre 1968.

No. 9333. GUARANTEE AGREEMENT¹ (*THIRD EXPANSION PROGRAM*) BETWEEN THE REPUBLIC OF COLOMBIA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 3 JUNE 1968

AGREEMENT, dated June 3, 1968, between REPUBLIC OF COLOMBIA (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 Empresa de Energía Eléctrica de Bogotá (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 eighteen million dollars (\$18,000,000), 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

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;

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 as amended February 9, 1967³ (said Loan Regulations No. 4 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 several terms defined in the Loan Agreement shall have the respective meanings therein set forth.

¹ Came into force on 3 August 1968, upon notification by the Bank to the Government of Colombia.

² See p. 244 of this volume.

³ See p. 244 of this volume.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this 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 interest and other charges on, the Loan, the principal of and interest on the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for carrying out the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

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 by way of a lien on governmental assets. 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; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

As used in this Section, (a) the term "assets of the Guarantor" includes assets of the Guarantor or of any of its political subdivisions or of any Agency or of Banco de la República or any other institution acting as the central bank of the Guarantor, and (b) the term "Agency" means any agency or instrumentality of the Guarantor or of any political subdivision of the Guarantor and shall include any institution or organization which is owned or controlled directly or indirectly by the Guarantor or by any political subdivision of the Guarantor or the operations of which are conducted primarily in the interest of or for account of the Guarantor or any political subdivision of 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, and free from all restrictions 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 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 Guarantor covenants that it will cause the Borrower's tariffs to be set and maintained at such levels as may be required to provide the Borrower with revenues at least sufficient, after covering all its operating and administrative expenses (including taxes and distribution to the Special District of Bogota, if any, and adequate provision for maintenance and depreciation), to produce a reasonable return on the Borrower's average net fixed assets in operation.

Section 3.06. The guarantee agreements between the Guarantor and the Bank dated January 20, 1960 (*Bogota Power Project*)¹ and May 23, 1962 (*Second Expansion Program*)² respectively are amended by deleting the provisions of

¹ United Nations, *Treaty Series*, Vol. 375, p. 49.

² United Nations, *Treaty Series*, Vol. 447, p. 39.

Section 3.07 in each such agreement and substituting therefor the provision in Section 3.05 of this Agreement.

Section 3.07. The Guarantor shall take all reasonable steps required on its part to enable the Borrower to obtain other loans or other financing on reasonable terms from sources outside Colombia and apply the proceeds of such loan or financing to meet as large a portion of the foreign exchange requirements of the Project as possible.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, its guarantee on the Bonds to be executed and delivered by the Borrower. The Minister of Finance and Public Credit of the Guarantor and such person or persons as he shall appoint in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12(b) of the Loan Regulations.

Article V

Section 5.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Guarantor :

Republic of Colombia
Ministerio de Hacienda y Crédito Público
Palacio de los Ministerios, Plaza San Agustín
Bogota, Colombia

Cable address :

Minhacienda
Bogota

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address :

Intbafrad
Washington, D.C.

Section 5.02. The Minister of Finance and Public Credit of the Guarantor is designated for the purposes of Section 8.03 of the Loan Regulations.