No. 9335

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT and MEXICO

Guarantee Agreement—*Second Power Sector Program* (with annexed Loan Regulations No. 4, as amended, and Loan Agreement between the Bank, the Comisión Federal de Electricidad and the Nacional Financiera). Signed at Washington, on 28 June 1968

Official text: English.

Registered by the International Bank for Reconstruction and Development on 9 December 1968.

BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DÉVELOPPEMENT et MEXIQUE

Contrat de garantie — *Deuxième programme relatif à l'énergie électrique* (avec, en annexe, le Règlement n° 4 sur les emprunts, tel qu'il a été modifié, et le Contrat d'emprunt entre la Banque, la Comisión Federal de Electricidad et la Nacional Financiera). Signé à Washington, le 28 juin 1968

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 9 décembre 1968.

No. 9335. GUARANTEE AGREEMENT[1] *(SECOND POWER SECTOR PROGRAM)* BETWEEN THE UNITED MEXICAN STATES AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 28 JUNE 1968

AGREEMENT, dated June 28, 1968, between UNITED MEXICAN STATES (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 Comisión Federal de Electricidad and Nacional Financiera, S.A. (hereinafter called the Borrowers), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,[2] the Bank has agreed to make to the Borrowers a loan in various currencies equivalent to ninety million dollars ($ 90,000,000), 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 Borrowers 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 Borrowers, has agreed so to guarantee such obligations of the Borrowers;

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, 1967[3], subject, however, to the modifications thereof set forth in Section 1.01 of the Loan 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.

[1] Came into force on 30 August 1968, upon notification by the Bank to the Government of Mexico.
[2] See p. 16 of this volume.
[3] See p. 16 of this volume.

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, 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 Borrowers, and each of them, 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 Guarantee Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrowers 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 Borrowers or cause the Borrowers 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 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 the 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 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 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 shall not take or permit any of its political subdivisions or agencies to take any action which would prevent or interfere with the performance by the Borrowers of any of the covenants, agreements and obligations of the Borrowers or either of them in the Loan Agreement contained or of Centro under the Subsidiary Agreement and shall take or cause to be taken all reasonable governmental action (and all reasonable action by reason of its ownership or control of the Power Sector) which shall be necessary in order to enable the Borrowers and Centro to perform such covenants, agreements and obligations and meet such conditions.

Section 3.07. (*a*) The Guarantor, by reason of its ownership or control of Mexlight, covenants that, unless the Guarantor, the Bank and the Borrowers shall otherwise agree, the Guarantor shall prevent Mexlight from (i) issuing any bonds under the Indenture, or (ii) selling, pledging or otherwise negotiating or exchanging bonds of Mexlight amounting to about $ 3,370,000 which are now held by Mexlight.

(*b*) Except as the Guarantor and the Bank shall otherwise agree, the Guarantor shall, by reason of its ownership or control of the Power Sector, prevent any of the entities of the Power Sector or any of the subsidiaries of any such entity from disposing of the control of any of its subsidiaries or of the ownership or control of the property or assets of any such entity or subsidiary required for the efficient carrying on of its business and undertaking except to another entity of the Power Sector or to a subsidiary of any such entity, provided that any such subsidiary is also included in the Power Sector.

Section 3.08. (*a*) The Guarantor covenants that indebtedness incurred by the Guarantor or by Comisión in respect of :

(i) the purchase of the assets of Industrial Electrica Mexicana, S.A. de C.V., and

(ii) the purchase after the date of this Agreement of assets of any other entity included or to be included in the Power Sector

will not be met out of the revenues of the Power Sector (including the Power Consumption Tax) except to the extent that such funds constitute excess funds set aside in accordance with Section 3.09(*a*) (B) of this Guarantee Agreement.

(*b*) The Guarantor will assist the Power Sector in refinancing, on more adequate terms and conditions, any debt of the Power Sector which, because of the amount or term originally contracted for or otherwise, interferes with the soundness of the Power Sector's financial situation and prospects.

Section 3.09. Except as the Bank and the Guarantor shall otherwise agree :

(*a*) The Guarantor will set and maintain or cause to be set and maintained rates for the sale of electricity (including the Power Consumption Tax) at such levels as shall be required to provide the Power Sector with revenues sufficient to : (i) cover all operating expenses of the Power Sector, including adequate maintenance and straight-line depreciation (calculated on the basis of the useful lives of major categories of assets) of its gross fixed