

No. 9366

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

Guarantee Agreement—*Seventh Power Project* (with annexed Loan Regulations No. 4, as amended, Loan Agreement between the Bank and the Empresa Nacional de Luz y Fuerza, and related letters). Signed at Washington, on 21 June 1968

Official text: English.

Registered by the International Bank for Reconstruction and Development on 27 December 1968.

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

Contrat de garantie — *Septième projet relatif à l'énergie électrique* (avec, en annexe, le Règlement n° 4 sur les emprunts, tel qu'il a été modifié, le Contrat d'emprunt entre la Banque et l'Empresa Nacional de Luz y Fuerza, et lettres connexes). Signé à Washington, le 21 juin 1968

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 27 décembre 1968.

No. 9366. GUARANTEE AGREEMENT¹ (*SEVENTH POWER PROJECT*) BETWEEN THE REPUBLIC OF NICARAGUA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 21 JUNE 1968

AGREEMENT, dated June 21, 1968, between REPUBLIC OF NICARAGUA (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 Nacional de Luz y Fuerza (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 fifteen million two hundred fifty thousand dollars (\$15,250,000), 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.

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 un-

¹ Came into force on 21 August 1968, upon notification by the Bank to the Government of Nicaragua.

² See p. 308 of this volume.

³ See p. 308 of this volume.

conditionally 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, 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. 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, the Guarantor undertakes to make arrangements or cause arrangements to be made to enable the Borrower promptly to be provided with such funds as are needed to meet such expenditures.

Section 2.03. Any funds supplied to the Borrower by the Guarantor pursuant to Section 2.02 or otherwise shall be provided under terms and conditions whereby repayment of principal and payment of interest and other charges, if required by the Guarantor, shall be met from surplus funds available to the Borrower only after meeting all obligations of the Borrower, including the obligations arising from the carrying out of the Project, the operation, maintenance and expansion of the plants, equipment and property of the Borrower, the building up of an adequate reserve fund, and the maintenance of service on the Loan and on any other long-term debt.

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 including the Banco Central de Nicaragua, 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 ensure 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 the administration, operations and financial condition of the Borrower, 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, the maintenance of the service thereof and the administration, operations and financial condition of the Borrower. 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 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 not take, or permit any of its political subdivisions or any part of its agencies or any agency of any political subdivision to take, any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained, and will take or cause to be taken all reasonable action (including action with respect to prompt payment to the Borrower of monies due to the Borrower for electricity supplied by it)

which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations.

Section 3.06. The Guarantor shall from time to time take all action necessary to enable the Borrower to maintain its rates at such levels as shall be necessary to provide revenue from the Borrower's operations sufficient to cover all its operating and administrative expenses, including taxes, adequate maintenance and depreciation, and to produce a reasonable return on the net fixed assets in operation of the Borrower. The provisions of this Section supersede all prior agreements between the Guarantor and the Bank relating to the rates of the Borrower.

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 *Ministro de Hacienda y Crédito Público* of the Guarantor and such person or persons as he shall designate 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 :

República de Nicaragua
Ministerio de Hacienda y Crédito Público
Palacio Nacional
Managua, Nicaragua

Alternative address for cables :

Hacienda
Managua, Nicaragua

For the Bank :

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

Alternative address for cables :

Intbafrad
Washington, D.C.