No. 9482

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
and
GUATEMALA

Guarantee Agreement—*Guacalate Power Project* (with annexed Loan Regulations No. 4, as amended, and Loan Agreement between the Bank and the Instituto Nacional de Electrificación). Signed at Washington on 28 June 1968

Authentic text: English.

Registered by the International Bank for Reconstruction and Development on 27 March 1969.

BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
GUATEMALA

Contrat de Garantie — *Projet relatif à l'énergie électrique de Guacalate* (avec, en annexe, le Règlement n° 4 sur les emprunts, tel qu'il a été modifié, et le Contrat d'emprunt entre la Banque et l'Instituto Nacional de Electrificación). Signé à Washington le 28 juin 1968

Texte authentique : anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 27 mars 1969.

GUARANTEE AGREEMENT [1]

AGREEMENT, dated June 28, 1968, between the REPUBLIC OF GUATEMALA (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 the Instituto Nacional de Electrificación (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 seven million dollars ($ 7,000,000), 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 Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961 as amended February 9, 1967, [2] subject, however, to the modification 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.

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,

[1] Came into force on 11 December 1968, upon notification by the Bank to the Government of Guatemala.
[2] See p. 210 of this volume.

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 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, promptly to make arrangements, satisfactory to the Bank, to provide the Borrower or cause the Borrower to be provided with such funds as and when 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 ; and (ii) 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 assets of the Banco de Guatemala or of any other institution performing the functions of a central bank.

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 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, except as the Guarantor and the Bank shall otherwise agree, it shall take all action necessary to enable the Borrower's rates for the sale of electricity to be set and maintained at such levels as may be required to provide the Borrower with revenues at least sufficient, after covering all operating and administrative expenses of the Borrower (including taxes, if any, adequate provision for maintenance, and depreciation on a straight-line basis at a rate of not less than 2 ½ per cent per annum) on its operations, to produce a return of not less than 9 % on the Borrower's average net fixed assets in operation, such assets to be reasonably valued in accordance with a method or methods of valuation or revaluation acceptable to the Bank ; provided, however, that until the end of 1969 : (i) the Borrower's return shall, in the case of the Borrower's average net fixed assets in operation which generate, transmit and deliver electricity to the Central System, be not less than 10 % ; and (ii) the Borrower's rates for the sale of electricity shall, in the other power systems, be maintained at least at their present levels. In determining the operating and administrative expenses for purposes of the computation in the foregoing proviso, the Borrower's central office overhead expenses shall be reasonably apportioned among the various systems.

For purposes of this Section, " average net fixed assets in operation " shall mean : (i) the value of the Borrower's gross fixed assets in operation less accumulated depreciation at the beginning of the calendar year plus (ii) the value of the gross fixed assets in operation less accumulated depreciation at the end of the year in question, divided by two ; provided, however, that when a major asset shall be brought into operation during the year, the value of such asset shall be included in the foregoing computation in respect of that part of the year during which such asset has been in operation.

For the purposes of the First Guarantee Agreement, the foregoing provisions will, on the Effective Date, replace those of Section 3.05 of the First Guarantee Agreement.

Section 3.06. The Guarantor covenants that, except as the Guarantor and the Bank shall otherwise agree, any funds made or to be made available by it to the Borrower either by way of advances, contributions (*asignaciones*) or otherwise shall, in accordance with the *Estatuto*, be made available only as free and unconditional equity investments of the Guarantor in the Borrower's capital.

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 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 :

Ministerio de Hacienda y Crédito Público
Palacio Nacional
Guatemala City
Guatemala

Alternative address for cables :

Minhacienda
Guatemala

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.