

No. 2377

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**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
and  
UNION OF SOUTH AFRICA**

**Guarantee Agreement (with annexed Loan Regulations  
No. 4 and Loan Agreement—*ESCOM Project*—between  
the Bank and the Electricity Supply Commission).  
Signed at Washington, on 28 August 1953**

*Official text: English.*

*Registered by the International Bank for Reconstruction and Development on  
20 November 1953.*

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**BANQUE INTERNATIONALE POUR LA  
RECONSTRUCTION ET LE DÉVELOPPEMENT  
et  
UNION SUD-AFRICAINE**

**Contrat de garantie (avec, en annexe, le Règlement n° 4  
sur les emprunts et le Contrat d'emprunt — *Projet  
ESCOM* — entre la Banque et l'Electricity Supply  
Commission). Signé à Washington, le 28 août 1953**

*Texte officiel anglais.*

*Enregistré par la Banque internationale pour la reconstruction et le développement  
le 20 novembre 1953.*

No. 2377. GUARANTEE AGREEMENT<sup>1</sup> BETWEEN THE UNION OF SOUTH AFRICA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 28 AUGUST 1953

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AGREEMENT, dated August 28, 1953, between THE UNION OF SOUTH AFRICA (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 Electricity Supply Commission (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,<sup>2</sup> the Bank has agreed to make to the Borrower a loan in various currencies in an aggregate principal amount equivalent to thirty million dollars (\$30,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the payment of the principal, interest and other charges on such loan and the obligations of the Borrower in respect thereof; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to guarantee the payment of the principal, interest and other charges on such loan and the obligations of the Borrower in respect thereof;

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<sup>3</sup> of the Bank dated October 15, 1952 (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, the due and punctual payment of the principal of, and the interest and other charges on,

<sup>1</sup> Came into force on 4 November 1953 upon notification by the Bank to the Government of the Union of South Africa.

<sup>2</sup> See p. 100 of this volume.

<sup>3</sup> See p. 98 of this volume.

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.

### 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 public 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 or any Province or other political subdivision of the Guarantor or any agency of any of them (including local governing authorities) 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 created by the South African Reserve Bank on any of its assets in the ordinary course of its banking business to secure a debt maturing not more than one year after the date on which it is originally incurred.

*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 or fees 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, or fees upon, 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 or fees 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 any action which would prevent or materially interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower contained in the Loan Agreement and will take or cause to be taken all action necessary and appropriate to enable the Borrower to perform such covenants, agreements and obligations. Without limitation or restriction upon the foregoing, the Guarantor undertakes (a) to permit the Borrower to borrow in the markets of the Guarantor such amounts of the currency of the Guarantor as may be needed by the Borrower for the purpose of carrying out the Project<sup>1</sup> described in Schedule 2 to the Loan Agreement, and (b) to sell or cause to be sold to the Borrower in exchange for currency of the Guarantor such amounts of foreign currencies as may be needed by the Borrower to meet the requirements in such currencies of the said Project.

#### *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 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.

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<sup>1</sup> See p. 110 of this volume.

*Article V*

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

For the Guarantor : Secretary to the Treasury, Union Buildings, Pretoria, Union of South Africa.

For the Bank : International Bank for Reconstruction and Development, 1818 H Street, N. W., Washington 25, D. C., United States of America.

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

*Section 5.03.* In this Agreement any reference to the Minister of Finance of the Guarantor shall include a reference to any Minister of State of the Guarantor for the time being acting for or on behalf of the Minister of Finance of the Guarantor.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

The Union of South Africa :

By G. P. JOOSTE

For the Minister of Finance on behalf of The Union of South Africa

International Bank for Reconstruction and Development :

By Eugene R. BLACK

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 OCTOBER 1952

REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS OTHER THAN  
MEMBER GOVERNMENTS

[*Not published herein. See United Nations, Treaty Series, Vol. 172, p. 115*]

## LOAN AGREEMENT

## (ESCOM PROJECT)

AGREEMENT, dated August 28, 1953, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and ELECTRICITY SUPPLY COMMISSION (hereinafter called the Borrower).

*Article I*

## LOAN REGULATIONS

*Section 1.01.* The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4<sup>1</sup> of the Bank dated October 15, 1952 (hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

*Article II*

## THE LOAN

*Section 2.01.* The Bank agrees to lend to the Borrower, on the terms and conditions in this Agreement set forth or referred to, an amount in various currencies equivalent to thirty million dollars (\$30,000,000).

*Section 2.02.* The Bank shall open a Loan Account on its books in the name of the Borrower and shall credit to such Account the amount of the Loan. The amount of the Loan may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in, the Loan Regulations.

*Section 2.03.* The Borrower shall pay to the Bank a commitment charge at the rate of three-quarters of one per cent ( $\frac{3}{4}$  of 1%) per annum on the principal amount of the Loan not so withdrawn from time to time. The date specified for the purposes of Section 2.02 of the Loan Regulations is October 31, 1953, or the Effective Date, whichever shall be the earlier.

*Section 2.04.* The Borrower shall pay interest at the rate of four and three-fourths per cent ( $4\frac{3}{4}\%$ ) per annum on the principal amount of the Loan so withdrawn and outstanding from time to time.

*Section 2.05.* Except as the Bank and the Borrower shall otherwise agree, the charge payable for special commitments entered into by the Bank at the request of the Borrower pursuant to Section 4.02 of the Loan Regulations shall be at the rate of one-half of one per cent ( $\frac{1}{2}$  of 1%) per annum on the principal amount of any such special commitments outstanding from time to time.

*Section 2.06.* Interest and other charges shall be payable semi-annually on March 15 and September 15 in each year.

*Section 2.07.* The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 1<sup>2</sup> to this Agreement.

<sup>1</sup> See p. 98 of this volume.

<sup>2</sup> See p. 108 of this volume.

*Article III*

## USE OF PROCEEDS OF THE LOAN

*Section 3.01.* The Borrower shall apply the proceeds of the Loan exclusively to financing the cost of goods required to carry out the Project described in Schedule 2<sup>1</sup> to this Agreement. The specific goods to be financed out of the proceeds of the Loan shall be determined by agreement between the Bank and the Borrower, subject to modification by further agreement between them.

*Section 3.02.* The Borrower shall cause all goods financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project. Except as shall be otherwise agreed in writing between the Bank and the Borrower, the Borrower will obtain title to all such goods free and clear of all encumbrances.

*Article IV*

## BONDS

*Section 4.01.* The Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in the Loan Regulations.

*Section 4.02.* Any Commissioner of the Borrower and such person or persons as he shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 6.12 (a) of the Loan Regulations.

*Article V*

## PARTICULAR COVENANTS

*Section 5.01.* (a) The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound engineering and financial practices.

(b) The Borrower shall maintain records adequate to identify the goods financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the financial condition and operations of the Borrower; shall enable the Bank's representatives to inspect the Project, the goods and any relevant records and documents; and shall furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the goods, and the financial condition and operations of the Borrower.

*Section 5.02.* (a) The Bank and the Borrower 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.

<sup>1</sup>See p. 110 of this volume.

(b) The Bank and the Borrower 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 Borrower 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.

*Section 5.03.* If the Borrower shall propose to incur any external debt, the Borrower shall inform the Bank of such proposal and, before the proposed action is taken, shall afford the Bank all opportunity which is reasonably practicable in the circumstances to exchange views with the Borrower with respect thereto; provided, however, that the foregoing provisions shall not apply to the incurring of additional external debt through utilization, in accordance with the terms of any credit established prior to the date of this Agreement, of any unused amounts available under such credit.

*Section 5.04.* It is the mutual intention of the Borrower and the Bank that no other debt shall enjoy any priority over the Loan by way of a lien on assets of the Borrower. To that end the Borrower specifically undertakes that except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any debt, such lien shall *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 shall be made to that effect. However, this Section shall not apply to any lien created on any property at the time of purchase thereof solely as security for the payment of the purchase price of such property.

*Section 5.05.* The Borrower shall pay or cause to be paid all taxes or fees, if any, imposed under the laws of the Guarantor or laws in effect in the territories of the Guarantor on or in connection with the execution, issue, delivery or registration of this Agreement, the Guarantee Agreement or the Bonds, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, 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 5.06.* The Borrower shall pay or cause to be paid all taxes and fees, if any, imposed under the laws of the country or countries in whose currency the Loan and Bonds are payable or laws in effect in the territories of such country or countries on or in connection with the execution, issue, delivery or registration of this Agreement, the Guarantee Agreement or the Bonds.

*Section 5.07.* Except as shall be otherwise agreed between the Bank and the Borrower, the Borrower shall insure or cause to be insured the goods financed with the proceeds of the Loan against risks incident to their purchase and importation into the territories of the Guarantor. Each contract of insurance shall be for such amounts as shall be consistent with sound commercial practice and shall be payable in dollars or in the currency in which the cost of the goods insured thereunder shall be payable.

*Section 5.08.* (a) The Borrower will at all times maintain its existence and right to carry on operations and will, except as the Bank shall otherwise agree in writing,



maintain and renew all rights, powers, privileges and franchises owned by it and necessary or useful in the operation of its business.

(b) The Borrower will maintain its plants, equipment and property, and from time to time make all necessary renewals and repairs thereof, all in accordance with sound engineering practice; and will at all times operate its plants and equipment in accordance with sound business and public utility practices.

(c) The Borrower will not, without the prior written consent of the Bank, (i) sell or otherwise dispose of all or substantially all of its assets and property unless the Borrower shall first redeem and pay or make adequate provision satisfactory to the Bank for redemption and payment of all of the Loan which shall be outstanding and unpaid; or (ii) sell or otherwise dispose of all or substantially all of the property included in the Project unless the Borrower shall first redeem and pay or make adequate provision satisfactory to the Bank for redemption and payment of a proportionate part of the Loan which shall then be outstanding and unpaid equal to the proportionate part of the Project so sold or disposed of; or (iii) sell, pledge, mortgage or otherwise dispose of any goods purchased or paid for in whole or in part out of the proceeds of the Loan; provided, however, that the Borrower may sell or otherwise dispose of any such goods which shall have become old, worn-out, obsolete or unnecessary for use in its operations.

#### Article VI

##### REMEDIES OF THE BANK

*Section 6.01.* (i) If any event specified in paragraph (a), paragraph (b), paragraph (e) or paragraph (f) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of thirty days, or (ii) if any event specified in paragraph (c) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower, then at any subsequent time during the continuance thereof, the Bank, at its option, may declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Agreement or in the Bonds to the contrary notwithstanding.

*Section 6.02.* The following is specified as an event for the purposes of Section 5.02 (j) of the Loan Regulations :

Any event specified in paragraph (3) of Section 5.02 of Loan Regulations No. 4 of the Bank dated August 15, 1950, with reference to the Loan Agreement dated January 23, 1951, between the Borrower and the Bank shall have occurred.

#### Article VII

##### MISCELLANEOUS

*Section 7.01.* The Closing Date shall be December 31, 1955.

*Section 7.02.* The following matter is specified for the purposes of Section 9.02 (d) of the Loan Regulations :

That the Borrower has the power and obligation under Section 10 of the Electricity Act, 1922, as amended, to adjust its charges from time to time, without

obtaining the approval of the Electricity Control Board or anyone else, in order to cover the costs and other amounts referred to in such Section.

*Section 7.03.* A date sixty days after the date of this Agreement is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

*Section 7.04.* The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Bank : International Bank for Reconstruction and Development, 1818 H Street, N. W., Washington 25, D. C., United States of America.

For the Borrower : Electricity Supply Commission, Escom House, Rissik Street, Johannesburg, Union of South Africa.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Bank for Reconstruction and Development :  
By (*Signed*) Eugene R. BLACK

Electricity Supply Commission :  
By (*Signed*) A. J. VAN LINGEN

## SCHEDULE 1

### AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>	<i>Principal Amount Outstanding After Each Payment (expressed in dollars)*</i>	<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>	<i>Principal Amount Outstanding After Each Payment (expressed in dollars)*</i>
March 15, 1955 . . .	—	30,000,000	September 15, 1959.	1,753,000	15,608,000
September 15, 1955.	1,455,000	28,545,000	March 15, 1960 . . .	1,795,000	13,813,000
March 15, 1956 . . .	1,487,000	27,058,000	September 15, 1960.	1,837,000	11,976,000
September 15, 1956.	1,523,000	25,535,000	March 15, 1961 . . .	1,881,000	10,095,000
March 15, 1957 . . .	1,559,000	23,976,000	September 15, 1961.	1,925,000	8,170,000
September 15, 1957.	1,596,000	22,380,000	March 15, 1962 . . .	1,971,000	6,199,000
March 15, 1958 . . .	1,634,000	20,746,000	September 15, 1962.	2,018,000	4,181,000
September 15, 1958.	1,673,000	19,073,000	March 15, 1963 . . .	2,066,000	2,115,000
March 15, 1959 . . .	1,712,000	17,361,000	September 15, 1963.	2,115,000	—

\* To the extent that any part of the Loan is repayable in a currency other than dollars (see Loan Regulations, Section 3.02), the figures in these columns represent dollar equivalents determined as for purposes of withdrawal.

## PREMIUMS ON PREPAYMENT AND REDEMPTION

The following percentages are specified as the premiums payable on repayment in advance of maturity of any part of the principal amount of the Loan pursuant to Section 2.05 (b) of the Loan Regulations or on the redemption of any Bond prior to its maturity pursuant to Section 6.16 of the Loan Regulations :

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than 1 year before maturity . . . . .	1/2%
More than 1 year but not more than 3 years before maturity . . .	3/4%
More than 3 years but not more than 5 years before maturity . .	1%
More than 5 years but not more than 7 years before maturity . .	1 1/2%
More than 7 years before maturity . . . . .	2%

## SCHEDULE 2

## DESCRIPTION OF THE PROJECT

The Project consists of the completion of (a) eight thermal power stations now under construction, which will have a total installed capacity when completed of 1,210,000 kilowatts, (b) the addition of approximately 202,000 kilowatts to six existing stations, and (c) the construction of about 900 miles of high tension transmission lines with the necessary substations. It is contemplated that the Borrower will expend for such purposes the equivalent of approximately £S.A. 74,000,000. The Project is scheduled to be completed by the end of 1958. Such schedule of completion may be modified by agreement between the Bank and the Borrower.

The capacities to be installed in each of the stations under construction and in existing stations are shown below :

## STATIONS UNDER CONSTRUCTION

<i>Name</i>	<i>Undertaking</i>	<i>Location</i>	<i>Installed Capacity when Completed (kW)</i>
Hex River	Cape Western	Worcester	60,000
Salt River No. 2	Cape Western	Cape Town	120,000
Swartkops	Swartkops River	Port Elizabeth	40,000
West Bank	Border	East London	30,000
Umgeni	Durban	Pinetown (Durban)	60,000
Vierfontein	Rand	Orange Free State	300,000
Taaibos	Rand	Orange Free State	420,000
Wilge	Rand	Transvaal	180,000
TOTAL			1,210,000

## EXISTING STATIONS

<i>Name</i>	<i>Undertaking</i>	<i>Location</i>	<i>Capacity to be Added (kW)</i>
Congella	Durban	Durban	40,000
Colenso	Natal Central	Natal	25,000
Vaal	Rand	Orange Free State	99,000
Witbank	Witbank	Transvaal	20,000
Vereeniging	Rand	Transvaal	7,000 <sup>1</sup>
Central (Kimberley)	Cape Northern	Cape	11,000
		TOTAL	202,000

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<sup>1</sup> No new generator is to be installed, but one additional boiler will increase capacity of present generators by approximately 7,000 kW.

## CENTRALES EXISTANTES

<i>Nom</i>	<i>Entreprise</i>	<i>Lieu</i>	<i>Capacité supplé- mentaire (kw)</i>
Congella	Durban	Durban	40.000
Colenso	Natal Central	Natal	25.000
Vaal	Rand	État libre d'Orange	99.000
Witbank	Witbank	Transvaal	20.000
Vereeniging	Rand	Transvaal	7.000 <sup>1</sup>
Central (Kimberley)	Cape Northern	Le Cap	11.000
TOTAL			202.000

<sup>1</sup> On n'installera pas un nouveau générateur mais une nouvelle chaudière qui accroîtra la capacité des générateurs actuels d'environ 7.000 kw.