

No. 2065

**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 Electricity Supply Commission). Signed
at Washington, on 23 January 1951**

Official text: English.

*Registered by the International Bank for Reconstruction and Development on
28 January 1953.*

**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 de
l'Escom* — entre la Banque et la Electricity Supply
Commission). Signé à Washington, le 23 janvier 1951**

Texte officiel anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développement
le 28 janvier 1953.*

No. 2065. GUARANTEE AGREEMENT¹ BETWEEN THE UNION OF SOUTH AFRICA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 23 JANUARY 1951

AGREEMENT, dated January 23, 1951, 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 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)² executed and delivered simultaneously with the execution and delivery of this Agreement and bearing even date herewith, the Bank has agreed to make to the Borrower a loan in the aggregate principal amount of thirty million dollars (\$30,000,000), or the equivalent thereof in other currencies, on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee such loan as herein provided; and

WHEREAS in the Loan Agreement the Bank and the Borrower have agreed to accept all the provisions of Loan Regulations No. 4², dated August 15, 1950, a copy of which is attached hereto as Annex A (hereinafter called the Loan Regulations); and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower has agreed to guarantee such loan as herein provided;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

Section 1.01. The parties hereto hereby accept all the provisions of the Loan Regulations with the same force and effect as if fully set forth herein. Each of the parties hereto agrees to perform all the obligations on its part to be performed under the Loan Regulations.

¹ Came into force on 4 April 1951 upon notification by the Bank to the Government of the Union of South Africa.

² See p. 142 of this volume.

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 interest and other charges on, the Loan, 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. (a) The Guarantor shall furnish to the Bank such information as it shall reasonably request with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor. The Guarantor will promptly inform the Bank of any condition of substantial importance in the territories of the Guarantor that shall interfere with, or threaten to interfere with, the performance by the Guarantor of its obligations hereunder.

(b) If the Guarantor or any Province or other political subdivision of the Guarantor or any agency of any of them (including local governing authorities) shall propose to incur any substantial external debt, the Guarantor 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 Guarantor with respect thereto; provided, however, that the foregoing provisions of this sentence shall not apply to : (i) 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; (ii) the entering into international payments or similar agreements the term of which is not more than one year and under which the transactions on each side are expected to balance over the period of the agreement; or (iii) the incurring by the South African Reserve Bank in the ordinary course of its business of any indebtedness maturing not more than two years after its date.

(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 3.02. It is the mutual intention of the Guarantor and the Bank that no other external public debt shall enjoy any priority over the Loan by way of a lien on public assets. To that end the Guarantor specifically 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 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 : (i) 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; (ii) any lien on commercial goods to secure debt maturing not more than one year after its date 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 any indebtedness maturing not more than one year after its date.

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 by the Guarantor or any taxing authority thereof or therein and free from all restrictions of the Guarantor and any Province or other political subdivision of the Guarantor or any agency of any of them (including local governing authorities). The foregoing provisions of this Section shall not apply to taxes on 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. The Guarantee Agreement, the Loan Agreement and the Bonds shall be free of any issue, stamp or other tax imposed by the Guarantor or any taxing authority thereof or therein.

Section 3.04. 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 in the Loan Agreement or the Loan Regulations contained.

Article IV

Section 4.01. 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 4.02. The Minister of Finance of the Guarantor and such person or persons as he shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 6.12 (b) of the Loan Regulations.

Section 4.03. The Minister of Finance of the Guarantor in office at the time in question is designated for the purposes of Section 8.03 of the Loan Regulations.

Section 4.04. 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 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
President

A N N E X A

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 AUGUST 1950

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

[*Not published herein. See United Nations, Treaty Series, Vol. 157, p. 268.*]

LOAN AGREEMENT

(ESCOM PROJECT)

AGREEMENT, dated January 23, 1951, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and ELECTRICITY SUPPLY COMMISSION (hereinafter called the Borrower).

Article I

THE LOAN

Section 1.01. The Bank agrees to lend to the Borrower, on the terms and conditions hereinafter in this Agreement set forth or referred to, the sum of thirty million dollars (\$30,000,000), or the equivalent in currencies other than dollars.

Section 1.02. The parties to this Agreement accept all the provisions of Loan Regulations No. 4¹ of the Bank, dated August 15, 1950 (hereinafter called the Loan

¹ See above.

Regulations), a copy of which has been furnished to the Borrower, with the same force and effect as if they were fully set forth herein.

Section 1.03. 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. Copies of forms of withdrawal applications have been delivered to the Borrower.

Section 1.04. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one per cent ($\frac{3}{4}\%$) per annum on the principal amount of the Loan not so withdrawn from time to time.

Section 1.05. The Borrower shall pay interest at the rate of four per cent (4%) per annum on the principal amount of the Loan so withdrawn and outstanding from time to time.

Section 1.06. Interest and commitment charge shall be payable semi-annually on May 15 and November 15 in each year.

Section 1.07. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 1¹ to this Agreement.

Article II

USE OF PROCEEDS OF THE LOAN

Section 2.01. The Borrower shall cause the proceeds of the Loan to be applied exclusively to the cost of goods which will be required for the carrying out of the Project as described in Schedule 2¹ attached hereto. The specific goods to be purchased out of the proceeds of the Loan shall be determined by agreement between the Bank and the Borrower, and the list of such goods may be modified from time to time by agreement between them.

Section 2.02. The Borrower shall cause all goods purchased in whole or in part with the proceeds of the Loan to be imported into the territories of the Guarantor and there 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 III

BONDS

Section 3.01. The Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in the Loan Regulations. 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.

¹ See p. 152 of this volume.

Article IV

PARTICULAR COVENANTS

Section 4.01. The Borrower will carry out and complete the Project with due diligence and efficiency and in conformity with sound engineering practice.

Section 4.02. The Borrower will maintain or cause to be maintained books, accounts and records adequate to identify the goods purchased in whole or in part with the proceeds of the Loan, to disclose the end-use thereof in the Project and to record the progress of the Project; and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Borrower.

Section 4.03. (a) The Bank and the Borrower shall co-operate fully to assure that the purposes of the Loan shall 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 Borrower, such information shall include information with respect to the operations and financial condition of the Borrower and the Project. The Borrower 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; and the Borrower shall promptly inform the Bank of any condition that shall interfere with, or threaten to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(b) The Borrower shall afford to the Bank all reasonable opportunity to inspect any and all goods paid for out of the proceeds of the Loan and any relevant records and documents and shall furnish to the Bank all such information as the Bank shall reasonably request relating to the end-use of such goods.

(c) If the Borrower shall propose to incur any substantial 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.

Section 4.04. 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 4.05. The Borrower will pay or cause to be paid any taxes and other fiscal charges of any nature that shall be imposed upon this Agreement, the Bonds or

the Guarantee Agreement, or the execution or delivery thereof, or the registration thereof with any agency or official of the Guarantor, or the payment of principal, interest or other charges thereunder. Such principal, interest and other charges will be paid without deduction for and free of any and all such taxes and fiscal charges imposed by the Guarantor or any taxing authority thereof or therein. This Section shall not apply to taxation of payments made under the provisions of 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 4.06. Except as shall be otherwise agreed in writing between the Bank and the Borrower, the Borrower will insure or cause to be insured with responsible insurers all goods purchased in whole or in part with the proceeds of the Loan. Such insurance shall cover such marine, transit and other hazards incident to delivery of the goods into the territories of the Guarantor, and shall be for such amounts, as shall be consistent with sound commercial practice. Each contract of insurance shall be payable in dollars or in the currency in which the cost of the goods insured thereunder shall be payable.

Section 4.07. (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 and maintain its financial position 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. The Borrower may, however, without reference to the foregoing, sell or otherwise dispose of any property which shall have become old, worn-out, obsolete or unnecessary for use in its operations.

Article V

REMEDIES OF THE BANK

Section 5.01. If any event specified in paragraph (1) or (2) of Section 5.02 of the Loan Regulations shall occur and continue for a period of thirty days or if any event

specified in paragraph (3) of Section 5.02 of the Loan Regulations shall occur and 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.

Article VI

MISCELLANEOUS

Section 6.01. The Closing Date shall be December 31, 1953.

Section 6.02. 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.

Section 6.03. The date specified for the purposes of Section 9.04 of the Loan Regulations is March 15, 1951.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this 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 Eugene R. BLACK
President

Electricity Supply Commission :

By A. VAN LINGEN
Authorized Representative

SCHEDULE 1
AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal</i>	<i>Principal Amount Outstanding After Each Payment</i>	<i>Date Payment Due</i>	<i>Payment of Principal</i>	<i>Principal Amount Outstanding After Each Payment</i>
November 15, 1953	—	\$30,000,000	November 15, 1962	\$874,535	\$16,626,725
May 15, 1954	\$624,560	29,375,440	May 15, 1963	892,026	15,734,699
November 15, 1954	637,051	28,738,389	November 15, 1963	909,866	14,824,833
May 15, 1955	649,792	28,088,597	May 15, 1964	928,063	13,896,770
November 15, 1955	662,788	27,425,809	November 15, 1964	946,625	12,950,145
May 15, 1956	676,044	26,749,765	May 15, 1965	965,557	11,984,588
November 15, 1956	689,565	26,060,200	November 15, 1965	984,868	10,999,720
May 15, 1957	703,356	25,356,844	May 15, 1966	1,004,566	9,995,154
November 15, 1957	717,423	24,639,421	November 15, 1966	1,024,657	8,970,497
May 15, 1958	731,772	23,907,649	May 15, 1967	1,045,150	7,925,347
November 15, 1958	746,407	23,161,242	November 15, 1967	1,066,053	6,859,294
May 15, 1959	761,335	22,399,907	May 15, 1968	1,087,374	5,771,920
November 15, 1959	776,562	21,623,345	November 15, 1968	1,109,122	4,662,798
May 15, 1960	792,093	20,831,252	May 15, 1969	1,131,304	3,531,494
November 15, 1960	807,935	20,023,317	November 15, 1969	1,153,930	2,377,564
May 15, 1961	824,094	19,199,223	May 15, 1970	1,177,009	1,200,555
November 15, 1961	840,576	18,358,647	November 15, 1970	1,200,555	—
May 15, 1962	857,387	17,501,260			

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 5 years before maturity	1/2%
More than 5 years but not more than 10 years before maturity	1%
More than 10 years but not more than 15 years before maturity	1 3/4%
More than 15 years but not more than 20 years before maturity	2 1/2%

SCHEDULE 2
DESCRIPTION OF PROJECT

The Project of the Borrower consists of the construction of seven new power stations with a total installed capacity of about 700,000 kw, the installation of 235,000 kw additional capacity in existing power stations, the construction of about 1,300 miles high-tension transmission lines, the installation of approximately 1,000,000 kva of transformer capacity and the installation of suitable interconnectors to provide for interchange of power between certain of its stations. The Project contemplates the expenditure by the Borrower of the equivalent of approximately £ S.A. 59,100,000 during the years 1950 through 1955 for such purposes.

The proceeds of the Loan are to be used to assist in the financing of turbo-generators and accessories, boilers and accessories, electrical apparatus, including switch gear, transformers, power and control cable, cable for station lighting and grounding, pumps, piping and structural materials.