INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT and NICARAGUA

Guarantee Agreement — Thermal Power Project (with annexed Loan Regulations No. 4 and Loan Agreement — Thermal Power Project — between the Bank and the Empresa Nacional de Luz y Fuerza). Signed at Washington, 8 July 1955

Official text : English.

Registered by the International Bank for Reconstruction and Development on 23 February 1956.

BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DÉVELOPPEMENT et

NICARAGUA

Contrat de garantie — Projet relatif à la production d'énergie thermique (avec, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt — Projet relatif à la production d'énergie thermique — entre la Banque et l'Empresa Nacional de Luz y Fuerza). Signé à Washington, le 8 juillet 1955

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 23 février 1956.

No. 3162. GUARANTEE AGREEMENT 1 (THERMAL POWER PROJECT) BETWEEN THE REPUBLIC OF NICARAGUA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 8 JULY 1955

AGREEMENT, dated July 8, 1955, between the 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 Agreement², the Bank has agreed to make to the Borrower a loan in various currencies in an aggregate principal amount equivalent to seven million one hundred thousand dollars (\$7,100,000), 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 of the Bank dated February 15, 1955³, (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 uncondition-

¹ Came into force on 8 October 1955 upon notification by the Bank to the Government of the Republic of Nicaragua.

<sup>See p. 106 of this volume.
See p. 106 of this volume.</sup>

ally 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 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, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower 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 of 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 indebtedness.

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 prinicpal 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 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 Nacional 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 co-operate 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 or permit any of its political subdivisions or any 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 which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations.

Section 3.07. The Guarantor covenants that it will from time to time grant or cause to be granted to the Borrower rates which will provide revenues sufficient: (a) to cover operating expenses, including adequate maintenance and depreciation, taxes, and interest; (b) to meet repayments on long-term indebtedness but only to the extent that such repayments shall exceed provision for depreciation; and (c) to leave a reasonable surplus for financing new investment.

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

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 Ministro de Hacienda y Crédito Público of the Guarantor is designated for the purposes of Section 8.03 of the Loan Regulations.

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.

Republic of Nicaragua

By Guillermo Sevilla Sacasa

Authorized Representative

International Bank for Reconstruction and Development

By Eugene R. BLACK President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 FEBRUARY 1955

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

[Not published herein. See United Nations, Treaty Series, Volume 221.]

LOAN AGREEMENT (THERMAL POWER PROJECT)

AGREEMENT, dated July 8, 1955, between International Bank for Reconstruction and Development (hereinafter called the Bank) and Empresa Nacional De Luz y Fuerza (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 of the Bank dated February 15, 1955, 1 (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

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 seven million one hundred thousand dollars (\$7,100,000).

¹ See above.

No. 3162

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-fourths of one per cent $(^3/_4$ of 1%) per annum on the principal amount of the Loan not so withdrawn from time to time.

Section 2.04. The Borrower shall pay interest at the rate of four and three-fourths per cent $(4^{3}/_{4}^{9})$ 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 $\frac{9}{0}$) 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 April 1 and October 1 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 to this Agreement.

Article III

Use of Proceeds of the Loan

Section 3.91. 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 2² 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 imported into the territories of the Guarantor and there to be used exclusively in the carrying out of the Project.

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. The General Manager (Gerente General) of the Borrower acting jointly with such other person or persons as the Borrower 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. 118 of this volume.

² See p. 118 of this volume.

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. To assist it in carrying out the Project the Borrower shall employ competent and experienced engineering consultants and contractors.
- (b) The Borrower shall furnish to the Bank, promptly upon request, the plans and specifications for the Project and any material modifications subsequently made therein.
- (c) 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 co-operate 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.
- (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. The Borrower 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 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 arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.
- Section 5.04. Except as the Bank and the Borrower shall otherwise agree, the Borrower shall not incur any long-term indebtedness if thereby the proportion of long-term indebtedness to equity would exceed a ratio of 2 to 1.

For the purposes of this Section the following terms shall have the meanings hereinafter set forth:

- (a) The term "long-term indebtedness" shall mean debt maturing by its terms more than one year after the date on which it is incurred. Whenever for purposes of this Section it shall be necessary to value in Nicaraguan currency long-term indebtedness payable in another currency, such valuation shall be made on the basis of the rate of exchange at which such other currency is, at the time such valuation is made, obtainable for the purposes of servicing such debt.
- (b) The term "equity" shall include capital and surplus determined in accordance with sound accounting practices. It shall also include such advances made by the Guarantor to the Borrower as are to be serviced 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 indebtedness.
- 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 the 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. (a) The Borrower shall at all times maintain its existence and right to carry on operations and shall, except as the Bank shall otherwise agree, 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 shall operate and maintain its plants, equipment and property, and from time to time make all necessary renewals and repairs thereof, all in accordance with sound engineering standards; and shall at all times operate its plants and equipment and maintain its financial position in accordance with sound business and public utility practices.
- (c) Except as shall be otherwise agreed between the Bank and the Borrower, the Borrower shall not undertake, execute or invest in any project or development (other than the Project) the cost of which is estimated to exceed \$300,000, or the equivalent; provided, however, that the foregoing provision shall not apply to any project or development for the expansion of the distribution facilities of the Borrower.

Section 5.08. The Borrower shall not, without the consent of the Bank, sell or otherwise dispose of all or substantially all of its property and assets or all or substantially all the property included in the Project or any plant the cost of which is financed in whole or in part out of the proceeds of the Loan, unless the Borrower shall first redeem and pay, or make adequate provision satisfactory to the Bank for redemption or payment of, all of the Loan which shall then be outstanding and unpaid.

Section 5.09. 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. Such insurance 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 5.10. The Borrower shall from time to time take all steps necessary or desirable to obtain such adjustments in its rates as will provide revenues sufficient: (a) to cover operating expenses, including adequate maintenance and depreciation, taxes, and interest; (b) to meet repayments on long-term indebtedness but only to the extent that such repayments shall exceed provision for depreciation; (c) to leave a reasonable surplus for financing new investment.

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.

Article VII

Effective Date; Termination

Section 7.01. The following event is specified as an additional condition to the effectiveness of this Agreement within the meaning of Section 9.01 (a) (ii) of the Loan Regulations:

Appropriate legislative or other action of the Guarantor satisfactory to the Bank shall have been taken for provision to the Borrower of not less than 21,460,000 Nicaraguan córdobas, to be made available to it at the rate of not less than 7,000,000 córdobas during the fiscal year 1955-1956, not less than 9,000,000 córdobas during the fiscal year 1956-1957, and not less than 5,460,000 córdobas during the fiscal year 1957-1958.

Section 7.02. A date sixty days after the date of this Agreement is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be June 30, 1958.

Section 8.02. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations:

For the Borrower:

Empresa Nacional de Luz y Fuerza Managua, Nicaragua

For the Bank:

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

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 Eugene R. Black

President

Empresa Nacional de Luz y Fuerza

By Salvo

Authorized Representative

SCHEDULE 1

AMORTIZATION SCHEDULE

Date Payment Due	Payment of Principal (expressed in dollars)*	Principal Amount Outstanding After Each Pay- ment (expressed in dollars)*	Date Payment Due		Payment of Principal (expressed in dollars)*	Principal Amount Outstanding After Each Pay- ment (expressed in dollars)*
April 1, 1958		\$7,100,000	April 1, 1967		\$206,000	\$4,043,000
October 1, 1958 .	\$138,000	6,962,000	October 1, 1967		211,000	3,832,000
April 1, 1959	141,000	6,821,000	April 1, 1968		216,000	3,616,000
October 1, 1959 .	145,000	6,676,000	October 1, 1968		221,000	3,395,000
April 1, 1960	148,000	6,528,000	April 1, 1969		226,000	3,169,000
October 1, 1960 .	152,000	6,376,000	October 1, 1969		231,000	2,938,000
April 1, 1961	155,000	6,221,000	April 1, 1970		237,000	2,701,000
October 1, 1961 .	159,000	6,062,000	October 1, 1970		242,000	2,459,000
April 1, 1962	163,000	5,899,000	April 1, 1971		248,000	2,211,000
October 1, 1962 .	167,000	5,732,000	0		254,000	1,957,000
April 1, 1963	170,000	5,562,000	April 1, 1972		260,000	1,697,000
October 1, 1963 .	175,000	5,387,000	October 1, 1972		266,000	1,431,000
April 1, 1964	179,000	5,208,000	April 1, 1973		273,000	1,158,000
October 1, 1964 .	183,000	5,025,000	October 1, 1973	,	279,000	879,000
April 1, 1965	187,000	4,838,000	April 1, 1974		286,000	593,000
October 1, 1965 .	192,000	4,646,000	October 1, 1974		293,000	300,000
April 1, 1966	196,000	4,450,000	April 1, 1975		300,000	
October 1, 1966 .	201,000	4,249,000	_			

^{*} 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:

Time of Prepayment or Redemption	Premium
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	13/4%
More than 15 years before maturity	2 1/2 %

SCHEDULE 2

DESCRIPTION OF PROJECT

The Project will consist of:

1. The construction at the site of the existing diesel-powered generating plant owned by the Borrower in Managua of a new thermal plant containing two turbo-generators each of 15,000 KW capacity and two boilers each with about 160,000 lbs. per hour steam

capacity to supply steam to the turbines at a pressure of about 850 lbs. per square inch and at a temperature of about 900 degrees F. complete with the conventional auxiliaries, a warehouse, fuel oil handling and storage facilities, substation and other electrical equipment.

- 2. The construction of about 180 kilometers of 69 Kv transmission lines and about 91 kilometers of 13.2 Kv transmission lines with the necessary substations to transmit energy from the thermal plant in Managua to about 15 communities north and south of Managua, including Granada, Masaya, Diriamba, Nandaime, León, Chinandega and Corinto, and the provision of carrier current equipment for communicating between the thermal plant in Managua and other generating plants that may be connected into the transmission system and substations on the transmission lines.
- 3. The installation of the necessary equipment to enable the existing diesel plant of the Borrower and the existing generating plants in León, Granada and Diriamba to operate in parallel with the new thermal plant to be constructed in Managua.
- 4. The rehabilitation and expansion of the distribution system in Managua to enable it to service adequately the demand anticipated in about the next ten years.