

No. 4343

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

Guarantee Agreement—Supplementary Loan—Lünersee Project (with annexed Loan Regulations No. 4, Loan Agreement—Supplementary Loan—Lünersee Project—between the Bank and Vorarlberger Illwerke Aktiengesellschaft and related letter). Signed at Washington, on 10 October 1957

Official text: English.

Registered by the International Bank for Reconstruction and Development on 20 May 1958.

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

Contrat de garantie — Emprunt supplémentaire — Projet du Lünersee (avec, en annexe, le Règlement n° 4 sur les emprunts, le Contrat d'emprunt — Emprunt supplémentaire — Projet du Lünersee — entre la Banque et la Vorarlberger Illwerke Aktiengesellschaft et une lettre connexe). Signé à Washington, le 10 octobre 1957

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 20 mai 1958.

No. 4343. GUARANTEE AGREEMENT¹ (*SUPPLEMENTARY LOAN—LÜNERSEE PROJECT*) BETWEEN THE REPUBLIC OF AUSTRIA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 10 OCTOBER 1957

AGREEMENT, dated October 10, 1957, between the REPUBLIC OF AUSTRIA (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 Vorarlberger Illwerke Aktiengesellschaft (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 in an aggregate principal amount equivalent to fifteen million German marks (DM 15,000,000), 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 the 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 June 15, 1956,² subject, however, to the modifications thereof set forth in Schedule 2³ to the Loan Agreement (such 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.

¹ Came into force on 18 January 1958, upon notification by the Bank to the Government of Austria.

² See p. 104 of this volume.

³ See p. 128 of this volume.

Section 1.02. Wherever used in this Guarantee Agreement, unless the context shall otherwise require, the respective terms which are defined in Section 1.02 of the Loan Agreement shall have the respective meanings therein set forth.

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, 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 hereafter created 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; (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.

The term "assets of the Guarantor" as used in this Section includes assets of the Guarantor, of any agency of the Guarantor and of the Österreichische Nationalbank.

The Guarantor further undertakes that, within the limits of its constitutional powers, it will make the foregoing undertaking effective with respect to liens on the assets of any of its political subdivisions and their agencies.

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 and the premium, if any, on the prepayment of the Loan or the redemption of 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, the Bonds, the Assignment and the Mortgage 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 and the premium, if any, on the prepayment of the Loan or the redemption of the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

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.

Article V

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

For the Guarantor :

Minister of Finance
Vienna I
Himmelpfortgasse
Austria

Alternative address for cablegrams and radiograms :

Finanzministerium
Wien

For the Bank :

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

Alternative address for cablegrams and radiograms :

Intbafrad
Washington, D. C.

Section 5.02. The Minister of Finance 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 Austria :

By ZEDTWITZ
Authorized Representative

International Bank for Reconstruction and Development :

By W. A. B. ILIFF
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 JUNE 1956

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

[Not published herein. See *United Nations, Treaty Series, Vol. 260, p. 376.*]

LOAN AGREEMENT (*SUPPLEMENTARY LOAN—LÜNERSEE PROJECT*)

AGREEMENT, dated October 10, 1957, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and VORARLBERGER ILLWERKE AKTIENGESELLSCHAFT (hereinafter called the Borrower), a company organized and existing under the laws of the Guarantor.

WHEREAS

(A) By a loan agreement dated June 14, 1955¹ (hereinafter called the first Loan Agreement), between the Bank and the Borrower, the Bank granted a loan to the Borrower in an amount in various currencies equivalent to \$10,000,000, for the purpose of financing the construction of hydroelectric generating facilities and ancillary installations more particularly described therein (hereinafter called the Lünensee Project);

(B) The said loan was guaranteed as to payment of principal, interest and other charges by the Guarantor;

(C) The Borrower as security for the first loan (as hereinafter defined) has created or has undertaken to create a first mortgage or first mortgages on certain properties now owned or hereafter acquired by the Borrower which are required for the completion and continued operation of the Lünensee Project, as more fully set forth in the first Loan Agreement;

(D) The Borrower as security for the due half-yearly payments of principal of, and interest and other charges on, the first loan has assigned to the Bank a portion of its rights to and claims for payments from Rheinisch-Westfälisches Elektrizitätswerk Aktiengesellschaft and Energie-Versorgung Schwaben A.G., as more fully set forth in the first Loan Agreement;

(E) Additional financing is required by the Borrower in order to complete the Lünensee Project, and the Bank has agreed to make a supplementary loan for such purpose;

NOW THEREFORE, the parties hereto agree as follows :

¹ *United Nations, Treaty Series, Vol. 221, p. 375.*

Article I

LOAN REGULATIONS; SPECIAL DEFINITIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated June 15, 1956,¹ subject, however, to the modifications thereof set forth in Schedule 2² to this 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.

Section 1.02. Except where the context otherwise requires, the following terms have the following meanings wherever used in this Agreement or any schedule thereto :

(a) The term "first Loan Agreement" means the Loan Agreement dated June 14, 1955, between the Bank and the Borrower, as modified by the provisions of Article VIII of this Agreement.

(b) The term "first loan" means the loan provided for in the first Loan Agreement and the bonds issuable pursuant to the terms of the first Loan Agreement.

(c) The term "Project" means the project described in Schedule 2 to the first Loan Agreement as such description shall be amended from time to time by agreement between the Bank and the Borrower.

(d) The term "mortgaged properties" means the properties referred to in Section 5.04 (a) of the first Loan Agreement now owned or hereafter acquired by the Borrower which are required for the completion and continued operation of the Project and in respect of which the Borrower pursuant to the said Section has created or has undertaken to create a first mortgage or first mortgages as security for the first loan.

(e) The term "original Mortgage" means the first mortgage or first mortgages created or to be created pursuant to Section 5.04 (a) of the first Loan Agreement, or any of them, as the context may require.

(f) The term "Mortgage" means the first mortgage or first mortgages created or to be created pursuant to Section 5.04 (a) of this Agreement, or any of them, as the context may require.

(g) The term "RWE" means Rheinisch-Westfälisches Elektrizitätswerk Aktiengesellschaft, a company organized and existing under the laws of the Federal Republic of Germany.

(h) The term "EVS" means Energie-Versorgung Schwaben A.G., a company organized and existing under the laws of the Federal Republic of Germany.

(i) The term "Illwerke-Agreement" means the agreement dated July 1, 1953, known as the "Illwerke-Vertrag 1952", between the Borrower, RWE, and EVS.

(j) The term "original Assignment" means the assignment dated June 20, 1955, executed pursuant to Section 5.03 (b) of the first Loan Agreement, by which the Borrower

¹ See p. 104 of this volume.

² See p. 128 of this volume.

has assigned to the Bank such portion of its rights to and claims for payments from RWE and EVS under the Illwerke-Agreement as shall from time to time be required for the due half-yearly payments of principal of, and interest and other charges on, the first loan.

(k) The term "Assignment" means the assignment provided for in Section 5.03 (b) of this Agreement.

(l) The term "German marks" and the letters "DM" mean marks of the Federal Republic of Germany.

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 fifteen million German marks (DM 15,000,000).

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-fourths 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. Such commitment charge shall accrue from a date sixty days after the date of this Agreement to the respective dates on which amounts shall be withdrawn by the Borrower from the Loan Account as provided in Article IV of the Loan Regulations or shall be cancelled pursuant to Article V of the Loan Regulations.

Section 2.04. The Borrower shall pay interest at the rate of five and three-fourths per cent ($5\frac{3}{4}$ %) 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 May 1 and November 1 in each year.

Section 2.07. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule¹ to the Loan Agreement.

For the purpose of facilitating the sale of portions of the Loan, of Bonds, of portions of the loan provided for in the first Loan Agreement or of bonds issuable pursuant to the terms of the first Loan Agreement, the Bank and the Borrower may from time to time by agreement between them vary the amounts of instalments of principal set forth

¹ See p. 126 of this volume.

in the amortization schedule to the Loan Agreement and of instalments of principal set forth in the amortization schedule to the first Loan Agreement, provided that no such variation shall change (a) the aggregate amount of instalments of principal which, but for such variation, would have been due on any one payment date under this Agreement and the first Loan Agreement; or (b) the total principal amount of the Loan or the total principal amount of the loan provided for in the first Loan Agreement.

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. 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.

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. In addition to the provisions prescribed by the Loan Regulations, the Bonds shall contain provisions satisfactory to the Bank to the effect that the Mortgage and the original Mortgage will equally and ratably secure the Loan, the Bonds and the first loan; that the Assignment will equally and ratably secure the due half-yearly payments of principal of, and interest and other charges on, the Loan and the Bonds and that any rights or powers of any holder of the Loan or the Bonds under the Assignment, the Mortgage and the original Mortgage or under any of them will be exercised by the trustee or trustees or fiduciary or fiduciaries contemplated in Sections 5.09, 5.10 and 5.11 hereof.

Section 4.03. For the period of the public administration of the Borrower the two public administrators of the Borrower are jointly designated as authorized representatives of the Borrower for the purposes of Section 6.12 (a) of the Loan Regulations; thereafter any two members of the Managing Board (*Vorstand*) of the Borrower are so designated for such purposes.

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 promptly furnish to the Bank, as the Bank may from time to time 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 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.

(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. (a) The Borrower shall duly perform its obligations under the Illwerke-Agreement and shall not agree to any modification or change thereof that would or might result in the Borrower's being unable duly to provide for the service of the Loan and the financing of the Project.

(b) As soon as practicable after the date of this Agreement the Borrower shall assign to the Bank such portion of all its rights to and claims for payments from RWE and EVS under the Illwerke-Agreement as shall from time to time be required for the due half-yearly payments of principal of, and interest and other charges on, the Loan and the Bonds. Such assignment shall be an assignment on account of payment (*Abtretung zahlungshalber*) within the meaning thereof under the laws of the Guarantor, shall equally and ratably secure the due half-yearly payments of principal of, and interest and other charges on the Loan and the Bonds, and shall be in form and substance satisfactory to the Bank.

(c) The Borrower shall take all such steps and execute and deliver all such documents as the Bank may from time to time reasonably request or as may from time to time be required in order to render or maintain the Assignment valid and enforceable.

Section 5.04. (a) From time to time the Borrower shall create on the mortgaged properties now owned or hereafter acquired by the Borrower, a first mortgage or first mortgages, in form and substance satisfactory to the Bank, which together with the original Mortgage shall equally and ratably secure the Loan, the Bonds and the first loan. The Borrower shall from time to time take such steps (including such modifications of the original Mortgage as shall be necessary for the purpose) and execute and deliver such deeds and other instruments, in form and substance satisfactory to the Bank, and shall cause all other necessary parties to take such steps and to execute and deliver such deeds and other instruments, all in form and substance satisfactory to the Bank, as may be required in order to ensure that the Mortgage and the original Mortgage shall equally and ratably secure the Loan, the Bonds and the first loan, all of which shall rank *pari passu inter se* in respect of all such security, and in order to ensure that the Mortgage and the original Mortgage shall rank in point of security, together with the first mortgage securing the Borrower's 4% Reichsmark Mortgage Loan of 1944, prior to any other mortgage, charge or lien upon any of the mortgaged properties.

In the event the par value of the currency of the Guarantor is reduced or the foreign exchange value of the currency of the Guarantor has, in the opinion of the Bank, depreciated to a significant extent, the Borrower shall from time to time promptly upon the Bank's request create such additional first mortgage or additional first mortgages and execute and deliver such additional deeds or other instruments, in form and substance satisfactory to the Bank, as may be required to make the aggregate amount in the currency of the Guarantor for which all mortgages created hereunder and the original Mortgage may be recordable or may have been recorded equivalent to the aggregate amount in the currencies other than the currency of the Guarantor required for the payment of principal of, and interest and other charges on, the Loan, the Bonds and the first loan, calculated on the basis of such reduced par value or depreciated foreign exchange value respectively, and for the purpose of such calculation the par value or the foreign exchange value of the currency of the Guarantor in terms of any such other currency shall be as reasonably determined by the Bank.

(b) Except as the Bank shall otherwise agree, the Borrower shall report to the Bank at intervals of one year all mortgaged properties which the Borrower shall have acquired during the preceding year and which have not theretofore been covered by the Mortgage.

(c) The Borrower shall duly record, register and file and re-record, re-register and re-file the Mortgage and the original Mortgage in every jurisdiction for which the Bank may from time to time request any such recordation, registration or filing or where such recordation, registration or filing may be necessary or desirable in order to render or maintain the Mortgage and the original Mortgage a valid and enforceable first lien.

The Bank shall have the right to record and re-record the Mortgage and the original Mortgage in the appropriate land register (*Grundbuch*) at any time after their execution and delivery.

(d) Whenever the Bank shall so request after the creation of any mortgage referred to in Section 5.04 (a) hereof, other than the mortgages referred to in Section 7.01 (d) hereof, the Borrower shall within 30 days after the date of such request furnish to the Bank an opinion or opinions of counsel acceptable to the Bank that such mortgage has

been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and constitutes a valid and enforceable first lien in accordance with its terms.

(e) The Borrower shall take all such other steps and execute and deliver all such other documents as the Bank may from time to time reasonably request or as may from time to time be required in order to render or maintain the Mortgage and the original Mortgage a valid and enforceable first lien.

Section 5.05. No delay in exercising, or omission to exercise, any right or power accruing to the Bank under the Assignment, the Mortgage, the original Assignment or the original Mortgage shall affect or impair any obligation of the Borrower under the Loan Agreement.

Section 5.06. (a) Except as the Bank shall otherwise agree or as otherwise provided in this Agreement, the Borrower shall not sell, or otherwise dispose of, or permit the creation as security for debt or otherwise of any additional lien ranking in priority to or *pari passu* with the Mortgage or the original Mortgage on, any of the mortgaged properties.

(b) Except as the Bank shall otherwise agree, the Borrower shall not make any assignment of, or permit the creation of any lien on, any of its rights to and claims for payments from RWE and EVS under the Illwerke-Agreement ranking in priority to the Assignment or the original Assignment, or securing any portion of any debt in excess of those maturing during any one year according to the original terms of any such debt. For the purposes of this subsection any debt or portion thereof that has become due and payable because of any default, bankruptcy, receivership, or for any other reason, prior to the date on which payment was contemplated in the ordinary course of business under the original terms of such debt, shall not be deemed to be maturing during any such one year.

Section 5.07. 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, the Bonds, the Mortgage, the Assignment, 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 5.08. 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, the Bonds, the Mortgage or the Assignment.

Section 5.09. The Borrower agrees to the re-assignment by the Bank, at any time, of all rights or powers that the Bank may have under the Assignment to a trustee, or

trustees, or a similar fiduciary or fiduciaries, for the equal and ratable benefit of all holders of the Loan and the Bonds. The Borrower shall take all such steps and execute and deliver all such documents as the Bank may from time to time reasonably request or as may from time to time be required in order to render or maintain such re-assignment valid and enforceable.

Section 5.10. The Borrower agrees to the assignment by the Bank, at any time, of the Mortgage or the original Mortgage to a trustee, or trustees, or a similar fiduciary or fiduciaries, for the equal and ratable benefit of all holders of the Loan, the Bonds and the first loan. The Borrower shall take all such steps and execute and deliver all such documents as the Bank may from time to time reasonably request or as may from time to time be required in order to render or maintain such assignment of the Mortgage or the original Mortgage valid and enforceable.

Section 5.11. In the event a trustee or trustees or a fiduciary or fiduciaries shall be appointed for the purposes contemplated in Sections 5.09 or 5.10 hereof, such appointment or appointments and any arrangements incident thereto shall be made after consultation with the Borrower on such reasonable terms and conditions as in the opinion of the Bank are required by the Bank's operations, by the laws affecting the Mortgage, the Assignment, and the original Mortgage and by the laws or the financial usages of the place or places where the Loan, the Bonds and the first loan are payable. The Borrower shall take all such steps and execute and deliver all such documents as the Bank shall reasonably request or as may from time to time be required in order to cause such trustee or trustees or fiduciary or fiduciaries to be appointed or to render or maintain such appointment or appointments and any arrangements incident thereto valid and enforceable, and shall pay all costs and expenses incident to such appointment or appointments and arrangements or arising out of the exercise by such trustee or trustees or fiduciary or fiduciaries of his or their functions.

Section 5.12. In the event the Bank shall request any Bonds, the Borrower shall promptly upon the Bank's request furnish the Bank a supplemental opinion or supplemental opinions satisfactory to the Bank of counsel acceptable to the Bank showing that such Bonds will constitute valid and binding obligations of the Borrower and of the Guarantor in accordance with their terms, and that the appointment or appointments contemplated in Section 5.11 hereof and any arrangements incident thereto have been validly made and have become effective in accordance with their terms.

Section 5.13. (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, acquire, maintain and renew all rights, powers, privileges and franchises necessary or useful in the operation of its business.

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

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 events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 9.01 (a) (ii) of the Loan Regulations :

- (a) The Borrower shall have made the Assignment;
- (b) RWE and EVS shall have notified the Bank of their approval of the Assignment. Such notice shall be in form and substance satisfactory to the Bank;
- (c) All such governmental actions shall have been taken and all such governmental consents shall have been obtained as may be required to make the Assignment valid and enforceable according to its terms;
- (d) The requirements of Section 5.04 (a) hereof shall have been satisfied in respect of such of the mortgaged properties as are owned by the Borrower at the date of this Agreement, and each mortgage executed thereunder shall have been duly recorded in the land register (*Grundbuch*) of the Gerichtsbezirk Montafon in Schruns.

Section 7.02. The following are specified as additional matters, within the meaning of Section 9.02 (e) of the Loan Regulations, to be included in the opinion or opinions to be furnished to the Bank :

- (a) that the Assignment has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is valid and enforceable in accordance with its terms;
- (b) that the governmental actions and consents referred to in Section 7.01 (c) hereof have been validly taken or given, as the case may be, and that they have been duly authorized or ratified by the appropriate organ or organs;
- (c) that the first mortgage or first mortgages referred to in Section 7.01 (d) hereof have been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower, have been duly recorded in the land register (*Grundbuch*) of the appropriate district or districts, constitute a valid and enforceable first lien in accordance with their terms, and together with the original Mortgage equally and ratably secure the Loan, the Bonds and the first loan.

Section 7.03. A date 90 days after the date of this Agreement is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

Article VIII

MODIFICATIONS OF LOAN AGREEMENT DATED JUNE 14, 1955

Section 8.01. The Loan Agreement dated June 14, 1955 between the Bank and the Borrower is hereby amended as follows :

(a) Section 2.07 is amended to read :

“*Section 2.07.* The Borrower shall repay the principal of the Loan in accordance with the amortization schedule to the Loan Agreement.

“For the purpose of facilitating the sale of portions of the Loan, of Bonds, of portions of the loan provided for in the Loan Agreement dated October 10, 1957 or of bonds issuable pursuant to the terms thereof, the Bank and the Borrower may from time to time by agreement between them vary the amounts of instalments of principal set forth in the amortization schedule to the Loan Agreement and of instalments of principal set forth in the amortization schedule to the Loan Agreement dated October 10, 1957, provided that no such variation shall change (a) the aggregate amount of instalments of principal which, but for such variation, would have been due on any one payment date under this Agreement and the Loan Agreement dated October 10, 1957; or (b) the total principal amount of the Loan or the total principal amount of the loan provided for in the Loan Agreement dated October 10, 1957.”

(b) Section 4.02 is amended to read :

“*Section 4.02.* In addition to the provisions prescribed by the Loan Regulations, the Bonds shall contain provisions satisfactory to the Bank to the effect that the Mortgage and the Mortgage provided for in the Loan Agreement dated October 10, 1957 will equally and ratably secure the Loan, the Bonds, the loan provided for in the Loan Agreement dated October 10, 1957 and the bonds issuable pursuant to the terms thereof; that the Assignment will equally and ratably secure the due half-yearly payments of principal of, and interest and other charges on, the Loan and the Bonds; and that any rights or powers of any holder of the Loan or the Bonds, under the Assignment, the Mortgage and the Mortgage provided for in the Loan Agreement dated October 10, 1957, or under any of them, will be exercised by the trustee or trustees or fiduciary or fiduciaries contemplated in Sections 5.09, 5.10 and 5.11 hereof.”

(c) Paragraph (h) of Schedule 3 is amended to read :

“(h) The following three new sub-paragraphs shall be added after sub-paragraph 20 of Section 10.01 :

“21. The term ‘Mortgage’ shall have the meaning set forth in Section 1.02 of the Loan Agreement.

- “22. The term ‘Assignment’ shall have the meaning set forth in Section 1.02 of the Loan Agreement.
- “23. The term ‘amortization schedule to the Loan Agreement’ shall mean the amortization schedule set forth in Schedule 1¹ to the Loan Agreement and as the same may be amended from time to time by agreement between the Bank and the Borrower.”

Section 8.02. For the purposes of the Loan Agreement dated June 14, 1955, between the Bank and the Borrower, paragraph (c) of Section 5.02 of Loan Regulations No. 4 of the Bank, dated February 15, 1955,² is hereby amended to read as follows :

“(c) A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower or the Guarantor under the Loan Agreement, the Guarantee Agreement, the Bonds, the Assignment or the Mortgage or under the Loan Agreement dated October 10, 1957, the Guarantee Agreement of even date therewith, the Bonds, the Assignment or the Mortgage therein provided for.”;

and the term “Loan Regulations” as used for the purposes of the said Loan Agreement shall mean Loan Regulations No. 4 of the Bank, dated February 15, 1955, as hereby amended.

Article IX

MISCELLANEOUS

Section 9.01. The Closing Date shall be July 1, 1959.

Section 9.02. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Borrower :

Vorarlberger Illwerke Aktiengesellschaft
Josef Huterstrasse 35
Bregenz
Austria

Alternative address for cablegrams and radiograms :

Illwerke
Bregenz
Austria

For the Bank :

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

Alternative address for cablegrams and radiograms :

Intbafrad
Washington, D. C.

¹ See p. 126 of this volume.

² United Nations, *Treaty Series*, Vol. 221, p. 160.

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 W. A. B. ILIFF
Vice President

Vorarlberger Illwerke Aktiengesellschaft :

By ZEDTWITZ
Authorized Representative

SCHEDULE 1

AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal (expressed in German marks)*</i>	<i>Date Payment Due</i>	<i>Payment of Principal (expressed in German marks)*</i>
May 1, 1960	DM 205,000	May 1, 1970	DM 361,000
November 1, 1960	211,000	November 1, 1970	371,000
May 1, 1961	217,000	May 1, 1971	381,000
November 1, 1961	223,000	November 1, 1971	393,000
May 1, 1962	229,000	May 1, 1972	404,000
November 1, 1962	236,000	November 1, 1972	415,000
May 1, 1963	243,000	May 1, 1973	428,000
November 1, 1963	250,000	November 1, 1973	440,000
May 1, 1964	256,000	May 1, 1974	453,000
November 1, 1964	264,000	November 1, 1974	466,000
May 1, 1965	272,000	May 1, 1975	478,000
November 1, 1965	280,000	November 1, 1975	493,000
May 1, 1966	288,000	May 1, 1976	507,000
November 1, 1966	295,000	November 1, 1976	521,000
May 1, 1967	304,000	May 1, 1977	536,000
November 1, 1967	313,000	November 1, 1977	552,000
May 1, 1968	322,000	May 1, 1978	568,000
November 1, 1968	331,000	November 1, 1978	584,000
May 1, 1969	341,000	May 1, 1979	600,000
November 1, 1969	351,000	November 1, 1979	618,000

* To the extent that any part of the Loan is repayable in a currency other than German marks (see Loan Regulations, Section 3.02), the figures in this column represent German mark 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 3 years before maturity	½%
More than 3 years but not more than 6 years before maturity	1%
More than 6 years but not more than 11 years before maturity	1¾%
More than 11 years but not more than 16 years before maturity	2½%
More than 16 years but not more than 18 years before maturity	3½%
More than 18 years but not more than 20 years before maturity	4¾%
More than 20 years before maturity	5¾%

SCHEDULE 2

MODIFICATIONS OF LOAN REGULATIONS No. 4

For the purposes of this Agreement the provisions of Loan Regulations No. 4 of the Bank, dated June 15, 1956, shall be deemed to be modified as follows :

(a) Section 2.02 is deleted.

(b) The first two sentences of Section 3.01 shall read as follows :

“The Borrower shall use reasonable efforts to purchase goods with the currencies of the countries from which such goods are acquired. The proceeds of the Loan shall, to the extent that the Bank shall so elect, be withdrawn from the Loan Account in the several currencies in which goods are paid for; except that with respect to goods paid for in the currency of the Guarantor or acquired from sources within the territories of the Guarantor such withdrawals may, to the extent that the Bank shall so elect, be made in any currency selected by the Bank.”

(c) The following paragraph shall be added to Section 3.05 :

“If a withdrawal is applied for on account of expenditures in the currency of the Guarantor, the value of the currency of the Guarantor in terms of the currency or currencies to be withdrawn shall be as reasonably determined by the Bank.”

(d) The second sentence of Section 4.01 shall read as follows :

“Except as shall be otherwise agreed between the Bank and the Borrower, no withdrawals shall be made on account of (a) expenditures prior to the Effective Date or (b) expenditures in the territories of any country which is not a member of the Bank or for goods produced in (including services supplied from) such territories.*”

(e) Section 5.02 (c) shall read as follows :

“A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower or the Guarantor under the Loan Agreement,

the Guarantee Agreement, the Bonds, the Assignment or the Mortgage, or under the Loan Agreement dated June 14, 1955, the Guarantee Agreement of even date therewith, or the Bonds, the Assignment or the Mortgage therein provided for.”

(f) Paragraph (j) of Section 7.04 shall read as follows :

“(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the determination of controversies between the parties to the Loan Agreement and the Guarantee Agreement or any claim by any such party against any other such party arising thereunder or under the Bonds; provided, however, that nothing herein shall be deemed to preclude the Bank or any holder of Bonds from exercising, or instituting any legal or equitable action to enforce, any right or claim arising out of or pursuant to the Mortgage or the Assignment, and submission to arbitration hereunder shall not be deemed to be a condition precedent or in any way to prejudice such exercise or enforcement of any such right or claim.”

(g) Paragraph 12 of Section 10.01 shall read as follows :

“The term ‘Project’ shall have the meaning set forth in Section 1.02 of the Loan Agreement.”

(h) The following three new sub-paragraphs shall be added after sub-paragraph 20 of Section 10.01 :

“21. The term ‘Mortgage’ shall have the meaning set forth in Section 1.02 of the Loan Agreement.

“22. The term ‘Assignment’ shall have the meaning set forth in Section 1.02 of the Loan Agreement.

“23. The term ‘amortization schedule to the Loan Agreement’ shall mean the amortization schedule set forth in Schedule 1 to the Loan Agreement and as the same may be amended from time to time by agreement between the Bank and the Borrower.”

RELATED LETTER

LETTER, DATED 14 OCTOBER 1957, FROM THE INTERNATIONAL BANK FOR RE-CONSTRUCTION AND DEVELOPMENT TO THE VORARLBERGER ILLWERKE AKTIENGESELLSCHAFT

October 14, 1957

Gentlemen :

We refer to Sections 2.70 and 8.01 (a) of the Loan Agreement (Lünersee Project—Supplementary Loan) dated October 10, 1957¹ (Loan 179 AUA) between us, which permit us, by mutual agreement, to vary the amortization schedule of this loan and that of Loan 118 AUA.

¹ See p. 104 of this volume.

In accordance with our telegram of October 1, 1957, we propose that upon the Effective Date of the new loan the amortization schedules of the two loans be revised in respect of the first nine maturities as follows :

LOAN 179 AUA

<i>Date</i>	<i>Original Schedule</i>	<i>Revised Schedule</i>
May 1, 1960	DM 205,000	DM 205,000
Nov. 1, 1960	211,000	866,200
May 1, 1961	217,000	889,000
Nov. 1, 1961	223,000	Nil
May 1, 1962	229,000	Nil
Nov. 1, 1962	236,000	Nil
May 1, 1963	243,000	Nil
Nov. 1, 1963	250,000	Nil
May 1, 1964	256,000	109,800

LOAN 118 AUA

<i>Date</i>	<i>Original Schedule</i>	<i>Revised Schedule</i>
May 1, 1960	\$153,000	\$153,000
Nov. 1, 1960	156,000	Nil
May 1, 1961	160,000	Nil
Nov. 1, 1961	164,000	217,000
May 1, 1962	167,000	222,000
Nov. 1, 1962	172,000	228,000
May 1, 1963	176,000	234,000
Nov. 1, 1963	180,000	239,000
May 1, 1964	184,000	219,000

Please confirm your agreement with the foregoing by signing the form of confirmation on the enclosed copy of this letter and returning it to us.

Very sincerely yours,

International Bank for
Reconstruction and Development :

By S. H. COPE
Authorized Representative

Vorarlberger Illwerke Aktiengesellschaft
Bregenz, Austria

Confirmed:
Vorarlberger Illwerke Aktiengesellschaft
(Signed) [illegible]
Authorized Representative
Date : 30. Oktober 1957