

No. 6126

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

Guarantee Agreement — *Third Escom Project* (with annexed Loan Regulations No. 4 and Loan Agreement between the Bank and Electricity Supply Commission). Signed at Washington, on 1 December 1961

Official text: English.

Registered by the International Bank for Reconstruction and Development on 23 April 1962.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
AFRIQUE DU SUD**

Contrat de garantie — *Troisième projet Escom* (avec, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt entre la Banque et l'Electricity Supply Commission). Signé à Washington, le 1^{er} décembre 1961

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 23 avril 1962.

No. 6126. GUARANTEE AGREEMENT¹ (*THIRD ESCOM PROJECT*) BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 1 DECEMBER 1961

AGREEMENT, dated December 1, 1961, between REPUBLIC OF SOUTH AFRICA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and Electricity Supply Commission (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,² the Bank has agreed to make to the Borrower a loan in various currencies equivalent to fourteen million dollars (\$14,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided ; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower ;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961,² subject, however, to the modifications thereof set forth in Schedule 3³ to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. For the purposes of this Guarantee Agreement and of the Loan Agreement, any reference therein or in the Loan Regulations (including any

¹ Came into force on 15 January 1962, upon notification by the Bank to the Government of South Africa.

² See p. 224 of this volume.

³ See p. 238 of this volume.

Schedules thereto) to the "territories" of the Guarantor shall be construed to include a reference to any territory administered by the Guarantor.

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.

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 cause the Borrower to be provided with such funds as are needed to meet such expenditures

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on public assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect ; provided, however, that the foregoing provisions of this Section shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property ; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods ; or (iii) any lien created by the South African Reserve Bank on any of its assets in the ordinary course of its banking business to secure a debt maturing not more than one year after the date on which it is originally incurred.

The term "assets of the Guarantor" as used in this Section includes assets of the Guarantor or of any of its Provinces or other political subdivisions or of any agency of the Guarantor or of any such Provinces or other political subdivisions, including assets of the South African Reserve Bank and of local governing authorities.

Section 3.02. (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Section 3.03. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes or fees imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 3.04. This Agreement, the Loan Agreement and the Bonds shall be free from any taxes or fees that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Section 3.05. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Section 3.06. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor specifically undertakes that it will not take any action which would prevent or materially interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower contained in the Loan Agreement and will take or cause to be taken all action necessary and appropriate to enable the Borrower to perform such covenants, agreements and obligations; and, more particularly, the Guarantor undertakes (a) to permit the Borrower to borrow in the markets of the Guarantor such amounts of the currency of the Guarantor as may be needed by the Borrower for the purpose of carrying out the Project, and (b) to sell or cause to be sold to the Borrower in exchange

for currency of the Guarantor such amounts of foreign currencies as may be needed by the Borrower to meet the requirements in such currencies of the Project.

Section 3.07. The Guarantor undertakes that, until the Loan Agreement and the Guarantee Agreement and all obligations of the parties thereunder shall have terminated, the Borrower will continue to have the power and obligation under Section 14 of the Electricity Act, 1958 to adjust its charges from time to time without obtaining the approval of the Electricity Control Board or any one else in order to cover the costs and other amounts referred to in that Section.

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 :

Secretary to the Treasury
Union Buildings
Pretoria
Republic of South Africa

Alternative address for cablegrams and radiograms :

Findep
Pretoria
South Africa

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.

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

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

Republic of South Africa :

By W. C. NAUDÉ

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 1961

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

[*Not published herein. See United Nations, Treaty Series, Vol. 400, p. 212.*]

LOAN AGREEMENT (*THIRD ESCOM PROJECT*)

AGREEMENT, dated December 1, 1961, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and ELECTRICITY SUPPLY COMMISSION (hereinafter called the Borrower).

Article I

LOAN REGULATIONS ; SPECIAL DEFINITION

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961,¹ subject, however, to the modifications thereof set forth in Schedule 3² to this Agreement (said Loan Regulations No. 4

¹ See p. above of this volume.

² See p. 238 of this volume.

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. For the purposes of this Agreement, any reference herein or in the Loan Regulations (including any Schedules thereto) to the "territories" of the Guarantor shall be construed to include a reference to any territory administered by the Guarantor.

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 fourteen million dollars (\$14,000,000).

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, this Agreement and 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.

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 June 1 and December 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 1¹ to this 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 described in Schedule 2¹ to this Agreement. The specific goods to be financed out of the proceeds of the Loan

¹ See p. 236 of this volume.

shall be determined by agreement between the Bank and the Borrower, subject to modification by further agreement between them, and the methods and procedures for procurement of such goods shall be satisfactory to the Bank.

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

Article V

PARTICULAR COVENANTS

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

(b) The Borrower shall furnish to the Bank, promptly upon their preparation, the plans, specifications and construction schedules for the Project and any material modifications subsequently made therein, in such detail as the Bank shall from time to time request.

(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 operations and financial condition 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 operations and financial condition 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. 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 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 any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property.

Section 5.04. 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 Agreement¹ 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 5.05. 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 5.06. (a) Except as shall be otherwise agreed between the Bank and the Borrower, the Borrower shall insure or cause to be insured with responsible insurers all goods financed with the proceeds of the Loan. Such insurance shall cover such marine, transit and other hazards incident to purchase and importation of the goods into the territories of the Guarantor and to delivery thereof to their sites in the Project, and shall be for such amounts as shall be consistent with sound commercial practice. Such insurance shall be payable in dollars or in the currency in which the cost of the goods insured thereunder shall be payable.

(b) In addition, the Borrower shall insure against such risks and in such amounts as shall be consistent with sound business and public utility practices.

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, take all steps necessary to maintain and renew all rights, powers, privileges and franchises which are necessary or useful in the conduct of its business.

¹ See p. 216 of this volume.

(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 and the requirements of Section 14 of the Electricity Act, 1958 of the Guarantor.

(c) The Borrower shall not, without the prior consent of the Bank, sell or otherwise dispose of all or substantially all of its assets and property or 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, all of the Loan which shall then be outstanding and unpaid.

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 or in Section 6.02 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower, then at any subsequent time during the continuance thereof, the Bank, at its option, may declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Agreement or in the Bonds to the contrary notwithstanding.

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

A default shall have occurred in the performance of any covenant or agreement (other than for the payment of money) on the part of the Borrower or the Guarantor under the Loan Agreements between the Bank and the Borrower dated January 23, 1951¹ and August 28, 1953² or the Guarantee Agreements of the same dates³ between the Guarantor and the Bank, or any of the Bonds provided for in such Loan Agreements.

Article VII

MISCELLANEOUS

Section 7.01. The Closing Date shall be June 30, 1963, or such other date as may from time to time be agreed between the Borrower and the Bank.

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

¹ United Nations, *Treaty Series*, Vol. 158, p. 135.

² United Nations, *Treaty Series*, Vol. 180, p. 91.

³ See footnotes 1 and 2 above.

That the Borrower has the power and obligation under Section 14 of the Electricity Act, 1958, as amended, to adjust its charges from time to time, without obtaining the approval of the Electricity Control Board or anyone else, in order to cover the costs and other amounts referred to in such Section.

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

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

For the Bank :

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

Alternative address for cablegrams and radiograms :

Intbafrad
Washington, D. C.

For the Borrower :

Electricity Supply Commission
Escom Center
204 Smit Street
Johannesburg
Republic of South Africa

Alternative address for cablegrams and radiograms :

Escom
Johannesburg
South Africa

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

International Bank for Reconstruction and Development :

By Eugene R. BLACK
President

Electricity Supply Commission :

By C. A. F. BLAIR
Authorized Representative

SCHEDULE 1

AMORTIZATION SCHEDULE

| <i>Date Payment Due</i> | <i>Payment of Principal (expressed in dollars)*</i> | <i>Date Payment Due</i> | <i>Payment of Principal (expressed in dollars)*</i> |
|----------------------------|---|----------------------------|---|
| December 1, 1963 | \$ 650,000 | June 1, 1968. | \$ 839,000 |
| June 1, 1964 | 669,000 | December 1, 1968 | 863,000 |
| December 1, 1964 | 688,000 | June 1, 1969 | 888,000 |
| June 1, 1965 | 708,000 | December 1, 1969 | 913,000 |
| December 1, 1965 | 728,000 | June 1, 1970 | 940,000 |
| June 1, 1966 | 749,000 | December 1, 1970 | 967,000 |
| December 1, 1966 | 771,000 | June 1, 1971 | 995,000 |
| June 1, 1967 | 793,000 | December 1, 1971 | 1,023,000 |
| December 1, 1967 | 816,000 | | |

* To the extent that any part of the Loan is repayable in a currency other than dollars (see Loan Regulations, Section 3.03), the figures in this column represent dollar equivalents determined as for purposes of withdrawal.

PREMIUMS ON PREPAYMENT AND REDEMPTION

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

| <i>Time of Prepayment or Redemption</i> | <i>Premium</i> |
|---|----------------|
| Not more than two years before maturity | ½ of 1 % |
| More than two years but not more than four years before maturity | 2 % |
| More than four years but not more than six years before maturity | 3 ½ % |
| More than six years but not more than eight years before maturity | 4¾ % |
| More than eight years before maturity | 5 ¾ % |

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project is that part of a 5-year expansion program being carried out by the Borrower which relates to the interconnected electric power system formed by the Borrower's Cape Northern, Rand and Orange Free State and Eastern Transvaal undertakings. The Project consists of the completion of (a) the first stage of the Komati thermal power station now under construction, (b) the expansion of the Highveld thermal power station, and (c) the construction of about 314 circuit miles of high tension transmission lines with the necessary step-down substations.

A. *Komati Power Station*

The new Komati power station will be in Eastern Transvaal at the mouth of the Blinkpan colliery, which will supply the necessary coal for the station. It is designed for an ultimate capacity of 1,000 MW but the first stage will have an installed capacity of 750 MW, comprised of five 100 MW and two 125 MW generating units with matching boilers. These seven units will be brought into operation progressively over the period of the Project, with the last unit scheduled to be in operation in August 1964.

B. *Expansion of Highveld Power Station*

The Highveld Power Station in the Orange Free State, now operating six 60 MW units, will be expanded by the installation of two additional 60 MW generating units with boilers to match. The additional units are scheduled to be in operation in March 1963.

C. *Transmission Lines and Substations*

About 314 circuit miles of 275 KV transmission lines will be constructed, running from the Komati Power Station via the Highveld Power Station to the Scafell substation. New step-down substations will be provided at Nevis, Snowdon and Scafell, having a combined initial capacity of 1170 MVA. These lines and substations are scheduled to be brought into operation progressively, with full operation scheduled for early 1963.

SCHEDULE 3

MODIFICATIONS OF LOAN REGULATIONS No. 4

For the purposes of this Agreement the provisions of Loan Regulations No. 4 of the Bank, dated February 15, 1961, shall be deemed to be modified as follows :

The eighth paragraph of the Form of Bond set forth in Schedule 1, the seventh paragraph of the Form of Bond set forth in Schedule 2 and the first paragraph of the Form of Guarantee set forth in Schedule 3 are amended by inserting, after the word "territories" in each such paragraph, the following : "(including territories administered by it)".
