

No. 6929

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

Guarantee Agreement—*Edwaleni Power Project* (with annexed Loan Regulations No. 4, Loan Agreement between the Bank and Swaziland and Project Agreement between the Bank and the Swaziland Electricity Board). Signed at Washington, on 16 May 1963

Official text: English.

Registered by the International Bank for Reconstruction and Development on 20 September 1963.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD**

Contrat de garantie — *Projet d'équipement hydro-électrique d'Edwaleni* (avec, en annexe, le Règlement n° 4 sur les emprunts, le Contrat d'emprunt entre la Banque et le Souaziland et le Contrat relatif au projet entre la Banque et le Swaziland Electricity Board). Signé à Washington, le 16 mai 1963

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 20 septembre 1963.

No. 6929. GUARANTEE AGREEMENT¹ (*EDWALENI POWER PROJECT*) BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 16 MAY 1963

AGREEMENT, dated May 16, 1963, between UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between Swaziland (hereinafter called the Borrower) and the Bank, which agreement (including the schedules therein referred to) is 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 four million two hundred thousand dollars (\$4,200,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee 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 to guarantee such loan as hereinafter provided;

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 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 11 July 1963, upon notification by the Bank to the Government of the United Kingdom.

² See p. 370 of this volume.

³ See p. 386 of this volume.

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, and the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, all as provided in the Loan Agreement and the Bonds.

Section 2.02. Whenever there is reasonable cause to believe that the Borrower will not have sufficient funds to carry out or cause to be carried out the Project in accordance with the Loan Agreement, the Guarantor will, in consultation with the Bank and the Borrower, take appropriate measures to assist the Borrower to obtain the additional funds necessary therefor.

Article III

Section 3.01. It is the mutual understanding of the Guarantor and the Bank that, except as otherwise herein provided, the Guarantor will not grant in favor of any external debt any preference or priority over the Loan. To that end, the Guarantor undertakes that, except as otherwise herein provided or as shall be otherwise agreed between the Guarantor and the Bank, if any lien shall be created on any assets or revenues of the Guarantor as security for any external debt, such lien shall equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision shall be made to that effect. This Section shall not apply to the following :

- (a) the creation of any lien on any property purchased, at the time of the purchase, solely as security for the payment of the purchase price of such property;
- (b) 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
- (c) any pledge by or on behalf of the Guarantor of any of its assets in the ordinary course of banking business to secure any indebtedness maturing not more than one year after its date.

For the purpose of this Section, the expression " assets or revenues of the Guarantor " shall include assets or revenues of any territorial subdivision of the Guarantor which has power to raise revenues by taxation and to charge such revenues or any of its assets as security for external debt.

Section 3.02. (a) The Guarantor and the Bank shall co-operate fully towards achievement of the purposes of the Loan. To that end, each of them shall furnish to the other all such information as shall be reasonably requested 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) Within the limits of its constitutional powers, the Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor (including those of the Borrower) 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 imposed under the laws of the Guarantor; provided, however, that the provisions of this Section shall not apply to taxation of 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 that shall be imposed under the laws of the Guarantor 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 now or at any time hereafter imposed under the laws of the Guarantor.

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 Secretary of the Treasury 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 :

H.M. Treasury
Treasury Chambers
Great George Street
London, S.W.1, United Kingdom
Alternative address for cables and radiograms :
 Proflist
 London

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 cables and radiograms :
 Intbafrad
 Washington, D.C.

Section 5.02. The Ambassador of the Guarantor to the United States of America 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 to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

United Kingdom of Great Britain and Northern Ireland :

 By Denis GREENHILL
 Authorized Representative

International Bank for Reconstruction and Development :

 By J. Burke KNAPP
 Vice 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

(EDWALENI POWER PROJECT)

AGREEMENT, dated May 16, 1963, between SWAZILAND (hereinafter called the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS

(A) the Borrower has requested the Bank to grant a loan to the Borrower the proceeds of which the Borrower intends to relend to the Swaziland Electricity Board (hereinafter called the Board);

(B) by a Project Agreement of even date¹ between the Bank and the Board, the Board has undertaken certain obligations in respect of the carrying out of the Project and related matters;

(C) the Bank has, on the basis of the foregoing, agreed to make a loan to the Borrower upon the terms and conditions hereinafter set forth;

NOW THEREFORE, the parties hereto hereby agree as follows :

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 February 15, 1961,² subject, however, to the modifications thereof set forth in Schedule 2³ 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.

¹ See p. 392 of this volume.

² See above.

³ See p. 386 of this volume.

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 “ High Commissioner ” means the person for the time being occupying the office of High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland and any successor office.

(b) The term “ the Board ” means the Swaziland Electricity Board constituted by the Electricity Proclamation 1963 of the Borrower promulgated by the High Commissioner on April 26, 1963 and shall include any successor agency.

(c) The term “ Project Agreement ” means the Agreement of even date herewith between the Bank and the Board, as the same shall be amended from time to time by agreement between the Bank and the Board.

(d) The term “ Subsidiary Loan Agreement ” means the loan agreement, referred to in Section 5.03 (a) of this Agreement, to be entered into between the Borrower and the Board.

(e) The term “ South Africa Note Issue ” means the notes, in a total amount of one million South African rands, to be issued by the Board and sold with the guarantee of the Borrower in the Republic of South Africa and the territories of the Borrower.

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 four million two hundred thousand dollars (\$4,200,000).

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 Agreement.

Section 2.03. The Borrower shall pay interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum on the principal amount of the Loan so withdrawn and outstanding from time to time.

Section 2.04. 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 2.05. Except as the Borrower and the Bank 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 15 and November 15 in each year.

Section 2.07. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 1¹ to this Agreement; provided, however, that, if the Board or the Borrower shall repay or purchase all or part of the South Africa Note Issue prior to its maturity or maturities, the Borrower shall, except as the Bank shall otherwise agree, immediately repay in advance of maturity in accordance with the Loan Regulations a pro rata amount of the principal of the Loan.

Article III

USE OF PROCEEDS OF LOAN

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied exclusively to financing the cost of goods required to carry out the Project described in the Schedule to the Project Agreement. The specific goods to be financed out of the proceeds of the Loan and the methods and procedures for the procurement of such goods shall be determined by agreement between the Borrower and the Bank, 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 Borrower 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 High Commissioner 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. 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 public assets. To that end, 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

¹ See p. 384 of this volume.

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 Borrower " as used in this Section includes assets of the Borrower or of any of its political subdivisions or of any agency of the Borrower or of any such political subdivision, including assets of any institution performing the functions of a central bank.

Section 5.02. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound engineering, financial and public utility practices.

(b) The Borrower shall cause to be performed all the covenants, agreements and obligations of the Board set forth in the Project Agreement and shall take or cause to be taken all action necessary or appropriate to enable the Board to perform such covenants, agreements and obligations.

Section 5.03. (a) The Borrower shall enter into a subsidiary loan agreement with the Board, satisfactory to the Bank, which shall provide for the relending of the proceeds of the Loan by the Borrower to the Board and shall contain appropriate provisions with respect to the financing and carrying out of the Project and other obligations of the Borrower and the Board under the Loan Agreement and the Project Agreement.

(b) Except as the Bank shall otherwise agree, the Borrower shall not amend, assign, abrogate or waive any provision of the Subsidiary Loan Agreement.

Section 5.04. The Borrower shall : (i) maintain or cause to be maintained records adequate to identify the goods financed out of the proceeds of the Loan, to disclose the use thereof in the Project and to record the progress of the Project (including the cost thereof); (ii) enable the Bank's representatives to inspect the Project, the goods and any relevant records and documents; and (iii) furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project and the goods.

Section 5.05. (a) The Borrower 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 shall be reasonably requested with regard to the general status of the Loan. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower, the debts of the Borrower and its agencies and political subdivisions and, to the extent ascertainable, the international balance of payments position of the Borrower.

(b) The Borrower and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. 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.

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

Section 5.06 Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Borrower shall, whenever there is reasonable cause to believe that the funds available to the Board will be inadequate to meet the estimated expenditures required for carrying out the Project, make arrangements, satisfactory to the Bank, promptly to provide the Board or cause the Board to be provided with such funds as are needed to meet such expenditures.

Section 5.07. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes imposed under the laws of the Borrower or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of 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 Borrower.

Section 5.08. The Loan Agreement, the Guarantee Agreement,¹ the Project Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Borrower or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof, and the Borrower shall pay all such taxes, 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.

Section 5.09. 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 Borrower or laws in effect in its territories.

Section 5.10. Except as the Borrower and the Bank shall otherwise agree, the Borrower shall, on or before April 30, 1965, cause the Board to assume the responsibility for the operation and management of power distribution facilities in the urban areas of Mbabane and Manzini.

Article VI

REMEDIES OF BANK

Section 6.01. (i) If any event specified in paragraph (a), paragraph (b), paragraph (e), paragraph (f), paragraph (j), paragraph (k) or paragraph (l) of Section 5.02 of the

¹ See p. 362 of this volume.

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 the Loan 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 (b) of the Loan Regulations :

- (a) that the execution and delivery of the Project Agreement on behalf of the Board have been duly authorized or ratified by all necessary action of the Borrower and the Board;
- (b) that the Subsidiary Loan Agreement has been duly executed in form satisfactory to the Bank and has become binding upon the parties thereto in accordance with its terms;
- (c) that the Board has entered into an agreement with the Swaziland Iron Ore Development Company for the sale of power upon terms and conditions satisfactory to the Bank; and
- (d) that the Board has, subject only to the effectiveness of the Loan Agreement, entered into firm commitments, satisfactory to the Bank, for the sale of the South Africa Note Issue.

Section 7.02. The following are specified as additional matters, 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 :

- (a) that the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Board and constitutes a valid and binding obligation of the Board in accordance with its terms;
- (b) that the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and the Board and has become effective and is a valid and binding obligation of the parties thereto in accordance with its terms;
- (c) that all acts, consents and approvals of the Borrower to be performed or given in order to authorize the construction of the Project, with all necessary powers and rights in connection therewith, have been duly and validly performed or given; and
- (d) that the firm commitments referred to in Section 7.01 (d) of this Agreement are valid and binding upon the purchasers of the South Africa Note Issue

in accordance with their terms and ensure the sale of the total amount of the South Africa Note Issue.

Section 7.03. A date 60 days after the date of this Agreement is hereby specified or the purposes of Section 9.04 of the Loan Regulations.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be April 30, 1966, or such other date as may from time to time be agreed between the Borrower and the Bank.

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

For the Borrower :

The Secretariat
P.O. Box 47
Mbabane, Swaziland

Alternative address for cables and radiograms :
Swazi
Mbabane

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 cables and radiograms :
Intbafrad
Washington, D.C.

Section 8.03. The High Commissioner is designated for the purposes of Section 8.03 (A) of the Loan Regulations.

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.

Swaziland :
By Denis GREENHILL
Authorized Representative

International Bank for Reconstruction and Development :
By J. Burke KNAPP
Vice President

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>
May 15, 1966	\$ 75,000	May 15, 1975	\$ 120,000
November 15, 1966	75,000	November 15, 1975	120,000
May 15, 1967	75,000	May 15, 1976	125,000
November 15, 1967	80,000	November 15, 1976	130,000
May 15, 1968	80,000	May 15, 1977	130,000
November 15, 1968	85,000	November 15, 1977	135,000
May 15, 1969	85,000	May 15, 1978	140,000
November 15, 1969	90,000	November 15, 1978	145,000
May 15, 1970	90,000	May 15, 1979	150,000
November 15, 1970	95,000	November 15, 1979	150,000
May 15, 1971	95,000	May 15, 1980	155,000
November 15, 1971	100,000	November 15, 1980	160,000
May 15, 1972	100,000	May 15, 1981	165,000
November 15, 1972	105,000	November 15, 1981	170,000
May 15, 1973	105,000	May 15, 1982	175,000
November 15, 1973	110,000	November 15, 1982	180,000
May 15, 1974	110,000	May 15, 1983	180,000
November 15, 1974	115,000		

* 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 three years before maturity	½ %
More than three years but not more than six years before maturity	1 ½ %
More than six years but not more than eleven years before maturity	2 ½ %
More than eleven years but not more than sixteen years before maturity	3 ½ %
More than sixteen years but not more than eighteen years before maturity	4 ½ %
More than eighteen years before maturity	5 ½ %

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 February 15, 1961, shall be modified as follows :

(a) By the deletion of the last sentence of Section 4.01 and the substitution therefor of the following sentence :

“ Except as shall be otherwise agreed between the Bank and the Borrower, no withdrawals shall be made on account of (a) expenditures prior to September 1, 1962 or (b) expenditures for goods produced in (including services supplied from) the territories of the Borrower or (c) expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) of for goods produced in (including services supplied from) such territories. ”

(b) By the deletion of subparagraphs (b), (d), (e), (f) and (j) of Section 5.02 and the substitution therefor respectively of the following subparagraphs :

“ (b) A default shall have occurred in the payment of principal or interest or any other payment required under any other loan agreement or under any guarantee agreement between the Borrower and the Bank or under any loan agreement or under any guarantee agreement between the Guarantor and the Bank or under any bond delivered pursuant to any such agreement. ”

“ (d) An extraordinary situation shall have arisen which shall make it improbable that the Borrower or the Guarantor will be able to perform its obligations under the Loan Agreement or the Guarantee Agreement, or there shall occur any such change in the nature and constitution of the Borrower as shall make it improbable that the Borrower will be able to carry out its obligations under the Loan Agreement. ”

“ (e) The Borrower shall have taken or permitted to be taken any action or proceeding whereby the undertaking of the Board, or any substantial part of such undertaking, shall or may be assigned or in any manner transferred or delivered to any other person, or whereby any property of the Board shall or may be distributed among the creditors of the Board. ”

“ (f) If the Borrower or any governmental authority having jurisdiction shall take any action for the dissolution or disestablishment of the Board or for the suspension of its operations. ”

“ (j) The Electricity Proclamation 1963 of the Borrower dated April 26, 1963 shall have been suspended, terminated or repealed, or materially amended, without the prior agreement of the Bank. ”

(c) By the addition to Section 5.02 of the following new subparagraphs :

“ (k) A default shall have occurred in the performance of any covenant or agreement on the part of the Board under the Project Agreement. ”

“ (l) A default shall have occurred in the payment of principal, interest, service charge or any other payment required under any development credit agreement between the Borrower and the International Development Association. ”

(d) By the insertion in Section 5.06 of the words “ the Project Agreement ” after the words “ the Loan Agreement ”.

(e) By the insertion in Section 6.17 of the words “ or the Project Agreement ” after the words “ the Guarantee Agreement ”.

(f) By the deletion of Section 7.02 and the substitution therefor of the following new section :

“ SECTION 7.02. *Obligations of Guarantor.* The obligations of the Guarantor under the Guarantee Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or action against the Borrower or the Board or to any prior notice to or demand upon the Guarantor with regard to any default by the Borrower or the Board, and shall not be impaired by any of the following : any extension of time, forbearance or concession given to the Borrower or the Board; any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Borrower or the Board or in respect of any security for the Loan; any modification or amplification of the provisions of the Loan Agreement or the Project Agreement contemplated by the terms thereof; any failure of the Borrower or the Board to comply with any requirement of any law, regulation or order of the Guarantor or of the Borrower or of any political subdivision or agency of the Guarantor or of the Borrower. ”

(g) By the insertion in Section 7.03 of the words “ or Project Agreement ” after the words “ Guarantee Agreement ”.

(h) By the deletion of the last sentence of Section 7.04 (k) and the substitution therefor of the following sentence :

“ Notwithstanding the foregoing, this Section shall not authorise any entry of judgment or enforcement of the award against the Borrower or Guarantor (as the case may be) except as such procedure may be available against the Borrower or Guarantor (as the case may be) otherwise than by reason of the provisions of this Section. ”

(i) By the deletion of the first sentence of Section 7.04 (l) and the substitution therefor of the following sentence :

“ (l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made upon the Bank and (to the extent that such proceeding is available against the Borrower or Guarantor) upon the Borrower or Guarantor in the manner provided in Section 8.01. ”

(j) By the insertion of the following new section :

“ SECTION 8.03 (A) *Action on Behalf of Borrower.* Any action required or permitted to be taken, and any documents required or permitted to be executed,

under the Loan Agreement on behalf of the Borrower may be taken or executed by the representative of the Borrower designated in the Loan Agreement for the purposes of this Section or any person thereunto authorized in writing by him. Any modification or amplification of the provisions of the Loan Agreement may be agreed to on behalf of the Borrower by written instrument executed on behalf of the Borrower by the representative so designated or any person thereunto authorized in writing by him; provided that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under the Loan Agreement. The Bank may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of the Loan Agreement affected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Borrower thereunder. ”

(k) By the insertion in Section 9.01 (c) of the words “ and Guarantee Agreement ” after the words “ the Loan Agreement ”.

(l) By the deletion of the second sentence in paragraph 7 of Section 10.01 and the substitution therefor of the following sentence :

“ Whenever reference is made to the currency of the Guarantor, the term ‘ currency ’ means such coin or currency as at the time referred to is legal tender for the payment of public and private debts in the United Kingdom of Great Britain and Northern Ireland. ”

(m) By the deletion of paragraph 11 of Section 10.01 and the substitution therefor of the following paragraph :

“ 10. The term ‘ Project ’ means the project for which the Loan is granted, as described in the Schedule to the Project Agreement and as the description thereof shall be amended from time to time by agreement between the Bank and the Board with the concurrence of the Borrower. ”

(n) By the deletion, in paragraph 12 of Section 10.01, of the word “ Guarantor ” and the substitution therefor of the word “ Borrower ”.

(o) By the deletion of paragraph 13 of Section 10.01 and the substitution therefor of the following paragraph :

“ 13. Where used in Section 3.01 of the Guarantee Agreement, the term ‘ external debt ’ means any debt payable in any medium other than in currency of the Guarantor, whether such debt is or may become payable absolutely or at the option of the creditor in such other medium. ”

(p) By the deletion of the eighth paragraph of the Form of Bond set forth in Schedule 1 and the seventh paragraph of the Form of Bond set forth in Schedule 2 and the substitution therefor, in each such Schedule, of the following paragraph :

“ The principal of the Bonds, the interest accruing thereon and the premium, if any, on the redemption thereof shall be paid without deduction for and free from any taxes, imposts, levies or duties of any nature or any restrictions now or at any time hereafter imposed under the laws of [name of Guarantor], or of [the Borrower] or laws in effect in its territories; *provided, however, that the provisions of this paragraph shall not apply to taxation imposed (a) under the laws of [name of Guarantor] on or in connection with 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 [name of Guarantor] or (b) under the laws of [the Borrower] or laws in effect in its territories on or in connection with 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 Borrower].* ”

PROJECT AGREEMENT

(EDWALENI POWER PROJECT)

AGREEMENT, dated May 16, 1963, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and SWAZILAND ELECTRICITY BOARD (hereinafter called the Board).

WHEREAS by agreement of even date herewith between Swaziland and the Bank, which agreement and the schedules and loan regulations therein referred to and incorporated, together with any changes which may be made therein in accordance with the provisions thereof, are hereinafter called the Loan Agreement,¹ the Bank has agreed to make a loan to Swaziland (hereinafter called the Borrower) in various currencies in an amount equivalent to four million two hundred thousand dollars (\$4,200,000) on the terms and conditions set forth in the Loan Agreement, to be relented to the Board, but only on condition that the Board agree to undertake certain obligations to the Bank as hereinafter provided; and

WHEREAS the Board has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

DEFINITIONS

Section 1.01. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement (as above defined) shall have the respective meanings therein set forth.

¹ See p. 370 of this volume.

Article II

PARTICULAR COVENANTS OF THE BOARD

Section 2.01. The Board shall carry out the Project with due diligence and efficiency and in conformity with sound engineering, financial and public utility practices.

Section 2.02. The Board shall maintain its plant, equipment and other property, shall make all necessary renewals and repairs thereof, all in accordance with sound engineering practices, and shall at all times operate such plant, equipment and property and conduct its operations and maintain its financial position, all in accordance with sound public utility and business practices.

Section 2.03. The Board 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.

Section 2.04. The Board shall : (i) 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 its operations and financial condition; (ii) enable the Bank's representatives to inspect the Project, the goods and all facilities operated by it and any relevant records and documents; and (iii) 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 all facilities operated by it, all financial transactions between it and the Borrower and its operations and financial condition.

Section 2.05. In order that the Bank and the Board may cooperate to the fullest extent in assuring that the purposes of this Agreement shall be accomplished :

(a) The Board shall promptly inform the Bank of any condition which prevents, or threatens to prevent, the performance by the Board of its obligations under this Agreement or the Subsidiary Loan Agreement.

(b) Each party to this Agreement will, from time to time, as the other party shall reasonably request, afford such other party all reasonable opportunity for exchanges of views between their respective accredited representatives in regard to any and all matters relating to the Project and the matters covered by this Agreement and the Subsidiary Loan Agreement.

Section 2.06. Except as the Board and the Bank shall otherwise agree, the Board shall not incur any debt unless its net revenues for the fiscal year of the Board next preceding such incurrence or for a later twelve-month period ended prior to such incurrence, whichever are the greater, shall be not less than two times the maximum annual interest requirement on all debt, including the debt to be incurred.

For the purposes of this Section :

(a) The term “ debt ” shall mean all indebtedness of or guaranteed by the Board maturing by its terms more than one year after the date on which it is incurred and all other indebtedness of or guaranteed by the Board to the Borrower.

(b) The term “ incur ” with reference to any debt shall include any modification of the terms of payment of such debt. Debt shall be deemed to be incurred on the date of execution and delivery of a contract or loan agreement providing for the incurring of such debt.

(c) The term “ net revenues ” shall mean gross revenues from all sources, adjusted to take account of rates for the supply of electricity in effect at the time of the incurrence of debt even though they were not in effect during the fiscal year or twelve-month period to which such revenues relate, less (i) all operating and administrative expenses, including provisions for taxes, if any, and (ii) provision covering depreciation computed on a straight-line basis, but before interest and other charges on debt.

(d) Interest payable in a currency other than currency of the Borrower shall be valued at the rate of exchange at which such other currency is obtainable, on the date the additional debt is incurred, for the purpose of servicing such debt, or if such currency is not so obtainable, at the rate of exchange reasonably determined by the Bank.

Section 2.07. The Board shall from time to time make such adjustments in its rates for the supply of electricity as will provide revenues sufficient to enable it to cover its operating expenses (including adequate maintenance and renewals and taxes, if any), interest, repayments on long-term indebtedness or depreciation (whichever is greater) and reasonable allocations to reserves.

For the purposes of this Section, the term “ long-term indebtedness ” shall mean any debt maturing by its terms more than one year after the date on which it was originally incurred.

Section 2.08. (a) All works included in the Project which are to be constructed under contract shall be constructed by contractors satisfactory to the Bank and the Board, employed under contracts satisfactory to the Bank and the Board.

(b) The general design standards to be used for the Project shall be satisfactory to the Bank and the Board.

(c) In connection with the carrying out of the Project, the Board shall employ consultants acceptable to, and upon terms and conditions satisfactory to, the Bank and the Board.

Section 2.09. (a) Except as shall be otherwise agreed between the Bank and the Board, the Board shall insure or cause to be insured the goods financed out of the proceeds of the Loan against risks incident to their purchase and transportation to the site of the Project. Such insurance shall be consistent with sound commercial practice and shall be payable in dollars or in the currency for which the cost of the goods insured thereunder shall be payable.

(b) The Board shall take out and maintain with good and reputable insurance companies, insurance against such risks and in such amounts as shall be consistent with sound public utility and business practices.

Section 2.10. The Board shall engage or appoint as auditor one or more independent chartered accountants satisfactory to the Bank, and the accounts of the Board shall be audited by such accountants as of the end of each fiscal year.

Section 2.11. The Board shall obtain the agreement of the Bank prior to making any appointment to the office of Chief Executive Officer of the Board.

Section 2.12. (a) The Board shall import or cause to be imported into the territories of the Borrower all goods financed out of the proceeds of the Loan and shall (except as the Bank shall otherwise agree) use them there or cause them to be used there exclusively in the carrying out of the Project.

(b) The methods and procedures for procuring the goods financed out of the proceeds of the Loan shall be satisfactory to the Bank.

Article III

EFFECTIVE DATE; TERMINATION

Section 3.01. This Agreement shall come into force and effect on the date when the Loan Agreement and the Guarantee Agreement¹ shall become effective as provided in the Loan Agreement.

Section 3.02. This Agreement shall terminate and the obligations of the parties hereunder shall cease and determine : (i) if, pursuant to Section 9.04 of the Loan Regulations, the Bank shall terminate the Loan Agreement; (ii) by agreement between the Bank, the Borrower and the Board; or (iii) if and when all principal, interest and other sums payable by the Board under the Subsidiary Loan Agreement shall have been paid.

Article IV

MISCELLANEOUS PROVISIONS

Section 4.01. No holder (other than the Bank) of any Bond shall by virtue of being holder thereof be entitled to exercise any of the rights conferred, or be subject to any of the conditions or obligations imposed, upon the Bank under this Agreement.

Section 4.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or

¹ See p. 362 of this volume.

any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 4.03. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are :

For the Board :

Swaziland Electricity Board
P.O. Box 258
Mbabane, Swaziland

Alternative address for cables and radiograms :

Power
Mbabane

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 cables and radiograms :

Intbafrad
Washington, D.C.

Section 4.04. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of the Board may be taken or executed by the Chairman of the Board or such person or persons as he shall designate in writing.

Section 4.05. This Agreement may be executed in several counterparts, each of which shall be an original and all collectively but one instrument.

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

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT :

By J. Burke KNAPP
Vice President

Swaziland Electricity Board :

By Denis GREENHILL
Authorized Representative

SCHEDULE

DESCRIPTION OF PROJECT

The Project is part of the Board's 1962-1972 expansion program to furnish electricity through an interconnected system to major towns and an iron ore mine. It includes :

- (a) The Edwaleni hydroelectric station, to be constructed on the Great Usutu River near Manzini. The station will utilize water from the reservoir created by the construction of a dam on the Little Usutu River; that water will be diverted through approximately 6.5 miles of canal, a small regulating reservoir and two steel penstocks. Four generating units of 2.5 MW each will be installed in the powerhouse. The dam, which will have a maximum height of about 35 feet and an overall length of about 1,700 feet, will include a concrete spillway section about 540 feet long with a discharge capacity of about 120,000 cubic feet per second and an earth and rockfill section about 1,160 feet long.
- (b) Three diesel generating units of 500 kw each which will be installed in a diesel generating station adjacent to the hydroelectric station.
- (c) Approximately 90 miles of 66 kv and 45 miles of 11 kv transmission lines, with appropriate substation equipment, which will interconnect the hydroelectric and diesel stations with the towns of Mbabane, Mhlambanyati, Manzini, the railway village and marshalling yard at Sidvokodvo, the iron ore mine at Bomvu Ridge and the Big Bend area.

It is expected that the Project will be completed by the end of 1965.
