

No. 10487

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
COSTA RICA**

**Guarantee Agreement—*Third Power Project* (with annexed
General Conditions Applicable to Loan and Guarantee
Agreements and Loan Agreement between the Bank and
the Instituto Costarricense de Electricidad). Signed at
Washington on 10 July 1969**

Authentic text: English.

*Registered by the International Bank for Reconstruction and Development on
25 May 1970.*

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
COSTA RICA**

**Contrat de garantie — *Troisième projet relatif à l'énergie
électrique* (avec, en annexe, les Conditions générales
applicables aux contrats d'emprunt et de garantie et le
Contrat d'emprunt entre la Banque et l'Instituto
Costarricense de Electricidad). Signé à Washington le
10 juillet 1969**

Texte authentique: anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développement
le 25 mai 1970.*

GUARANTEE AGREEMENT¹

AGREEMENT, dated July 10, 1969, between REPÚBLICA DE COSTA RICA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS, by the Loan Agreement of even date herewith² between the Bank and Instituto Costarricense de Electricidad (hereinafter called the Borrower), the Bank has agreed to make to the Borrower a loan in various currencies equivalent to twelve million dollars (\$12,000,000), 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 the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,³ with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan and Guarantee Agreements being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

Article II

Section 2.01. Without limitation or restriction upon any of its other obligations under this Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punc-

¹ Came into force on 20 October 1969, upon notification by the Bank to the Government of Costa Rica.

² See p. 346 of this volume.

³ See p. 344 of this volume.

tual payment of the principal of, and the interest and other charges on, the Loan and the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds prior to their maturity and the punctual performance of all the obligations of the Borrowers, 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 the carrying out of the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the 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; or (ii) any lien arising in the ordinary course of banking transactions 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 political subdivisions or of any agency of the Guarantor or of any such political subdivision, including the Banco Central de Costa Rica or any other institution performing the functions of a central bank.

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

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of

the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

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

Section 3.03. The principal of, and interest and other charges on the Loan and the Bonds shall be paid without deduction for, and free from, any taxes and free from all restrictions 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, the Mortgage 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 Guarantor shall take all such action as will be necessary to enable the Borrower and CNFL to obtain from time to time such adjustments in their respective power rates as will provide revenues sufficient to meet the requirements of Sections 5.11 and 5.12 of the Loan Agreement.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. The *Ministro de Hacienda* of the Guarantor and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

Article V

Section 5.01. The *Ministro de Hacienda* of the Guarantor is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

Section 5.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions :

For the Guarantor :

Ministro de Hacienda
San José
Costa Rica

Alternative address for cables :

Minhacienda
San José

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cables :

Intbafrad
Washington, D.C.

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.

República de Costa Rica :
By LUIS DEMETRIO TINOCO
Authorized Representative

International Bank for Reconstruction and Development :

By J. BURKE KNAPP
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO LOAN GUARANTEE AGREEMENTS

[Not published herein. See *United Nations, Treaty Series, vol. 691, p. 300.*]

LOAN AGREEMENT

AGREEMENT, dated July 10, 1969, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and INSTITUTO COSTARRICENSE DE ELECTRICIDAD (hereinafter called the Borrower).

WHEREAS, by an agreement dated February 3, 1961¹ between the Bank and the Borrower, the Bank agreed to lend to the Borrower an amount in various currencies equivalent to eight million eight hundred thousand dollars to assist the Borrower in the expansion of its power generating and transmission facilities;

WHEREAS, by an agreement dated July 10, 1963² between the Bank and the Borrower, the Bank agreed to lend to the Borrower an amount in various currencies equivalent to twenty-two million dollars to assist the Borrower in financing (i) the further expansion of its power generating and transmission facilities and (ii) the establishment of a telecommunication system in Costa Rica;

WHEREAS, by an agreement of even date herewith³ between the Bank and the Borrower, the Bank has agreed to lend to the Borrower an amount in various currencies equivalent to six million five hundred thousand dollars to assist the Borrower in financing the expansion of its telecommunication system in Costa Rica; and

WHEREAS, the Borrower has requested the Bank to make a loan to assist it in financing the further expansion of its power generating and transmission facilities;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969⁴ with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan Guarantee Agreements of the Bank being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Mortgage" means the Original Mortgage, as defined in Section 6.01 of this Loan Agreement, and shall include any Supplemental Mortgage constituted pursuant to the provisions of Section 6.01 of this Loan Agreement.

(b) "Colones" and the sign "₡" mean *colones* in the currency of the Guarantor.

¹ United Nations, *Treaty Series*, vol. 414, p. 313.

² *Ibid.*, vol. 482, p. 69.

³ See p. 338 of this volume.

⁴ See p. 344 of this volume.

(c) "Prior Loan Agreements" means the Loan Agreement (*Río Macho Hydroelectric Project*) dated February 3, 1961 and the Loan Agreement (*Power and Telecommunication Project*) dated July 10, 1963, both between the Bank and the Borrower.

(d) "Prior Guarantee Agreements" means the Guarantee Agreement (*Río Macho Hydroelectric Project*) dated February 3, 1961 and the Guarantee Agreement (*Power and Telecommunication Project*) dated July 10, 1963, both between the Guarantor and the Bank.

(e) "Power Assets" means all electric power generating facilities, substations, transmission lines, distribution facilities, and related facilities and assets owned by the Borrower.

(f) "Electric Power Functions" means the management and operation by the Borrower of the Power Assets.

(g) "Power Section" means the organizational divisions or subdivisions of the Borrower performing the Electric Power Functions.

(h) "CNFL" means Compañía Nacional de Fuerza y Luz, Sociedad Anónima, a *sociedad anónima* created and existing under the laws of the Guarantor, of which the Borrower acquired the majority of the shares (92.3%) as authorized by *Ley No. 4197* dated September 20, 1968 of the Guarantor.

(i) "Decree Law No. 449" means *Decreto Ley No. 449* of the Guarantor establishing the Borrower, dated April 8, 1949, and shall include any amendments thereof in effect at the date of this Loan Agreement.

(j) "Concession Agreement" means *Contrato Eléctrico, Ley No. 2*, establishing the rights and duties of CNFL, dated April 8, 1941, as modified by *Ley No. 4197*, dated September 20, 1968, of the Guarantor.

Article II

THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in this Loan Agreement set forth or referred to, an amount in various currencies equivalent to twelve million dollars (\$12,000,000).

Section 2.02. (a) 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.

(b) 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 Loan Agreement and in accordance with the allocation of the proceeds of the Loan set forth in Schedule 1 to this Agreement, as such allocation shall be modified from time to time pursuant to the provisions of such Schedule or by further agreement between the Bank and the Borrower.

Section 2.03. The Borrower shall be entitled to withdraw from the Loan Account such amounts as shall have been paid (or, if the Bank shall so agree, as shall be required to meet payments to be made) in respect of the reasonable cost of goods or services required for the Project and to be financed under this Loan Agreement.

Section 2.04. (a) It is hereby agreed, pursuant to Section 5.01 of the General Conditions :

- (i) that withdrawals from the Loan Account under Categories I to III of the allocation of the proceeds of the Loan referred to in Section 2.02 of this Agreement may be made on account of payments in the currency of the Guarantor for goods produced in the territories of the Guarantor; and
- (ii) that withdrawals from the Loan Account under Categories I to III of the allocation of the proceeds of the Loan referred to in Section 2.02 of this Agreement may be made on account of payments made prior to the date of this Loan Agreement but under contracts entered into after January 1, 1969;

provided, however, that notwithstanding the foregoing provisions of this Section, no withdrawal shall be made from the Loan Account if as a result of such withdrawal and of prior withdrawals the amount withdrawn from the Loan Account shall exceed : (a) the equivalent of one million eight hundred thousand dollars (\$1,800,000) in the case of withdrawals made pursuant to sub-paragraph (i) of this Section; and (b) the equivalent of five hundred thousand dollars (\$500,000) in the case of withdrawals made pursuant to sub-paragraph (ii) of this Section.

(b) No withdrawal from the Loan Account shall be made on account of payments for taxes imposed by the Guarantor or any of its political subdivisions on, or in connection with the importation or supply of, goods.

Section 2.05. 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 withdrawn from time to time.

Section 2.06. The Borrower shall pay interest at the rate of six and one-half per cent ($6\frac{1}{2}\%$) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

Section 2.07. Interest and other charges shall be payable semi-annually on May 1 and November 1 in each year.

Section 2.08. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

Article III

USE OF PROCEEDS OF THE LOAN

Section 3.01. The Borrower shall apply the proceeds of the Loan in accordance with the provisions of this Loan Agreement to expenditures on the Project described in Schedule 3 to this Agreement.

Section 3.02. Except as the Bank shall otherwise agree, (i) the goods and services to be financed out of the proceeds of the Loan shall be procured on the basis of international competitive bidding in accordance with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in February 1968, and in accordance with such other procedures supplementary thereto as are set forth in Schedule 4 to this Agreement or as shall be agreed between the Bank and the Borrower, and (ii) contracts

for the procurement of such goods and services shall be subject to the prior approval of the Bank, except as otherwise provided in said Schedule 4.

Section 3.03. Until the completion of the Project, the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively in carrying out the Project, except as the Bank may otherwise agree.

Article IV

BONDS

Section 4.01. If and as the Bank shall from time to time request, the Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in Article VIII of the General Conditions.

Section 4.02. In addition to the provisions set forth in the General Conditions, the Bonds shall contain :

- (a) provisions satisfactory to the Bank to the effect that the Mortgage will equally and ratably secure payment of the principal of, interest, premium, if any, on prepayment or redemption, and other charges on, the Loan and the Bonds; and
- (b) in the event the Bank shall have assigned the Mortgage to a trustee or trustees or a similar fiduciary or fiduciaries, as contemplated in Section 6.03 of this Loan Agreement, provisions satisfactory to the Bank to the effect that any and all rights or powers, under the Mortgage, of any holder of the Bonds, will be exercised by such trustee or trustees or fiduciary or fiduciaries.

Section 4.03. Bonds executed and delivered by the Borrower prior to the date on which the Bank shall have assigned the Mortgage to a trustee or trustees or a similar fiduciary or fiduciaries, as contemplated in Section 6.03 of this Loan Agreement, shall, as soon as practicable after the Bank shall have so requested the Borrower and without charge to the Bank, be exchanged for new Bonds containing provisions complying with the terms of Section 4.02 (b) of this Loan Agreement.

Section 4.04. The *Gerente General* of the Borrower and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 8.10 of the General Conditions.

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, public utility, administrative and financial practices.

(b) To assist the Borrower in carrying out the Project, the Borrower shall employ consultants acceptable to the Bank, upon terms and conditions satisfactory to the Bank.

(c) The Borrower undertakes to inform the Bank when a change is to be effected in the position of the *Gerente General* and to give the Bank a reasonable opportunity to comment thereon.

(d) Upon request from time to time by the Bank, the Borrower shall promptly furnish, or cause to be furnished, to the Bank the plans and specifications for the Project and any material modifications subsequently made therein, in such detail as the Bank shall from time to time request.

Section 5.02. The Borrower shall maintain records adequate to identify the goods and services 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 and of the Power Section with respect to the Power Assets; 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 services financed out of the proceeds of the Loan, the Power Assets and the operations and financial conditions of the Borrower and of the Power Section.

Section 5.03 (a) The Borrower shall maintain separate administrative, accounting and engineering records for the Power Section.

(b) The Borrower shall prepare separate financial statements (balance sheet, statement of earnings and expenses and other related statements) of the Borrower and the Power Section in accordance with generally accepted accounting practices consistently applied.

(c) The Borrower shall have the financial statements referred to in paragraph (b) of this Section certified annually by an independent auditor acceptable to the Bank, and shall promptly after their preparation, and not later than four months after the end of the Borrower's fiscal year, transmit to the Bank certified copies of such statements and a signed copy of the auditor's report.

Section 5.04. (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 5.05. The Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that, except

with respect to any property referred to in Section 6.01 of this Agreement, 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; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after the date on which it is originally incurred.

Section 5.06. The Borrower shall pay or cause to be paid all taxes, 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 Loan Agreement, the Guarantee Agreement, the Mortgage 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 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 5.07. The Borrower shall pay or cause to be paid all 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 on or in connection with the execution, issue, delivery or registration of this Loan Agreement, the Guarantee Agreement, the Mortgage or the Bonds.

Section 5.08. (a) The Borrower shall take out and maintain with responsible insurers, or make other provisions satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with sound business and public utility practices.

(b) Without limiting the generality of the foregoing, the Borrower shall insure or cause to be insured the imported goods financed out of the proceeds of the Loan against marine, transit and other hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by the Borrower to replace or repair such goods.

Section 5.09. (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.

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

(c) The Borrower shall not sell or otherwise dispose of any of its property or assets which shall be required for the efficient carrying on of its business and undertaking, including the Project, unless the Borrower shall first pay or redeem, or make adequate

provisions satisfactory to the Bank for payment or redemption of, all of the Loan and the Bonds which shall then be outstanding and unpaid, provided, however, that the Borrower may sell or otherwise dispose of any of its property which shall have become obsolete, worn out or unnecessary for use in its operations.

Section 5.10. Except as the Bank and the Borrower shall otherwise agree :

(a) The Borrower shall not incur for the Power Section any long-term debt unless the net revenues of the Power Section for the fiscal year next preceding such incurrence, or for a later twelve-month period ended prior to such incurrence, whichever shall have been the greater, shall be not less than 1.5 times the maximum debt service requirements for any succeeding fiscal year on all long-term indebtedness incurred for the Power Section (including the debt to be incurred). For the purposes of this Section :

- (i) the term “long-term debt” means any debt maturing by its terms more than one year after the date on which it is originally incurred, including any debt represented by bonds;
- (ii) debt shall be deemed to be incurred (1) under a loan contract or agreement, on the date the loan contract or agreement providing for such debt is entered into, and (2) under a guarantee agreement, on the date the agreement providing for such guarantee is entered into;
- (iii) the term “net revenues” means gross revenues from all sources adjusted to take account of power rates in effect at the time of calculation even though they were not in effect during the twelve consecutive months to which such revenues related, less operating and administrative expenses, including provision for taxes, if any, but before provision for depreciation and interest and other charges on debt;
- (iv) the term “debt service requirements” means the aggregate amount of amortization (including sinking fund contributions, if any), interest and other charges on debt; and
- (v) whenever it shall be necessary to value in Colones debt payable in another currency, such valuation shall be made on the basis of the rate of exchange at which such other currency is obtainable by the Borrower, at the time such valuation is made, for the purposes of servicing such debt or, if such other currency is not so obtainable, at the rate of exchange that will be reasonably determined by the Bank.

(b) The requirements set forth in paragraph (a) of this Section shall apply *mutatis mutandis* to the incurrence by CNFL of any long-term debt and the Borrower shall cause CNFL to comply with the provisions of this paragraph (b) as if they were binding on CNFL.

(c) The Borrower shall not sell any bonds which are subject to agreements committing the Borrower to repurchase such bonds before their maturity date, if at the time or as a result thereof, the aggregate principal amount of bonds subject to such repurchase agreements then outstanding shall exceed an amount equal to forty per cent (40%) of the aggregate principal amount of all bonds of the Borrower then outstanding.

(d) The Borrower shall not permit its short-term debt to exceed ten million Colones ((Q10,000,000)). For the purposes of this Section “short-term debt” means debt for money borrowed, including bank overdrafts maturing on demand or by its terms within twelve months after the date on which it is originally incurred, excluding debt represented by bonds.

Section 5.11. (a) Except as the Bank shall otherwise agree, the Borrower shall from time to time take all steps necessary or desirable to obtain such adjustments in its power rates as will provide, beginning January 1, 1970, sufficient revenues for the Power Section to yield an annual return which shall be not less than 9%.

(b) For the purposes of this Section :

- (i) the annual rate of return shall be calculated in respect of each fiscal year by relating net income for that year to the average of the net value of fixed assets in operation at the beginning and at the end of that year;
- (ii) the term “net income” means all power revenues, except dividend and interest income from CNFL and from other long-term investments, less all operating expenses;
- (iii) the term “operating expenses” includes : direct costs of operation, administration, overhead and adequate maintenance expenses; straightline depreciation based on the useful life of assets; taxes (if any); but does not include interest and other charges on debt; and
- (iv) the term “net value of fixed assets in operation” means the gross value of fixed assets in operation less the accumulated depreciation, all determined in accordance with methods of valuation and revaluation acceptable to the Bank and the Borrower.

Section 5.12. The Borrower shall from time to time take or cause to be taken all steps necessary or desirable to obtain such adjustments in CNFL’s power rates as will provide sufficient revenues for CNFL, in accordance with the provisions of Article 16 of the Concession Agreement.

Section 5.13. Except as the Bank shall otherwise agree, the Borrower shall not (i) reduce its capital and reserves, (ii) declare or pay any dividends, or make any other distribution on its capital, or (iii) make any investment not directly related to the Electric Power Functions or the management and operation of the Borrower’s telephone, telegraph, telex, data and television transmission installations and related facilities and assets.

Article VI

MORTGAGE

Section 6.01. (a) As soon as practicable after the date of this Agreement, the Borrower shall take such action and execute and deliver to the Bank, in form and substance satisfactory to the Bank, such instrument or instruments (hereinafter called the Original Mortgage) as shall be necessary to constitute under the laws of the Guarantor, in favor of

the Bank and of the holders from time to time of the Loan and the Bonds, a *hipoteca y prenda industrial*, both *de primer grado*, on so much of the property described in paragraph (1) of Schedule 5 to this Agreement as the Borrower shall have had an ownership interest in at the date of the execution of the Original Mortgage.

(b) The Borrower shall after the creation of the Original Mortgage from time to time within sixty days after receipt of a request from the Bank to that effect, take such action and execute and deliver to the Bank, in form and substance satisfactory to the Bank, such supplemental instrument or instruments (each such supplemental instrument being hereinafter called the Supplemental Mortgage) as shall be necessary to constitute under the laws of the Guarantor, in favor of the Bank and of the holders from time to time of the Loan and the Bonds, a *hipoteca y prenda industrial*, both *de primer grado*, on so much of the property described in paragraph (2) of Schedule 5 to this Agreement, as shall be specified in such request, provided, however, that if the Borrower shall so desire and the Bank shall so agree, the Borrower shall instead within sixty days after receipt of a request from the Bank to that effect, take such action and execute and deliver to the Bank, in form and substance satisfactory to the Bank, such supplemental instrument or instruments as shall be necessary to modify a *hipoteca y prenda industrial*, constituted pursuant to Article VI of the Prior Loan Agreements, to the effect that such *hipoteca y prenda industrial* shall secure the Loan, in favor of the Bank and of the holders from time to time of the Loan and the Bonds, in addition to the loan made by the Bank to the Borrower under the Prior Loan Agreements.

(c) The *hipotecas y prendas industriales de primer grado* provided for in paragraph (a) and paragraph (b) of this Section shall equally and ratably secure payment of the principal of, interest, premium, if any, on prepayment and redemption, and other charges on, the Loan and the Bonds.

Section 6.02. (a) The Borrower shall duly record, register and file and re-record, re-register and re-file the Original Mortgage and each Supplemental Mortgage in every jurisdiction for which the Bank may from time to time request any such recording, registration or filing or where such recording, registration or filing may be necessary or desirable in order to render or maintain the Mortgage a valid and enforceable first lien.

(b) Promptly after execution and delivery of each Mortgage the Borrower shall furnish to the Bank: (i) evidence satisfactory to the Bank that such Mortgage has been duly recorded, registered and filed in accordance with the laws of the Guarantor in all such jurisdictions as may be required under the laws of the Guarantor to make it a valid and enforceable first lien in favor of the Bank and of the holders from time to time of the Loan and the Bonds; and (ii) an opinion or opinions satisfactory to the Bank, 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, that it has been duly recorded, registered and filed in such jurisdictions as may be required under the laws of the Guarantor to make it a valid and enforceable first lien, that it constitutes a valid first lien under the laws of the Guarantor enforceable in accordance with its terms, and that at the dates of the Mortgage and of the recording, registration and filing thereof the Borrower had valid

title to the property described therein free of all liens and encumbrances other than the liens of the Mortgage.

(c) The Borrower shall take all such other action 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 a valid and enforceable first lien.

Section 6.03. The Borrower agrees to the assignment by the Bank, at any time, of the Mortgage to a trustee or trustees, or a similar fiduciary or fiduciaries, which may be the Bank, for the equal and ratable benefit of all holders of the Loan and the Bonds. The Borrower shall take all such action 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 valid and enforceable.

Section 6.04. In the event the Bank shall appoint a trustee or trustees or a fiduciary or fiduciaries, as in Section 6.03 of this Loan Agreement provided, the Borrower shall pay all costs and expenses incidental to such appointment or appointments or arising out of the exercise by such trustee or trustees or fiduciary or fiduciaries of his or their functions.

Article VII

REMEDIES OF THE BANK; AMENDMENTS OF THE PRIOR LOAN AGREEMENTS

Section 7.01. If any event specified in Section 7.01 of the General Conditions or in Section 7.02 of this Agreement shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Bank, at its option, may by notice to the Borrower and the Guarantor declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately, together with the interest and other charges thereon and upon any such declaration such principal, interest and charges shall become due and payable immediately, anything to the contrary in this Loan Agreement or in the Bonds notwithstanding.

Section 7.02. For the purposes of Section 7.01 of the General Conditions, the following additional events are specified :

- (a) A default shall occur in the performance of any covenant or agreement on the part of the Borrower or the Guarantor under any of the Prior Loan Agreements, any of the Prior Guarantee Agreements, the loan agreement (*Second Telecommunications Project*) between the Bank and the Borrower, the guarantee agreement relating thereto between the Guarantor and the Bank, both of even date herewith, or the Bonds provided for therein, and shall continue for a period of thirty days, or the security constituted by the mortgages provided for therein shall become enforceable.
- (b) The security constituted by the Mortgage shall become enforceable.
- (c) Any amendment, abrogation or waiver of any provision of Decree Law No. 449 or the Concession Agreement shall occur without the Bank having, in advance thereof, notified the Guarantor and the Borrower of its concurrence therewith.

Section 7.03. For the purpose of the Prior Loan Agreements, paragraph (c) of Section 5.02 of Loan Regulations No. 4 of the Bank applicable thereto 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, or the Bonds, or under the loan agreements dated July 1969, between the Bank and the Borrower, the guarantee agreements of even date therewith between the Guarantor and the Bank or the bonds therein provided for, or the security constituted by the Mortgage shall have become enforceable.”;

and the term “Loan Regulations” as used for the purposes of the Prior Loan Agreements shall mean the Loan Regulations No. 4 of the Bank applicable thereto, as modified in the Prior Loan Agreements and as further amended hereby.

Section 7.04. The provisions of Sections 5.10 and 5.11 of this Loan Agreement supersede the provisions of Sections 5.08 and 5.09 of the Prior Loan Agreements.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be December 31, 1973 or such other date as shall be agreed between the Bank and the Borrower.

Section 8.02. The date of October 15, 1969 is hereby specified for the purposes of Section 11.04 of the General Conditions.

Section 8.03. The following addresses are specified for the purposes of Section 10.01 of the General Conditions :

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cables :

Intbafrad
Washington, D.C.

For the Borrower :

Instituto Costarricense de Electricidad
Apartado XXXII
San José, Costa Rica

Alternative address for cables :

ICE
San José

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 to be 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

Instituto Costarricense de Electricidad :

By LUIS DEMETRIO TINOCO
Authorized Representative

SCHEDULE 1

ALLOCATION OF PROCEEDS OF LOAN

<i>Category</i>	<i>Amounts Expressed in Dollar Equivalent</i>
I. Materials and services for the construction of the Tapanti hydro-electric plant	7,300,000
II. Materials and services for the enlargement of the Cachi hydro-electric plant	750,000
III. Associated transmission and substation facilities	1,000,000
IV. Consultant services for the Project	250,000
V. Interest and other charges on the Loan until December 31, 1972	1,500,000
VI. Unallocated	1,200,000
TOTAL	<u>12,000,000</u>

REALLOCATION UPON CHANGE IN COST ESTIMATES

1. If the estimate of the cost of the items included in any of the Categories I to V shall decrease, the amount of the Loan then allocated to, and no longer required for, any such Category will be reallocated by the Bank to Category VI.

2. If the estimate of the cost of the items included in any of the Categories I to V shall increase, an amount equal to the portion, if any, of such increase to be financed out of the proceeds of the Loan will be allocated by the Bank, at the request of the Borrower, to any such Category or Categories from Category VI, subject, however, to the requirements for contingencies, as determined by the Bank, in respect of the cost of the items in the other Categories.

SCHEDULE 2
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>
November 1, 1973	\$140,000	May 1, 1984	270,000
May 1, 1974	140,000	November 1, 1984	280,000
November 1, 1974	145,000	May 1, 1985	285,000
May 1, 1975	150,000	November 1, 1985	295,000
November 1, 1975	155,000	May 1, 1986	305,000
May 1, 1976	160,000	November 1, 1986	315,000
November 1, 1976	165,000	May 1, 1987	325,000
May 1, 1977	170,000	November 1, 1987	335,000
November 1, 1977	180,000	May 1, 1988	350,000
May 1, 1978	185,000	November 1, 1988	360,000
November 1, 1978	190,000	May 1, 1989	370,000
May 1, 1979	195,000	November 1, 1989	385,000
November 1, 1979	200,000	May 1, 1990	395,000
May 1, 1980	210,000	November 1, 1990	410,000
November 1, 1980	215,000	May 1, 1991	420,000
May 1, 1981	225,000	November 1, 1991	435,000
November 1, 1981	230,000	May 1, 1992	450,000
May 1, 1982	235,000	November 1, 1992	465,000
November 1, 1982	245,000	May 1, 1993	480,000
May 1, 1983	255,000	November 1, 1993	495,000
November 1, 1983	260,000	May 1, 1994	525,000

* To the extent that any portion of the Loan is repayable in a currency other than dollars (see General Conditions, Section 4.02), 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 portion of the principal amount of the Loan pursuant to Section 3.05 (b) of the General Conditions or on the redemption of any Bond prior to its maturity pursuant to Section 8.15 of the General Conditions :

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than three years before maturity	1/2 %
More than three years but not more than six years before maturity	1 1/4 %
More than six years but not more than eleven years before maturity	2 1/4 %
More than eleven years but not more than sixteen years before maturity	3 3/4 %
More than sixteen years but not more than twenty-one years before maturity	5 %
More than twenty-one years but not more than twenty-three years before maturity	6 %
More than twenty-three years before maturity	6 1/2 %

SCHEDULE 3

DESCRIPTION OF THE PROJECT

The Project consists of the Río Macho hydroelectric plant expansion, the raising of the existing Cachi reservoir to its full level and transmission system expansion associated with the added generating plant capacity. It forms part of the Borrower's 1968-1975 expansion program to meet forecast demand for electric power. The principal items of the Project are :

- (1) Construction of about 14.5 km of tunnels and other civil works to convey the water of the Reventazon River to the existing Río Macho tunnel, and the addition of 2×30 MW generating units and associated civil and electrical installations in an extension to the existing Río Macho hydroelectric station.
- (2) Installation of spillway gates and associated civil works to raise the reservoir of the Cachi hydroelectric station to its full level.
- (3) Construction of various short transmission lines and substations.
- (4) Provision of consultant services for the carrying out of the Power Functions.

The Project is expected to be completed by December 31, 1972.

SCHEDULE 4

PROCUREMENT PROCEDURES

With respect to contracts, any part of which is to be financed out of the proceeds of the Loan (excepting contracts for consultants' services), the following shall apply :

- (1) For contracts involving an amount of \$50,000 equivalent or more, the following procedures shall apply :
 - (a) Before bids are invited, the Borrower shall submit to the Bank for approval the invitations to bid, specifications and other tender documents, together with a description of advertising procedures.
 - (b) After bids have been received and analyzed, the bid analysis and recommendation for award, together with the reasons for such recommendation, will be submitted by the Borrower to the Bank for approval prior to the award or the issuance of a letter of intent.
 - (c) If the final contract is to differ substantially from the terms and conditions contained in the respective documents approved by the Bank under paragraphs (a) and (b) above, the text of the proposed changes will be submitted to the Bank for its review and approval prior to the execution of such contract or issuance of such letter of intent.

(d) One confirmed copy of any letter of intent issued and of any contract executed under this paragraph (1) shall be sent to the Bank promptly upon its issuance or execution.

(2) For other contracts the Borrower shall furnish to the Bank any invitation to bid, bid evaluation report and copy of signed contract, and any other material relevant thereto that the Bank shall request, promptly after execution of any such contract and prior to the submission to the Bank of the first application for withdrawal in respect to such contract.

(3) Pursuant to paragraph 2.8 of the Guidelines for Procurement referred to in Section 3.02 of this Loan Agreement, the Bank agrees that where bids are submitted by manufacturers, located in the territories of one of the member countries of the Central American Common Market, of equipment, materials or supplies manufactured or processed to a substantial extent in the territories of said Common Market (Central American Bid), the following rules shall be observed for the purpose of comparing any such bid to any other competing bid (Non-Central American Bid) :

- (a) All customs duties and similar levies shall first be excluded from the total of any such Non-Central American Bid;
- (b) The portion of such Non-Central American Bid representing the C.I.F. landed price of the goods shall then be increased by 15% thereof or fifty percent of the rate of such duties as they generally apply to non-exempt purchasers for the importation of such goods, whichever is lower; in cases where it is recommended to award a contract to a Central American Bid, the bid analysis shall state the rate of duties which would be applicable to a non-exempt purchaser for the importation of such goods;
- (c) The resulting figure plus the portion of such Non-Central American Bid representing inland freight, insurance and other costs of delivery of the goods to the site of use as designated in the specifications shall be deemed to be the comparison price of any such Non-Central American Bid;
- (d) If the price of the goods delivered to such site offered by the competing Central American Bid is equal to or lower than the comparison price of the Non-Central American Bids arrived at under (b) and (c) above, and other terms and conditions are satisfactory under the principles set forth in Part III of the Guidelines for Procurement, then the Central American Bid may be considered the lowest evaluated bid under paragraph 3.9 of the said Guidelines for Procurement.

SCHEDULE 5

PROPERTY TO BE SUBJECT TO THE MORTGAGE

(1) The following property of the Borrower shall be subject to the Original Mortgage pursuant to the provisions of Section 6.01(a) of this Loan Agreement :

Cachi Property No. 58,294 (consisting of intake works, camps, roads and tunnels).

(2) The following property of the Borrower shall be subject to the Supplemental Mortgage pursuant to the provisions of Section 6.01 (b) of this Loan Agreement :

Río Macho Property to be used for the part of the Project which is described in paragraph (1) of Schedule 3 to this Agreement.
