

No. 12015

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

Guarantee Agreement—*Fifth Power Project* (with General Conditions Applicable to Loan and Guarantee Agreements). Signed at Washington on 3 April 1972

Authentic text: English.

Registered by the International Bank for Reconstruction and Development on 26 September 1972.

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

Contrat de garantie — *Cinquième projet relatif à l'énergie électrique* (avec Conditions générales applicables aux contrats d'emprunt et de garantie). Signé à Washington le 3 avril 1972

Texte authentique : anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 26 septembre 1972.

GUARANTEE AGREEMENT¹

AGREEMENT, dated April 3, 1972, between REPUBLIC OF THE PHILIPPINES (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 National Power Corporation (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to twenty-two million dollars (\$22,000,000), 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

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this 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, subject, however, to the modifications thereof set forth in Section 1.01 of the Loan Agreement (said General Conditions Applicable to Loan and Guarantee Agreements, as so modified, 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.

¹ Came into force on 30 June 1972, upon notification by the Bank to the Government of the Philippines.

² The said Agreement entered into force on 30 June 1972. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Bank as document LN 809 PH, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

³ See p. 148 of this volume.

Article II

GUARANTEE; BONDS; PROVISION OF FUNDS

Section 2.01. Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and 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 other obligations of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. 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 Secretary of Finance 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.

Section 2.03. 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

OTHER COVENANTS

Section 3.01. (a) It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan or the Bonds by way of a lien on governmental assets.

(b) To that end the Guarantor (i) represents that at the date of this Agreement no lien exists on any governmental assets as security for any external debt except as otherwise disclosed in writing by the Guarantor to the Bank, and (ii) undertakes that if any such lien shall be created, it 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 in the creation of any such lien express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; and (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

As used in this Section, the term "governmental assets" means assets of the Guarantor, of any of its political subdivisions, of any agency of the Guarantor or of any such political subdivision, and assets of the Central Bank of the Philippines or any institution performing the functions of a central bank for the Guarantor.

(d) The Guarantor further undertakes that, within the limits of the laws in force in its territories, it will make the foregoing undertaking effective with respect to liens on the assets of its political subdivisions and their agencies, and to the extent that the Guarantor is unable within the limits of the laws in force in its territories to make this undertaking effective, the Guarantor will give to the Bank an equivalent lien satisfactory to the Bank.

Section 3.02. The Guarantor shall take all necessary steps to ensure that funds required by the Borrower to finance local currency costs during fiscal years 1973 to 1976 shall be made available to the Borrower on reasonable terms satisfactory to the Bank.

Section 3.03. The Guarantor shall, by June 30, 1973, pay to the Borrower (or make other arrangement satisfactory to the Bank) an amount of not less than twenty million pesos in the currency of the Guarantor for the sinking fund on the Borrower's indebtedness converted into capital stock in 1967.

Section 3.04. The Guarantor shall, by December 31, 1972, submit to the Bank for comment a proposal regarding the effective coordination of the planning of power development and the implementation thereof among power suppliers.

Section 3.05. The Guarantor covenants that it will take or cause to be taken all necessary action to enable the Borrower to set and maintain rates at such levels as shall be sufficient to meet the requirements of Sections 5.05 and 5.06 of the Loan Agreement.

Article IV

CONSULTATION AND INFORMATION

Section 4.01. The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the

Guarantor and the Bank shall from time to time, at the request of either party: (i) exchange views through their representatives with regard to the performance of their respective obligations under the Guarantee Agreement and other matters relating to the purposes of the Loan; and (ii) 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, including its balance of payments, and the external debt of the Guarantor, of any of its political subdivisions and of any agency of the Guarantor or of any such political subdivision.

Section 4.02. (a) 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.

(b) 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.

Article V

TAXES AND RESTRICTIONS

Section 5.01. 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 or laws in effect in its territories; provided, however, that the foregoing 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 5.02. The Guarantee Agreement, the Loan Agreement, any instrument made pursuant to Section 3.01 of this Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof and the Guarantor shall, in respect of any instrument made pursuant to such Section 3.01, pay all such taxes, if any, imposed under the laws of any other country or countries.

Section 5.03. The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls or moratoria of any nature imposed under the laws of the Guarantor or laws in effect in its territories.

Article VI

REPRESENTATIVE OF THE GUARANTOR; ADDRESSES

Section 6.01. The Secretary of Finance of the Guarantor is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Guarantor:

Secretary of Finance
Department of Finance
Manila, Philippines

Cable address:

Secfinance
Manila, Philippines

For the Bank:

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

Cable address:

Intbafrad
Washington, D.C.

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.

Republic of the Philippines:

By CESAR VIRATA
Authorized Representative

International Bank for Reconstruction and Development:

By MOHAMED SHOAI B
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
GENERAL CONDITIONS, DATED 31 JANUARY 1969
GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

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