
LOAN NUMBER 565 BR

Guarantee Agreement

(Porto Colombia Hydroelectric Project)

BETWEEN

BRAZIL

AND

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

DATED OCTOBER 23, 1968

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AGREEMENT, dated October 23, 1968, between BRAZIL (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and Central Elétrica de Furnas, S.A. (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement, the Bank has agreed to make to the Borrower a loan in various currencies equivalent to twenty-two million three hundred thousand dollars (\$22,300,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to enter into this Guarantee Agreement;

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to enter into this Guarantee Agreement;

WHEREAS the Guarantor represents and warrants that the giving of such guarantee is authorized by Law No. 1518 of December 24, 1951; Articles 22 and 23 of Law No. 1628 of June 20, 1952; Decree No. 57,482 of December 24, 1965 pursuant to Law No. 4131 of September 3, 1962; Law No. 4457 of November 6, 1964; and Law No. 5000 of May 24, 1966;

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 as amended February 9, 1967, subject, however, to the modification thereof set forth

in Section 1.01 of the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

SECTION 1.02. Wherever used in this Guarantee Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement shall have the same meanings as therein set forth.

ARTICLE II

SECTION 2.01. Without limitation or restriction upon any of the other covenants on its part in this Guarantee Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

SECTION 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for carrying out the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures, either by way of loans or equity investment by *Eletróbrás*, or otherwise.

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 in the allocation or realization

of foreign exchange. 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 or of any of its political subdivisions or of any agency of any such political subdivision 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 shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods; or (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term "assets of the Guarantor" as used in this Section includes assets of the Guarantor or of any agency of the Guarantor, including *Banco Central do Brasil* and any other institution performing the functions of a central bank for the Guarantor.

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

(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 and shall promptly inform each other 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 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 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 or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

SECTION 3.05. (a) The Guarantor will exercise every power, right and recourse available to it to the end that it will not take or permit any of its political subdivisions or any of its agencies (including *Eletrobrás* in its capacity as holder of the majority of the Borrower's shares, and *Banco Central do Brasil* and any other institution performing the functions of a central bank for the Guarantor in respect of the allocation or realization of foreign exchange)

or any agency of any political subdivision to take any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained, and will take or cause to be taken all reasonable action (including action by *Eletrobrás* in its capacity as holder of the majority of the Borrower's shares and by *Banco Central do Brasil* and any other institution performing the functions of a central bank for the Guarantor in respect of the allocation or realization of foreign exchange) which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations.

(b) The Guarantor shall cause the agency or agencies of the Guarantor responsible for the setting and adjustment of the Borrower's rates for the sale of electricity to act in respect of any application of the Borrower for the setting and adjustment of such rates within a period of not more than 30 days after receipt of such application.

SECTION 3.06. The Guarantor undertakes that it will: (a) take all such action as shall be practicable in the circumstances to encourage effective coordination of the operation of the electricity generating, transmission and distribution facilities of the integrated system into which the power output of the Project will flow; and (b) take or cause to be taken all such timely and effective action as shall be necessary or advisable in respect of the expansion of the transmission and distribution facilities in the areas served by such system in order to ensure that the electricity generated and to be generated by the system will efficiently reach the retailers and consumers in such areas.

SECTION 3.07. The Guarantor shall take all such measures as shall be necessary in order to facilitate the importation by the Borrower of goods to be financed out of the proceeds of the Loan and purchased outside Brazil in accordance with the provisions of the Loan Agreement.

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 *Ministro da Fazenda* 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:

Ministério da Fazenda
Av. Presidente Antonio Carlos 375
Rio de Janeiro, Brazil

Cable address:

Minifaz
Rio de Janeiro

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.

SECTION 5.02. The *Ministro da Fazenda* of the Guarantor is designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and to be delivered in the City of Rio de Janeiro, Brazil, as of the day and year first above written.

BRAZIL

By ANTONIO DELFIM NETO
Ministro da Fazenda

By JAYME ALIPIO DE BARROS
Procurador Geral da Fazenda

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By ROBERT S. McNAMARA
President