



***GUIDE TO FEDERAL
REGULATION
OF SALES OF IMPORTED
ELECTRICITY
IN CANADA, MEXICO, AND
THE UNITED STATES***

**A Publication of
The North American Energy
Working Group
January 2005**

The North American Energy Working Group

The North American Energy Working Group (NAEWG) was established in spring of 2001 by the Canadian Minister of Natural Resources, the Mexican Secretary of Energy and the U.S. Secretary of Energy, to enhance North American energy cooperation. The NAEWG is led by officials from Natural Resources Canada, the Mexican Secretariat of Energy, and the U.S. Department of Energy.

The goals of the NAEWG are to foster communication and cooperation among the governments and energy sectors of the three countries on energy-related matters of common interest, and to enhance North American energy trade and interconnections consistent with the goal of sustainable development for the benefit of all. This cooperative process fully respects the domestic policies, divisions of jurisdictional authority and existing trade obligations of each country.

To achieve these goals, the NAEWG exchanges views and shares information on factors affecting North American energy, including policies and programs, sector developments and anticipated demand and sources of supply. It also identifies issues that need to be addressed, such as regulatory structures, interconnections, technical specifications, and technology research and development. The scope of the NAEWG's discussions includes energy development, production, transport and transmission, distribution and consumption in North America. The NAEWG also considers the full range of energy sources, as well as the efficient and clean production and use of energy.

Introduction

This *Guide to Federal Regulation of Sales of Imported Electricity in Canada, Mexico, and the United States* is intended to inform national energy departments, regulators and other interested parties, and promote cross-border electricity trade. In order to develop a more thorough understanding of the breadth of federal regulation of cross-border electricity trade, it should be used in conjunction with *North America - Regulation of International Electricity Trade*, a companion guide to federal regulation of the construction and operation of cross-border power lines and the permitting requirements to

allow exports and imports of electricity in Canada, Mexico and the United States that was issued by the NAEWG in December 2002.

Each guide focuses on discrete elements of the overall federal regulatory process that may apply to a given North American cross-border electricity trade. For example, once an import /export of electricity has been authorized on both sides of the border under the processes outlined in *North America - Regulation of International Electricity Trade*, there may be additional federal regulation and monitoring of any sale of the otherwise authorized import of electricity under the processes outlined in the *Guide to Federal Regulation of Sales of Imported Electricity in Canada, Mexico, and the United States*. To an extent, there is some overlap in the coverage between these two guides to facilitate a better understanding of the applicable country's federal regulatory regime. Please note that different federal government agencies within a country may regulate different aspects of a particular cross-border electricity trade. This guide does not examine the requirements that may apply at the state or provincial government levels.

This document is a publication of the NAEWG. It represents the collaborative effort of the staffs of the national energy departments and energy regulators of Canada, Mexico and the United States that participate in and support The Experts Group on Electricity Regulatory Issues, a specialized unit assembled by the NAEWG. This document and its content have not been officially approved by any of the contributing Federal regulatory agencies or energy departments.

It should be further noted that the energy policies and regulations of each nation change from time to time. For an update of the regulatory requirements of each country, interested persons should contact the respective regulatory agencies or government departments.

General Inquiries:

Canada - National Energy Board (NEB):

Phone: (403) 292-4800, toll free 1-800-899-1265
Fax: (403) 292-5503
E-mail: info@neb-one.gc.ca

Mexico - Comisión Reguladora de Energía (CRE):

Phone: (52-55) 5283-1596
Fax: (52-55) 5283-1597
E-mail: ure@cre.gob.mx

U.S. - Federal Energy Regulatory Commission (FERC):

Phone: (202) 502-8371, toll free 1-888-208-3676
Email: public.referenceroom@ferc.gov

I. Overview of the Federal Treatment of Sales and Purchases of Imported Electricity:	<i>CANADA</i>	<i>MEXICO</i>	<i>UNITED STATES</i>
<p>A) Does the Federal regulatory treatment of sales and purchases of imported electricity differ from that accorded sales and purchases of domestically produced electricity?</p>	<p>There is no Federal regulation with respect to the sales of imported electricity. The Federal Government does monitor quantities of imported electricity.</p>	<p>There is no difference. Sales and purchases of imported electricity can be made either by the state owned utility <i>Comisión Federal de Electricidad</i> (CFE) or by private parties.</p> <p>If CFE imports electricity, it has to be for the provision of electricity for public service. The electricity tariff regime is set by the Ministry of Finance and Public Credit (SHCP). This tariff regime does not differentiate between imported electricity and electricity generated by CFE's power plants.</p> <p>When private parties import electricity, it has to be for self-supply purposes. Imports are regulated through a permit regime by the Energy Regulatory Commission (CRE) and, if applicable, through an interconnection contract with CFE in order to use the National Transmission System.</p> <p>In other words, private parties have to undertake three major steps to import electricity:</p> <ol style="list-style-type: none"> 1) Procure electricity from a company abroad and negotiate price, terms and conditions; 2) Obtain an import permit from CRE; 3) Sign an interconnection contract with CFE, when CFE's grid has to be used. 	<p>There is no difference in the Federal regulatory treatments of the sale of imported and domestic electricity.</p> <p>In either situation, Federal regulation is limited to "sales for resale" in "interstate commerce" by a public utility.</p> <p>A "sale for resale" is a sale of electricity within the contiguous United States by one utility to another utility, which, in turn, will then resell the electricity to a third party.</p> <p>"Interstate commerce" occurs where electricity in a State commingles with electricity that has been in another State.</p> <p>Interstate commerce is universal throughout the U.S. except for Hawaii, Alaska and isolated portions of Texas and New England.</p>

I. Overview of the Federal Treatment of Sales and Purchases of Imported Electricity:	CANADA MEXICO UNITED STATES		
<p>B) Is Federal approval required to import electricity? (For additional details, see NAEWG publication, North America- Regulation of International Electricity Trade, December 2002)</p>	<p>No Federal permit is required.</p>	<p>Yes, electricity imports require a permit from the CRE.</p>	<p>No Federal permit is required to import electricity.</p>
<p>C) Is a Federal permit required to sell imported electricity?</p>	<p>No Federal permit is required.</p>	<p>CFE and the state-owned utility in central Mexico, <i>Luz y Fuerza del Centro</i> (LFC) are the only entities that can sell imported electricity.</p>	<p>No Federal permit is required to sell imported electricity, if the sale at issue takes place outside of interstate commerce.</p> <p>Federal regulation of a sale for resale in interstate commerce of imported or domestic electricity will apply if title to the electricity changes hands at a point within the United States. In this case, the seller must apply to the Federal Energy Regulatory Commission (FERC) for approval of the rates, terms and conditions of the sale. If approved, FERC will issue an order approving the rates, terms and conditions.</p> <p>There are two exceptions: First, in the event the sale for resale in interstate commerce of imported or domestic electricity is conducted by a U.S. Government-owned, U.S. State-owned, or U.S. municipally-owned utility, or is conducted by a U.S. Department of Agriculture Rural Utilities Service-financed rural electric cooperative, there will be no FERC regulation of the sale.</p> <p>Second, there will be no FERC regulation of retail sales of imported or domestic electricity. Retail sales are sales to end-use customers. The State public service commission may regulate the retail sales of electricity within its border.</p>

II. Particulars Concerning Federal Regulation of <u>Wholesale Sales</u> of Imported Electricity:	<div style="display: flex; justify-content: space-around; align-items: center;"> CANADA MEXICO UNITED STATES </div>		
<p>A) Typical entities that might purchase and resell wholesale electricity, including imported electricity.</p> <p>B) Typical entities whose sales for resale of electricity are regulated or monitored at the Federal level.</p> <p>C) Federal regulatory agencies which regulate or monitor sales for resale of electricity and the nature of such regulation or monitoring.</p>	<p>Provincially-owned and municipally-owned utilities involved in generation, transmission and distribution of electricity; investor-owned utilities and non-utilities; and marketers.</p> <p>Not applicable.</p> <p>The National Energy Board (NEB) collects data on import quantities and costs under a Memorandum of Understanding with Statistics Canada.</p>	<p>CFE. All the electricity that CFE imports is resold for the provision of electricity for public service.</p> <p>CFE's wholesale sales and retail sales are regulated through a tariff regime set up by SHCP. As mentioned above, the tariff regime does not differentiate between CFE-generated electricity or imported energy.</p> <p>Permits for imports are granted by CRE; however, tariffs are set by SHCP.</p>	<p>Investor-owned vertically integrated utilities and power marketers; U.S. government-owned utilities; State government-owned and municipally owned utilities; and rural electric cooperatives.</p> <p>Investor-owned vertically integrated utilities and power marketers; and certain rural electric membership cooperatives (i.e., those cooperatives that no longer have loans from the U.S. Department of Agriculture Rural Utilities Service).</p> <p>FERC regulates the rates, terms and conditions of the electricity sales contract and any related transmission service contract.</p>

II. Particulars Concerning Federal Regulation of Wholesale Sales of Imported Electricity:			
	CANADA	MEXICO	UNITED STATES
D) Federal Statute or Public Law granting Federal agency with regulatory authority.	<i>The Statistics Act</i> authorizes collection of data on energy trade.	<p><i>Ley Orgánica de la Administración Pública Federal</i> (Federal Organic Public Administration Act).</p> <p><i>Ley del Servicio Público de Energía Eléctrica</i> (Public Electricity Service Act)</p> <p><i>Reglamento Ley del Servicio Público de Energía Eléctrica</i> (Public Electricity Service Ruling Act).</p> <p><i>Ley de la Comisión Reguladora de Energía</i> (Energy Regulatory Commission Act).</p>	Part II of the <i>Federal Power Act</i> : particularly section 205, 16 USC 824d and section 206, 16 USC 824e.
E) The Federal agency's applicable regulation, which implements its Statutory or Public Law authorities.	Not Applicable.	<i>Ley de la Comisión Reguladora de Energía</i> (Energy Regulatory Commission Act).	Volume 18, Code of Federal Regulations, particularly Part 35 – Filing of Rate Schedules and Tariffs.

II. Particulars Concerning Federal Regulation of Wholesale Sales of Imported Electricity:	<div style="display: flex; justify-content: space-around; align-items: center;"> <i>CANADA</i> <i>MEXICO</i> <i>UNITED STATES</i> </div>		
<p>F) Describe the Federal agency's applicable regulatory review process.</p>	<p>As indicated above, there is no Federal presence in pricing, tariffs and tolling; there is the requirement for reporting import quantities and costs.</p> <p>The import tariff and tolling would be subject to regulation in the respective provincial jurisdictions. Import prices would be based on commercial dealings between the exporting and importing jurisdictions (reflecting market supply and demand).</p> <p>Alberta and Ontario have "market rules" in their competitive markets that prevent imports from setting the market price when the import price is above the price that would be established by domestic generators.</p> <p>In that case, the higher cost of imports is recovered through an uplift charge added to the domestic price. (Note: With respect to the reference to the Alberta and Ontario competitive markets, imports include imports from other provinces and international imports.)</p>	<p>For private parties, CRE grants import permits and the permit holder has to submit quarterly reports.</p> <p>To grant a permit, the CRE receives an import permit request and has a 10-working day period to either request more detailed information or accept the application. Afterwards, CRE asks CFE's opinion regarding CFE's capability to provide transmission services.</p> <p>CFE has a 20-working day period to answer. Finally, CRE has 30 working days to either grant or deny the permit.</p> <p>Once the permit is granted, the private party can start importing electricity from abroad.</p>	<p>A seller of electricity at wholesale in interstate commerce or a transmission provider in interstate commerce submits proposed rates, terms or conditions in the form of a sales contract or a tariff of general applicability for FERC approval under the "just and reasonable standard." The rates, terms and conditions also must not be unduly discriminatory or preferential.</p> <p>Specified rates may be cost-based to reflect embedded, incremental or marginal costs.</p> <p>Where a seller and its affiliates lack or have mitigated market power, the seller of electricity may seek FERC approval of a "market-based rate" tariff that allows the seller to negotiate with a buyer transaction-specific rates, terms and conditions without prior approval by FERC. If the seller has a transmission system, FERC authorization of power sales under a market-based rate tariff will be conditioned upon the seller having an open-access transmission tariff.</p> <p>Wholesale electricity markets have developed covering large areas of the United States, which may facilitate the use of market-based rate tariffs. These markets are operated by an independent transmission provider such as a Regional Transmission Organization (RTO) or (ISO).</p>

III. Particulars Concerning Federal Regulation of <u>Retail Sales</u> of Imported Electricity (i.e., Sales of Imported Electricity to End Use Customers):	<div style="display: flex; justify-content: space-around; align-items: center;"> <i>CANADA</i> <i>MEXICO</i> <i>UNITED STATES</i> </div>		
<p>A) Typical entities that purchase electricity to sell at retail.</p> <p>B) Typical entities that might purchase imported electricity directly at retail for their own consumption.</p> <p>C) Typical entities, which are regulated or monitored at the Federal level.</p>	<p>Provincially-owned, municipally- owned or investor-owned distribution utilities, and marketers, depending upon the province.</p> <p>Large end-use customers importing directly, based on bilateral deals with U.S. generators or marketers.</p> <p>There is no Federal presence in retail pricing, tariffs and tolling; there is the requirement for importing entities to report quantities and costs of imported electricity.</p>	<p>CFE and LFC.</p> <p>Any private party who has an import permit from the CRE. Currently, as of November 2004, the CRE has granted 30 import permits.</p> <p>CFE and LFC.</p>	<p>Investor-owned vertically integrated utilities and independent power marketers; U.S. government-owned, State government-owned and municipally-owned power utilities; rural electric cooperatives, and other load serving entities.</p> <p>Many States have established programs ("retail choice") that allow retail customers to purchase electricity from any source. In these cases, the associated transmission delivery transaction is usually regulated at the Federal level by FERC.</p> <p>There is no Federal regulation or monitoring of retail electricity sales. The retail rates, terms and conditions typically are set according to the rules and policies established by the State public service commission. If the State is a retail choice State, the retail prices are set by the market (reflecting market supply and demand).</p>

III. Particulars Concerning Federal Regulation of <u>Retail Sales</u> of Imported Electricity (i.e., Sales of Imported Electricity to End Use Customers):	<div style="display: flex; justify-content: space-around; align-items: center;"> <i>CANADA</i> <i>MEXICO</i> <i>UNITED STATES</i> </div>		
<p>D) Federal regulatory agency or agencies, which regulate or monitor retail sales of electricity and the nature of such regulation or monitoring.</p> <p>E) Statute or Public Law granting Federal agency with regulatory authority.</p>	<p>Not Applicable.</p> <p>Not Applicable.</p>	<p>SHCP - retail sales.</p> <p><i>Ley Orgánica de la Administración Pública Federal</i> (Federal Organic Public Administration Act).</p> <p><i>Ley del Servicio Público de Energía Eléctrica</i> (Public Service Electricity Act).</p> <p><i>Reglamento Ley del Servicio Público de Energía Eléctrica</i> (Public Electricity Service Ruling Act).</p> <p><i>Ley de la Comisión Reguladora de Energía</i> (Energy Regulatory Commission Act).</p>	<p>Not Applicable.</p> <p>Not Applicable.</p>

III. Particulars Concerning Federal Regulation of <u>Retail Sales</u> of Imported Electricity (i.e., Sales of Imported Electricity to End Use Customers):	<div style="display: flex; justify-content: space-around; align-items: center;"> <i>CANADA</i> <i>MEXICO</i> <i>UNITED STATES</i> </div>		
<p>F) Federal agency's applicable regulation that implements Statutory or Public Law authorities.</p> <p>G) Describe the Federal agency's applicable regulatory review process for rates, terms and conditions associated with sales of imported electricity and the transmission thereof, including the basis for setting of the approved rates, terms and conditions (e.g., cost-based pricing, negotiated or market-based pricing, or other method).</p>	<p>Not Applicable.</p> <p>Not Applicable.</p>	<p>Not Applicable.</p> <p>CFE uses all imported energy for the provision of electricity for public service and is regulated by the tariffs structure defined by SHCP. This tariff structure is divided into two main categories: i) specific use tariffs and ii) general purposes tariffs. The first category is updated with inflation indexes and the second category is updated with inflation and fuel indexes.</p> <p>For private parties, the economic conditions are negotiated on a bilateral and non-regulated basis.</p> <p>However, if the permit holder requires use of CFE's transmission system, it has to pay wheeling service charges.</p>	<p>Not Applicable.</p> <p>Not Applicable.</p>