

**North America
Regulation of International Electricity Trade**

prepared by

North American Energy Working Group

December 2002

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 Group 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 the full range of energy development, production, transport and transmission, distribution and consumption in North America. It also considers the full range of energy sources, as well as the efficient and clean production and use of energy.

This document, as a publication of the North American Energy Working Group, reflects a joint perspective of the national energy departments and regulators of Canada, Mexico and the United States. Information on each country contained in this document has been provided through the relevant country's national energy department, which retains sole responsibility for the information on its country.

Introduction

The North American Energy Working Group's Experts Group on Electricity Regulatory Issues has developed a concise summary of federal regulations in Canada, Mexico and the United States, with respect to the authorization of the construction and operation of international power lines and the authorization of electricity exports and imports. It is hoped that this guide to the regulatory requirements in each country will be useful to participants in the electricity sector with an interest in operating in multiple jurisdictions.

The information contained in this table is to be considered valid at the time of its release in December 2002. For an updated and complete description of the regulatory requirements in each country, interested persons should contact the respective regulatory agencies or government departments.

Canada - National Energy Board

General Inquiries

Phone: (403) 292-4800 or 1-800-899-1265

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Mexico - Energy Regulatory Commission

General Inquiries

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United States Department of Energy

General Inquiries

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General Information			
Responsible Authority	National Energy Board (NEB)	Department of Energy (DOE)	Energy Regulatory Commission (CRE)
Legislation	<p><i>National Energy Board Act</i></p> <p>The <i>National Energy Board Act</i> was initially promulgated in 1959, and later amended. Significant changes were introduced following the implementation of the <i>Canadian Electricity Policy (1988)</i>.</p> <p>The NEB also has responsibilities under the <i>Canadian Environmental Assessment Act (CEA Act)</i> which came into effect in 1995.</p>	<p><i>Executive Order 10485 and Federal Power Act</i></p> <p>Regulation of international transmission lines began in 1939 and was established by Executive Order rather than law. In 1953, <i>Executive Order 10485</i> delegated the authority for Presidential permits to the Federal Power Commission; in 1978, <i>Executive Order 12038</i> transferred the authority to the Secretary of Energy.</p> <p>The <i>Federal Power Act</i>, section 202(e), establishes DOE's electricity export authority.</p>	<p><i>Public Electricity Service Act</i></p> <p>The <i>Public Electricity Service Act</i> was published in 1975, and it established exclusive Federal responsibility over the electricity public service. However, it was amended in 1992, in order to allow private participation under certain generation modalities and imports.</p> <p><i>Energy Regulatory Commission Act</i></p> <p>The <i>Energy Regulatory Commission Act (CRE Act)</i> was issued in 1995. The CRE Act transformed the CRE's role to that of an empowered, independent regulator with technical and operational autonomy and provided the CRE with a legislative mandate to regulate the activities in the electricity and gas industries.</p>
Regulated Activities	<p>Construction and operation (and abandonment) of international power lines (IPLs).</p> <p>Electricity exports.</p>	<p>Construction, operation, maintenance, and connection of electric transmission facilities at the U.S. international border.</p> <p>Electricity exports.</p>	<p>Construction and operation of private generation plants under the self-supply, cogeneration, Independent Power Producer (IPP)¹, small production and import/export category.</p> <p>Any private party may apply for a generation permit under the above mentioned categories. However, the Comisión Federal de Electricidad (CFE) will be in charge of the planning of IPP projects and conduct an international bidding process. An IPP generation permit will be granted subject to the awarding of the above-mentioned bidding process.</p>

¹ An IPP is a private generation category permitted by the Public Electricity Service Act. This category consists of a power plant built and operated by a private party with an installed capacity larger than 30 MW. The producer will sign a Power Purchase Agreement with CFE to sell on an exclusive basis all the power plant capacity and the associated energy. These projects will be awarded through a bidding process carried out by CFE.

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Procedure			
<i>Application</i>	<p>An application is filed with the NEB containing information specified in the NEB's Electricity Regulations.</p> <p>Prospective applicants may arrange pre-application meetings with the NEB to discuss procedural and general, non-substantive matters.</p> <p>The NEB's <i>Memorandum of Guidance</i> dated 26 August, 1998, and <i>Guidelines to Filing Requirements</i> dated 22 February, 1995, provide information on the application process and filing requirements.</p> <p>These documents are available at www.neb-one.gc.ca (under Publications (Links to Acts and Regulations)).</p>	<p>Applications for presidential permits and electricity export authorizations are filed with DOE's Office of Fossil Energy. Applications should generally contain the information identified in DOE's regulations at 10 CFR 205.300.</p> <p>Applicants for Presidential permits may request pre-application meetings with DOE to discuss filing requirements. Export authorization applicants do not generally require pre-application meetings.</p> <p>Application procedures and examples are available at the program web site www.fe.doe.gov (Electricity Regulation).</p>	<p>The applicant must be aware of the types of permit that CRE may grant and the requirements that the Law and the Regulations specify. The applicant must file an application form requesting a generation or an import permit.</p> <p>Before filing the documentation, the applicant may participate in meetings with CRE officers to resolve any doubts regarding filling in the application form or the additional documents required.</p> <p>The permit request and granting procedure is specified in the <i>Public Electricity Service Act</i> and its regulation. (CRE's web site): www.cre.gob.mx/English/publications/booklets/folletto%207/doc7-dis.html</p>
<i>Public Notification</i>	<p>Coincident with the filing of the application to the NEB, the applicant is required to publish notification of its application in the <i>Canada Gazette</i> and, in some cases, local newspapers.</p>	<p>DOE places a notice of each application in the <i>Federal Register</i> usually within 2 weeks of receipt of the application that begins a 30-day public comment period. Interested parties may comment, protest the application, or request status as an intervener. The application can be viewed on the program web site after the public notice appears.</p>	<p>There is no public notification requirement except in the case of permit termination, revocation, renewal or expiration.</p>

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International Power Lines			
Legislative Requirement	<p>The <i>NEB Act</i> states that no person shall construct or operate a section or part of an international power line except under and in accordance with a permit or certificate issued by the Board (section 58.1).</p>	<p><i>Executive Order (EO) 10485</i> established that no person shall construct, operate, maintain or connect an electric transmission line at the borders of United States without a permit from the Federal Power Commission. In 1978, EO 12038 transferred authority to issue permits for new international transmission facilities to the Secretary of Energy.</p>	<p>The <i>Public Electricity Service Act</i> does not establish the need of a permit to construct, operate or maintain an International Transmission Line (IPL). If CFE constructs or operates the IPL, there is no need for such organism to obtain a CRE permit. In the other hand, if a private party is interested in building and/or operating an IPL, they will have to comply with the Official Mexican Standards (NOM's), and in the case that private party should be interconnected with the National Electric System, it will require a contract with CFE.</p>
Criteria	<p>The NEB must take into account the effect of the power line on provinces other than those through which the power line is to pass, which may include adverse effects on the power systems of those provinces.</p> <p>The NEB must take into account the impact of the construction or operation on the environment. This may require the applicant to prepare a screening report, or a Comprehensive Study Report (CSR) pursuant to the <i>CEA Act</i>, or a report undertaken pursuant to provincial regulation. A CSR would normally be required for an IPL greater than 345 kV and longer than 75 km in length on a new right-of-way. The CSR must be prepared and provided to the Minister of the Environment, for his or her decision, before the NEB can take a course of action with respect to the applied-for project.</p> <p>The NEB must take into account other considerations as specified in the Board's Electricity Regulations.</p>	<p>The proposed international transmission facilities must not adversely impact the reliability of the U.S. electric power supply system.</p> <p>DOE must identify the environmental impacts of the project using the <i>National Environmental Policy Act of 1969</i> (NEPA). Three levels of environmental review are available under NEPA. DOE exercises its discretion, case-by-case, based primarily on project size and location, in determining the appropriate level of environmental review.</p> <p>DOE must obtain concurrence from the Departments of State and Defense prior to issuance of new or amended permits. If there is disagreement among the agencies, the decision is referred to the President of the United States.</p>	<p>The applicant will have to comply with the environmental and municipal regulations.</p> <p>Additionally, if the applicant will use the National Electric System, they will have to sign an interconnection contract, which will establish the terms and conditions to use the power grid.</p> <p>The permit holders shall use generated electricity for their own supply and the surplus energy may be sold to CFE.</p> <p>According to the <i>General Law of Environmental Balance and Protection</i>, any party interested in building an International Transmission Line must submit an Environmental Impact Assessment and a Risk Analysis of the project to the Environment and Natural Resources Ministry (SEMARNAT). The SEMARNAT will review all the information provided, and if it complies with the requirements established in the General Law of Environmental Balance and Protection, an environmental impact license and a risk license will be granted.</p> <p>Regarding the municipal regulation, the applicant must obtain a land use license, and in case, a construction license, whenever this authorizations will not damage other authorities by crossing its jurisdiction. This procedure will depend on the municipal authorities.</p>

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Procedure			
Application	<p>An application is filed with the Board containing information specified in the Board’s Electricity Regulations.</p> <p>The Board’s Memorandum of Guidance dated 26 August,1998, and Guidelines to Filing requirements dated 22 February,1995, provide information on the application process and filing requirements.</p> <p>These documents are available at www.neb-one.gc.ca (under “Publications” (Links to Acts and Regulations)).</p> <p>There are no application fees. The NEB recovers its costs from electricity exporters on a <i>pro rata</i> basis.</p>	<p>A Presidential permit application is filed containing the information specified in DOE regulations at 10 CFR 205.300. Regulations and examples are available on the program web site, www.fe.doe.gov (Electricity Regulation).</p> <p>A filing fee of \$150 U.S. must accompany a permit application.</p> <p>The applicant is responsible for the cost of the preparation of environmental assessments or environmental impact statements required by NEPA.</p>	<p>If the IPL is built by a private party, an export/import permit will be required. The procedure will be the same for an export/import permit.</p> <p>If the line is built by CFE it will not require any permit from the CRE, it will only have to comply with the environmental and municipal requirements. CFE will be responsible for all the reliability analysis.</p> <p>The applicant party must pay an export/import permit fee of \$68,001 Mexican pesos as permit rights.²</p>
Public Notification	<p>Coincident with the filing of the application with the NEB, the applicant must publish a Notice of Application and Directions on Procedure (NOA/DOP) in the Canada Gazette and local newspapers. Prior to the filing, the applicant must provide early public notification (EPN) to explain the project and the potential environmental and socio-economic effects and to allow an opportunity for public comments and questions.</p>	<p>Within 2 weeks of receipt of the application, DOE places a notice in the <i>Federal Register</i> announcing the start of a 30-day public comment period. During this period, interested parties may submit comments, protest the application or request to intervene in the proceeding.</p>	<p>There is no public notification requirement except in the case of permit termination, revocation, renewal or expiration.</p>
Additional Filing Information	<p>After reviewing the application, the Board and other interested parties may request additional information to complete the record.</p>	<p>Each Presidential permit project is unique and may have properties that preclude submission of standard information. After an application is submitted, DOE may request additional information from the applicant.</p>	<p>If the permit application is not complete and if additional information is required, the CRE could notify the applicant to submit any additional information required.</p>
Authorization/ Issuance	<p>The Board issues a permit to construct and operate an IPL, if it is satisfied that the information provided conforms with its requirements and all concerns have been</p>	<p>DOE issues a Presidential permit only after fulfilling the NEPA and electric reliability criteria and obtaining State and Defense Department concurrences. Presidential permits may contain</p>	<p>The CRE issues a permit to export and import electricity provided that the information conforms with all legal requirements.</p>

² Approximately US.\$6,719 (exchange dollar rate from November 29th, 2002, issued by Mexican National Bank, Official Federation Gazette \$10.1193 pesos/US). The fee established in the Fee Federal Law has a semestral adjustment.

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	<p>addressed. The permit normally includes terms and conditions to be fulfilled by the applicant respecting matters prescribed by the Electricity Regulations.</p> <p>If, after consideration of the relevant factors, the Board believes the application raises concerns, it may recommend to the Governor in Council (GIC) that a public hearing be held. If the Board approves the application after the public hearing it issues a certificate, subject to GIC approval.</p>	<p>conditions determined by DOE (i.e., environmental mitigation measures) or, based on technical studies, DOE may apply very specific conditions regarding transfer limits during certain operating conditions. These technical limits are usually the same limits established by the regional reliability councils and/or independent system operators.</p>	
Timing	<p>From the date the application is filed (and public notification is given), interested parties have 30 days to review it, in order to provide comments and ask for additional information. The applicant has 15 days to respond to any submissions. Interested parties then have 10 days to assess and comment on the responses. The Board may then issue a permit or make a recommendation to the GIC that the application be designated for a public hearing. Additional time would be required in the case where a public hearing is held.</p>	<p>Applications requiring an environmental impact statement, the highest level of environmental review, could take between 15 and 24 months to complete.</p> <p>Applications requiring an environmental assessment usually can be completed within 6 months.</p> <p>DOE has identified types of projects that experience has shown do not normally have a negative environmental impact. Proposed IPL projects, within one of these groups, can be completed within 60 days of submission of final electric reliability studies. (NEPA “Categorical Exclusion”)</p>	<p>After the CRE receives all the information submitted by the applicant, the CRE will ask CFE’s opinion, which they will have 30 working days period to submit. This opinion will have regard to the availability of wheeling and back-up services that the applicant may require and, if applicable, the delivery of surplus energy to CFE.</p> <p>Once the CRE receives the public utilities’ opinion, CRE will have a 20 working days period to publish the permit resolution. If there are any comments from the CRE or the public utilities, the applicant will have 10 working days to submit any corrections to the permit application.</p> <p>Finally the CRE has a 20 working days period to issue the permit resolution.</p>
Maximum Term for IPL Authorizations	<p>NEB issues a permit or certificate without term limits.</p> <p>The NEB may revoke or suspend a permit or certificate: on application to the NEB, or by consent of the holder of the permit or certificate; or if the holder has not complied with a term or condition of the permit or certificate.</p> <p>The NEB must approve the abandonment of the operation of an IPL.</p>	<p>Presidential permits are issued without term limits; permits are not transferable or assignable. If facility ownership changes, a joint application by both parties is required.</p> <p>Although it has not occurred, permits may be modified or revoked without notice by the President of the United States, or by the Secretary of Energy after public notice.</p>	<p>Permit issuance without time limit except for the IPP permits that last 30 years.</p> <p>However, permits may be revoked, according to the <i>Public Service Electricity Ruling Act</i>, if the permit holder doesn’t comply with its obligations established in article 90 of the <i>Public Service Electricity Ruling Act</i> or if it transfers the permit right to another party in a different way than that established in the regulation.</p>

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Exports and Imports		
Legislative Requirement	<p>The <i>NEB Act</i> states that no person shall export any electricity except in accordance with a permit or licence issued by the Board (section 119.02).</p> <p>The NEB does not regulate imports of electricity.</p>	<p>Section 202(e) of the <i>Federal Power Act</i> requires that no person may export electric energy from the United States to a foreign country without first obtaining authorization from DOE.</p> <p>The U.S. federal government does not regulate electricity imports.</p>
Criteria	<p>The NEB must take into account the effect of the export on provinces other than that from which the electricity is to be exported.</p> <p>The NEB must take into account the impact of the export on the environment.</p> <p>The NEB must take into account whether the applicant has: (i) informed those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale, and (ii) given an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions specified in the application to those who, within a reasonable time after being informed, demonstrate an intention to buy electricity for consumption in Canada. These considerations are referred to as the provision of Fair Market Access.</p> <p>The NEB must take into account other</p>	<p>The applicant must demonstrate to DOE's satisfaction that the electricity export would not impair the sufficiency of electric supply within the United States and would not impede, or tend to impede, the coordination in the public interest of facilities subject to the jurisdiction of DOE (i.e., the export will not adversely impair the operational reliability of the U.S. electric power supply system).</p> <p>Using NEPA criteria, DOE must assess the impact of the export on the environment.</p>
		<p>Currently, CFE carries on exports and imports activities, mainly for balances. In this sense, it requires an authorization from CRE or from the Energy Ministry.</p> <p>However, since the <i>Public Electricity Service Act's</i> amendments in 1992, private parties are allowed to import for their own supply or export.</p> <p>Applicants for export or import permits may use either the National Electric System or build an IPL. In the first case, the applicant must sign an Interconnection Contract with CFE that establishes terms and conditions to use the National Electric System whenever it is required.</p> <p>In the second case, and if the line built by the applicant interconnects with the National Electric System, the new infrastructure will have to be transferred to CFE.</p>

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	considerations as specified in the Board's Electricity Regulations.		utility, that is the responsibility of the permit holders. The permit holders shall use generated electricity for their own supply and the surplus energy may be sold to CFE.
Procedure			
Application	<p>An application is filed with the Board containing information specified in the Board's Electricity Regulations.</p> <p>The Board's Memorandum of Guidance dated 26 August, 1998, provides information on the application process and filing requirements.</p> <p>These documents are available at www.neb-one.gc.ca (under Publications (Links to Acts and Regulations)).</p> <p>There are no application fees. The NEB recovers its costs from electricity exporters on a <i>pro rata</i> basis.</p>	<p>An export application is submitted containing the information specified in DOE regulations at 10 CFR 205.300. The regulations and examples of applications are available on the program web site at www.fe.doe.gov (Electricity Regulation).</p> <p>A \$500 U.S. filing fee must accompany each application.</p>	<p>The applicant must submit a permit application and all the information and studies, established in the <i>Public Electricity Service Ruling Act</i>, to the CRE.</p> <p>Along with the information mentioned above, the applicant will have to submit a document recording the commitment or letter of intention to acquire electricity by persons in another country.</p> <p>The permit request procedure is specified in the <i>Public Electricity Service Ruling Act</i> and at CRE's web site: www.cre.gob.mx/English/publications/booklets/folleto%207/doc7-dis.html</p> <p>The applicant party must pay an application fee of \$68,001 Mexican pesos as permits rights³.</p>
Public Notification	Coincident with the filing of the application with the NEB, the applicant must publish an NOA/DOP in the Canada Gazette and, in some circumstances, local newspapers.	Within 2 weeks of receiving an export application, DOE places a notice in the <i>Federal Register</i> announcing a 30-day public comment period. During this time, interested parties may submit comments, protests, or request to intervene in the proceeding. The application can be viewed on the program web site after the notice appears in the Federal Register.	There is no public notification requirement except in the case of permit termination, renewal or expiry.
Additional Filing Information	After reviewing of the application, the Board and other interested parties may request additional information to complete the record.	Each export application is unique and may have properties that preclude submission of standard information. DOE may request additional information from the applicant.	If the permit application is not complete and if additional information is required, the CRE will notify the applicant and it will have a 5 working days period to submit any additional information required.
Authorization/ Issuance	The Board issues a permit to export electricity, if it is satisfied that the information provided conforms to its requirements and all concerns	DOE issues electricity export authorizations after providing for public comment.	The CRE issues a permit to export and import electricity provided that the information conforms with all legal requirements.

³ *ibid.*

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	<p>have been addressed. The permit normally includes terms and conditions to be fulfilled by the applicant respecting matters prescribed by the Electricity Regulations.</p> <p>If, after consideration of the relevant factors, the Board believes the application raises concerns, it may recommend to the Governor in Council (GIC) that a public hearing be held. If the Board approves the application after the public hearing, it issues an export licence, subject to GIC approval.</p>	<p>Electricity export authorizations may limit the amount of power that may be exported over a specific transmission line.</p>	
Timing	<p>From the date the application is filed (and public notification is given), interested parties have 30 days to review it, in order to provide comments and ask for additional information. The applicant has 15 days to respond to any submissions. Interested parties then have 10 days to assess and comment on the responses. The Board may then issue a permit or make a recommendation to the GIC that the application be designated for a public hearing. Additional time would be required in the case where a public hearing is held.</p>	<p>Requests to export over existing cross-border transmission lines usually can be completed within 60 days.</p> <p>Timing of export authorizations directly associated with a new transmission line project is driven by the timing of the Presidential permit process.</p>	<p>After the CRE receives all the information submitted by the applicant, the CRE will ask CFE's opinion, which they will have 30 working days period to submit. This opinion will have regard to the availability of wheeling and back-up services that the applicant may require and, if applicable, the delivery of surplus energy to CFE.</p> <p>Once the CRE receives the public utilities' opinion, it will have a 20 working days period to issue the permit resolution. If there are any comments from the CRE or the public utilities, the applicant will have 10 working days to submit any corrections to the permit application.</p> <p>Finally the CRE has a 20 working days period to publish the permit resolution.</p>
Maximum Term for Export Authorizations	<p>The maximum term for a permit or licence is 30 years.</p> <p>Typically, the term applied for in recent permit applications has been 10 years.</p> <p>The NEB may revoke or suspend a permit or licence: on application to the NEB, or by consent of the holder of the permit or licence; or if the holder has not complied with a term or condition of the permit or licence.</p>	<p>Currently, initial authorizations issued to power marketers, or traditional utilities operating as marketers are limited to 2 years; renewals are limited to 5 years. Authorizations for exports by traditional utilities, exporting from their own generation resources, are currently issued without term limits. Exceptions have been granted.</p> <p>Renewals may be sought 6 months prior to expiration. Longer terms may be available on a case-by-case basis.</p>	<p>Permit issuances are without time limits, except in the case of IPP permits which may have a duration of up until 30 years and are also subject to CFE's PPA.</p> <p>Permits may finish for expiration, permit holder dissolution, concession ending and revocation according to the article 99 of <i>Public Service Electricity Ruling Act</i>.</p>
Reporting Requirements	<p>Export permit and licence holders are required to report to the NEB, on a monthly basis, the amount of electricity exported and the corresponding export revenue.</p>	<p>A quarterly reporting requirement is placed on all marketer-type export authorizations. Reports contain the amount of electricity exported, the rate of transmission, and the dollar amounts received.</p>	<p>CFE is required to notify the Secretariat of Finance and Public Credit about the import and export of power it carries on.</p>

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	corresponding export revenue.	Export authorizations held by "traditional" utilities and Presidential permit holders have annual reporting requirements for the same information.	On the other side, private parties are required to inform the CRE about their export and import activities.
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Glossary of Terms

CEA Act: Canadian Environmental Assessment Act of 1995

CFE: *Comisión Federal de Electricidad*

CFR: [U.S.] Code of Federal Regulation

CRE: *Comisión Reguladora de Energía* or Energy Regulatory Commission

CRE Act: *Comisión Reguladora de Energía* or Energy Regulatory Commission Act of 1995

CSR: [Canada] Comprehensive Study Report

DOE: [U.S.] Department of Energy

DOP: [Canada] Directions on Procedure

EO: [U.S.] Executive Order

EPN: [Canada] Early Public Notification

FPA: [U.S.] The Federal Power Act

GIC: [Canada] Governor in Council

INE: [Mexico] National Ecology Institute

IPLs: International Power Lines

IPPs: Independent Power Producers

LSPEE: *Ley del Servicio Público de Energía Eléctrica* or Public Electricity Service Act of 1975, amended in 1992

NAEWG: North American Energy Working Group

NEB: [Canada] National Energy Board

NEB Act: [Canada] National Energy Board Act of 1959 and later amendments

NEPA: [U.S.] National Environmental Policy Act of 1969

NOA: [Canada] Notice of Application

SEMARNAT: Environment and Natural Resources Ministry