

November 30, 2018

The Honorable Chrystia Freeland
Minister of Foreign Affairs
Canada

Dear Minister Freeland:

I have the honor to confirm that, in connection with the signing on this date of the Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada (the Protocol), the Government of the United States (United States) and the Government of Canada (Canada) have agreed on disciplines related to energy regulatory measures and energy regulatory transparency, contained in the Annex to this letter.

I have the honor to propose that this letter and your letter in reply confirming your Government shares this understanding, shall constitute an agreement between the United States and Canada, which shall enter into force on the date of entry into force of the United States – Mexico – Canada Agreement (the Agreement) and shall constitute an integral part of the Agreement when it enters into force.

Sincerely,

Ambassador Robert E. Lighthizer
United States Trade Representative

ANNEX

ENERGY REGULATORY MEASURES AND REGULATORY TRANSPARENCY

Article 1: Definitions

For the purposes of this Annex:

authorization means a permission, license or similar administrative or contractual instrument by which a competent regulatory authority of a Party entitles a person to exercise a certain economic activity in its territory;

electric transmission facility means a transmission element that is operated at 100kV or higher, or real power and reactive power resources connected at 100kV or higher, that are subject to an energy regulatory authority of a Party's central level of government with respect to tolls, rates, or charges for services provided over those elements. These transmission elements do not include facilities used in the local distribution of electric energy;

energy regulatory measure means a measure adopted or maintained by a Party's central level of government that directly affects the exploration for, or production, storage,¹ transportation, transmission or distribution, purchase or sale, import or export of oil,² natural gas, hydrocarbon gas liquids, coal, electricity, refined petroleum products, biofuels, and uranium, but does not include measures related to energy efficiency;

monetary payment means a payment, in cash or its equivalent in kind, required by law or regulation to be made by a person to a Party's central level of government in connection with an application for or authorization to participate in energy-related activities in its territory;

Party refers to the United States or Canada;

pipeline network means a line transporting oil, natural gas, refined petroleum products or hydrocarbon gas liquids in a Party's territory, or across sub-national or international boundaries, and includes associated facilities such as pumps and other compressor stations and storage tanks regulated by an energy regulatory authority of the Party;

renewable energy means energy derived from natural processes that are replenished at a higher rate than they are consumed. They are virtually inexhaustible. Renewable energy resources

¹ For greater certainty, storage does not include reservoir water levels for hydro-electric dams.

² For greater certainty, oil includes crude oil, bitumen, condensates, and other oil-derived fuels.

include biomass, waste carbon streams, hydro, geothermal, solar, wind, ocean thermal, wave action, and tidal action. Renewable energy also includes renewable fuels and renewable fuel blending components in petroleum-based fuels, such as renewable diesel fuel, fuel ethanol, and advanced and cellulosic biofuels, produced from renewable biomass; and

unduly discriminatory or unduly preferential means differential treatment of like products, or differential treatment of service suppliers, investors, or investments in like circumstances, that constitute

3. A Party may require an authorization to participate in energy-related activities in its territory.

4. If a Party requires an authorization referred to in paragraph 3, it shall ensure that information prescribed in its

November 30, 2018

The Honorable Robert E. Lighthizer
United States Trade Representative
Washington, D.C.
United States of America

Dear Ambassador Lighthizer:

I am pleased to acknowledge your letter, which reads as follows:

I have the honor to confirm that, in connection with the signing on this date of the Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada (the Protocol), the Government of the United States (United States) and the Government of Canada (Canada) have agreed on disciplines related to energy regulatory measures and energy regulatory transparency, contained in the Annex to this letter.

I have the honor to propose that this letter and your letter in reply confirming your Government shares this understanding, shall constitute an agreement between the United States and Canada, which shall enter into force on the date of entry into force of the United States – Mexico – Canada Agreement (the Agreement)