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The Honorable Chrystia Freeland  
Minister of Foreign Affairs  
Canada

Dear Minister Freeland:

I have the honor to confirm that, in connection with the negotiations of the United States – Mexico – Canada Agreement, 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 of confirmation in reply, equally valid in English and French, shall constitute an agreement between our two Governments, integral to the USMCA, and shall enter into force on the date of entry into force of the USMCA.

Sincerely,

Ambassador Robert E. Lighthizer  
United States Trade Representative

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**ANNEX**

**Energy Regulatory Measures and Regulatory Transparency**

**Article 1: Definitions**

For the purposes of this Annex:

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

**electric transmission facility** means all transmission elements that are operated at 100kV or higher, and 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 such elements. Such transmission elements do not include facilities used in the local distribution of electric energy;

**energy regulatory measure** means any measure adopted or maintained by a Party's central level of government that directly affects the exploration for, or production, storage<sup>1</sup>, transportation, transmission or distribution, purchase or sale, import or export of oil<sup>2</sup>, 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;

**pipeline network** means a line transporting oil, natural gas, refined petroleum products or hydrocarbon gas liquids within a Party's borders, 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 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

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

<sup>2</sup> Oil includes crude oil, bitumen, condensates, and other oil-derived fuels.

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reflects arbitrary or unjustifiable discrimination within the meaning of Article XX of the GATT 1994 and its interpretive notes or Article XIV of GATS, as applicable.

**Article 2: Scope**

This Annex applies to energy regulatory measures proposed, maintained, or adopted by a Party's central level of government.

**Article 3: Cooperation**

The Parties recognize the importance of enhancing the integration of North American energy markets based on market principles, including open trade and investment among the Parties, to support North American energy competitiveness, security, and independence. The Parties shall endeavor to promote North American energy cooperation, including with respect to energy security and efficiency, standards, joint analysis, and the development of common approaches.

**Article 4: Energy Regulatory Measures and Regulatory Transparency**

1. Each Party shall maintain or establish regulatory authorities that are separate from, and not accountable to, persons subject to energy regulatory measures.
2. Each Party shall seek to ensure that in the application of any energy regulatory measure, energy regulatory authorities within its territory avoid disruption of contractual relationships to the maximum extent practicable, support North American energy market integration, and provide for orderly and equitable implementation appropriate to such measures<sup>3</sup>.
3. A Party may require an authorization to participate in energy-related activities in its territory.
4. If a Party requires an authorization of the kind referred to in paragraph 3, it shall ensure that all information prescribed in law or regulation relevant to the authorization process is published, including:
  - (a) the process for applying;
  - (b) any monetary payment associated with the application;
  - (c) the regulatory authority to which an application or other relevant documentation must be submitted;
  - (d) criteria an applicant must meet to be eligible to seek an authorization;

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<sup>3</sup> This paragraph does not apply to measures related exclusively to the protection of human health or the environment.

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- (e) criteria to be considered in determining if an authorization should be granted;
- (f) timelines relevant to the authorization process; and
- (g) a contact point or points from which applicants can obtain further information on their application for an authorization.

5. Each Party shall endeavor to administer its process for obtaining an authorization of the kind referred to in paragraph 3 in accordance with the information published pursuant to paragraph 4.

6. Each Party shall endeavor to ensure that energy-related activities that do not result in any facility exceeding its previously authorized capacity and are limited to performing maintenance work on existing cross-border infrastructure or other actions taken to ensure the safety of existing cross-border infrastructure may be undertaken under the initial authorization and shall not require a new authorization.

7. Each Party may require a person which has been granted an authorization of the kind referred in paragraph 3 to make a reasonable monetary payment. The monetary payment and any changes to it shall be determined in a transparent manner with reasonable advance notice so as to provide legal certainty for the person which has been granted that authorization, in accordance with the applicable legal provisions of the authorizing Party. If recovery of administrative costs is provided for in the Party's relevant rules, these costs do not have to be determined in advance.

8. Each Party shall provide that the applicant for an authorization of the kind referred to in paragraph 3 has a right of appeal or judicial review of the decision concerning the authorization by an authority independent from the authority that issued the decision, in accordance with the applicable legal provisions of each Party.<sup>4</sup>

**Article 5: Access to Electric Transmission Facilities and Pipeline Networks**

1. Each Party shall ensure that any measures governing access to or use of electric transmission facilities and pipeline networks:

- (a) accord access to these facilities and pipeline networks for purposes of importation from another Party, that is neither unduly discriminatory nor unduly preferential; and
- (b) to the extent that tolls, rates, or charges are set, assessed, approved, or subject to oversight by a Party, establish that any tolls, rates, or charges payable for that

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<sup>4</sup> This paragraph does not apply to authorizations for the construction, connection, operation, or maintenance of cross-border infrastructure, including electric transmission facilities and pipeline networks, at international boundaries.

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access are just, reasonable, and neither unduly discriminatory nor unduly preferential.

2. The United States shall ensure that the Intertie Access Policy of the Bonneville Power Administration affords British Columbia Hydro treatment no less favorable than the most favorable treatment afforded to utilities located outside the Pacific Northwest.

**Article 6: Relation to other Chapters**

For greater certainty, the obligations contained in Article 4 (Energy Regulatory Measures and Regulatory Transparency) and Article 5 (Access to Electric Transmission Facilities and Pipeline Networks) are (a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 14 (Investment), Chapter 15 (Cross-Border Trade in Services) and Chapter 2 (National Treatment and Market Access for Goods), and Article 32.1 (General Exceptions); and (b) to be read in conjunction with any other relevant provisions in this Agreement.