

[TRANSLATION - TRADUCTION]

FRAMEWORK TREATY FOR THE CENTRAL AMERICAN ELECTRICITY MARKET

The Governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, hereinafter called "the Parties",

Whereas, in the framework of the Central American Integration System (SICA), the States of the region have expressed their desire to initiate a gradual process of electrical integration by developing a competitive regional electricity market through transmission lines interconnecting their national grids and by promoting regional generation projects,

Aware that a regional electricity market, supported by the interconnection of the electrical systems of the countries, will promote the development of the electric power industry for the benefit of all their inhabitants,

Certain that the consolidation of the regional electricity market will increase electricity exchange and efficiently meet the needs of sustainable development in the region, in a framework of respect for and protection of the environment,

Taking into account that the Presidents of the six Central American countries, at their fifteenth, sixteenth and seventeenth summit meetings, declared that it was of the highest priority to implement the project known as the Central American Electrical Interconnection System (SIEPAC),

Have agreed to sign this Framework Treaty for the Central American Electricity Market, which shall be governed by the following:

OBJECTIVE OF THE TREATY

Article 1

The objective of this Treaty shall be to establish and gradually expand a competitive regional electricity market, hereinafter called the market, based on reciprocal and non-discriminatory treatment, that will contribute to the sustainable development of the region in a framework of respect for and protection of the environment.

PURPOSES OF THE TREATY

Article 2

The purposes of the Treaty shall be:

- (a) To establish the rights and obligations of the Parties;
- (b) To establish the conditions for the growth of the regional electricity market, which shall supply, in a timely and sustainable way, the electricity required for economic and social development;

(c) To encourage greater and more competitive private participation in the electricity sector;

(d) To foster the interconnection infrastructure needed for the development of the regional electricity market;

(e) To create the necessary conditions to promote acceptable levels of quality, reliability and safety in the provision of electric power in the region;

(f) To establish objective, transparent and non-discriminatory rules to govern the operation of the regional electricity market and relations between participating agents, and to create the appropriate regional agencies to achieve these objectives;

(g) To help ensure that the benefits derived from the regional electricity market are enjoyed by all the inhabitants of the countries of the region.

PRINCIPLES GOVERNING THE TREATY

Article 3

The Treaty shall be governed by the principles of competitiveness, gradual implementation and reciprocity, which shall be defined as follows:

Competitiveness

Freedom to carry out activities aimed at providing service on the basis of objective, transparent and non-discriminatory rules.

Gradual Implementation

Planning for a gradual evolution of the market, through the incorporation of new participants, gradual expansion of coordinated operations, development of grids and strengthening of regional agencies.

Reciprocity

Right of each State to apply to another State the same rules and standards that the former State applies provisionally in accordance with the principle of gradual implementation.

REGIONAL ELECTRICITY MARKET

Article 4

The market shall operate as a permanent activity of commercial electricity transactions, through short-term exchanges, derived from a dispatch of energy under regional economic criteria, and through medium- and long-term contracts between the agents. The market should evolve gradually from an initially limited situation towards a broader, more open and competitive one, based on the existing and future national and regional infrastructure.

Article 5

The activities of the market shall be carried out by its agents, which may be enterprises devoted to the generation, transmission, distribution and marketing of electricity; or they may be major consumers. The agents may buy and sell electrical energy freely and without discrimination of any kind. However, where the laws of a country allow the same enterprise to carry out two or more activities relating to the provision of electric power, or the designation of a single enterprise to carry out transactions in the market, the enterprises must set up separate business units to enable the cost of each activity to be clearly identified. The participation of the agents in the market shall be governed by the rules set forth in this Treaty, together with its protocols and regulations.

Article 6

The Governments shall ensure that the market evolves in increasingly more competitive stages, for which they shall conduct joint evaluations at least every two years on the basis of recommendations from the Regional Electrical Interconnection Commission (CRIE), the regional agency established in article 18 of this Treaty.

REGIONAL ELECTRIC POWER GENERATION

Article 7

Electricity produced by any of the generating plants of the member electrical systems which are designated as agents may be bought and sold on the market.

Article 8

Generating plants may be installed in any of the member countries, in accordance with the legal requirements of each country.

Article 9

The Governments shall determine the conditions that are conducive to the development of regional electric generating plants, consistent with the efficient development of the regional market.

Article 10

The Regional Operating Agency (EOR), a regional body established in article 18 of this Treaty, in coordination with the national electricity dispatching agencies, shall perform the functions of coordinated operation of the electrical systems under economic criteria for dispatch.

REGIONAL TRANSMISSION

Article 11

Regional transmission shall be understood as the flow of energy across the borders of the countries, allowing for market transactions through existing and future high-tension grids.

Article 12

Market agents shall have free access to both regional and national transmission grids. Charges for the use of and access to the regional grids shall be approved by CRIE, and charges for the use of and access to national grids shall be approved by the national regulating agency and shall be non-discriminatory for use in regional operations.

Article 13

The sole purpose of regional transmission enterprises shall be to transmit or transport electrical energy.

Article 14

Remuneration for access to and use of regional grids shall be paid by market agents in accordance with the methodology approved by CRIE.

Article 15

Each Government shall designate a public agency in its country to participate in a public or private capital enterprise in order to develop, design, finance, build and maintain an initial regional transmission system that will interconnect the electrical systems of the six countries. None of the members shall have direct or indirect control of the said enterprise. The enterprise shall be called the Grid Proprietor (EPR); it shall be governed by private law and legally domiciled in a Central American country.

Article 16

In accordance with the legal requirements of each country, each Government shall grant the respective permit, authorization and concession, as appropriate, to EPR for the building and exploitation of the first regional interconnection system. The said permit, authorization or concession shall remain in effect for up to 30 years and shall be renewable.

Article 17

In accordance with the prevailing legal procedures in each country, each Government agrees to grant authorizations, permits or concessions, as appropriate, for future expansions of the regional transmission grids to EPR or other regional transmission enterprises.

REGIONAL AGENCIES

Article 18

For the purposes of better and more effectively fulfilling the purposes of this Treaty and of organizing relations between market agents, the Regional Electrical Interconnection Commission (CRIE) and the Regional Operating Agency (EOR) shall be established as regional agencies.

REGIONAL ELECTRICAL INTERCONNECTION COMMISSION

Article 19

The Regional Electrical Interconnection Commission (CRIE) shall be the regulating agency for the regional market, with its own legal personality and capacity in international public law applicable to the Parties. Its headquarters shall be located in one of the Central American countries, to be determined by the Governments. Its duration shall be the same as that of this Treaty.

Article 20

CRIE shall have sufficient legal capacity to act judicially and extrajudicially and carry out all those transactions, contracts and operations which are necessary or appropriate to fulfilling its purpose, both within and outside the territories of the signatory countries, while adhering to the principles of satisfying the public interest, equality, free competition and public disclosure.

Article 21

To fulfil its objectives and functions, CRIE shall be composed of a commissioner from each member country, appointed by his Government for a renewable term of five years. CRIE shall have the technical and administrative structure that it requires.

Article 22

The general objectives of CRIE shall be:

(a) To enforce this Treaty and its protocols, regulations and other supplementary instruments;

- (b) To promote the development and consolidation of the market and to oversee its transparency and smooth operation;
- (c) To promote competition among market agents.

Article 23

CRIE shall have the authority, inter alia:

- (a) To regulate the operation of the market, issuing the necessary regulations;
- (b) To take the general and specific measures needed to ensure conditions of competition and non-discrimination in the market;
- (c) To take the decisions required to foster the development of the market, while overseeing its initial operation and its gradual evolution to more competitive conditions;
- (d) To adopt the regulations for physical and economic dispatch, at the proposal of EOR;
- (e) To regulate the aspects concerning regional transmission and generation;
- (f) To rule on the authorizations provided for in the Treaty, in accordance with its regulations;
- (g) To take steps to prevent abuse by any agent of a dominant position in the market;
- (h) To impose the sanctions established by the protocols in relation to non-compliance with the provisions of the Treaty and its regulations;
- (i) To approve charges for the use of the regional transmission system in accordance with the corresponding regulations;
- (j) To resolve conflicts between agents stemming from the implementation of this Treaty;
- (k) To designate enterprises as market agents;
- (l) To approve charges for grid operation services provided by EOR under the corresponding regulations;
- (m) To evaluate periodically the development of the market and suggest to the Parties the steps they should take, in its view, for the purpose of further consolidating the market;
- (n) To request audited financial records from the business units established under article 5;
- (o) To coordinate with national regulatory agencies the necessary steps for the smooth operation of the market.

Article 24

The resources required for the operation of CRIE shall be obtained from the regulatory charge and other charges paid by the agents, contributions from Governments, economic sanctions, interest payments from business arrangements, donations and transfers from public or international agencies, funds or resources allocated by laws and regulations, and goods or rights acquired for consideration or free of charge.

The mechanism for establishing the regulatory charge and the auditing of its expenditures shall be established in the corresponding protocol.

REGIONAL OPERATING AGENCY

Article 25

The Regional Operating Agency (EOR) shall be the operating agency for the regional market, with its own legal personality and capacity in public international law applicable to the Parties. It shall be headquartered in one of the countries of Central America, to be determined by the Governments, and its duration shall be the same as that of this Treaty.

Article 26

EOR shall have its own legal capacity to acquire rights and contract obligations, to act in judicial or extrajudicial procedures and to carry out all actions, contracts and operations necessary or appropriate to fulfilling its purpose, both within and outside the territory of the countries signatories to the Treaty, while adhering to the principles of satisfaction of the public interest, equality, free competition and public disclosure.

Article 27

To accomplish its objectives and functions, EOR shall be headed by a Governing Board composed of two directors for each Party appointed by their own Government or proposed by the market agents in each country for a term of five years. Should they deem it appropriate, the Governments may, through protocols to this Treaty, arrange for another structure for the Governing Board. EOR shall have the administrative and technical structure that it may require.

Article 28

The principal objectives and functions of EOR shall be:

- (a) To propose to CRIE the procedures for the operation of the market and the use of regional transmission grids;
- (b) To ensure that the operation and regional dispatch of energy is carried out under economic criteria, while seeking to ensure adequate levels of safety, quality and reliability;
- (c) To manage the transactions between market agents;
- (d) To support, through the provision of information, the processes involved in developing the market;
- (e) To formulate the indicative expansion plan for generation and regional transmission, envisaging the establishment of regional reserve margins, and to make the plan available to market agents.

Article 29

The resources required for the operation of EOR shall come from the charges for operating the system approved by CRIE and other charges paid by market agents, economic sanctions, interest payments from business arrangements, donations and transfers from public or international agencies, funds or resources allocated by laws and regulations, and goods or rights acquired for consideration or free of charge.

AUTHORIZATIONS

Article 30

Public agencies of the member countries which are active in any of the activities connected with the generation, distribution or marketing of electric power shall be authorized to:

- (a) Become market agents;
 - (b) Buy and sell energy on the short term under the rules of the market;
 - (c) Sign, through the bidding procedure, contracts for the purchase and sale of energy on the long term in the market,
- all the foregoing being in accordance with the provisions of article 5.

Article 31

Public agencies of the member countries which are active in any of the activities connected with the generation, transmission, distribution or marketing of electric power shall be authorized to:

- (a) Buy on the international market the fuel necessary for the generation of electricity;
- (b) Sign for the purchase of shares in the trading company which builds the first regional interconnection line. To that end, it may make cash and non-monetary contributions such as land, usufruct rights, designs, surveys and others;
- (c) Sign contracts to guarantee payment for the remuneration of regional transmission grids;
- (d) Pay the appropriate charges for the normal operation of the regional agencies created by this Treaty.

COMMITMENTS BY GOVERNMENTS

Article 32

The Governments shall:

- (a) Guarantee the free transit or circulation of electrical energy through their territories, for themselves or for third countries in the region, subject solely to the conditions established in this Treaty, together with its protocols and regulations;

(b) Declare as being in the public interest the electrical infrastructure works required for the activities of the regional electricity market;

(c) Provide for exemption from any tax on the transit, import or export of electrical energy among their countries which might discriminate against market transactions.

DISPUTE SETTLEMENT

Article 33

The market agents shall seek to reach agreement on the interpretation and application of this Treaty and shall make every effort to find a mutually satisfactory solution to any dispute that may affect their operations.

Article 34

Any dispute that may arise between market agents which is not settled through negotiation shall be referred to CRIE for definitive settlement.

Article 35

Any dispute that may arise between Governments with regard to the interpretation and implementation of the Treaty which is not settled through negotiation shall be referred for arbitration, at the request of either party to the dispute, to the Central American Court of Justice, or to another body agreed on by the Parties, for definitive settlement.

PROTOCOLS

Article 36

To facilitate the fulfilment and due implementation of the provisions contained in this Treaty, the Governments shall sign the necessary protocols, which shall be in accordance with the principles, purposes and other provisions of this Treaty.

PRIVILEGES AND IMMUNITIES

Article 37

Staff members of CRIE and EOR shall enjoy, in the territory of the countries members of the market, the privileges and immunities granted through the signing of a protocol, without prejudice to the provisions of the headquarters agreements for the regional agencies established by this Treaty.

ENTRY INTO FORCE, RATIFICATION, ACCESSION, REGISTRATION AND DENUNCIATION

Article 38

This Treaty shall be subject to ratification and shall be open to the accession of other American States.

The Secretariat of the Central American Integration System (SICA) shall be the depositary of the instruments referred to in the previous paragraph.

This Treaty shall remain in effect indefinitely and shall enter into force eight days following the date of deposit of the second instrument of ratification. For each Party that ratifies this Treaty or accedes to it after the deposit of the second instrument of ratification, the Treaty shall enter into force eight days following the date on which the said State deposits its instrument of ratification or accession.

The Secretariat of SICA, as depositary of the Treaty, shall transmit certified copies thereof to the Ministry of Foreign Affairs of each of the member countries, and shall immediately notify the said countries of the deposit of each of the instruments of ratification.

Upon the entry into force of the Treaty, the Secretariat of SICA shall transmit a certified copy thereof to the Secretariat of the United Nations, for the purpose of registering it in accordance with Article 102 of the Charter of the United Nations.

This Treaty may be denounced by any of the Parties by written notification to the Secretariat of the Central American Integration System with an advance notice of 10 years, following the tenth year of validity.

Article 39

For the purposes of updating this Treaty, it may be revised at the request of two of the member countries thereof.

COPIES

Article 40

This Treaty has been signed in six equally authentic copies.

TEMPORARY PROVISIONS

1. The first protocol must be signed within three months following the entry into force of the Treaty.

2. CRIE must be constituted within six months of the entry into force of the Treaty and EOR within twelve months thereof.

3. Temporarily, while EOR is being set up, an electrical interconnection committee, composed of representatives of the agencies in charge of national electricity dispatching, shall coordinate the operation of the interconnected systems, for which purpose the Gov-

ernments, through their designated agencies, shall provide it with the necessary support and resources.

In witness whereof, the undersigned have signed this Treaty at Guatemala City on 30 December 1996.

JOSÉ MARÍA FIGUERES OLSEN

President of the Republic of Costa Rica

ARMANDO CALDERÓN SOL

President of the Republic of El Salvador

ALVARO ARZU IRIGOYEN

President of the Republic of Guatemala

CARLOS ROBERTO REINA

President of the Republic of Honduras

VIOLETA DE CHAMORRO

President of the Republic of Nicaragua

ERNESTO PÉREZ BALLADARES

President of the Republic of Panama