



Electric Utility Regulation and The Caribbean Single Market and Economy, CSME

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ABSTRACT

This paper addresses the implications of the Caribbean Single Market and Economy (CSME) on the regulation electric utilities of Caribbean Community (CARICOM). This is especially important within the context of the recent developments in the regional energy markets. CSME issues relate to: establishment or continuation of government monopolies, cross border transactions; the rights of establishment; competition; regional economic enterprises; environmental sustainability; harmonized legislation; incentive regulation; regional organs and legal committees of CARICOM; and regional trade.



Disclaimer

All view points expressed herein are those of the author, and not the official view point of the CARICOM Secretariat

- Signed Roland R. Clarke



Changing Electric Utility Business Environment

- ∞ Privatisation
- ∞ Liberalisation e.g competition in generation
- ∞ Regional Initiatives - e.g. Task Force on Regional Energy Policy, T&T Energy Plan for CARICOM, PetroCaribe, GeoCaribes
- ∞ Rate of Return Regulation versus Performance Based Regulation, PBR
- ∞ Caribbean Single Market and Economy, CSME



Utility Organisation – Public versus Private Ownership

- ∞ Government owned and operated e.g SVG, (and Guyana Power and Light, only because privatisation failed)
- ∞ Investor owned – Vertically integrated - Jamaica Public Service Company, Lucelec, Domlec, Barbados Light and Power
- ∞ Trinidad and Tobago (Government owns transmission and distribution (T&D)) only. Generation is private, and sold via PPA)
- ∞ Belize – T&D owned by Belco, generation is fully competitive via regional power market



Scenario – T&T Energy Plan for CARICOM

- ∞ Produce bulk electricity in T&T, and sell to Grenada and SVG
- ∞ Supply natural gas via a pipeline to Barbados, the Fr. West Indies, with a take-off to Lucelec
- ∞ Supply compressed natural gas to Barbados in a special tanker, yet to be developed
- ∞ Supply liquefied natural gas to Jamaica, using existing tankers, at a negotiated contract price
- ∞ Collective purchasing of crude from Venezuela, for refining at PetroTrin, and product sold at discount



PetroCaribe

- ∩ A political alliance
- ∩ Greater involvement of Governments in petroleum product supply chain
- ∩ Investment capital for infrastructure (e.g. terminals, storage, refinery upgrade)
- ∩ Payment arrangements only, no discounts
- ∩ Implications for CARICOM common external tariff (CET), as most products already supplied by T&T to some countries



CSME definition of Electricity

- ∩ CARICOM Secretariat defines electricity as a service



*CSME - CHAPTER V Rights of Establishment,
Provision of Services and Movement of Capital -*

ARTICLE 35 – Scope of Application

- ∞ 1. Save as otherwise provided in this Article and Article 35a, the provisions of this Chapter shall apply to the right of establishment, the right to provide services and the right to move capital in the Community.*
- ∞ 2. Activities in a Member State involving the exercise of governmental authority shall, in so far as that Member State is concerned, be excluded from the operation of this Chapter.*



CSME - Article 35

- 3. For the purposes of this Chapter, "activities involving the exercise of governmental authority" means activities conducted neither on a commercial basis nor in competition with one or more economic enterprises, and includes:*
 - (d) other activities conducted by a public entity for the account of or with the guarantee or using financial resources of the government.*



View point

- Ω 1. Some electric utilities are owned and operated by government.
- Ω 2. Electric utilities are monopolies, whether “natural monopolies” or otherwise.
- Ω 3. It’s debatable whether such utilities are conducted “on a commercial basis.”
- Ω For sure a monopoly is not “in competition with one or more economic enterprise”



CSME - ARTICLE 35a *Treatment of Monopolies*

- Ω 1. *Member States may determine that the public interest requires the exclusion or restriction of the right of establishment in any industry or in a particular sector of an industry.*
- Ω 2. *Where such a determination has been made:*
 - Ω (a) *if the determination results in the continuation or establishment of a government monopoly, the Member State shall adopt appropriate measures to ensure that the monopoly does not discriminate between nationals of Member States, save as otherwise provided in this Treaty, and is subject to the agreed rules of competition established for Community economic enterprises;*



View Point

- ∩ 1. This implies that an existing or continuing electric utility may not sell to another member state at prices (i.e. tariffs) that “discriminate between nationals ... save as otherwise provided in this Treaty...”



CSME - ARTICLE 35b - Prohibition of New Restrictions on the Right of Establishment

- ∩ 1. *Upon the entry into force of this Protocol, Member States shall not introduce in their territories any new restrictions relating to the right of establishment of nationals of other Member States save as otherwise provided in this Treaty.*
- ∩ 3. (1) *The right of establishment within the meaning of this Chapter shall include the right to:*
- *(b) create and manage economic enterprises referred to in paragraph 5(b) of this Article.*



View Point

- Ω 1. Does this mean that a new electricity generating company may be established in any member state, by an entity from another member state, to sell power to a neighbouring state, even though the local electric utility has monopoly rights on generation, transmission, (distribution) and sale of electricity within that state?
- Ω 2. Would the new generating entity require a license?



CSME - ARTICLE 36 - Prohibition of New Restrictions on the Provision of Services

- Ω 4. For the purposes of this Chapter, "services" means services provided against remuneration other than wages in any approved sector and "the provision of services" means the supply of services:
 - (a) from the territory of one Member State into the territory of another Member State;
 - (b) in the territory of one Member State to the service consumer of another Member State;
 - (c) by a service supplier of one Member State through commercial presence in the territory of another Member State;



View Point

- ∞ Cross border electricity transmission is permitted, e.g T&T Energy Plan for CARICOM, GeoCaribes



CSME - Article 39 - Objectives of the Community Industrial Policy

- ∞ *1. The goal of the Community Industrial Policy shall be market-led, internationally competitive and sustainable production of goods and services for the promotion of the Region's economic and social development.*
- ∞ View Point
 - 1. This may imply “market led” production of electricity “services.”
 - 2. “Market led” may be interpreted to mean “competitive markets.”



View Point

1. While competition in generation is desirable, same is not true for the establishment and operations of transmission and distribution systems.
2. The use of cheap natural gas from Trinidad and Tobago, as a factor input to the generation of electricity, may lead to “internationally competitive production of goods and services” in the Community.
3. The use of renewable energy will lead to the “sustainable” production of electricity. Here “sustainable” means environmental sustainability.



CSME - Article 39 – cont'd

2. *In fulfillment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:*
 - (a) *cross-border employment of natural resources, human resources, capital, technology and management capabilities for the production of goods and services on a sustainable basis;*



View Point

∞ Natural gas is a “natural resource” than may be employed “cross-border” for the production of goods and services (e.g. electricity).



CSME - Article 39 cont'd

∞ (b) linkages among economic sectors and enterprises within and among Member States of the Single Market and Economy;

∞ View Point

- 1. Cross-border electricity will provide the linkages



CSME - Article 39 cont'd

∞ (c) regional economic enterprises capable of achieving scales of production to facilitate successful competition in domestic and extra-regional markets;

∞ View Point

- 1. Cross-border electricity, organized as regional enterprises, is more capable of achieving economies of scale.
- 2. Fixed cost may be spread across all customers in all member states, thus minimizing costs implications for all.



CSME - Article 39 – cont'd

∞ (g) industrial production on an environmentally sustainable basis;

∞ View Point

- 1. Electricity production from renewable resources is environmentally sustainable



CSME - Article 39a - Implementation of Community Industrial Policy

- ∞ 1. In order to achieve the objectives of its industrial policy, the Community shall promote, *inter alia*:
- ∞ (a) the co-ordination of national industrial policies of Member States;
- ∞ **View Point**
 - The intent of the Caribbean Renewable Energy Development Programme (CREDP) is to foster markets for electricity produced from renewable energy resources.
 - This includes the coordination of energy policy legislation, licenses, administrative procedures and regulation.



View Point – cont'd

- 1. The Task Force on Regional Energy Policy is attempting to coordinate energy policy.
- 2. There should be co-ordination in the regulation of electricity.
- 3. There should be co-ordination or harmonization of legislation and licenses.



CSME - Article 39a – cont'd

∩ (b) the establishment and maintenance of an investment-friendly environment, including a facilitative administrative process;

∩ **View Point**

- **The coordination of energy policy, legislation, licenses, administrative procedures and regulation is intended to enhance the investment environment, e.g. renewable energy**



CSME - Article 39a

∩ *6. Member States shall undertake to establish and maintain appropriate macro-economic policies supportive of efficient production in the Community. In addition, they shall undertake to put in place arrangements for, **inter alia**:*

∩ (c) *harmonised legislation in relevant areas;*

∩ **View Point**

- **1. Electricity legislation, as well as regulation, licensing, and administrative procedures should be harmonised**



CSME - Article 39a

∞ 7. *In order to facilitate the implementation of the Community Industrial Policy, the COTED shall, in collaboration with competent organs and agencies:*

- *(c) encourage Member States to establish and develop export markets, especially in non-traditional sectors, through the development of sector-specific incentives and appropriate policy instruments.*



View Point

- ∞ 1. **Cross-border electricity is an example of an export market in a non-traditional sector.**
- ∞ 2. **A regional transmission network is also an example.**



CSME - Article 39a – cont'd

8. For the purpose of this Article, "production integration" includes:
- (a) the direct organisation of production in more than one Member State by a single economic enterprise;
 - (b) complementary production involving collaboration among several economic enterprises operating in one or more Member States to produce and use required inputs in the production chain; and
 - (c) co-operation among economic enterprises in areas such as purchasing, marketing, and research and development.



View Point

1. **Caribbean electric utilities may be integrated by interconnecting states with a transmission network.**



CSME - Article 41 - Development of the Services Sector

Ω 1. The COTED shall, in collaboration with the appropriate Councils, promote the development of the services sector in the Community in order to stimulate economic complementarities among, and accelerate economic development in, Member States. In particular, the COTED shall promote measures to achieve:

- (a) increased investment in services;



CSME - Article 41

Ω (b) increased volume, value and range of trade in services within the Community and with third States;

Ω (d) enhanced enterprise and infrastructural development, including that of micro and small service enterprises.

Ω View Point

- 1. The cross-border provision of electricity is an example of “increased investment in services”, “increased volume, value and range of trade in services”, and “infrastructural development.”



CSME - Article 41

- 2. In order to achieve the objectives set out in paragraph 1, Member States shall, through the appropriate Councils, collaborate in:
 - (b) establishing a regime of incentives for the development of and trade in services; and
 - (c) adopting measures to promote the establishment of an appropriate institutional and administrative framework and, in collaboration with the Legal Affairs Committee, promote the establishment of the appropriate legal framework to support the services sector in the Community.



View Point

- 1. The regime of incentives may be captured in a regulatory regime such as “performance based regulation.”
- 2. The role of the Legal Affairs Committee is defined here.



CSME - Article 41

- ∩ 3. *In the establishment of programmes and policies of the Community for the development of the services sector, the relevant Councils shall give priority to:*
- ∩ (a) *the efficient provision of infrastructural services including telecommunications, road, air, maritime and air transportation, statistical data generation and financial services;*



View Point

- ∩ 1. **There is no mention of electricity an "infrastructural service."**
- ∩ 2. **Is this an error of omission?**



CSME - Article 41

- Ω (c) the development of services which enhance cross-sector competitiveness;
- Ω (d) the facilitation of cross-border provision of services which enhance the competitiveness of the services sector;
- Ω **View Point**
 - 1. Electricity is a factor input to all industries. The enhanced competitiveness of electricity will enhance cross-sector competitiveness.



CSME - Article 49d - Legal Infrastructure

- Ω 1. The Legal Affairs Committee shall cooperate with competent organs of the Community to advise Member States on the legal infrastructure required to promote investments in the Member States, including cross-border investments, bearing in mind the provisions of Article 49c.
- Ω 2. Member States shall harmonise their laws and administrative practices in respect of, **inter alia:**



CSME - Article 49d

- ∩ (a) *companies or other legal entities;*
- ∩ (c) *standards and technical regulations;*
- ∩ (f) *restrictive business practices;*
- ∩ (h) *subsidies and countervailing measures;*
- ∩ **View Point**
 - 1. The legal infrastructure for electricity should include legislation, licenses, regulations, administrative procedures.



CSME - Article 50a *Role of Public Authorities*

- ∩ *The COTED shall promote the modernisation of government bureaucracies by, **inter alia**:*
- ∩ (b) *removing impediments and improving the regulatory framework for economic enterprises at national and regional levels;*



View Point

1. Cross-border electricity will require significant regulatory oversight. Many member states do not have autonomous regulatory “commissions.”
2. Instead they have regulatory “agencies” that have significant government involvement.
3. In some instances, Government regulates itself, which is a conflict of interest.



CSME - Article 13 - Objectives of the Community Trade Policy

1. *The goal of the Community Trade Policy shall be the sustained growth of intra-community and international trade and mutually beneficial exchange of goods and services among Member States and between the Community and third States.*
2. *In fulfillment of the goal set out in paragraph 1 of this Article the Community shall pursue the following objectives:*



CSME - Article 13

- Ω (a) *full integration of the national markets of all Member States of the Community into a single unified and open market area;*
- Ω (b) *the widening of the market area of the Community*
- Ω **View Point**
 - 1. **The regions electricity market may be fully integrated by creating a single transmission network.**



CSME - Article 13

- Ω 3. *In order to achieve the objectives of its Trade Policy, the Community shall:*
 - (a) *undertake:*
 - (i) *the establishment of common instruments, common services and the joint regulation, operation and efficient administration of the internal and external commerce of the CARICOM Single Market and Economy;*



View Point

- ∩ 1. This suggests “joint” regulation, which is deeper than “coordinated” regulation. Should there be a regional regulatory commission for electricity, *cf* ECTEL.



CSME - Article 13

- ∩ 1. Member States shall eliminate existing restrictions on imports and exports of goods of Community origin, other than those authorised by this Treaty.

∩ View Point

- 1. Current legislation gives exclusive licenses for transmission, distribution, sale, and more often than not, generation.



CSME - Article 19 - General Provisions on Trade Liberalisation

- ∞ *1. Member States shall establish and maintain a regime for the free movement of goods and services within the Single Market and Economy.*
- ∞ ***View Point***
 - 1. Current legislations gives exclusive franchises for transmission, distribution, sales, and more often than not, generation.**



CSME - Article 19

- ∞ *2. Each Member State shall refrain from trade policies and practices, the object or effect of which is to distort competition, frustrate free movement of goods, or otherwise nullify or impair benefits to which other Member States are entitled under this Treaty.*



View Point

- ∞ View Point
- ∞ 1. Utilities are currently isolated and are tiny. This leads to high unit costs for production due to lack of economies of scale and lack of interconnectivity. Continuation of this reality will impair the benefits that may be derived through transmission integration.



CSME - Article 29 - General Exceptions

- ∞ *Nothing in Article XVI of this Protocol shall prevent the adoption or enforcement by any Member State of measures :*
- ∞ *(d) ... or to the operation of monopolies by means of state enterprises or enterprises given exclusive or special privileges;*
- ∞ *(k) relating to the conservation of natural resources or the preservation of the environment,*



CSME - Article 29

∩ but only if such measures are not used as a means of arbitrary or unjustifiable discrimination between Member States, or as a disguised restriction on trade within the Community.



View Point

- ∩ 1. Member states should change their legislation to permit the importation of electricity.
- ∩ 2. Competition in generation should be introduced.
- ∩ 3. Interconnection of States should be undertaken.

