

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	CRIMINAL NO. H-09-CR-629
v.	§	
	§	
JOHN JOSEPH O'SHEA,	§	
Defendant.	§	

OPPOSED REQUEST FOR JUDICIAL NOTICE

At the last status conference, the Court stated that it was going to take judicial notice of the relevant Mexican laws concerning CFE. Tr. 11/10/2011 at 7. The United States proposes the following, which could be either read to the jury or submitted as a Court Exhibit.¹

(1) Under the Mexican Constitution, the supply and distribution of electricity is exclusively a governmental function.²

(2) Under Mexican law, the provision of electricity is a public service, and CFE has a monopoly over the provision of electric power.³

¹ To the extent that this notice requires determinations of foreign law, the government requests that the Court make those determinations pursuant to Federal Rule of Criminal Procedure 26.1.

² Mexican Constitution, art. 27. DE 50-1 at 3

³ Law of the Public Service of Electrical Energy, art. 1. DE 50-2 at 2.

(3) The Mexican Ministry of Energy, Mines, and State-Owned Industry sets forth requirements for CFE according to the national energy policy, and CFE is responsible for providing public electrical power to the nation.⁴

(4) The President of Mexico appoints the General Director of CFE, and the governing board of CFE includes various Ministry Secretaries.⁵

(5) Electricity rates are set by the Ministry of the Treasury and Public Credit, with participation of the Ministry of Energy, Mines, and State-Owned Industry and at the proposal CFE.⁶

(6) CFE pays use fees to the Mexican Federal government, which are offset by subsidies provided by the Mexican Federal government, through CFE, to electricity users.⁷

⁴ Law of the Public Service of Electrical Energy, art. 5, 7. DE 50-2 at 3.

⁵ Law of the Public Service of Electrical Energy, art. 10, 14. DE 50-2 at 4, 7.

⁶ Law of the Public Service of Electrical Energy, art. 31. DE 50-2 at 11.

⁷ Law of the Public Service of Electrical Energy, art. 46. DE 50-2 at 18-19.

Respectfully submitted,

KENNETH MAGIDSON
United States Attorney

DENIS J. McINERNEY
Chief
Criminal Division, Fraud Section

NICOLA J. MRAZEK
Senior Trial Attorney

\s\ Gregg Costa
GREGG COSTA
Assistant United States Attorney

CERTIFICATE OF SERVICE

I, Gregg Costa, certify that I have caused a copy of the Request for Judicial Notice to be served on all counsel of record on this matter on December 29, 2011.

\s\ Gregg Costa
GREGG COSTA
Assistant United States Attorney

CERTIFICATE OF CONFERENCE

I, Gregg Costa, certify that I contacted counsel for the defendant, Sarah Frazier, who stated that O'Shea is opposed to this request.

\s\ Gregg Costa
GREGG COSTA
Assistant United States Attorney