

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE PROVINCE OF NEW BRUNSWICK (MINISTER OF ENERGY)
AND
THE NEW BRUNSWICK SYSTEM OPERATOR
AND
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

This Memorandum of Understanding (“MOU”) between the Province of New Brunswick as represented by the Minister of Energy (“Minister”), the New Brunswick System Operator, a body corporate under the *Electricity Act* (NB) (“NBSO”) and the North American Electric Reliability Corporation (“NERC”) reflects the desire for a continuing and cooperative relationship related to enhancing the reliability of the bulk electric power system in North America and sets forth the mutual understanding of each of the signatories in relation to NERC’s status as an Electric Reliability Organization (“ERO”) in New Brunswick and to a MOU among NBSO, NERC and the Northeast Power Coordinating Council Inc. (“NPCC”).

Nothing in this MOU limits the responsibility or authority of each of the signatories in carrying out their respective mandates.

1. GENERAL MATTERS

Commitment to Bilateral Principles

The signatories are committed to an international electric reliability organization that is effective and that functions in general accordance with the “Principles for an Electric Reliability Organization that can Function on an International Basis” (Bilateral Electric Reliability Oversight Group, August 3, 2005) (the “Bilateral Principles”).

Acknowledgement of the Status of the Minister

The Minister is responsible for the administration of the *Electricity Act* (NB) that governs the electricity sector in New Brunswick and for the *Energy and Utilities Board Act* (NB) that governs the activities of the New Brunswick Energy and Utilities Board (“EUB”).

Acknowledgement of the Status of the EUB

The EUB is constituted under the *Energy and Utilities Board Act* (NB) and has statutory responsibility for regulating the electricity sector in New Brunswick, including the regulatory oversight of the New Brunswick System Operator (“NBSO”), in the manner and to the extent described in the *Electricity Act* (NB), the *Energy and Utilities Board Act* (NB) and other applicable statutes.

Acknowledgement of the Status of the NBSO

The NBSO has the responsibility under the *Electricity Act* (NB) to make and enforce the New Brunswick Electricity Market Rules (“market rules”) in New Brunswick including the development, adoption, and enforcement of mandatory reliability standards.

Acknowledgement of the Status of NERC

NERC is a corporation, sponsored by all sectors of the electric utility industry, whose mission as the ERO is to promote the reliability of the bulk electric power system in North America.

NERC is a “standards authority” within the context and intent of the *Electricity Act* (NB) and as defined under the market rules.

NERC By-laws and Rules of Procedure

New Brunswick's current legislative framework does not expressly contemplate approval of NERC's By-laws or Rules of Procedure. However, the signatories acknowledge that NERC must function as an international organization, having in particular a single set of By-laws and Rules of Procedure acceptable to all jurisdictions. To that end, NERC will inform the EUB and NBSO and seek input from the EUB and NBSO on any proposed changes to NERC's By-laws and Rules of Procedure.

Interpretation of "NERC Reliability Standard"

References in this MOU to a NERC reliability standard are to a reliability standard and any amendment to or revision of a reliability standard that has been adopted by NERC and includes any reliability standard that is developed by NPCC and that is adopted by NERC, as well as any amendment to or revision of such a reliability standard.

Representation of Canadian Jurisdictions on NERC Committees

The signatories will use the Bilateral Principles as a guide to ensuring that Canadian jurisdictions are represented on NERC Committees.

Information on Reliability Performance

NERC will provide to the EUB and NBSO information related to the reliability performance of the New Brunswick operating area and of entities regulated by the EUB and related to the performance of interconnected systems. NERC disclosure guidelines require the naming of the entity where applicable, for confirmed violations of reliability standards. A confirmed violation is one with respect to which all dispute resolution procedures regarding a violation have been completed or that the time for seeking a review of a finding of a violation has passed and no review has been sought.

2. DEVELOPMENT, APPROVAL, REMAND and APPLICATION of NERC RELIABILITY STANDARDS

Development of NERC Reliability Standards

The signatories recognize the importance of the involvement of New Brunswick market participants (as that term is defined in the *Electricity Act* (NB)) and the NBSO in the development of NERC reliability standards. Under the *Electricity Act* (NB), the NBSO has a statutory object “to participate with any standards authority in the development of standards and criteria relating to the reliability of transmission systems”.

Notification of NERC Reliability Standards

NERC will inform the EUB and NBSO of reliability standards approved by NERC and submitted for approval by applicable regulatory agencies.

NERC, upon request, will provide the EUB and NBSO with a briefing on any reliability standard that is filed with applicable regulatory agencies.

NERC will keep the EUB and NBSO informed on the status of any regulatory approvals of NERC reliability standards in jurisdictions outside of New Brunswick, and of the date on which such reliability standards will come into effect in those jurisdictions.

Approval and Remand of NERC Reliability Standards in New Brunswick

In New Brunswick NERC reliability standards are referenced in the market rules that are developed and administered by the NBSO by means of a market rule obligation imposed on various market participants and the NBSO to comply with all applicable reliability standards.

NERC reliability standards therefore currently have effect in New Brunswick under the market rules, subject to the provisions of the market rules and of applicable legislation.

The process in place under the *Electricity Act* (NB) and market rules for making and amending market rules will apply to the adoption of NERC reliability standards in New Brunswick.

When a reliability standard is approved by the NERC Board of Trustees the NBSO will initiate the adoption process for New Brunswick. The reliability standard will be posted by the NBSO for at least 30 days before coming into force as an amendment to the market rules.

The EUB has certain legislative authorities in relation to amendments to the market rules and in relation to a review of the market rules under the *Electricity Act* (NB), and the resulting ability to remand market rule amendments or provisions to the NBSO in appropriate cases.

The EUB also has appellate functions in relation to certain decisions of the NBSO. However, New Brunswick's current legislative framework does not expressly contemplate the formal approval of NERC reliability standards by the EUB for application in New Brunswick, nor does it expressly provide for the Board to remand NERC reliability standards to NERC.

The signatories also recognize that the exercise by the EUB of its statutory authorities in relation to the market rules, market participants or the NBSO may affect the application of a NERC reliability standard in New Brunswick.

The signatories recognize that this will be the framework for establishing and maintaining reliability standards in New Brunswick under the ERO regime.

Notice of Remand of Reliability Standards in Another Jurisdiction

NERC will notify the EUB and the NBSO in the event that a NERC reliability standard is remanded to NERC in any jurisdiction outside of New Brunswick.

NERC will work with the EUB and NBSO, in coordination with other stakeholders, in relation to concerns raised as a result of any such remand prior to re-filing by NERC of the reliability standard for approval, to the extent permitted by, and as appropriate within the context of, the powers and authorities of the EUB and NBSO.

New Brunswick- Specific Reliability Standards

The NBSO has the authority under the market rules to develop New Brunswick- specific reliability standards to supplement those of NERC. It is the understanding of the signatories that NBSO reliability standards will not be inconsistent with NERC reliability standards, and will be no less stringent than NERC reliability standards that are in effect in New Brunswick at the relevant time.

3. COMPLIANCE ASPECTS

Compliance Accountability in New Brunswick

The NBSO will continue to be the sole entity in New Brunswick accountable to NERC for compliance with all NERC reliability standards applicable to New Brunswick market participants and will be subject to NERC's standards compliance monitoring and enforcement processes.

The NBSO is required under the New Brunswick market rules (and thus also by the terms of its licence issued by the EUB) to comply with applicable reliability standards. New Brunswick market participants will continue to be accountable to the NBSO and to the EUB for complying with all applicable reliability standards as required by the market rules.

It is recognized that the NBSO's role in this regard predates the establishment of NERC as the ERO.

Appellate Authority

The NBSO as the sole New Brunswick entity accountable to NERC for compliance with NERC reliability standards by it or by market participants and being subject to NERC's standards compliance monitoring and enforcement processes, will have a right of appeal to NERC from a finding by NERC (or NPCC if it is acting as the compliance enforcement authority) of violations of NERC reliability standards or from the associated assessment of penalties.

Under the *Electricity Act* (NB), the EUB has authority to hear appeals from certain orders made under the market rules, including an order that requires a person to pay a financial penalty.

Disclosure of Violations of NERC Reliability Standards in New Brunswick

The signatories will work together to establish a system for disclosure by NERC of violations of NERC reliability standards and to provide for assessment and reporting by NERC of inter-region reliability risks to and from entities outside of New Brunswick where coordinated action is required to address those risks.

The signatories recognize that, because a violation of a NERC reliability standard would also be a violation of the New Brunswick market rules, the disclosure systems for NERC reliability standard violations must be made compatible with those for New Brunswick market rule violations. Disclosure by NERC will be restricted to confirmed violations (as defined above). Disclosure in New Brunswick will be effected in accordance with the practice of the NBSO or of the EUB, as applicable.

Information on Compliance

NERC will provide the EUB and the NBSO with information relevant to New Brunswick on issues related to compliance with NERC reliability standards, including reports on:

- Compliance audits and spot checks;
- Readiness evaluations;
- Disturbance reports;
- Reliability assessments and benchmarking information; and
- Reports by regional reliability organizations, where applicable.

Disposition of Monies Collected as Penalties

The signatories acknowledge that NERC will not impose financial penalties on the NBSO for violations by it of NERC reliability standards. Accordingly, there is no issue in relation to the question of the disposition of monies collected as penalties from the NBSO.

New Brunswick market participants must comply with applicable NERC reliability standards as part of their market rule obligations. The NBSO has the authority to impose financial penalties for non-compliance with the market rules. Monies collected by the NBSO from financial penalties will be disposed of in accordance with the provisions of the market rules.

Compliance with the market rules (and thus with NERC reliability standards) is a condition of licence of each market participant and of the NBSO. The EUB has the authority to impose administrative penalties for violation of licence conditions in accordance with and subject to the limitations in and under the *Energy and Utilities Board Act* (NB).

It has been the approach of the EUB to rely on the NBSO in the first instance to enforce compliance with the market rules by market participants, and to perform more of a regulatory backstop role in this regard. The EUB's approach is not to rely on any intermediary in relation to the EUB's role in enforcing compliance with the market rules by the NBSO.

4. FUNDING OF NERC

The Minister acknowledges and accepts the process by which NERC will develop its annual budget as set out in NERC's By-Laws and Rules of Procedure.

Although the prior EUB approval of NERC's annual budget in its entirety is not contemplated, NERC will invite the EUB and the NBSO to provide input into the development of the NERC annual budget.

The signatories acknowledge that all or substantially all of the payments to NERC respecting New Brunswick's share of the costs associated with NERC's reliability standards development and enforcement processes will be made by the NBSO.

NERC acknowledges that as a jurisdiction New Brunswick will carry out compliance and enforcement activities under an established regulatory framework and therefore will not rely on NERC compliance and US regulatory support resources to the same degree as US jurisdictions and that NERC will work with the NBSO to reflect this in establishing New Brunswick's share of costs.

NERC acknowledges that the NBSO's proposed expenditures and revenue requirements are subject to review and approval by the EUB through a public process, and that there is no guarantee that any given expenditure or element of the NBSO's revenue requirement will be approved in any given year.

5. AMENDMENT AND TERMINATION OF THIS MEMORANDUM

This MOU will continue until replaced or amended by the signatories, or terminated by either signatory on 30 days written notice.

6. POINTS OF CONTACT

For all purposes related to this MOU, the points of contact shall be as follows:

for NERC:

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for the Minister:

Neil Jacobsen

Assistant Deputy Minister

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for the EUB:

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for the NBSO:

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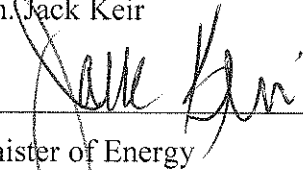
Kevin.Roherty@NBSO.ca

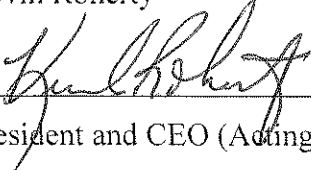
These points of contact can be changed at any time by written notification to the other signatories.

NERC agrees to include the Minister, EUB and NBSO, or a person designated for this purpose by the Minister, on its e-mail circulation list.

7. SIGNATURES

Signed this 3rd day of October, 2008:

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION <i>Original Signed By</i> Richard P. Sergel  _____ President & CEO	PROVINCE OF NEW BRUNSWICK <i>Original Signed By</i> Hon. Jack Keir  _____ Minister of Energy
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NEW BRUNSWICK SYSTEM OPERATOR <i>Original Signed By</i> Kevin Roherty  _____ President and CEO (Acting)
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