

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW BRUNSWICK ENERGY AND UTILITIES BOARD
AND
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND
NORTHEAST POWER COORDINATING COUNCIL INC.

WHEREAS, the New Brunswick Energy and Utilities Board (“NBEUB”), the North American Electric Reliability Corporation (“NERC”), and the Northeast Power Coordinating Council Inc. (“NPCC”) (collectively “the signatories”) desire a continuing and cooperative relationship related to enhancing the reliability of the bulk power system (“BPS”) in North America and this memorandum of understanding (“MOU”) reflects a mutual understanding of each of the signatories for that purpose.

AND WHEREAS the NBEUB has the responsibility under the *Electricity Act* to adopt and enforce reliability standards in New Brunswick;

AND WHEREAS pursuant to section 122 of the *Electricity Act* and the New Brunswick Regulation 2013-66 (“*Reliability Standards Regulation*”), NERC is designated as a standards body and NPCC is designated as a compliance body in New Brunswick;

AND WHEREAS, NERC is a not-for-profit international regulatory authority whose mission is to assure the reliability of the BPS in North America subject to oversight by the Federal Energy Regulatory Commission (FERC) and governmental authorities in Canada;

AND WHEREAS, NPCC is a not-for-profit corporation having the purpose of promoting and enhancing the reliability of the international, interconnected BPS in northeastern North America;

AND WHEREAS, the signatories recognize NERC as the International Electric Reliability Organization (“ERO”) and the ERO 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*”);

AND WHEREAS, the *Electricity Act*, the *Reliability Standard Regulation* and the Contract for Service (“*Service Contract*”) between NPCC and NBEUB executed concurrently with this MOU, address the development, approval and enforcement of reliability standards applicable to New Brunswick;

AND WHEREAS this MOU is intended to supplement and be read in conjunction with the *Electricity Act*, the *Reliability Standard Regulation*, and the *Service Contract*;

AND WHEREAS, nothing in this MOU limits the responsibility or authority of any signatory in carrying out its respective mandate;

AND WHEREAS, this MOU is not intended to be an enforceable or binding agreement or contract by or against any signatory, save for provisions relating to confidentiality, notwithstanding the occasional use of the term 'agree' or the use of mandatory language such as 'shall' or 'will' in the MOU. For further clarity, nothing in this MOU, save for provisions relating to confidentiality, is to be construed as creating binding legal relations or any partnership, agency or joint or several liabilities between any of the signatories, and no penalties may be applied or enforced against any of the signatories to this MOU;

NOW THEREFORE this MOU sets out the mutual understanding of the signatories as follows:

1. DEFINITIONS

The capitalized terms used in this MOU shall be defined as set forth below or elsewhere as indicated in the text of this agreement:

- (a) Confidential Information has the definition as provided for in Section 1500 of the NERC Rules of Procedure, as amended from time to time and as applicable to New Brunswick.
- (b) Non-Public Information means information that has been obtained or created relating to potential violations, alleged violations, settlement agreements, confirmed violations and other enforcement actions but does not include information made public by the NBEUB on final disposition of an enforcement matter in accordance with the *Electricity Act* and *Reliability Standards Regulation*.
- (c) NERC Reliability Standard has the definition as provided for in the Glossary of Terms Used in NERC Reliability Standards, as amended from time to time and as applicable to New Brunswick;

2. RELIABILITY STANDARDS RESPONSIBILITIES

(a) NBEUB

Pursuant to the *Electricity Act* and *Reliability Standards Regulation* the NBEUB is responsible for adopting and enforcing NERC Reliability Standards in New Brunswick.

(b) NERC

NERC is responsible for the development of NERC Reliability Standards that are subsequently filed by the New Brunswick Power Corporation (“NB Power”) with the NBEUB, for adoption and application in New Brunswick and as defined in the *Electricity Act*.

NERC will notify the NBEUB of any NERC Board of Trustee (“NERC Board”) approved changes to NERC’s Reliability Standards, By-laws and Rules of Procedure.

NERC may provide comments on reliability standards filed for NBEUB approval. NERC may also provide advice on clarifications and applicability of standards and may participate in NBEUB standards hearings consistent with the *Electricity Act* and the *Reliability Standards Regulation*.

(c) NPCC

NPCC may provide comments on reliability standards filed for NBEUB approval. NPCC may also provide advice on clarifications and applicability of standards and may participate in NBEUB standards hearings consistent with the *Electricity Act* and the *Reliability Standards Regulation*.

3. COMPLIANCE RESPONSIBILITIES

(a) NBEUB

The NBEUB has the regulatory responsibility under the *Electricity Act* and *Reliability Standard Regulation* to monitor and enforce compliance with reliability standards in New Brunswick.

The NBEUB has the regulatory responsibility under the *Electricity Act* and *Reliability Standard Regulation* to maintain a New Brunswick Compliance Registry on its website which identifies those users, owners, and operators of the BPS who must comply with approved reliability standards in New Brunswick.

(b) NPCC

NPCC will assist the NBEUB with its compliance responsibilities as described in the *Service Contract*.

NPCC will provide NERC, for periodic review, with copies of audit reports, spot check reports, and NPCC recommendations to the NBEUB relating to Find Fix and Track, alleged violations, settlement agreements and confirmed violations.

NPCC will provide NERC, for review, with a copy of the NPCC Service Contract Annual Report.

(c) NERC

NERC will oversee the services provided by NPCC in connection with the *Service Contract*. This oversight includes the periodic review of NPCC's compliance activities, and other appropriate oversight as may be requested by the NBEUB, including as follows:

- a. Periodic review of audit reports, spot check reports and NPCC recommendations to the NBEUB relating to Find Fix and Track, alleged violations, settlement agreements and confirmed violations;
- b. Review of other NPCC recommendations to the NBEUB as may be requested by the NBEUB; and
- c. Review of NPCC Service Contract Annual Reports submitted by NPCC to the NBEUB.

NERC may provide comments on NPCC compliance and enforcement recommendations to the NBEUB and may participate in NBEUB compliance and enforcement hearings consistent with the *Electricity Act* and the *Reliability Standards Regulation*.

Upon request by the NBEUB and at a schedule agreed upon by NERC, NPCC, and the NBEUB, NERC undertakes to conduct an audit to assess the performance of NPCC's work with respect to the *Service Contract*.

4. INFORMATION SHARING

The signatories agree to comply with Section 1500 of the NERC Rules of Procedure concerning Confidential Information, as applicable to NB and in accordance with Part 7.2 of the *New Brunswick Compliance Monitoring and Enforcement Program*.

The signatories agree to share Confidential Information as applicable to New Brunswick with the other signatories to this MOU.

The signatories agree to share Non-Public Information as applicable to New Brunswick with other signatories of this MOU but shall not release or disclose such information to a third party without written consent from the entity that provided the information.

5. FUNDING OF NERC AND NPCC

The total funding received by NERC and NPCC for, among other things, developing standards, monitoring and performing assessments of the reliability of the Bulk Power System in the United States and Canada is established and allocated annually among load serving entities in accordance with a business plan and budget and associated assessment schedule approved by the NPCC and NERC boards.

New Brunswick's share out of the approved total funding shall reflect the NPCC and NERC Boards currently effective Expanded Policy on Allocation of Certain Compliance and Enforcement Costs, which gives recognition to the compliance and enforcement activities conducted by Canadian entities in the form of a credit for certain compliance and enforcement costs set forth in the NERC and NPCC budgets for such year. New Brunswick share of such total funding shall cover all the services provided by NERC and NPCC under this MOU.

NERC and NPCC shall provide the NBEUB or the NBEUB's designee with the draft versions of their respective annual business plans and budgets by May 31st of each year and the final versions of the said business plans and budgets as soon as practical after being approved by the NERC Board, but in no event later than August 30th of each year.

On or before December 1st of each year, NERC and NPCC shall provide the NBEUB with a copy of the NERC Board-approved NERC and NPCC business plans and budgets and New Brunswick's share of the total funding as set forth above. NERC shall invoice New Brunswick quarterly. Each invoice shall be paid by the NBEUB or the NBEUB's designee within 30 days of the date of such invoice.

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

6. LIMITATION OF LIABILITY

The signatories agree they shall not be liable to one another for any loss or damage caused by reason of any act or omission in the good faith performance of their respective duties pursuant to the MOU or in conducting activities under the authority of the *Electricity Act*, except for liabilities arising from breaches of confidentiality, intentional or gross fault or liabilities that are not permitted to be excluded or limited pursuant to applicable law in New Brunswick. This section shall survive termination of the MOU.

7. DISPUTE RESOLUTION

In the event a dispute arises under this MOU amongst the signatories, representatives of the signatories with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner.

In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the signatories may agree upon, each signatory shall have all rights to pursue all remedies, except as expressly limited by the terms of this MOU. No signatory shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 7 have been exhausted.

8. TERM, TERMINATION AND AMENDMENTS

This MOU is made effective as of the date that the last signatory executes this MOU.

This MOU will commence as of the Effective Date and continue for a term of five years which automatically renews, unless earlier terminated in accordance with the provisions hereof. Any signatory may terminate this MOU at any time by providing one (1) year written notification to the other two signatories. However, this MOU may be terminated by the NBEUB providing thirty (30) days written notice to NERC and NPCC only in the case where there are legislative changes impacting the authority of the NBEUB.

Any amendment to this MOU requires the written consent of all signatories.

9. GOVERNING LAW

This MOU shall be governed by, and construed in accordance with, the laws of the Province of New Brunswick.

10. COUNTERPARTS

This MOU may be signed in counterparts, each of which may be deemed an original, and all of which together constitute one and the same agreement.

11. SEVERABILITY

Every term or condition of this MOU is severable from the others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this MOU has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.

12. NOTICES

All notices, requests, formal demands and other communications required or provided for in this MOU shall be given in writing to a signatory at the address set forth below, or at such other address as the signatories shall designate for itself in writing, and shall be delivered by hand or reputable overnight courier or via email. These points of contact can be changed at any time by written notification to the other signatories.

For NBEUB:

Ms. Ellen Desmond
Director of Legal and Administration
15 Market Square, Suite 1400
P.O. Box 5001
Saint John, NB
Canada
E2L 4Y9
(506) 658-2504
Email: ecdesmond@nbeub.ca

For NERC:

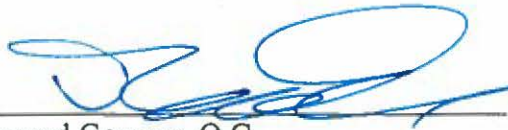
Mr. Charles Berardesco
Senior Vice President & General Counsel
1325 G Street N.W., Suite 600
Washington, DC 20005
United States
(202) 400-3000
Email: charles.berardesco@nerc.net

For NPCC:

Mr. Damase Hebert
Senior Compliance Attorney
1040 Avenue of the Americas, 10th floor
New York, NY
United States, 10018
(212) 302 2782
E-mail: dhebert@npcc.org

13. SIGNATURES

Signed for and on behalf of the NBEUB

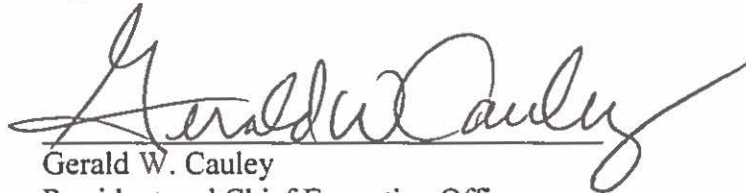


Raymond Gorman, Q.C.
Chairman and Chief Executive Officer
New Brunswick Energy and Utilities Board

on August 8, 2016

at Saint John, New Brunswick

Signed for and on behalf of NERC



Gerald W. Cauley
President and Chief Executive Officer
North American Electric Reliability Corporation

on August 10, 2016

at Halifax, Nova Scotia, Canada

Signed for and on behalf of NPCC



Edward A. Schwerdt
President and Chief Executive Officer
Northeast Power Coordinating Council, Inc.

on August 10, 2016

at Halifax, Nova Scotia, Canada