

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ONTARIO ENERGY BOARD
AND
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

This Memorandum of Understanding (“MOU”) between the Ontario Energy Board (the “Board”) and the North American Electric Reliability Corporation (“NERC”) is contemplated in, and is entered into further to, an application filed with the Board on April 4, 2006 by the North American Electric Reliability Council, on behalf of its affiliate NERC, for recognition of NERC as an Electric Reliability Organization (“ERO”), a companion application filed the same date for recognition of certain reliability standards, and a request that the Board approve NERC’s certificate of incorporation, its By-laws and its Rules of Procedure. This MOU sets forth the mutual understanding of each of the signatories in relation to NERC’s status as an ERO in Ontario.

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

1. General Matters

Interpretation

References in this MOU to a NERC reliability standard are to a reliability standard that has been adopted by NERC and include the following:

- any amendment to or revision of a reliability standard that has been adopted by NERC; and
- any reliability standard that is developed by the Northeast Power Coordinating Council (“NPCC”) and that is adopted by NERC, as well as any amendment to or revision of such a reliability standard.

Acknowledgement of Status of the Board

The Board is a corporation continued under the *Ontario Energy Board Act, 1998* (Ontario) and has statutory responsibility for regulating the electricity sector in Ontario, Canada in the manner and to the extent described in the *Electricity Act, 1998* (Ontario), the *Ontario Energy Board Act, 1998* (Ontario) and other applicable statutes.

The Board is a statutory body with specific powers and authorities that derive from legislation, and those powers and authorities are subject to limitations and constraints, including limitations and constraints that flow from applicable legislation and from the Board’s status as a quasi-judicial tribunal.

The Ontario Ministry of Energy, and not the Board, is responsible for the legislation that governs the activities of the Board.

The Ontario Independent Electricity System Operator (the “IESO”), and not the Board, is responsible for making market rules that govern the wholesale electricity market, subject to regulatory oversight by the Board as described below.

Acknowledgement of Status of NERC

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

Once the Ontario Ministry of Energy has confirmed that NERC is a successor to the North American Electric Reliability Council, NERC will be a “standards authority” within the meaning of the *Electricity Act, 1998* (Ontario).

General Commitment

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”).

NERC By-laws and Rules of Procedure

Ontario’s current legislative framework does not expressly contemplate approval by the Board 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 regulators. To that end, NERC will inform the Board of, and seek the Board’s input on, any proposed changes to NERC’s By-laws and Rules of Procedure.

Representation of Canadian Regulators on NERC Committees

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

Information on Reliability Performance

NERC’s predecessor has produced, and NERC will continue to produce and will provide to the Board, information related to the reliability performance of the Ontario control area and of entities regulated by the Board, 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 Ontario market participants (as that term is defined in the *Electricity Act, 1998* (Ontario)) and the IESO in the development and enforcement of NERC reliability standards. Under the *Electricity Act, 1998* (Ontario), the IESO's statutory objects include: "to participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems" and "to establish and enforce standards and criteria relating to the reliability of transmission systems".

Notification of NERC Reliability Standards

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

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

NERC will keep the Board informed on the status of any regulatory approvals of NERC reliability standards in jurisdictions outside of Ontario, and of the date on which such reliability standards will come into effect in all jurisdictions, including Ontario.

Approval and Remand of NERC Reliability Standards in Ontario

In Ontario, NERC reliability standards are referenced generically in the wholesale market rules that are developed and administered by the IESO by means of a market rule obligation imposed on various market participants to comply with all applicable reliability standards. NERC reliability standards therefore currently have effect in Ontario under the market rules, subject to the provisions of the market rules and of applicable legislation. NERC reliability standards are not currently subject to formal approval by the IESO for application in Ontario. The Board 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, 1998* (Ontario), and the resulting ability to remand market rule amendments or provisions to the IESO in appropriate cases, as well as appellate functions in relation to certain decisions of the IESO. However, Ontario's current legislative framework does not expressly contemplate the formal approval of NERC reliability standards by the Board for application in Ontario, nor does it expressly provide for the Board to remand NERC reliability standards to NERC.

The signatories recognize that this framework will continue under the ERO regime.

The signatories also recognize that the exercise by the Board of its statutory authorities in relation to the market rules, market participants or the IESO may affect the application of a NERC reliability standard in Ontario. Where this is the case, the Board will inform NERC of the outcome of the matter.

Notice of Remand of Reliability Standards in Another Jurisdiction

NERC will notify the Board in the event that a NERC reliability standard is remanded to NERC in any jurisdiction outside of Ontario.

NERC and the Board will work together, 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 Board's powers and authorities.

Ontario-specific Reliability Standards

The IESO has the authority under the market rules to develop Ontario-specific reliability standards to supplement those of NERC. It is the understanding of the signatories that IESO 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 Ontario at the relevant time.

3. Compliance Aspects

Compliance Accountability in Ontario

The IESO will continue to be the sole entity in Ontario accountable to NERC for compliance with all NERC reliability standards applicable to Ontario market participants and will be subject to NERC's standards compliance monitoring and enforcement processes. The IESO is required under the Ontario market rules (and thus also by the terms of its licence issued by the Board) to comply with applicable reliability standards. Ontario market participants will continue to be accountable to the IESO and to the Board for complying with all applicable reliability standards as required by the market rules.

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

Appellate Authority

The IESO, as the sole Ontario 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 of violations of NERC reliability standards or from the associated assessment of penalties.

Under the *Electricity Act, 1998* (Ontario), the Board 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 or other amount of money that exceeds the amount prescribed by a regulation made under that Act.

Disclosure of Violations of NERC Reliability Standards in Ontario

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 Ontario 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 Ontario market rules, the disclosure systems for NERC reliability standard violations must be made compatible with those for Ontario market rule violations. Disclosure by NERC will be restricted to confirmed violations (as defined above). Disclosure in Ontario will be effected in accordance with the practice of the IESO or of the Board, as applicable.

Information on Compliance

NERC will provide the Board with information relevant to Ontario on issues related to compliance with NERC reliability standards, including reports on:

- Compliance audits and spot checks;
- Readiness audits;
- 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 it is not the intention of NERC to impose financial penalties on the IESO 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 IESO.

Ontario market participants must comply with applicable NERC reliability standards as part of their market rule obligations. The IESO has the authority to impose financial penalties for non-compliance with the market rules, 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 IESO. The Board has the authority to impose administrative penalties for violation of licence conditions in accordance with and subject to the limitations in and under the *Ontario Energy Board Act, 1998* (Ontario). It has been the approach of the Board to rely on the IESO 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 Board's approach is not to rely on any intermediary in relation to the Board's role in enforcing compliance with the market rules by the IESO.

4. Funding of NERC

The Board acknowledges and accepts the process by which NERC will develop its annual budget, including charges or costs incurred by NPCC associated with carrying

out responsibilities detailed in a delegation agreement to be signed between NERC and NPCC.

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

The signatories acknowledge that it is the intention of NERC that all or substantially all of the payments to NERC respecting Ontario's share of the costs associated with NERC's reliability standards development and enforcement processes will be made by the IESO. NERC will work with the IESO to establish Ontario's share of those costs.

NERC acknowledges that the IESO's annual proposed expenditures and revenue requirements are subject to review and approval by the Board through a public process, and that there is no guarantee that any given expenditure or element of the IESO'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 notice.

6. Points of Contact

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

for NERC:

David Cook
Vice President & General Counsel
North American Electric Reliability Corporation
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for the Board:

Peter Fraser
Manager, Wholesale Power Policy
Ontario Energy Board
P.O. Box 2319
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These points of contact can be changed at any time by notification to the other signatory.

NERC agrees to include the Board contact, or a person designated for this purpose by the Board contact, on its e-mail circulation list.

7. Signatures

Signed this 25th day of October, 2006:

North American Electric Reliability Corporation <i>Original Signed By</i> Richard P. Sergel <hr/>	Ontario Energy Board <i>Original Signed By</i> Howard I. Wetston <hr/>
Name President & CEO <hr/>	Name Chair <hr/>
Title	Title