

SENT BY RESS & COURIER

June 21, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

**Independent Electricity
System Operator**
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Dear Ms. Walli:

**Re: Application by Independent Electricity System Operator (“IESO”) for Licence
Renewal
Board File No.: EB-2013-0066
Reply Submission**

Please find attached the Independent Electricity System Operator’s (“IESO”) reply submission in Board proceeding, EB-2013-0066. Two (2) hard copies of this submission have been sent by courier to your attention.

Yours truly,

Original Signed by

Tam Wagner, P. Eng.
Senior Regulatory Analyst
Independent Electricity System Operator

cc (email only): Irina Kuznetsova, Ontario Energy Board

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ONTARIO ENERGY BOARD
APPLICATION FOR LICENCE RENEWAL
REPLY SUBMISSION OF THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR
("IESO")

Overview

This is the response of the IESO to comments received on the IESO's application to renew its licence with the Ontario Energy Board (the "Board") under section 60 of the *Ontario Energy Board Act, 1998* (the "OEB Act"). The IESO's application was filed on March 1, 2013 and the Board assigned file number EB-2013-0066 to the application.

There were no requests for intervenor status in this proceeding and the only substantive comments received were those of Board Staff filed on May 28, 2013¹. In its submission, Board Staff commented on the IESO's proposed changes as outlined in the application which include:

- a) A licence term of twenty years;
- b) Removing section 5.2 which is a condition applicable only to interim and transitional licences;
- c) Minor editorial modifications for consistency with legislation and throughout the licence; and
- d) Amendments to sections 14, 16 and 17 should a Ministerial Directive enable these changes.

Board Staff also proposed several new reporting obligations for the IESO to be included as additional conditions of the IESO's licence.

Part I of this submission addresses Board Staff comments on the IESO's proposed changes while Part II sets out the IESO's position on the need for, and appropriateness of, including each of the Board Staff's proposed reporting requirements as licence conditions.

Part I - Changes Proposed by IESO

a) Twenty-Year Term

As stated previously, the IESO is seeking to renew its licence for a twenty-year term. Given that the IESO's mandate and core responsibilities have not changed over the past ten years, a longer term is appropriate and would reduce administrative costs associated with licence processing. Further, twenty-year terms are standard for many transmitters and generators who are licensed by the Board to participate in Ontario's electricity market.

¹ On March 26, 2013, Mr. Russ Houlding submitted a letter of comment in which he acknowledged that his comments were mainly addressed to government and not the IESO.

In their submission, Board Staff concurred with the IESO's assessment and submitted that a twenty-year term is appropriate.

b) Removal of Section 5.2 of the Licence

Section 5.2 of the IESO's current licence includes a condition that originated from a Ministerial Directive dated March 16, 1999 and approved by Order in Council 600/99 dated March 24, 1999 (the "Directive"). This condition was applicable to interim and transitional licences only under section 129 of the OEB Act, which was repealed in 2003. As such, the IESO proposed to remove this section.

Board Staff stated that there is no obligation on the Board to maintain this licence condition and agreed that this licence condition should be removed.

c) Minor Modifications to the Licence

The IESO proposed minor modifications to its licence for greater consistency with current legislation and throughout the licence itself. Board Staff, in their submission, agreed with the IESO's proposal with a few exceptions. To address these exceptions, Board Staff proposed the following alternatives, which the IESO supports:

- Revising the definitions of "Market Surveillance Panel" and "standards authority" in the licence so that they are the same definitions found in section 2 of the *Electricity Act, 1998*;
- Adding the definition of "reliability standard" found in section 2 of the *Electricity Act, 1998* as it is used in paragraph (f) of section 6.2 of the licence but it is not defined;
- Referring to "a holiday" within the meaning of the *Legislation Act, 2006*;

The IESO also proposed to delete the obligation in paragraph (c) of section 6.2 because the obligation set out in this paragraph is covered by the more general obligation to comply with the Market Rules that is included in section 7 of the licence. While Board Staff agreed that this requirement is indeed covered in section 7, Board Staff submitted that the Board may wish to consider whether there is nonetheless merit to retaining a reference to this obligation in section 6.2 as a useful reminder of it as a specific reporting requirement. Should the Board decide it is a useful reminder, the IESO has no concerns about retaining the provision.

d) Amendments to Sections 14, 16 and 17 of the Licence

In its application, the IESO identified the licence conditions included in sections 14, 16 and 17 originated from the Directive and that any changes to, or removal of, these sections would require another Ministerial directive. Board Staff re-iterated this in their submission and further stated that changes to sections 14, 16, 17 and 12.2 (which also originated from the Directive) should not be made at this time.

The IESO also supports Board Staff's proposal that if changes to section 16 were to become permitted, consideration should be given to deleting section 16.1 altogether because the Market Surveillance Panel now resides with the Board rather than being a panel of the IESO.

Part II – New Licence Conditions Proposed by Board Staff

Board Staff proposed new licence conditions to require filings relating to three matters:

1. Annual Reporting on Implementation of Market Surveillance Panel Recommendations;
2. Filing re. Market Rule Amendment Review Application; and
3. Filings re. Reliability Standards
 - A. Filing at the time of posting of a reliability standard
 - B. Filing re. FERC review of reliability standard
 - C. Filing re. “Non-ANSI” standards

Board Staff submits that including these matters as licence conditions will not only be of assistance to the Board, but will also provide greater regulatory predictability for the IESO in term of the Board’s needs.

In preparing this response, the IESO met with Board Staff to fully understand the concerns of Staff and their informational needs. In addition, the IESO considered the following in assessing each of Board Staff’s proposed new reporting obligations:

- Does the IESO have the information?
- To what extent is that information already being provided to the Board by the IESO or some other entity?
- Is the frequency of the proposed filings and the associated effort to provide such information reasonable for the purpose for which it is being requested?

The IESO’s response to the additional licence conditions recommended by Board Staff is set out below.

1. Annual Reporting on Implementation of Market Surveillance Panel Recommendations

Board Staff proposed the following licence condition:

provide the Board, on or before the end of each calendar year, with the status of actions taken by the Licensee further to all recommendations addressed to the Licensee in any report issued by the Market Surveillance Panel in that year and the preceding four calendar years to the extent that they remain outstanding and, where no action has been taken in relation to a recommendation, the rationale for not taking action.

The IESO does not object the addition of this proposed licence condition but suggests amending the language to address a potential timing concern.

The IESO appreciates the Board’s interest in working with the IESO to address recommendations made by the Market Surveillance Panel (MSP)². The IESO already reports on these recommendations in two ways:

² In his 2011 Annual Report, the Auditor General made the following recommendation:

1. A letter from the IESO's Chief Executive Officer to the Chair of the Board advising of the actions the IESO intends to take in response to recommendations made in the MSP's semi-annual monitoring reports, along with a status update on any actions that the IESO may be taking in response to recommendations in the immediately preceding MSP report; and
2. A document posted on the IESO's website that contains its responses to recommendations made in MSP reports.

While Board Staff acknowledged that the IESO has, for many years, posted on its website a document that contains its responses to MSP recommendations, Board Staff stated that, to their knowledge, the document is not updated to reflect the current status of older recommendations.

The IESO wishes to clarify that the document posted on the IESO's website is updated after each and every MSP monitoring report to reflect not only the newest recommendations, but also the status of older recommendations. However, the IESO acknowledges that where the status of older recommendations remains the same, no changes are made to the report so it is not obvious to the reader that the IESO has reviewed all recommendations.

In addition, the IESO wishes to propose an amendment to the suggested licence condition to address a potential timing concern with regards to an MSP monitoring report issued late in a calendar year. As proposed, the requirement may not provide sufficient time for the IESO to develop its response to a report issued in December. The current reporting practice, established through the Chair of the Board's letter to the IESO's Chief Executive Officer, provides the IESO with thirty days to advise of its plans to address the latest MSP recommendations. As such, the IESO proposes the following licence condition be added as a new paragraph in section 6.2:

provide the Board, on or before the end of each calendar year, with the status of actions taken by the Licensee further to all recommendations addressed to the Licensee in any report issued by the Market Surveillance Panel prior to December in that year, and the preceding four calendar years to the extent that they remain outstanding and, where no action has been taken in relation to a recommendation, the rationale for not taking action. The Licensee's response to recommendations in any report issued by the Market Surveillance Panel within 30 days of the end of the calendar year will be included in the succeeding report.

2. Filing re. Market Rule Amendment Review Application

Board Staff proposed a new licence condition as follows:

The Licensee shall, within seven days of the date of the filing of an application to review a Market Rule amendment under section 33 of the Electricity Act, file with the Board the following in respect of that Market Rule amendment:

... the Board should ... work more proactively with the [IESO] to address the high-priority recommendations from the Market Surveillance Panel. (at page 79)

- i. all Market Rule Amendment Submissions relating to the amendment, including any covering memoranda;
- ii. all written submissions received by the Licensee in relation to the amendment;
- iii. minutes or meeting notes of all stakeholder meetings (including meetings of the Licensee's Stakeholder Advisory Committee) and of all meetings of the Licensee's Technical Panel at which the amendment or the subject matter of the amendment was discussed;
- iv. a list of all materials related to the amendment or the subject matter of the amendment tabled before any stakeholders (including the Licensee's Stakeholder Advisory Committee) or before the Licensee's Technical Panel
- v. a list of all materials tabled before the Board of Directors of the Licensee in relation to the amendment or the subject matter of the amendment, and a copy of all such materials other than those already captured by item (i) above;
- vi. a copy of the decision of the Board of Directors of the Licensee adopting the amendment;
- vii. any analysis conducted by the Licensee relating to the costs and benefits of the amendment, to the extent not already captured by any of the items above;
- viii. all materials relating to the development and consideration of options that involved alternatives to the amendment, to the extent not already captured by any of the items above; and
- ix. any materials relating to the consistency of the amendment with the purposes of the Electricity Act, to the extent not already captured by any of the items above.

Items (i) – (vi)

The IESO does not object to a licence condition obligating the IESO to produce items (i) – (vi) within seven days after the filing of an application to review a market rule amendment.

Board Staff submitted that the Board and parties to a market rule amendment review proceeding would be assisted by the production of relevant information as early as possible following the filing of an application to review. In light of the Board's statutory requirement to issue an order that embodies its final decision within sixty days after receiving an application, the IESO is prepared to post this information within seven days of the date of the filing of an application for review. The IESO agrees that this body of information, together with the applicant's filing initiating the review, will provide the Board with a good base of contextual information should it be requested to make procedural rulings at the initial stages of the proceeding.

Items (vii) – (ix)

The IESO strongly objects to a licence condition that requires the production of information identified in items (vii) through (ix) at the outset of every application to review a market rule amendment. Requiring the IESO to produce these additional materials in advance of any deliberations by the Board not only denies the IESO's procedural rights to have the Board

address production requests that the IESO believes to be excessive, but also denies those rights to third parties whose material may be in the IESO's possession.

The IESO agrees with the Board Staff observation that the document production process can be demanding, as evidenced in the two market rule amendment review proceedings. However, the demanding nature of the process does not justify a generic requirement to automatically produce, at the outset of every market rule amendment review application, materials that may not be relevant to the issues in the proceeding nor useful to the Board in fulfilling their statutory mandate. The statutory tests that apply in relation to such applications, as set out in section 33(9) of the *Electricity Act, 1998*, are whether the market rule amendment is inconsistent with the purposes of the *Electricity Act, 1998* or unjustly discriminates against or in favour of a market participant or class of market participants.

Each application will raise its own issues around those tests. In dealing with the particulars of each case, the parties should have the opportunity to make submissions with respect to the appropriate scope of additional document production, both by the IESO and others. Generic requirements on the IESO, beyond those listed in items (i) through (vi), create a substantial risk of driving up the complexity and costs of the proceeding unnecessarily – both for the IESO directly and through the time spent by or on behalf of all intervenors and the applicant in reviewing materials that may be ruled as not being of assistance to the Board in addressing the issues before it.

In EB-2013-0029, dealing with the dispatching of, and the establishment of floor prices for, variable generation facilities, the Applicant requested documents that were, in the IESO's opinion, beyond the scope of the review and beyond the control of the IESO. Only after parties had the opportunity to make submissions did the Board fashion an Order which, in addition to covering items (i) – (vi) above, also required production of the following:³:

- The analysis conducted by the IESO relating to the environmental benefits, cost saving, and system operational efficiencies that could be gained through the Renewable Integration Amendments, to the extent not already captured by any of the items above; and
- Information relating to the consistency of the Renewable Integration Amendments with the purposes of the Electricity Act, including all materials related to the development and consideration of options that involved alternatives to imposing the Renewable Integration Amendments' dispatch and floor price requirements on variable generators, to the extent not already captured by any of the items above.

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http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/381253/view/PO1_RES_G_20130129.PDF

Further, as to what constituted “materials”, in Procedural Order 3, the Board defined materials as “all materials (including reports, presentations, and analyses, but excluding correspondence)”⁴.

In short, the Board crafted a specific Order tailored to deal with the specific issues identified in that case – bringing a focus to the proceeding that would not have been achieved through generic requirements.

The IESO submits that the timely provision of the information under items (i)-(vi) will:

- Give the Board members a good understanding of the potential issues relating to the statutory tests under section 33(9) of *the Electricity Act, 1998*;
- Provide a proper foundation for considering a motion for further productions, if necessary, while preserving the rights of the parties to make submissions to the Board in that regard; and
- Retain the Board’s ability to focus the proceedings in light of the specific issues raised.

The IESO also notes that Board Staff has been attending the Technical Panel⁵ (“TP”) meetings since March 2005 as an observer, a practice established at the request of the Board⁶ so that the Board is better prepared to review market rule amendments. By hearing TP discussions first-hand, this observer should be well-positioned to quickly assist the Board in understanding the key issues associated with any application to appeal a market rule amendment.

For the reasons outlined above, the IESO proposes the following alternative licence condition:

The Licensee shall, within seven days of the date of the filing of an application to review a Market Rule amendment under section 33 of the Electricity Act, file with the Board the following in respect of that Market Rule amendment:

- i. all Market Rule Amendment Submissions relating to the amendment, including any covering memoranda;
- ii. all written submissions received by the Licensee in relation to the amendment;
- iii. minutes or meeting notes of all stakeholder meetings (including meetings of the Licensee’s Stakeholder Advisory Committee) and of all meetings of the Licensee’s Technical Panel at which the amendment or the subject matter of the amendment was discussed;

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http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/383089/view/decision%20on%20motion_po3_RESG_20130212.PDF

⁵ The TP reviews and proposes amendments to the market rules on an ongoing basis and, as requested, advises the IESO Board on specific technical issues related to the operation of the IESO-administered markets.

⁶ http://www.ieso.ca/imoweb/pubs/tp/tp_Minutes_2005Mar22.pdf, pg. 5-6

- iv. a list of all materials related to the amendment or the subject matter of the amendment tabled before any stakeholders (including the Licensee's Stakeholder Advisory Committee) or before the Licensee's Technical Panel
- v. a list of all materials tabled before the Board of Directors of the Licensee in relation to the amendment or the subject matter of the amendment, and a copy of all such materials other than those already captured by item (i) above; and
- vi. a copy of the decision of the Board of Directors of the Licensee adopting the amendment.

In the alternative, if the Board concludes that it is necessary and appropriate for items (vii) - (ix) to be produced at the outset of every application for review, the IESO submits that materials as referenced in items (vii) - (ix) should be defined such that correspondence is explicitly excluded. In its decision in EB-2013-0029, the Board stated that "the production of correspondence has the potential to be particularly onerous for the IESO but of relatively limited incremental value in assisting the Board"⁷.

Filings re Reliability Standards

A. Filing at the time of posting of a reliability standard

Board Staff submitted that it would be of assistance to the Board for the IESO to provide supporting materials in respect of each reliability standard that is posted for the purposes of section 36.2 of the *Electricity Act, 1998*.

Board Staff proposed the following new licence condition:

The Licensee shall, within seven days of the posting of a reliability standard under section 36.2(1) of the *Electricity Act*, file with the Board the following information or such other information as may be determined by the Board from time to time:

- i. a summary of the purpose of the reliability standard;
- ii. the class(es) of market participant to which the reliability standard will apply;
- iii. the anticipated technical impact that the reliability standard will have in Ontario;
- iv. an indication of the magnitude of costs associated with implementation of the reliability standard in Ontario, if known by the Licensee;
- v. a summary of the level on Ontario support for or opposition to the reliability standard during the standards development process, including the result of the final vote of the Registered Ballot Body of NERC or NPCC; and
- vi. any salient history regarding the reliability standard, including whether the reliability standard has already been the subject of an order issued by the Federal Energy Regulatory Commission.

⁷ Ibid, page 6

The IESO submits that most of this information is already available to the Board through the petition of NERC to the Board and through information publicly available on the IESO website. However, it is our understanding that it would be of assistance to the Board for the IESO, as the Ontario expert in reliability standard development, to provide a summary following the posting of a reliability standard which includes the abovementioned details. As such, the IESO is supportive of the intent of this licence condition and proposes the following language be added as a new paragraph to section 6.2 of the IESO's licence, preceding the current 6.2(f):

provide the Board, within seven business days of the posting of a reliability standard under section 36.2(1) of the *Electricity Act, 1998*, with a summary that describes the purpose of the standard; class(es) of Ontario market participants to which the standard will apply; the anticipated technical impact in Ontario; the magnitude of costs associated with implementation, if known by the Licensee; the level of IESO support for the reliability standard including any Ontario market participant opposition, if known by the Licensee, and the result of the final vote of the Registered Ballot Body of NERC or NPCC; and any salient history including identification of a non-ANSI standard.

It is our understanding that Board Staff would be agreeable to this proposed language.

Currently, the IESO has a licence obligation to annually provide the Board with a summary of any significant activities related to the development of reliability standards (6.2(f)). With the inclusion of the new licence condition above, the IESO believes that some of the information already provided under section 6.2(f) would become redundant. Therefore, the IESO also proposes the following amendment to the existing section 6.2(f):

provide the Board, on or before the end of each calendar year, with a summary of any significant activities related to the development of reliability standards undertaken by the Licensee pursuant to subsections 5(1)(d) or 5(1)(e) of the *Electricity Act*, *to the extent that such information has not already been provided under section 6.2 (e) above.*

B. *Filing re FERC review of a reliability standard*

Board Staff submitted that it would be helpful to the Board if the IESO were to notify the Board when the IESO becomes aware that the Federal Energy Regulatory Commission's ("FERC") review of a reliability standard has been completed. Board Staff proposed the following new condition be added to the IESO's licence:

"The Licensee shall notify the Board promptly upon becoming aware that the Federal Energy Regulatory Commission has released an order regarding a reliability standard."

The IESO does not believe that this should be a licence condition for the IESO.

Further, the IESO submits that the Board Staff's preamble and their proposal are inconsistent. The FERC issues orders for many reasons regarding reliability standards. The IESO submits that the FERC orders of interest to the Board are the final rules approving or remanding a reliability standard.

It is our understanding that this information should already be reported to the Board by NERC as per the Memorandum of Understanding (“MOU”) between the Board and NERC (see pages 3-4 of attachment 1).

In the MOU between the Board and NERC, section 2 addresses the development, approval, remand and application of NERC reliability standards. Section 2 states that “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”⁸ and “NERC will notify the Board in the event that a NERC reliability standard is remanded to NERC in any jurisdiction outside of Ontario”⁹. The IESO submits that the MOU between the Board and NERC addresses this proposed licence condition and to include this in the IESO’s licence would be duplicative.

If the Board is not receiving the required notifications, the IESO can assist by pursuing the necessary organizations to ensure appropriate communication protocols are in place.

C. *Filing re “Non-ANSI” standards*

Board Staff submitted that it would be of assistance for the Board to be notified of developments regarding non-ANSI standards on a timely basis and proposed the following licence condition:

Where the Licensee engages in a consultation regarding a non-ANSI standard under section 1.2.7 of Chapter 5 of the Market Rules, the Licensee shall promptly upon completion of that consultation provide a report to the Board that includes the following information:

- i. a description of the consultation process, including the identity of the market participants that were consulted;
- ii. a summary of the position of each market participant as expressed during the consultation;
- iii. the outcome of the consultation; and
- iv. where the outcome is the rejection of the non-ANSI standard, an indication of whether a “made in Ontario” standard is being considered in lieu of the non-ANSI standard.

The IESO supports the intent of Board Staff’s recommendation but would like to point out that the Market Rules already contain a requirement for the IESO to publish such a report. The IESO proposes, instead, that a copy of this report be provided to the Board.

The IESO submits that, as the IESO is amenable to the proposed licence condition (A) to file with the Board a summary of a posted reliability standard including the identification of a non-ANSI standard, timely notification would occur. The summary, as requested in proposed

⁸ Memorandum of Understanding between the Ontario Energy Board and the North American Reliability Corporation, pg. 3

⁹ Ibid, pg. 4

licence condition (A), would classify that a standard is non-ANSI, if applicable, and, as a result, the IESO will be commencing the necessary consultation process.

Board Staff is a member of the Reliability Standards Standing Committee¹⁰ (“RSSC”) and this committee would be involved in any non-ANSI standards consultation process. As such, the Board should be aware of developments during the consultation process.

Further, in chapter 5 section 1.2.7 of the Market Rules, there is an obligation of the IESO to “publish notice of its determination [that all or part of a *reliability standard* is in force in Ontario]”. In this notice, the IESO would address the items requested by Board Staff in their proposed licence condition.

Therefore, the IESO proposes that the following new condition be added to the IESO’s licence, as a new paragraph in section 6.2:

provide the Board, where the Licensee engages in a consultation regarding a non-ANSI standard, with a copy of the notice of its determination, pursuant to section 1.2.7 of chapter 5 of the Market Rules, that would include a description of the consultation process, including the identity of the market participants that were consulted; a summary of stakeholder feedback expressed during the consultation; the outcome of the consultation; and where the outcome is the rejection of the non-ANSI standard, an indication of whether a “made in Ontario” standard is being considered in lieu of the non-ANSI standard.

All of which is respectfully submitted this 21st day of June, 2013.

Independent Electricity System Operator

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¹⁰ The RSSC assists Ontario market participants develop a more comprehensive understanding of their reliability obligations by notifying participants of reliability related information on new and developing reliability standards, providing a forum to discuss and develop consensus comments on new and developing reliability standards, and engaging participants in the standard development process of NERC and NPCC.

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Attachment 1: Memorandum of Understanding
Between the Ontario Energy Board
and the North American Electric Reliability Corporation

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**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
116-390 Village Blvd.
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(609) 4522-8060
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for the Board:

Peter Fraser
Manager, Wholesale Power Policy
Ontario Energy Board
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2300 Yonge Street
27th Floor
Toronto, Ontario M4P 1E4
(416) 440-7616
peter.fraser@oeb.gov.on.ca

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:

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| 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 |