

**Amended and Restated Memorandum of Understanding for the
North American Energy Standards Board, North American Electric Reliability Council
and the ISO/RTO Council**

This Memorandum of Understanding (“MOU”) is entered into this 15th day of May, 2003, among the North American Energy Standards Board (“NAESB”), the North American Electric Reliability Council (“NERC”), and the Independent System Operator/Regional Transmission Organization Council (“ISO/RTO Council”) (collectively, “Parties”).

Whereas NAESB is the primary industry forum for development and promotion of business practice and electronic communication standards in North American wholesale and retail natural gas and electricity markets and its stakeholder-based standards development process is well-suited for the resolution of issues that affect or implicate business practices;

Whereas NERC is the primary industry organization for developing reliability standards for the reliable operation and planning of the bulk electric systems serving North America and NERC as an organization is well-suited for addressing reliability issues related to such standards;

Whereas the ISO/RTO Council is a duly formed organization composed of ISO and RTO chief executive officers, and its Charter has been filed with the Federal Energy Regulatory Commission (“FERC”) and other appropriate regulatory authorities in North America;

Whereas each of the Parties has duly authorized its representative to execute this MOU and bind the Organization to abide by the provisions set forth in this MOU;

Whereas the ISO/RTO Council is not a standards development organization, but may participate in standardization activities and existing standards development organizations, including preparing proposed standards for those organizations;

Whereas the Parties understand “policy” in the context of this MOU to mean a definite course of action selected from among alternatives that will guide and determine subsequent material decisions, and also understand “ISO and RTO policy” to mean major market and transmission tariff policies¹ that would normally be proposed and implemented by ISOs and RTOs and which require approval by the FERC or other appropriate regulatory authorities in North America;

¹ In Canada, the more common term for this is market rules.

Whereas NAESB is precluded by its Charter from setting industry policy, NERC is organized to set reliability policy, and individual RTOs and ISOs are organized to operate transmission systems and administer markets;

Whereas individual ISOs and RTOs must, in carrying out their responsibilities, develop ISO and RTO policy proposals and must also, subject to receiving all required and appropriate regulatory approvals, implement such policies;

Whereas the Parties agree that there is a need to develop and maintain standards to enhance electricity markets and maintain reliability throughout North America;

Whereas the Federal Energy Regulatory Commission (“FERC”) has “strongly urged” the Parties to coordinate standards development efforts;

Whereas most electric industry standards have both business and reliability implications and range along a continuum from “predominantly reliability” in nature to “predominantly business” in nature;

Whereas the Parties agree that a coordination process should be developed among the Parties to ensure that the development of business practice and reliability standards is coordinated and harmonized with the development, approval and implementation of ISO and RTO policy and that every practicable effort is made to eliminate overlap and duplication of efforts;

Whereas, the FERC Commissioners and Staff have encouraged the Parties to bring the functions previously addressed by the Electronic Scheduling Collaborative (“ESC”) and the Oasis Standards Collaborative (“OSC”) into the functionally appropriate Party organization, and through that organization into a single process for coordinating standard-setting;

Whereas, the Parties agree that all the current activities of the ESC and OSC should be included in one or several of the Parties’ organizations and thus brought into the single standard setting coordination process as defined in this Memorandum of Understanding;

Whereas, the Parties agree that the coordination that takes place under this MOU should not delay the development of standards or the implementation of ISO and RTO policy;

Whereas, the Parties shall not be obliged to change their existing standards approval processes, but the parties agree it would be beneficial to keep an open mind for future changes to be considered that would improve the processes and achieve the goals contained within this MOU; and,

Whereas, the Parties intend this MOU to be a living document and recognize that the coordination procedures detailed in this MOU are likely to require revision as the Parties gain experience working under these procedures,

Now therefore, the Parties agree as follows:

1. Purpose and Principles of Agreement

1.1 The Parties propose to establish a coordination process set forth in Section 2 of this MOU. The coordination process is intended to avoid overlap and duplication of effort in the activities of the three organizations by distinguishing the development, proposal and implementation of ISO and RTO policy from the setting of reliability standards or business practice standards. The coordination process will accomplish this primarily through the Joint Interface Committee (“JIC”) comprised of representative members of NERC, NAESB and the ISO/RTO Council. The JIC is not intended to delay standards development or the implementation of ISO and RTO policy, but to facilitate efficient policy implementation and standards development and to avoid duplication of effort between and among the Parties.

1.2 The Parties recognize that many standards have implications that affect aspects of reliability, market administration and transmission system operation, and business standards and communication protocols. Accordingly, the JIC will evaluate each standards development proposal, as well as the annual plans² of each organization, in a two-stage process as described in section 2.5 before determining whether NAESB or NERC should develop the proposed standard.^{3 4}

1.3 The Parties intend to have the coordination process set forth in Section 2 of the MOU in full operation by June 1, 2003. The Parties may mutually agree to move the start date for the coordination process.

² The JIC is not limited to new standards or annual plan items, but can receive existing proposed standards or annual plan items referred to it by any Party.

³ While the JIC will evaluate the disposition of standards with the recognition that most standards have both reliability and business standards and communication protocols implications, the intent of NERC and NAESB (through the JIC) is that the coordination process should work toward the development of “standards for the industry” and avoid characterizing standards, wherever possible.

2. Coordination Process

2.1 The Parties agree to establish a process, as set forth in this section, for coordinating the development of proposed standards, in accordance with the principles in Section 1 of this MOU.

2.2 The JIC shall be responsible for the coordination process. The JIC shall be composed of representatives from NERC holding one-third of the votes, representatives from NAESB WEQ holding one-third of the votes and representatives from the ISO/RTO Council holding one-third of the votes. Each Party will determine its representatives to the JIC, with every effort to have each segment or area represented. The quorum necessary for the transaction of business at meetings of the JIC shall require a majority of the representatives of each of any two Parties. Any or all members of the JIC may participate in a meeting, including being counted as part of the quorum, by means of a communication system by which all persons participating in the meeting are able to hear each other. Use of notational balloting or proxies will not be permitted. NERC, NAESB and the ISO/RTO Council will separately determine whether designated alternates will be permitted to participate in place of their absent JIC representatives. The JIC will have co-chairs, one representing NERC, one representing NAESB, and one representing the ISO/RTO Council chosen by each Party from among its JIC representatives.

2.3 Decisions of the JIC will be by a simple majority of all votes cast, with each NERC representative present at a meeting having a vote equal to 33.3% divided by the number of NERC representatives participating in the meeting, each NAESB representative having a vote equal to 33.3% divided by the number of NAESB representatives participating in the meeting, and each ISO/RTO Council representative having a vote equal to 33.3% divided by the number of ISO/RTO Council representatives participating in the meeting. In the event any Party fails to be represented by at least one representative and quorum requirements are met, the remaining two Parties shall each receive 50% of the vote, to be divided equally among the Party's representatives. In the event of a tie vote, the matter will be referred to the Chairmen of the Parties present for the tie vote [or their Board level designee(s)] for resolution. In the determinations made under Section 2.6, each Party may abstain from voting on any question in which it determines it does not have a material interest.

⁴ The Parties expressly agree that reliability and business practice standards that are required for ISO/RTO Council activities would typically be developed by NERC and NAESB, consistent with this MOU.

2.4 The JIC will meet as necessary to review the annual plans of each organization. Additionally, the JIC will meet as necessary to review each Standards Authorization Request (“SAR”) that the Standards Authorization Committee (“SAC”) of NERC has approved for the drafting of a standard, each standard request that the NAESB Executive Committee (“EC”) has assigned to the Wholesale Electric Quadrant (“WEQ”) of NAESB and each ISO and RTO policy anticipated to be proposed or implemented by the ISO/RTO Council’s constituent organizations that may affect business practice standards and reliability standards.

2.5 In the first stage of its process, the JIC will evaluate the annual plans of each Party. If the JIC determines that an annual plan item would establish or require substantial modification to ISO and RTO policy, then standard setting activities associated with the annual plan item would normally be deferred⁵ until the FERC or other appropriate regulatory authorities in North America have exercised their authority to determine such policy issues. Once such ISO and RTO policy issues have been resolved, further standards development activity will be coordinated by the JIC according to this MOU. If the JIC does not determine that an annual plan item would establish or require substantial modification to ISO and RTO policy, then the item would continue through the standards development process. If the JIC determines that an aspect of the ISO/RTO Council’s annual plans would alter or require new business practice standards, communication protocol standards or reliability standards, those standards development activities would be coordinated by the JIC according to this MOU. The JIC may also recommend that a particular item or aspect of an item in one Party’s annual plan be removed from that Party’s annual plan and added to another Party’s annual plan in order to carry out the purposes of this agreement.

2.6 Once the JIC has made the determinations in section 2.5, the second stage of the process will take place. In this stage the JIC will consider the relationship of each specific standards proposal, including any standards proposals derived from ISO and RTO annual plan items, to the reliability responsibilities of NERC and the business standards and electronic communication protocol responsibilities of NAESB, and will refer the development of the standard as appropriate to the two organizations. In this stage, the JIC may also determine

⁵ If the FERC or other appropriate regulatory authorities in North America have already assigned the item to the ISO/RTO Council’s constituent organizations for development of a policy proposal, the Parties may await the policy

whether a specific standards request proposal would itself primarily establish or substantially modify ISO and RTO policy, in which case standards development may be deferred until the FERC or other appropriate regulatory authorities have determined the resolution of such policy issues. Once the JIC has assigned or referred the standards proposal for further development, the members and constituents of the other organizations are strongly encouraged to actively engage in the development process by participating in subcommittee, task force and working group deliberations as well as offering comments and recommendations on any and all aspects of the proposed standard or policy.

2.7 The JIC will make such determinations by the end of the month subsequent to the month in which the annual plan item, standards request proposal or proposed ISO and RTO policy is referred to the JIC. The JIC may prioritize submitted proposals if there are urgent reliability, business, or policy implications.

2.8 All interested individuals and entities are invited and encouraged to participate to the maximum extent possible consistent with membership or registration requirements in NERC, NAESB and the ISO/RTO Council standards development and policy development activity. None of the organizations places any membership or registration requirement on the submission of comments on draft proposed standards or policy development.

2.9 With respect to the provisions of section 2.6, either the determination of the JIC or the resolution reached in the event of a tie vote will become final after thirty days unless, within that thirty-day period, one of the Parties acts to withdraw a standards request proposal. In this event, the proposal may be redrafted and resubmitted to the JIC or the Parties shall meet to attempt to resolve the impasse. Should further consideration not result in a final determination, each of the parties may act consistent with its own standards development or policy definition process. Likewise, with respect to the provisions of section 2.5, a determination of the JIC or the resolution reached in the event of a tie vote will become final after thirty days unless, within that thirty-day period, one of the Parties disagrees with the determination. In this event, the annual plan item may be redrafted and resubmitted to the JIC or the Parties shall meet to attempt to further resolve the issue. Should further consideration not result in a final determination, each of

resolution. In the interim while awaiting the policy resolution, the Parties may identify specific standards activity needed to support any proposed policy resolution.

the parties may act consistent with its own standards development or policy development and implementation process.

2.10 Because the Parties' annual planning processes are iterative and are implemented through or otherwise affect the standards setting processes, the JIC may discuss coordination of ongoing annual plan development and implementation, and each Party, through its JIC members, may make recommendations regarding other Parties' annual plan development and implementation.

3. Filings With Governmental and Regulatory Authorities

3.1 Each Party shall be responsible for making filings with governmental and regulatory authorities as appropriate.

3.2 The Parties agree that all meetings of the JIC will be duly noticed, open and transcribed, and that the JIC's deliberations and all supporting documents, including any minority opinions, will be a matter of public record and may be provided by any Party or any of its members in any filing with governmental authorities of a standard or other issue which the JIC has acted upon.

4. Information Exchange

4.1 Each Party will inform each other party each year of its projected standards development, significant policy development and implementation activities for the coming year and of any additional planned activity as it arises. After exchange of this information, the JIC will meet to address any apparent areas of duplicate or inconsistent effort as soon as practical.

4.2 With respect to each particular initiative regarding an RTO or ISO policy activity, or request for a standard or standard development action, each Party will promptly inform the other Parties of the action, or the request in sufficient detail to convey the subject matter and timeline for resolution of such action or request.

5. Costs

5.1 Each Party shall bear its own costs.

6. Reevaluation

6.1 The Parties agree to meet annually during the anniversary month of the signing of this MOU to evaluate in good faith the effectiveness and efficiency of this MOU in meeting the goal of coordinating the standards and policy development-related activities of the three organizations and to make any appropriate revisions.

6.2 The Parties may also agree to revise this MOU, including the appendices, at any other time as mutually agreeable.

7. Termination

7.1 Each Party may withdraw from this MOU upon 60 days' written notice to the other Parties. Notification of such withdrawal should be provided to the FERC or other appropriate Provincial or state regulatory authorities in North America. Prior to the withdrawal becoming effective, the Parties agree to meet to discuss whether changes to this MOU would address the reasons prompting the withdrawal.

8. Miscellaneous

8.1 Each Party is legally authorized to execute this MOU and to exercise the rights and perform the obligations and responsibilities contained in it.

8.2 This MOU constitutes the entire agreement between the Parties with respect to establishing a coordination process intended to avoid overlap and duplication of effort in the activities of the three organizations by distinguishing ISO and RTO policy-making from the setting of reliability and business practice standards supporting energy markets.

8.3 This MOU may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one instrument.

8.4 None of the Parties shall be liable for any indirect, special, incidental or consequential damages arising in any way from any performance or failure to perform under this MOU.

8.5 The Parties agree that they will create a process whereby the notice of JIC activities and documents are posted on a web site for public access.

8.6 This is an Amendment and Restatement of the Agreement dated November 30, 2002 between NERC and NAESB.

8.7 Nothing in this Agreement is intended for the benefit of third parties, and no third party may claim for damages or otherwise to enforce any such benefit.

8.8 Nothing in this Agreement shall be construed as establishing a joint venture, agency relationship, any authority of any signatory or the JIC to bind another signatory, or as intending to violate the antitrust laws.

AGREED TO as of this 15th day of May, 2003.

NORTH AMERICAN ENERGY
STANDARDS BOARD

By: Leonard J. Hayner

ISO/RTO Council

By: W. J. Museler

NORTH AMERICAN ELECTRIC
RELIABILITY COUNCIL

By: Michelle K. Galt

APPENDIX A

JIC Coordination Guidelines

The coordination guidelines for use by the JIC as a starting point, under section 2.6 of the MOU, are based in part upon NERC's Functional Model⁶ and in part upon market criteria developed by NAESB. As the JIC gains more experience alternative coordination guidelines may be developed and used as the JIC sees fit.

In general, the functions identified in the functional model diagrams as "generator" (whether merchant or load-affiliated), "purchasing-selling entity," "load-serving entity," "market operator," "customer aggregator," and certain of the relationships and information flows of "transmission service provider," "transmission owner," and "transmission operator" are associated with how wholesale electric business practices and electronic communication protocols are developed for use by market participants. Additionally, market criteria such as product or service definitions, specifications, and compensation; prerequisites for participation in market and identification of costs and funding obligations; arrangements for product and service delivery to customers; creditworthiness requirements; market-related business practices; market settlement practices; and communication protocols in support of market criteria should be considered. Standards development proposals applicable to those functions and to the relationships and information flows among those functions normally would be assigned to NAESB, regardless of where the original request for the standard was filed.

In general, the functions identified in the functional model diagrams as "reliability authority," "balancing authority," "interchange authority," "compliance monitor," "NERC," and certain of the relationships and information flows of "transmission service provider," "transmission owner," and "transmission operator" are associated with the reliable operation of the bulk power system. Standards development proposals applicable to those functions and to the relationships and information flows among those functions normally would be assigned to NERC, regardless of where the original request for the standard was filed.

⁶ A PowerPoint display of NERC's Functional Model may be downloaded at <http://www.nerc.com/~filez/fmrtg.html>. The Functional Model identifies and defines the functions, associated responsibilities, and the relationships and information flows among those functions, that are necessary for electric systems to operate reliably and for participants in wholesale electricity markets to transact business efficiently, independent of which entities perform which functions.

In general, the functions associated with ISO and RTO policy relate to proposals for and implementation of a definite course of action selected from among alternatives that will guide and determine subsequent material decisions for administering electricity markets and operating regional transmission systems, with the approval of the FERC or other appropriate regulatory authorities in North America. Such policy issues would normally be deferred until the FERC or other appropriate regulatory authorities in North America have exercised their authority to determine such policy issues.

Other factors that may be considered by the JIC in determining the assignment of a particular standards development request to NERC or NAESB include (but are not limited to):

- a. Regulatory direction to one organization or the other;
- b. The priority of the proposal and the ability of either organization to take on and complete the standard development in a timely manner, given its other workload; and
- c. Whether the proposal includes a significant reliability compliance element.