

1 **Amended and Restated Memorandum of Understanding for the**
2 **North American Energy Standards Board, North American Electric Reliability Council**
3 **and the ISO/RTO Council**
4
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6 This Memorandum of Understanding (“MOU”) is entered into this ___ day of ____,
7 2003, between the North American Energy Standards Board (“NAESB”) and the North
8 American Electric Reliability Council (“NERC”) and the Independent System Operator/Regional
9 Transmission Organization Council (“ISO/RTO Council”) (collectively, “Parties”).

10 Whereas NAESB is the primary industry forum for development and promotion of
11 business practice and electronic communication standards in North American wholesale and
12 retail natural gas and electricity markets and NAESB is willing to make its stakeholder process
13 available for the resolution of related issues;

14 Whereas NERC is the primary industry organization for developing reliability standards
15 for the reliable operation and planning of the bulk electric systems serving North America;

16 Whereas the ISO/RTO Council is an organization composed of Regional Transmission
17 Organizations (RTO) and Independent System Operators (ISO) executive officers whose primary
18 responsibility is for determining and implementing policy-related matters for regional
19 transmission tariffs¹ and market management activities in coordination with the Federal Energy
20 Regulatory Commission (“FERC”) or other appropriate regulatory authorities in North America;

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

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

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

28 Whereas the Parties agree that a coordination process should be developed between the
29 Parties to ensure that business practice and reliability standards are harmonized and distinguished
30 from regional transmission tariff policy or market management policy-making and that every
31 practicable effort is made to eliminate overlap and duplication of efforts;

¹ In Canada, the more common term for this is market rules. Whenever the MOU refers to regional transmission tariffs, it incorporates market rules in Canada.

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

36 Whereas, the Parties agree that all the current activities of the ESC and OSC should be
37 included in the single standard setting coordination process as defined in this Memorandum of
38 Understanding;

39 Whereas, the Parties agree that the coordination that takes place under this MOU should
40 not delay the development of standards or the implementation of regional transmission tariff
41 policy or market management policy;

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

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

49 Now therefore, the Parties agree as follows:

50

51 **1. Purpose and Principles of Agreement**

52 1.1 The Parties propose to establish a coordination process set forth in Section 2 of
53 this MOU. The coordination process is intended to avoid overlap and duplication of effort in the
54 activities of the three organizations by distinguishing regional transmission tariff policy and
55 market management policy-making from the setting of reliability standards and also from
56 business practice standards. The coordination process will accomplish this primarily through the
57 Joint Interface Committee (“JIC”) comprised of representative members of NERC, NAESB and
58 the ISO/RTO Council. The JIC is not intended to create delay in standards development or the
59 implementation of regional transmission tariff policy or market management policy, but to
60 facilitate efficient standards development and avoid duplication of effort between and among the
61 Parties.

62 1.2 The Parties recognize that many standards have implications that include
63 combinations of reliability, business standards and communication protocols, regional
64 transmission tariff policy and market management policy. Accordingly, the JIC will evaluate
65 each standard development proposal, as well as the annual plans² of each organization, in a two-
66 stage process as described in section 2.5 (with this recognition in mind) before determining
67 whether NAESB or NERC should develop the proposed standard.^{3 4}

68 1.3 The Parties intend to have the coordination process set forth in Section 2 of the
69 MOU in full operation by April 1, 2003. The Parties may mutually agree to move the start date
70 for the coordination process.

71

72 **2. Coordination Process**

73 2.1 The Parties agree to establish a ~~coordination~~ process, as set forth in this section,
74 for coordinating the development of proposed standards, in accordance with the principles in
75 Section 1 of this MOU.

76 2.2 The JIC shall be responsible for the coordination process. The JIC shall be
77 composed of representatives from NERC holding one third of the votes and representatives from
78 NAESB WEQ holding one third of the votes and representatives from the ISO/RTO Council
79 holding one third of the votes. Each Party will determine its representatives to the JIC, with
80 every effort to have each segment or area represented. The quorum necessary for the transaction
81 of business at meetings of the JIC shall require a majority of the NERC representatives, a
82 majority of the NAESB representatives and a majority of the ISO/RTO representatives. Any or
83 all members of the JIC may participate in a meeting, including being counted as part of the
84 quorum, by means of a communication system by which all persons participating in the meeting
85 are able to hear each other. Use of notational balloting or proxies will not be permitted. NERC,
86 NAESB and the ISO/RTO Council will separately determine whether designated alternates will
87 be permitted to participate in place of their absent JIC representatives. The JIC will have co-

¹ 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.

⁴ The Parties expressly agree that standards that support regional transmission tariff policies or market management policies may be developed by NAESB and NERC, consistent with this MOU.

88 chairs, one representing NERC, one representing NAESB, and one representing the ISO/RTO
89 Council chosen by each Party from among its JIC representatives.

90 2.3 Decisions of the JIC will be by a simple majority vote, with each NERC
91 representative present at a meeting having a vote equal to 33.3% divided by the number of
92 NERC representatives participating in the meeting, each NAESB representative having a vote
93 equal to 33.3% divided by the number of NAESB representatives participating in the meeting,
94 and each ISO/RTO Council representative having a vote equal to 33.3% divided by the number
95 of ISO/RTO Council representatives participating in the meeting. Appendix B to this MOU
96 contains illustrative examples of this voting allocation. In the event of a tie vote, the matter will
97 be referred to the Chairmen of the Parties [or their Board level designee(s)] for resolution.

98 2.4 The JIC will meet as necessary to review the annual plans of each organization.
99 Additionally, the JIC will meet as necessary to review each Standards Authorization Request
100 (“SAR”) that the Standards Authorization Committee (“SAC”) of NERC has approved for the
101 drafting of a standard, each standard request that the NAESB Executive Committee (“EC”) has
102 assigned to the Wholesale Electric Quadrant (“WEQ”) of NAESB and each policy initiative
103 proposed by the ISO/RTO Council and their constituent organizations for regional transmission
104 tariff policy or market management policy⁵.

105 2.5 In the first stage of the process, the JIC will evaluate the annual plans of each
106 Party. If the JIC determines that an annual plan item would create or require substantial
107 modification to regional transmission tariff policy or market management policy, then the annual
108 plan item first should be referred to the ISO/RTO Council and their constituent organizations for
109 resolution of policy issues with the FERC or other appropriate regulatory authorities in North
110 America. Once the regional transmission tariff policy or market management policy issues have
111 been resolved, further standards development activity may be appropriate. If the JIC determines
112 that an annual plan item would not create or require substantial modification to regional
113 transmission tariff policy or market management policy, then the item would continue through
114 the standards development process. The JIC may also determine that a particular item in one
115 Party’s annual plan should be removed from that Party’s annual plan and added to another
116 Party’s annual plan in order to carry out the purposes of this agreement. Occasionally, the initial

⁵ Such policy initiatives include any market development, modification and coordination efforts, proposals, and tariff filings that affect or may affect business practice standards and reliability standards.

117 review of annual plan items may not identify policy issues; therefore, in the second stage of the
118 process, the parties may evaluate again whether a standards request proposal passing the first
119 screen would or would not primarily create or modify regional transmission tariff policy or
120 market management policy. Again, if the standards request proposal is identified by the JIC to
121 focus on the definition and setting of regional transmission tariff policy or market management
122 policy, the standards request proposal should be referred to the ISO/RTO Council and their
123 constituent organizations for resolution of policy issues with the FERC or other appropriate
124 regulatory authorities in North America, before a standard would be further considered. Once
125 such a determination has been made, then the standards request proposal would proceed for
126 standards development consistent with Appendix A.

127 2.6 Once the JIC has determined whether an annual plan item or standards request
128 proposal is 1) more appropriately a regional transmission tariff policy or market management
129 policy-setting activity to be addressed via the ISO/RTO Council and their constituent
130 organizations and FERC or other appropriate regulatory authorities in North America, or 2) that
131 the proposal is more appropriately a standards activity to be addressed by NERC or NAESB, the
132 second stage of the process will take place. In this stage the JIC will make determinations
133 regarding the appropriate organization for the development of standards request proposals,
134 NERC or NAESB, and assign such proposals for standards development consistent with such
135 determinations. In this stage, the JIC may also determine whether a specific standards request
136 proposal would primarily create or modify regional transmission tariff policy or market
137 management policy, in which case the proposal will be referred to the ISO/RTO Council and
138 their constituent organizations for resolution of policy issues with the FERC or other appropriate
139 regulatory authorities in North America. Once the JIC has assigned or referred the standards
140 request proposal for further development, the members and constituents of the other
141 organizations are strongly encouraged to actively engage in the development process by
142 participating in subcommittee, task force and working group deliberations as well as offering
143 comments and recommendations on any and all aspects of the proposed standard or policy.

144 2.7 The JIC will make such determinations by the end of the month subsequent to the
145 month in which the annual plan item, standards request proposal or proposed regional
146 transmission tariff policy or market management policy, is referred to the JIC. The JIC may
147 prioritize submitted proposals if there are urgent reliability, business, or policy implications.

148 2.8 All interested individuals and entities are invited and encouraged to participate to
149 the maximum extent possible consistent with membership or registration requirements in NERC,
150 NAESB and the ISO/RTO Council standards development and policy development activity.
151 None of the organizations places any membership or registration requirement on the submission
152 of comments on draft proposed standards or policy development.

153 2.9 Either the determination of the JIC or the resolution reached in the event of a tie
154 vote will become final after thirty days unless, within that thirty-day period, one of the Parties
155 acts to withdraw a standards request proposal. In this event, the proposal may be redrafted and
156 resubmitted to the JIC or the Parties shall meet to attempt to resolve the impasse. Should further
157 consideration not result in a final determination, each of the parties may act consistent with its
158 own standards development or policy definition process. Likewise for annual plan items, a
159 determination of the JIC or the resolution reached in the event of a tie vote will become final
160 after thirty days unless, within that thirty-day period, one of the Parties disagrees with the
161 determination. In this event, the annual plan item may be redrafted and resubmitted to the JIC or
162 the Parties shall meet to attempt to further resolve the issue. Should further consideration not
163 result in a final determination, each of the parties may act consistent with its own standards
164 development or policy definition process.

165

166 **3. Filings With Governmental and Regulatory Authorities**

167 3.1 Each Party shall be responsible for making filings with governmental and
168 regulatory authorities of the standards or requests for policy determinations that it develops, as
169 appropriate.

170 3.2 All filings must include, verbatim, any written comments on the approved
171 standard submitted by the Party that did not develop the standard, as well as the comments of
172 other interested parties.

173

174 **4. Information Exchange**

175 4.1 Each party will inform each other party each year of its projected standards
176 development and regional transmission tariff policy activity and market management policy
177 activity for the coming year and of any additional planned activity as it arises. After exchange of

178 this information, the JIC will meet to address any apparent areas of duplicate or inconsistent
179 effort as soon as practical.

180 4.2 With respect to each particular initiative regarding a regional transmission tariff
181 policy activity or market management policy activity, or request for a standard or standard
182 development action, each Party will promptly inform the other Parties of the action, or the
183 request in sufficient detail to convey the subject matter and timeline for resolution of such action
184 or request. -

185

186 **5. Costs**

187 5.1 Each Party shall bear its own costs.

188

189 **6. Reevaluation**

190 6.1 The Parties agree to meet annually during the anniversary month of the signing of
191 this MOU to evaluate in good faith the effectiveness and efficiency of this MOU in meeting the
192 goal of coordinating the standards development related activities of the three organizations and
193 to make any appropriate revisions.

194 6.2 The Parties may also agree to revise this MOU, including the appendices, at any
195 other time as mutually agreeable.

196

197 **7. Termination**

198 7.1 Each Party may withdraw from this MOU upon 60 days' written notice to the
199 other Parties and to the FERC or other appropriate [PROVINCIAL OR STATE] regulatory
200 authorities in North America. Prior to the withdrawal becoming effective, the Parties agree to
201 meet to discuss whether changes to this MOU would address the reasons prompting the
202 withdrawal.

203

204 **8. Miscellaneous**

205 8.1 This MOU constitutes the entire agreement between the Parties with respect to
206 establishing a coordination process intended to avoid overlap and duplication of effort in the
207 activities of the three organizations by distinguishing regional transmission tariff policy and/or

208 market management policy-making from the setting of reliability and business practice standards
209 supporting energy markets. -

210 8.2 This MOU may be executed in counterparts each of which shall be deemed an
211 original and all of which together shall constitute one instrument.

212 8.3 None of the Parties shall be liable for any indirect, special, incidental or
213 consequential damages arising in any way from any performance or failure to perform under this
214 MOU.

215 8.4 The Parties agree that they will create a process whereby the notice of JIC
216 activities and documents are posted on a web site for public access.

217 8.5 No third-party rights.

218 8.6 No joint ventures.

219 8.58.7 This is an Amendment and Restatement of the Agreement dated November 30,
220 2002 between NERC and NAESB.

221

222 AGREED TO this ____th day of _____, 2003.

223

224 NORTH AMERICAN ENERGY
225 STANDARDS BOARD

NORTH AMERICAN ELECTRIC
RELIABILITY COUNCIL

226

227 By: _____

By: _____

228

229 ISO/RTO Council

230

231 By: _____

(or signatures of each of the RTOs/ISOs)

232

232 APPENDIX A

233 JIC Coordination Guidelines

234 The coordination guidelines for use by the JIC as a starting point, under paragraph 2.4 of
235 the NERC-NAESB MOU, are based in part upon NERC’s Functional Model⁶ and in part upon
236 market criteria developed by NAESB. As the JIC convenes and as it gains more experience
237 alternative coordination guidelines may be developed and used as the JIC sees fit.

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

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

⁶ The current version of the functional model is illustrated in Aa PowerPoint display which of NERC’s Functional Model may be downloaded at <http://www.nerc.com/~filez/fmrtg.html>, follows. 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.

258 In general, the functions identified as policy for regional transmission tariffs and market
259 management of the wholesale electricity market are associated with a general plan of action for
260 the operation of the Regional Transmission Organizations and Independent System Operators as
261 defined through the FERC or other appropriate regulatory authorities in North America. These
262 functions normally would be referred to the ISO/RTO Council,

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

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

269
270

270 APPENDIX B

271 JIC Voting Examples

272 (Quorum requirement: A majority of each of the representatives of NAESB, NERC and the
273 ISO/RTO Council.)

274
275 Example 1:

- 276 1. The JIC is composed of: 6 representatives from NAESB
277 9 representatives from NERC
278 3 representatives from the ISO/RTO Council
- 279 2. All JIC members are in attendance at the meeting – quorum requirement is met.
- 280 3. Each group gets one third of the vote, which means that each NAESB JIC member gets
281 5.5% of the total vote (6 representatives times 5.5% = 33.3%), and each NERC JIC
282 member gets 3.7% of the total vote (9 representatives times 3.7% = 33.3%) and each
283 ISO/RTO Council JIC member has 11.1% of the total vote (3 representatives times
284 11.1% = 33.3%). When the votes are cast on an issue, the percentages cast is totaled and
285 if the votes in favor of an issue exceed 50%, the issue is considered adopted.

286 Example 2:

- 287 1. The JIC is composed of: 6 representatives from NAESB
288 9 representatives from NERC
289 3 representatives from the ISO/RTO Council
- 290 2. 3 NAESB JIC members, 6 NERC JIC members and 2 ISO/RTO JIC members are in
291 attendance at the meeting – quorum requirement is met.
- 292 3. Each group has one third of the vote, which means that each NAESB JIC member gets
293 11.15% of the total vote (3 representatives times 11.15% = 33.3%), each NERC JIC
294 member gets 5.5% of the total vote (6 representatives times 5.5% = 33.3%) and each
295 ISO/RTO Council JIC member has 16.6% of the total vote (2 representatives times
296 16.6% = 33.3%). When the votes are cast on an issue, the percentages cast is totaled and
297 if the votes in favor of an issue exceed 50%, the issue is considered adopted.

298
299 The two examples above illustrate the importance to the organizations for the JIC members to
300 attend the JIC meetings.