

Fellow WEQ Members:

Thank you for your recent comments, concerns and suggestions on the draft MOU. Our negotiating team met again this past Wednesday to specifically address the feedback we received from our members. I am pleased to report that we have reached resolution with the ISO/RTO Council on every major concern.

Attached to this e-mail is the MOU, which reflects resolution to the concerns expressed by a broad base of NAESB market interests. For your convenience I will recap below the major and minor concerns and indicate how and where the MOU captures resolution of the concern.

- MAJOR CONCERNS

1. *The MOU is not reflective of who the ISO-RTO Council is, what are they doing, when will they do it and how their decisions are binding.*

The MOU clarifies in whereas clauses that the members of the ISO/RTO Council are the Chief Executive Officers of existing ISOs and RTOs. The whereas clauses further clarify that the ISO/RTO Council has been duly formed and that its Charter has been filed with the FERC and other appropriate regulatory authorities. Finally, the MOU clarifies that the ISO/RTO Council has the legal authority to execute this MOU and bind the Organization to abide by the provisions set forth in the MOU. See MOU lines 16-20 and lines 217 - 218.

2. *The MOU should note that policy determination is the domain of FERC, and standards development in general is to be performed by standards development organizations.*

The MOU explicitly states in whereas clauses that the ISO/RTO Council is not a standards development organization. See MOU lines 21-23. The MOU clarifies that FERC is responsible for approving policy and that the ISO/RTOs normally implement and propose policy. Further, the MOU clarifies that NAESB does not set industry policy. See MOU lines 24-35.

3. *Phase 2 of the activities undertaken by the Joint Interface Committee includes the ISO-RTO Council with equal voting rights with NERC and NAESB on where standards development should occur (NERC or NAESB). If they do not have material interest in the outcome of who should be the standards developer, should they have such a vote?*

The negotiating team collectively agreed that the ISO/RTO council should have an opportunity to vote in Phase 2. The MOU clarifies in a whereas clause that a coordination process should be developed between 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. See MOU lines 43-47. Inclusion of an additional policy screen in Phase 2 supports ISO/RTO voting participation, See MOU lines 142-146; however, acceptable language to the ISO/RTO Council was added in Section 2.3 which introduces the explicit understanding that in the determinations made under Section 2.6 (Phase 2), each Party would be expected to abstain from voting on any question in which it determines it does not have a material interest. See MOU lines 112-114.

4. *Are the standards development activities undertaken by the Electronic Scheduling Collaborative and the OASIS Standards Collaborative appropriately addressed in the MOU, such that the groups' functions would be addressed in NERC, NAESB or the ISO Council by the procedures described in the MOU depending on the characteristics of the activity?*

The negotiating team unanimously agreed with whereas clauses in the document. See MOU lines 48-54.

5. *Has the timing of the development of the MOU and consideration for adoption by NERC Board of Trustees, NAESB Board of Directors and ISO-RTO Council been considered?*

Yes. Recent discussions with the FERC have reconfirmed that the Commission still desires to see the parties come to agreement in March. Further, since satisfactory resolution of concerns has been achieved there is no reason to delay approval of the MOU. Nevertheless, the implementation date has been left blank for the time being. See MOU line 83.

- MINOR CONCERNS

1. *Quorum*

The quorum requirement has been modified to eliminate the possibility that one party's non-participation could prevent any JIC action. See MOU lines 94-96 and 108-111.

2. *Termination of a party's agreement to the MOU*

The termination language was clarified to address the concern that withdrawal from the agreement is subject to FERC approval. See MOU lines 210-212.

3. *How the JIC meetings should be conducted*

Language was added to reflect that meetings would be conducted in the "sunshine". See MOU lines 182-186.

4. *Recognition of ongoing annual plan developments*

Language was added to allow the parties, through its JIC members, to make recommendations to the other party(ies) regarding ongoing annual plan efforts. See MOU lines 173-177.

Our negotiating team consisting of Scott Brown (WEQ Board member; Marketer/Broker Segment), Steve Corneli (WEQ EC Vice-chair), Rick Lentz (WGQ Board member), Bill Boswell (Chairman) and I have been negotiating with the ISO/RTOs and NERC since November. Even before the negotiations on this MOU began and going back as far as the conclusion of the WEQ formation, NAESB leadership and I have been striving to provide an appropriate and fair way for the ISO/RTOs to have a voice in the NAESB process. We believe this MOU achieves that goal.

We have received tremendous cooperation and feedback from the membership and collectively we believe that we have an agreement that will benefit the industry, has the support of the Commission and will provide clarity and access to better resources for NAESB WEQ. Therefore, we the negotiating team will recommend to the NAESB Board that it accept the MOU at the March 20th Board meeting.

I have arranged through the NAESB office a series of conference calls to provide an opportunity to discuss the MOU. Additionally, the members of the negotiating team and I are available if any member has any questions or would like to discuss the document.

Michael Desselle

NAESB Vice-Chair for the WEQ

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

64 Now therefore, the Parties agree as follows:
65

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

67 1.1 The Parties propose to establish a coordination process set forth in Section 2 of
68 this MOU. The coordination process is intended to avoid overlap and duplication of effort in the
69 activities of the three organizations by distinguishing the development, proposal and
70 implementation of ISO and RTO policy from the setting of reliability standards or business
71 practice standards. The coordination process will accomplish this primarily through the Joint
72 Interface Committee (“JIC”) comprised of representative members of NERC, NAESB and the
73 ISO/RTO Council. The JIC is not intended to delay standards development or the
74 implementation of ISO and RTO policy, but to facilitate efficient policy implementation and
75 standards development and to avoid duplication of effort between and among the Parties.

76 1.2 The Parties recognize that many standards have implications that affect aspects of
77 reliability, market administration and transmission system operation, and business standards and
78 communication protocols. Accordingly, the JIC will evaluate each standards development
79 proposal, as well as the annual plans² of each organization, in a two-stage process as described in
80 section 2.5 before determining whether NAESB or NERC should develop the proposed
81 standard.^{3 4}

82 1.3 The Parties intend to have the coordination process set forth in Section 2 of the
83 MOU in full operation by _____, 2003. The Parties may mutually agree to move the start date
84 for the coordination process.
85

86 **2. 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.

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.

87 2.1 The Parties agree to establish a process, as set forth in this section, for
88 coordinating the development of proposed standards, in accordance with the principles in Section
89 1 of this MOU.

90 2.2 The JIC shall be responsible for the coordination process. The JIC shall be
91 composed of representatives from NERC holding one-third of the votes, representatives from
92 NAESB WEQ holding one-third of the votes and representatives from the ISO/RTO Council
93 holding one-third of the votes. Each Party will determine its representatives to the JIC, with
94 every effort to have each segment or area represented. The quorum necessary for the transaction
95 of business at meetings of the JIC shall require a majority of the representatives of each of any
96 two Parties. Any or all members of the JIC may participate in a meeting, including being counted
97 as part of the quorum, by means of a communication system by which all persons participating in
98 the meeting are able to hear each other. Use of notational balloting or proxies will not be
99 permitted. NERC, NAESB and the ISO/RTO Council will separately determine whether
100 designated alternates will be permitted to participate in place of their absent JIC representatives.
101 The JIC will have co-chairs, one representing NERC, one representing NAESB, and one
102 representing the ISO/RTO Council chosen by each Party from among its JIC representatives.

103 2.3 Decisions of the JIC will be by a simple majority of all votes cast, with each
104 NERC representative present at a meeting having a vote equal to 33.3% divided by the number
105 of NERC representatives participating in the meeting, each NAESB representative having a vote
106 equal to 33.3% divided by the number of NAESB representatives participating in the meeting,
107 and each ISO/RTO Council representative having a vote equal to 33.3% divided by the number
108 of ISO/RTO Council representatives participating in the meeting. In the event any Party fails to
109 be represented by at least one representative and quorum requirements are met, the remaining
110 two Parties shall each receive 50% of the vote, to be divided equally among the Party's
111 representatives. In the event of a tie vote, the matter will be referred to the Chairmen of the
112 Parties present for the tie vote [or their Board level designee(s)] for resolution. In the
113 determinations made under Section 2.6, each Party may abstain from voting on any question in
114 which it determines it does not have a material interest.

115 2.4 The JIC will meet as necessary to review the annual plans of each organization.
116 Additionally, the JIC will meet as necessary to review each Standards Authorization Request
117 (“SAR”) that the Standards Authorization Committee (“SAC”) of NERC has approved for the

118 drafting of a standard, each standard request that the NAESB Executive Committee (“EC”) has
119 assigned to the Wholesale Electric Quadrant (“WEQ”) of NAESB and each ISO and RTO policy
120 anticipated to be proposed or implemented by the ISO/RTO Council’s constituent organizations
121 that may affect business practice standards and reliability standards.

122 2.5 In the first stage of its process, the JIC will evaluate the annual plans of each
123 Party. If the JIC determines that an annual plan item would establish or require substantial
124 modification to ISO and RTO policy, then standard setting activities associated with the annual
125 plan item would normally be deferred⁵ until the FERC or other appropriate regulatory authorities
126 in North America have exercised their authority to determine such policy issues. Once such ISO
127 and RTO policy issues have been resolved, further standards development activity will be
128 coordinated by the JIC according to this MOU. If the JIC does not determine that an annual plan
129 item would establish or require substantial modification to ISO and RTO policy, then the item
130 would continue through the standards development process. If the JIC determines that an aspect
131 of the ISO/RTO Council’s annual plans would alter or require new business practice standards,
132 communication protocol standards or reliability standards, those standards development activities
133 would be coordinated by the JIC according to this MOU. The JIC may also recommend that a
134 particular item or aspect of an item in one Party’s annual plan be removed from that Party’s
135 annual plan and added to another Party’s annual plan in order to carry out the purposes of this
136 agreement.

137 2.6 Once the JIC has made the determinations in section 2.5, the second stage of the
138 process will take place. In this stage the JIC will consider the relationship of each specific
139 standards proposal, including any standards proposals derived from ISO and RTO annual plan
140 items, to the reliability responsibilities of NERC and the business standards and electronic
141 communication protocol responsibilities of NAESB, and will refer the development of the
142 standard as appropriate to the two organizations. In this stage, the JIC may also determine
143 whether a specific standards request proposal would itself primarily establish or substantially
144 modify ISO and RTO policy, in which case standards development may be deferred until the
145 FERC or other appropriate regulatory authorities have determined the resolution of such policy

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

146 issues. Once the JIC has assigned or referred the standards proposal for further development, the
147 members and constituents of the other organizations are strongly encouraged to actively engage
148 in the development process by participating in subcommittee, task force and working group
149 deliberations as well as offering comments and recommendations on any and all aspects of the
150 proposed standard or policy.

151 2.7 The JIC will make such determinations by the end of the month subsequent to the
152 month in which the annual plan item, standards request proposal or proposed ISO and RTO
153 policy is referred to the JIC. The JIC may prioritize submitted proposals if there are urgent
154 reliability, business, or policy implications.

155 2.8 All interested individuals and entities are invited and encouraged to participate to
156 the maximum extent possible consistent with membership or registration requirements in NERC,
157 NAESB and the ISO/RTO Council standards development and policy development activity.
158 None of the organizations places any membership or registration requirement on the submission
159 of comments on draft proposed standards or policy development.

160 2.9 With respect to the provisions of section 2.6, either the determination of the JIC or
161 the resolution reached in the event of a tie vote will become final after thirty days unless, within
162 that thirty-day period, one of the Parties acts to withdraw a standards request proposal. In this
163 event, the proposal may be redrafted and resubmitted to the JIC or the Parties shall meet to
164 attempt to resolve the impasse. Should further consideration not result in a final determination,
165 each of the parties may act consistent with its own standards development or policy definition
166 process. Likewise, with respect to the provisions of section 2.5, a determination of the JIC or the
167 resolution reached in the event of a tie vote will become final after thirty days unless, within that
168 thirty-day period, one of the Parties disagrees with the determination. In this event, the annual
169 plan item may be redrafted and resubmitted to the JIC or the Parties shall meet to attempt to
170 further resolve the issue. Should further consideration not result in a final determination, each of
171 the parties may act consistent with its own standards development or policy development and
172 implementation process.

173 2.10 Because the Parties' annual planning processes are iterative and are implemented
174 through or otherwise affect the standards setting processes, the JIC may discuss coordination of
175 ongoing annual plan development and implementation, and each Party, through its JIC members,

176 may make recommendations regarding other Parties' annual plan development and
177 implementation.

178

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

180 3.1 Each Party shall be responsible for making filings with governmental and
181 regulatory authorities as appropriate.

182 3.2 The Parties agree that all meetings of the JIC will be duly noticed, open and
183 transcribed, and that the JIC's deliberations and all supporting documents, including any
184 minority opinions, will be a matter of public record and may be provided by any Party or any of
185 its members in any filing with governmental authorities of a standard or other issue which the
186 JIC has acted upon.

187

188 **4. Information Exchange**

189 4.1 Each Party will inform each other party each year of its projected standards
190 development, significant policy development and implementation activities for the coming year
191 and of any additional planned activity as it arises. After exchange of this information, the JIC
192 will meet to address any apparent areas of duplicate or inconsistent effort as soon as practical.

193 4.2 With respect to each particular initiative regarding an RTO or ISO policy activity,
194 or request for a standard or standard development action, each Party will promptly inform the
195 other Parties of the action, or the request in sufficient detail to convey the subject matter and
196 timeline for resolution of such action or request.

197

198 **5. Costs**

199 5.1 Each Party shall bear its own costs.

200

201 **6. Reevaluation**

202 6.1 The Parties agree to meet annually during the anniversary month of the signing of
203 this MOU to evaluate in good faith the effectiveness and efficiency of this MOU in meeting the
204 goal of coordinating the standards and policy development-related activities of the three
205 organizations and to make any appropriate revisions.

206 6.2 The Parties may also agree to revise this MOU, including the appendices, at any
207 other time as mutually agreeable.

208

209 **7. Termination**

210 7.1 Each Party may withdraw from this MOU upon 60 days' written notice to the
211 other Parties. Notification of such withdrawal should be provided to the FERC or other
212 appropriate Provincial or state regulatory authorities in North America. Prior to the withdrawal
213 becoming effective, the Parties agree to meet to discuss whether changes to this MOU would
214 address the reasons prompting the withdrawal.

215

216 **8. Miscellaneous**

217 8.1 Each Party is legally authorized to execute this MOU and to exercise the rights
218 and perform the obligations and responsibilities contained in it.

219 8.2 This MOU constitutes the entire agreement between the Parties with respect to
220 establishing a coordination process intended to avoid overlap and duplication of effort in the
221 activities of the three organizations by distinguishing ISO and RTO policy-making from the
222 setting of reliability and business practice standards supporting energy markets.

223 8.3 This MOU may be executed in counterparts each of which shall be deemed an
224 original and all of which together shall constitute one instrument.

225 8.4 None of the Parties shall be liable for any indirect, special, incidental or
226 consequential damages arising in any way from any performance or failure to perform under this
227 MOU.

228 8.5 The Parties agree that they will create a process whereby the notice of JIC
229 activities and documents are posted on a web site for public access.

230 8.6 This is an Amendment and Restatement of the Agreement dated November 30,
231 2002 between NERC and NAESB.

232 8.7 Nothing in this Agreement is intended for the benefit of third parties, and no third
233 party may claim for damages or otherwise to enforce any such benefit.

234 8.8 Nothing in this Agreement shall be construed as establishing a joint venture,
235 agency relationship, any authority of any signatory or the JIC to bind another signatory, or as
236 intending to violate the antitrust laws.

237

238

239 AGREED TO this ____th day of _____, 2003.

240

241 NORTH AMERICAN ENERGY
242 STANDARDS BOARD

NORTH AMERICAN ELECTRIC
RELIABILITY COUNCIL

243

244 By: _____

By: _____

245

246 ISO/RTO Council

247

248 By: _____

249 APPENDIX A

250 JIC Coordination Guidelines

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

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

268 In general, the functions identified in the functional model diagrams as "reliability
269 authority," "balancing authority," "interchange authority," "compliance monitor," "NERC," and
270 certain of the relationships and information flows of "transmission service provider,"
271 "transmission owner," and "transmission operator" are associated with the reliable operation of
272 the bulk power system. Standards development proposals applicable to those functions and to
273 the relationships and information flows among those functions normally would be assigned to
274 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.

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

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

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

288

289