

**THE NEW BRUNSWICK  
ENERGY AND UTILITIES BOARD**

**IN THE MATTER OF a Review of the New  
Brunswick System Operator's ("NBSO")  
2010-2011 Revenue Requirement**

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**APPENDIX D**

**Agreement for the Secondment of Employees  
(Between NB Power Transmission Corporation  
and New Brunswick System Operator)**

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## AGREEMENT FOR THE SECONDMENT OF EMPLOYEES

This Agreement shall be effective commencing the 1<sup>st</sup> day of April 2005.

### BETWEEN:

**NEW BRUNSWICK POWER TRANSMISSION CORPORATION**, a body corporate under the laws of New Brunswick, having its head office in the City of Fredericton and Province of New Brunswick, hereinafter called "NB Power Transmission"

- and -

**NEW BRUNSWICK SYSTEM OPERATOR**, a corporation established under section 40 of the Electricity Act (New Brunswick), having its head office in the City of Fredericton and Province of New Brunswick, hereinafter called "SO"

Each of which may be referred to herein as a "Party" or collectively as the "Parties".

**WHEREAS**, the objects of the SO are described in section 42 of the Electricity Act (New Brunswick); and

**WHEREAS** the SO wishes to have certain of the tasks and functions necessary to meet its objects performed by certain of the employees of NB Power Transmission (the "Seconded Employees"); and

**WHEREAS** the Parties wish to set out the terms and conditions under which the Seconded Employees shall perform tasks and functions on behalf of the SO;

**NOW THEREFORE in consideration** of the mutual covenants contained herein, and for other good and valuable consideration the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

### 1.0 TERM, RENEWAL AND AMENDMENT

1.1 This Agreement shall have a term of three (3) years, from April 1, 2005 to March 31, 2008, unless terminated or renewed as specified herein.

- 1.2 Unless notice of termination is given in writing by either Party on or before April 1, 2007, this Agreement shall automatically renew for a period of five (5) years. Thereafter, unless notice of termination is given in writing by either Party on or before the commencement of the fifth year of such renewal period, this Agreement shall automatically renew for a further period of five (5) years, to a maximum of five such renewals.
- 1.3 Notwithstanding the provisions of Articles 1.1 & 1.2 above, the SO may terminate this Agreement at any time upon the provision of twelve (12) months written notice to NB Power Transmission.
- 1.4 If at any time during the continuance of this Agreement the Parties deem it necessary or expedient to make any alterations or additions to this Agreement they may do so only by means of a written agreement between them which shall form part of this Agreement, or supercede it as the case requires.

## **2.0 GENERAL**

- 2.1 Seconded Employees under this Agreement shall be all those employees included in Schedule "A" attached hereto and forming part hereof. Additions to or deletions from Schedule "A" may only be made upon the mutual consent in writing of the Parties.
- 2.2 All Seconded Employees shall be integrated into the organization of the SO and shall be supervised by the SO. Notwithstanding this provision, the parties recognize that the Seconded Employees maintain responsibility for the protection and security of Transmission Assets (as defined in the Operating Agreement between the parties dated October 1, 2004), and NB Power Transmission reserves the right to provide direction to the Seconded Employees respecting the Transmission Assets.
- 2.3 The SO shall assign the functions and responsibilities of each Seconded Employee, and the SO shall have the right to alter such assignments provided, however, that the SO shall consult with NB Power Transmission before making such alterations.
- 2.4 The Seconded Employees' services shall be exclusive to the SO during the term of this Agreement unless mutually agreed between the Parties from time to time.
- 2.5 If any Seconded Employee commits an employment misdemeanor, the SO shall report same to the Vice President of NB Power Transmission and the Parties shall consult as to what disciplinary action, if any, shall be taken.
- 2.6 Although the Seconded Employees shall not be considered as employees of the SO, they shall conduct their activities during the term of this Agreement in a manner consistent with the policies and procedures established by the SO including, without limiting the generality of the foregoing, those policies and procedures that relate to safety, security, ethics, conflicts of interest, computer software and internet use, inventions, discoveries and confidentiality.

2.7 The Seconded Employees shall continue, throughout the currency of this Agreement, to be governed by any applicable collective agreement relating to NB Power Transmission, and the SO agrees to abide by the terms of any such applicable collective agreement with respect to the Seconded Employees.

2.8 The SO shall not compel any Seconded Employee to do any action that might, in the reasonable opinion of the Seconded Employee, cause damage to Controlled Transmission Facilities, nor shall any Seconded Employee be required to take any such action, and the SO agrees to advise the Seconded Employees of this provision.

### **3.0 COMPENSATION & FINANCIAL RESPONSIBILITIES**

3.1 All compensation and employee expenses relating to the Seconded Employees, including but not limited to wages, salaries, overtime, any applicable bonuses or incentives, employer contribution to Canada Pension Plan and Employment Insurance, Workers' Compensation premiums, employer contribution to benefit plans, legitimate business expenses reflected on timesheets, and any overhead fees or charges allocated by New Brunswick Power Holding Corporation in respect of the Seconded Employees, shall be the responsibility of NB Power Transmission.

3.2 The provision of all support services, materials and equipment related to the Seconded Employees shall be the responsibility of NB Power Transmission.

### **4.0 REIMBURSEMENT, BILLING AND PAYMENT**

4.1 (a) The SO agrees to reimburse NB Power Transmission for 100% of the wages, salaries, overtime, any applicable bonuses or incentives, employer contribution to Canada Pension Plan and Employment Insurance, Workers' Compensation premiums, employer contribution to benefit plans, and any overhead fees or charges incurred by NB Power Transmission in respect of the Seconded Employees, including the costs described in Article 3.2 above.

(b) The SO agrees to reimburse NB Power Transmission Corporation for 100% of the legitimate business expenses incurred by any Seconded Employee and approved by the SO.

4.2 Within five (5) business days from the end of each month, NB Power Transmission shall remit to the SO an invoice for the costs and charges described in sections 4.1(a) and 4.1(b) above, together with all supporting documentation as may be requested by the SO.

4.3 The invoice is due and shall be paid by the SO by the twentieth (20th) day of each month, or if the twentieth day of the month is a Saturday, Sunday or a statutory holiday, the closest previous common working day to the twentieth. Payments shall be made by wire transfer.

- 4.4 Any dispute respecting billing or payment shall be dealt with in accordance with the provisions of Article 5.0 of this Agreement. Under no circumstances, however, shall payment be withheld pending the resolution of any dispute.

#### **5.0 DISPUTE RESOLUTION PROCEDURE**

- 5.1 Step One: Either Party shall first bring any dispute to the attention of the responsible officer of the other Party for discussion. Such discussions shall be held in good faith and in a timely fashion.
- 5.2 Step Two: Any dispute that is not resolved at Step One shall be taken up by the CEO of the SO and the Vice-President of NB Power Transmission. Such discussions shall be held in good faith and in a timely fashion.
- 5.3 Step Three: Any dispute remaining unresolved at Step Two after a reasonable time and reasonable attempts at resolution, shall be determined in accordance with general principles of commercial arbitration and shall be governed by the provisions of the *Arbitration Act* (New Brunswick), except as expressly modified herein. The resolution of such disputes pursuant to the *Arbitration Act* shall be final and binding upon the parties to this Agreement and there shall be no appeal therefrom, including any appeal to a court on a question of law, a question of fact, or a question of mixed fact and law. The application of subsection 7(2) of the *Arbitration Act* is expressly excluded. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner.

#### **6.0 LIABILITY**

- 6.1 The SO shall be liable for, and shall indemnify and hold harmless NB Power Transmission from and against any and all claims, demands, losses, liabilities, damages, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest in respect of, any and all actions, suits, grievances, complaints, applications, proceedings and assessments, judgments, settlement and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) whether or not an action, suit, grievance, application or proceeding has been commenced or a judgment, settlement or compromise obtained, asserted against or suffered by NB Power Transmission relating to, in connection with, resulting from, or arising out of:
- (a) any personal injury, loss of life, wrongful death or property damage caused directly or indirectly by a Seconded Employee in the course of his/her performance under this Agreement ;
  - (b) any personal injury, loss of life or wrongful death suffered by a Seconded Employee;

- (c) any matter respecting any Seconded Employee arising out of the applicable collective agreement or the collective bargaining relationship with the I.B.E.W., Local 37 during the currency of this Agreement;
- (d) any breach of Human Rights, common law contracts of employment, or any other employment matter respecting any Seconded Employee arising during the currency of this Agreement

6.2 Notwithstanding the provisions of Article 6.1, under no circumstances will the SO be liable to indemnify and hold harmless NB Power Transmission from or in respect of any indirect or consequential loss, incidental or special damages, including punitive damages, or any loss of profit, loss of contract, loss of opportunity or loss of goodwill.

#### **7.0 ADMINISTRATIVE COMMITTEE**

7.1 The Parties agree to establish an Administrative Committee comprised of two (2) representatives from each of the Parties. The mandate of the committee shall be to oversee the administration of this Agreement, to coordinate budget preparation activities, and to seek mutually agreeable solutions respecting any issues arising under this Agreement, but it shall have no ability to alter any term of this Agreement or any applicable collective agreement.

#### **8.0 RESERVATION**

8.1 Nothing in this Agreement shall be construed as restricting the SO from utilizing subcontractors or consultants, or from obtaining similar services to the services offered by the Seconded Employees from any other party or from providing services from its own resources

#### **9.0 WAIVER**

9.1 The failure on the part of either Party to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

#### **10.0 SUCCESSORS AND ASSIGNS**

10.1 This Agreement shall not be assigned by either Party without the prior written consent of the other Party. Any purported assignment by either Party of all or any of that Party's rights, duties or obligations under this Agreement without written consent of the other Party is void.

10.2 This Agreement shall inure to the benefit of and be binding on the Parties and their respective successors and permitted assigns.

## 11.0 NOTICES

- 11.1 All notices required pursuant to this Agreement shall be delivered by hand to the Party for which it is intended, sent by mail, e-mail, fax, telegram or similar form of transmitted message or sent by prepaid courier, directed to such Party at the address indicated below, or at such other address as either Party may stipulate by notice to the other. Any notice delivered by hand or prepaid courier or mail, shall be deemed to be received on the date of actual delivery thereof. Any notice so sent by e-mail, telegram, fax or similar form of transmitted message shall be deemed to have been received on day of transmission.

New Brunswick System Operator  
P.O. Box 2020  
77 Canada Street  
Fredericton, New Brunswick  
E3B 5G4

Attention: Secretary and General Counsel

New Brunswick Power Transmission Corporation  
P.O. Box 2030  
515 King Street  
Fredericton, New Brunswick  
E3B 5G4

Attention: Vice President

## 12.0 CONFIDENTIALITY

- 12.1 The Parties acknowledge that in order to fulfil the purposes of this Agreement they may need to collect use or disclose certain data or personal information (the "Personal Information") concerning the Seconded Employees. The Parties agree that each shall abide by the *Protection of Personal Information Act*, R.S.N.B. c. P-19.1, and any other privacy legislation that is or may become applicable to them. Further, and for clarification, each Party agrees to hold all Personal Information in its possession concerning the Seconded Employees in strict confidence and not to disclose it to any third party without the prior written consent of the person to whom the information relates, except as allowed or required by law. Further, the Party possessing the Personal Information shall use the same degree of care it uses with respect to its own Personal Information to prevent the unauthorized disclosure to a third party.

## 13.0 UNENFORCEABLE CLAUSES

- 13.1 It is intended that all provisions of this Agreement shall be fully binding and effective between the Parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatever, then the

particular provision or provisions or part of the provision shall be deemed severed from the remainder of this Agreement.

**14.0 FORCE MAJEURE**

14.1 Neither Party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against. Force majeure includes, but is not limited to acts of God, labour disputes (including but not limited to strikes and lockouts), fires, riots, incendiaries, interference by civil or military authorities and compliance with the regulations or order of any Government Authority, and acts of war (declared or undeclared).

14.2 Both Parties shall be prompt and diligent to remove all causes of interruption or delay in the performance of this Agreement, insofar as each is able so to do.

**15.0 ENTIRETY**

15.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set forth herein. For greater certainty, the agreement between the Parties dated October 1, 2004 entitled "Agreement for the Sub- Secondment of Employees" is terminated.

**16.0 CLAUSES SURVIVING TERMINATION**

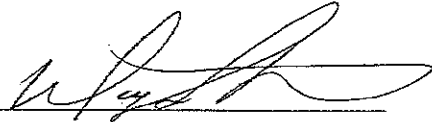
16.1 Any payment, indemnification and confidentiality provisions contained in this Agreement shall survive the termination of this Agreement.

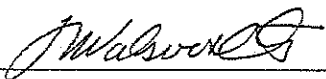
**17.0 GOVERNING LAW**

17.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick.

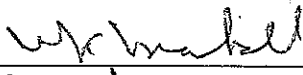
**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first written above.


**NEW BRUNSWICK POWER  
TRANSMISSION CORPORATION**

Per:   
Wayne Snowdon  
V-P Transmission

Per:   
Lynn M. Walsworth  
Associate Corporate Secretary

**NEW BRUNSWICK SYSTEM  
OPERATOR**

Per:   
President and CEO

Per:   
Secretary & General Counsel

Schedule "A"

Name	Classification
1. Bourque, Rodney	Power System Operator
2. Briggs, Alden	Manager, Transmission Operations
3. Butland, Eugene	IT Professional
4. Charters, Geraldine	Administration Analyst
5. Chezenko, Ron	Energy Coordinator
6. Daigle, Ronald	Power System Operator
7. Daley, Dave	Manager, Infrastructure & System Support
8. Eroh, Luther	IT Professional
9. Garland, Rodney	Energy Coordinator
10. Gautreau, Carl	Senior System Operator
11. Hickey, Neal	System Engineer
12. Landers, Dean	Transaction & Scheduling Coordinator
13. Lipsett, Heather	ASR III
14. MacDonald, Paul	IT Professional
15. MacDonald, Randy	SCADA/EMS Engineer
16. MacLean, Archie	IT Specialist
17. McKinley, Kim	Transaction & Scheduling Administrator
18. McTiernan, Mark	Energy Coordinator
19. Melanson, Kevin	Transmission Engineer
20. Michaud, Anthony	Power System Operator
21. Nason, Daniel	Energy Coordinator
22. Pelkey, Glenn	Power System Operator
23. Richard, Carey Anne	IT Professional
24. Robinson, Phil	Senior System Operator
25. Roy, Marc	Energy Coordinator
26. Savoie, Corinne	ASR V
27. Sears, Eric	IT Professional
28. Seely, Norman	Transmission Administrator
29. Smith, Wendy	IT Professional
30. Stairs, Ross	Manager, Transactions & Scheduling
31. Theriault, Marc	Power System Operator
32. Trites, Jeffrey	Power System Operator
33. Van Doren, Harry	Power System Operator
34. Waye, Danny	Apprentice Power System Operator
35. Weaver, Donald	Resource Adequacy Coordinator
36. Wilcox, Andrew	Transmission Engineer

July 1, 2008

Schedule "A"

Name	Classification
1. Bourque, Rodney	Energy Coordinator
2. Briggs, Alden	Director, Power System Engineer
3. Butland, Eugene	IT Professional I - IV
4. Charters, Geraldine	Administration Analyst I
5. Chezenko, Ron	Energy Coordinator
6. Daigle, Ronald	Power System Operator
7. Daley, Dave	Director, Infrastructure & System Support
8. Eroh, Luther	IT Professional V
9. Garland Hicks, Rodney	Energy Coordinator
10. Hickey, Bruce	PSO Operator, Power System Apprentice
11. Hickey, Neal	Senior Engineer I
12. Landers, Dean	Coordinator, Power System Operations
13. MacDonald, Paul	IT Professional I - IV
14. MacDonald, Randy	SR Engineer I
15. MacLean, Archie	ECC System Specialist
16. MacPherson, Ian	Specialist, Market Assessment & Settlement
17. McTiernan, Mark	Energy Coordinator
18. Melanson, Kevin	Transmission Engineer I - V
19. Michaud, Anthony	Power System Operator
20. Morrison, Scott	PSO Operator, Power System Apprentice
21. Murray, Jane	Manager, Technical Training
22. Nason, Daniel	Energy Coordinator
23. Pelkey, Glenn	Coordinator, Power System Operations
24. Poirier, Jeannette	ASR IV
25. Richard, Carey Anne	IT Professional I - IV
26. Robinson, Phil	Senior System Operator
27. Roy, Marc	Energy Coordinator
28. Savoie, Corinne	ASR V
29. Sears, Eric	IT Professional I - IV
30. Seely, Norman	Load Forecaster/Tariff Admin
31. Smith, Wendy	IT Professional I - IV
32. Stairs, Ross	Director, Power Systems Operators
33. Theriault, Marc	Power Systems Operator
34. Trites, Jeffrey	Power Systems Operator
35. Van Doren, Harry	Power Systems Operator
36. Waye, Danny	Apprentice Power System Operator
37. Weaver, Donald	Control Room Manager