

**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**

APPENDIX E

**Services Agreement
(Between NB Power Transmission Corporation
and New Brunswick System Operator)**

SERVICES AGREEMENT

THIS AGREEMENT SHALL BE EFFECTIVE COMMENCING THE 1st 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 "the SO"

Both of which may hereinafter be referred to as a "Party" or collectively as the "Parties".

WHEREAS the SO and NB Power Transmission are parties to an agreement dated April 1, 2005 respecting the secondment of NB Power Transmission employees to the SO and the provision of certain services in respect of those employees (the "Secondment Agreement"); and

WHEREAS the SO has and will have a number of its own employees ("SO Employees") and a Board of Directors; and

WHEREAS the SO wishes to have NB Power Transmission provide certain services in respect to the SO Employees and the members of the SO Board of Directors and certain other services not provided for in the Secondment Agreement.

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 hereby agree as follows:

1.0 DEFINITIONS

1.1 Definitions

“Dispute” means any disagreement, controversy, question or claim (including a claim for indemnification) arising out of or relating to this Agreement, including, without limitation, with respect to its formation, execution, validity, application, interpretation, performance or breach, that cannot be resolved verbally by reasonable efforts between the Parties involved;

“Services” means those Services set out in Article 3

2.0 TERM OF AGREEMENT, RENEWAL AND AMENDMENT

2.1 This Agreement shall have a term of two (2) years, from April 1, 2005 until March 31, 2007 inclusive, unless terminated or renewed as specified herein.

2.2 Unless notice of termination is given on or before September 30, 2006, this Agreement will automatically renew for a further period of one year. In subsequent years, renewal will be automatic unless notice of termination is given on or before September 30 of the previous year. In addition, and for clarification, should the fiscal year of one or both Parties be changed, the Parties may, by written agreement, adjust the date of termination to reflect the end of a fiscal year, and adjust the date of notification to be one year in advance of the date of desired termination.

2.3 This Agreement may only be amended by mutual written agreement of the Parties.

3.0 LIST OF SERVICES

3.1 NB Power Transmission shall provide the following Services to the SO in respect of the SO Employees and Directors of the SO:

- a) Human Resources
- b) Payroll & Expense Administration
- c) Benefits administration
- d) Business Information Systems
- e) Materials Management

- f) Telecom
- g) Safety
- h) Regulatory Services

3.2 Services may be added to or subtracted from the above list as mutually agreed to by the Parties.

3.3 For greater certainty, the benefits administration noted in 3.1(c) above is limited to the processing of forms and claims and related activities. Under no circumstances shall this Agreement be interpreted as requiring NB Power Transmission to be in any way responsible for the payment of any deficits associated with the claims experience or pension funding of the SO Employees.

4.0 LEVEL OF SERVICE

4.1 The level of Service to be provided shall be as reasonably required by the SO in conducting its day to day business activities. NB Power Transmission may provide such Services through the use of its own staff or by use of such other resources as it may engage.

4.2 Non- Exclusivity

Nothing in this Agreement shall be construed as restricting the SO from utilizing sub-contractors or consultants, or from obtaining any of the Services from a third party or through its own resources

5.0 PRICE

5.1 In respect to the Services listed in Article 3.1(a) to 3.1(g) inclusive, the SO agrees to pay NB Power Transmission the sum of \$4,428.00 per month for the period April 1, 2005 to March 31, 2006. Payment for the period April 1, 2006 to March 31, 2007, and for any subsequent twelve month period resulting from the extension of the initial term of this Agreement, shall be adjusted as necessary to reflect NB Power Transmission's approved budget for the relevant period.

5.2 In respect of Regulatory Services the SO agrees to pay NB Power Transmission the sum of \$3,000.00 per month. For greater certainty, Regulatory Services provided under this Agreement are limited to day to day assistance from regulatory staff with on-going and routine requirements. In the event of a hearing before the Public Utilities Board, payment for Regulatory Services in respect of such a hearing will be a matter of negotiation between the Parties

- 5.3 In respect of any other Service requested and provided, the price shall be the same price as that charged in transactions between and among the NB Power family of companies for such Service.

6.0 PERFORMANCE COVENANTS

- 6.1 NB Power Transmission warrants that throughout the term of this Agreement and any renewal thereof it will maintain the expertise, facilities, equipment, financial capabilities and any other resources necessary to deliver the Services to the SO.
- 6.2 Should NB Power Transmission at any time during the term of this Agreement be unable to deliver the Services upon the terms and conditions of this Agreement, it shall notify the SO immediately in writing. In such event, payment obligations of the SO shall be reduced accordingly.

7.0 FORCE MAJEURE

- 7.1 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).
- 7.2 Both Parties shall be prompt and diligent to remove all causes of interruption or delay in the provision of Services, insofar as each is able so to do.

8.0 BILLING AND PAYMENT

- 8.1 Within five business days of the end of each month NB Power Transmission shall submit to the SO an invoice for the costs and charges described in Article 5 above, together with all supporting documentation as may be requested by the SO.
- 8.2 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 statutory holiday, the closest previous common business day to the twentieth. Payments shall be made by wire transfer.
- 8.3 Any dispute respecting billing or payment shall be dealt with in accordance with Article 11 of this Agreement. Under no circumstances, however, shall payment be withheld pending the resolution of any dispute.

9.0 LIABILITY AND INDEMNIFICATION

- 9.1 NB Power Transmission shall indemnify and save harmless the SO, its employees, agents, consultants, subcontractors, and/or directors from and against all claims, demands and/or losses of any type, including reasonable lawyers' fees, in connection with or resulting from gross negligence, willful misconduct, dishonest or fraudulent act of NB Power Transmission, its employees, agents, consultants, subcontractors and/or directors in the performance of this Agreement;
- 9.2 In no event shall either Party be liable to the other for indirect, punitive or consequential damages, or for loss of profits, whether in tort or in contract, and the Parties hereby expressly waive any claim or recourse against one another for any such damages.

10.0 CONFIDENTIALITY

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 SO Employees and the members of the SO Board of Directors . 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 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.

11.0 DISPUTE RESOLUTION PROCEDURE

- 11.1 Either Party may 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.
- 11.2 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.
- 11.3 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.

12.0 NOTICES

- 12.1 Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as provided below. Any such notice or other communication, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the business day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Article. Notices and other communications shall be addressed as follows:

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

New Brunswick System Operator
 P.O. Box 2020
 77 Canada St
 Fredericton, New Brunswick
 E3B 5G4
 Attention: Secretary and General Counsel

13.0 WAIVER

- 13.1 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.

14.0 ENTIRE AGREEMENT

- 14.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supercede 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 Provision and Purchase of Services" is terminated.

15.0 UNENFORCEABLE CLAUSES

15.1 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 whatsoever, then the particular provision or provisions or part of the provision shall be deemed to be severed from the remainder of this Agreement.

16.0 CLAUSES SURVIVING TERMINATION

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

17.0 SUCCESSORS AND ASSIGNS

17.1 This Agreement may not be assigned by either of the Parties hereto 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 the prior written consent of the other Party is void.

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

18.0 GOVERNING LAW

18.1 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

By: [Signature]
V. P. NB POWER TRANSMISSION CORP

By: [Signature]
Lynn M. Walsworth
Associate Corporate Secretary

NEW BRUNSWICK SYSTEM
OPERATOR

By: [Signature]
President and CEO

By: [Signature]
Secretary & General Counsel