

MEMORANDUM OF UNDERSTANDING

Between:

The Minister of Natural Resources and Energy Development (the “Minister”);

And

The Deputy Minister of Natural Resources and Energy Development (the “Deputy Minister”);

And

**New Brunswick Power Corporation,
(Represented by the Chairperson and the President/CEO)**

(each a “Party”)

PREAMBLE

WHEREAS the New Brunswick Power Corporation (hereinafter called the “Corporation”) was continued under the laws of the Province of New Brunswick by the *Electricity Act (S.N.B. 2013, c.7)* as a Crown corporation; and

WHEREAS pursuant to the *Electricity Act* the Minister of Natural Resources and Energy Development is the Minister responsible for the Corporation and is accountable to the Legislative Assembly for the Corporation; and

WHEREAS, the Board is the accountability link between the Corporation and the Minister and is accountable for the strategic oversight of the Corporation; and

WHEREAS, the Chief Executive Officer (CEO) is responsible for the operations of the Corporation and is accountable to the Board; and

NOW THEREFORE the parties hereafter enter into this Memorandum of Understanding (MOU).

DEFINITIONS

In this Agreement, unless the context otherwise requires:

“Act” means the *Electricity Act (S.N.B. 2013, c.7)*;

“Agreement” shall mean this Agreement and all preambles, recitals and schedules hereto, along with any amendments hereto and thereto;

“Board” shall mean the board of directors of the Corporation as constituted from time to time, and “Director” or “Directors” shall mean a member or members of the Board of Directors, respectively;

“By-Laws” shall mean the by-laws of the Corporation, as amended and supplemented from time to time;

“Department” means the authorized agents and representatives of the Minister within the Department of Natural Resources and Energy Development (DNRED);

“Finance and Treasury Board” means the Department of Finance and Treasury Board of New Brunswick;

“Government” means the Government of New Brunswick;

“Minister” means the Minister of Natural Resources and Energy Development who is responsible for the Corporation.

“MOU” means this Memorandum of Understanding; and

“Province” means the Crown in right of the Province of New Brunswick.

PURPOSE

The purpose of this MOU is to provide a framework to enhance the parties’ abilities to meet their respective legislative and policy objectives in a mutually beneficial fashion. Along with the New Brunswick *Electricity Act*, and the mandate letter which supports the relationship between Government and the Corporation, the terms and conditions of this MOU are intended to clarify their respective roles and responsibilities and to ensure complete and full disclosure of information, all in support of this objective.

CROWN CORPORATION STATUS

The Corporation is a Crown corporation and is, for all purposes, an agent of the Crown.

TERM

This MOU will be in effect for the period commencing on April 1, 2023, and shall be reviewed and renewed, amended, or replaced three years from the date on which it was developed and every three years thereafter unless one of the parties advises the other that renegotiations are necessary.

The parties will begin negotiating a successor MOU not less than six (6) months prior to the expiry of the Term.

STATUTORY MANDATE

The Corporation’s mandate is set out in the Mandate Letter provided to the Corporation by the Government through the Minister, in addition to the *Electricity Act*. In the event a conflict arises between the Act, regulations and mandate letter, the Act and regulations shall prevail.

ACCOUNTABILITY RELATIONSHIPS

1. The Minister is accountable to the Legislative Assembly for the fulfillment of the statutory mandate of the Corporation and for reporting to the Legislative Assembly on the affairs of the Corporation.
2. The Board is accountable to the Government through the Minister. The Board acknowledges that accountability to the Government means accountability to the Minister through the Chair.
3. The President and CEO as a non-voting member of the Board, is accountable to Board through the Chair.

ROLES AND RESPONSIBILITIES OF THE PARTIES

Minister

The Minister is responsible for the following:

- Fulfilling all of their duties as established in the *Electricity Act*, in particular, but also all other applicable Acts, including but not limited to:
 - Provide direction to the Corporation of the form of the Quarterly reports referred to in paragraph 40 of the *Electricity Act*; and
 - Tabling the annual financial statements in the Legislative Assembly, in accordance with paragraph 42 of the *Electricity Act*.
- Consulting with and advising the Corporation of the Government’s strategic priorities, decisions and public policy that may impact the Corporation.
- Consulting with and advising the Corporation of performance targets, objectives and expectations that may impact the Corporation.

- Monitoring the operations and performance of the Corporation to ensure that it is fulfilling its mandate.

Deputy Minister

The Deputy Minister of DNRED is responsible for the following:

- Supporting and acting under the general direction of the Minister and is responsible for activities which have been delegated to the Minister under the *Electricity Act*.
- Coordinating the approval of the Integrated Resource Plan annually by Executive Council Office.

The Board

The Board is responsible for the governance of the Corporation and overseeing the management of the Corporation's business and affairs as laid out in the *Electricity Act*. The Board guides the Corporation's strategic direction, evaluates the performance of the Corporation's CEO, approves and monitors the Corporation's business plan, operational plan and financial results, and is ultimately accountable to the Minister, through the Chairperson.

The Corporation has responsibilities under and is subject to a variety of New Brunswick statutes and is accountable to ensure compliance.

The President and CEO

The President and CEO is, subject to the direction of the Board, charged with the general direction, supervision and control of the business of the Corporation and may exercise any other powers and duties conferred on him or her by the by-laws of the Corporation or by the *Electricity Act*.

Commitment to Effective Communication

The four signatories and all successors for the term of this agreement shall commit to keeping each other informed of matters that aid, influence or interfere with the roles and responsibilities outlined above.

Areas of Shared Responsibility

CORPORATE INITIATIVES

The Government and the Corporation will work together on a number of corporate initiatives to maximize benefits for both parties. In the event these corporate initiatives conflict with other provisions in this mandate, the other provisions shall prevail.

Directives by Executive Council

Directives made by Executive Council pursuant to section 69 of the *Electricity Act*, shall be developed in an effective manner. To that end, the Department will work with the Corporation to ensure that the implications of the particular directive are well-known and advised upon prior to the issuance of the directive.

Human Resources, Collective Bargaining and Executive Compensation

The Corporation is required to gain the approval of the Lieutenant-Governor in Council prior to entering into a collective agreement under the *Public Service Labour Relations Act*.

The Corporation acknowledges that the Government is seeking a harmonized approach to human resources management and as such the Corporation commits to working collaboratively with Finance and Treasury Board in a manner and timeline prescribed by Finance and Treasury Board and share such information regarding human resource data, policies and practices as may be required for the benefit of the respective organizations.

The Corporation will provide annually, to the Minister of Finance and President of Treasury Board, information regarding its workforce, including but not limited to: the number of permanent and temporary persons in its employ, the expenditures on wages and benefits and rates of absenteeism in a manner and timeline prescribed. The Minister of Finance and President of Treasury Board may request additional information of the Corporation concerning human resource information.

To facilitate approval of collective agreements, pursuant to section 62 of the *Public Service Labour Relations Act*, and to avoid delays in the collective bargaining process, the Corporation agrees to the following process:

1. Finance and Treasury Board will provide the Corporation with any bargaining parameters as soon as they are established. In the event that Finance and Treasury Board has not issued bargaining parameters, the Corporation will contact Finance and Treasury Board prior to commencing a round

of collective bargaining;

2. once the Corporation has concluded collective bargaining and has a tentative agreement and if that agreement respects the aforementioned bargaining parameters, the Corporation can advise its union to proceed to a vote;
3. once the Corporation's union approves the collective agreement but prior to ratification, the Corporation will notify the Department and begin preparation of a joint Memorandum to Executive Council (MEC) asking for the Lieutenant-Governor in Council to approve that they enter into the collective agreement; and
4. once approved by Cabinet, a proposed contract will proceed for ratification. If an approved contract is subsequently ratified, the provisions of section 62 of the *Public Service Labour Relations Act* will be considered to have been met.

As part of the public sector, it is important to Government and New Brunswickers that the Corporation's collective agreements and non-bargaining remuneration remain consistent with similar staff in Part I and Part IV in New Brunswick were applicable.

Government recognizes that the negotiations process as well as the collective agreements must respect the language in which the Corporation is organized.

As per the *Electricity Act*, the Board will seek the approval of the Lieutenant-Governor in Council for:

- The additional by-laws not already authorized or required by or subject to the *Electricity Act* that provide for the control and management of the Corporation's affairs;
- The appointment process and remuneration of Board members;
- The appointment process and remuneration of a Chair and Vice-Chair; and
- The appointment process and remuneration of the President/CEO.

Information Management and Information and Communication Technologies

It is Government's expectation that the Corporation will work collaboratively with Finance and Treasury Board to develop policies, and to establish and evolve governance frameworks as the application of information management and information and communication technologies continues to enable the evolution of services, both internally and to the public.

Procurement

It is the expectation that the Corporation works with Service New Brunswick, the Department of Transportation and Infrastructure or Finance and Treasury Board as the case requires to maximize economies of scale by amalgamating procurement volumes where appropriate and as long as it is financially viable for the Corporation procuring from Corporate and Enterprise level supply arrangements established by the Minister of Service New Brunswick.

Duty to Consult

The Corporation is expected to work with the Department of Aboriginal Affairs to properly discharge the Province's Duty to Consult Policy in matters that may impact Aboriginal and Treaty rights.

PUBLIC AND STAKEHOLDER RELATIONS

The Corporation, the Department, and Executive Council Office (Corporate Communications and Public Relations) shall consult and collaborate with one another on key communications issues that may affect the Department, or the Corporation. The intent is to ensure awareness of actions planned by any one of the parties that may impact, involve or reference the others. This includes proactive and reactive communications. The director of communications (or designate) assigned to the Department, Executive Council Office's Senior Director of Media Relations (or designate) and the Corporation's Executive Director, Communications (or designate) will keep each other informed of key communication issues in a timely manner, and adequately in advance to ensure appropriate input, having regard to the seriousness of the key public communication issue.

COMMUNICATION AND COLLABORATION

In matters related to the development of materials for the Government including MECs and approval of the Integrated Resource Plan as well as for matters related to the planning and development of initiatives outside of the normal course of business, the Corporation will inform and correspond with the Department through the Assistant Deputy Minister designated by the Department for the Corporation. Should the

designated Assistant Deputy Minister change, the Department will notify the Corporation of such a change.

When submitting reporting documents, the Corporation through the CEO will address them to the Minister, copying the Deputy Minister.

Description	Responsibility	
	Corporation	Department
Information requests made by the public	Will respond in a timely manner to information requests made by the public regarding its activities. Government will be copied on responses to information requests that were channelled through them.	Will defer to the Corporation on information requests made by the public.
Cabinet submissions – All issues	Will provide in a timely manner all information needed by Government to complete Cabinet submissions.	Will be the lead in all Cabinet submissions. Will consult with the Corporation as deemed appropriate.
Correspondence – On all subjects directed to the Minister or the Corporation	Will respond in a timely manner to correspondence regarding its activities. Government will be copied on responses to correspondence that was channelled through them.	Will respond in a timely manner to correspondence relating to high level Government policies but will defer to the Corporation correspondence relating to the specific activities of the Corporation.
Briefing notes	Will provide advance briefings on potential or emerging issues to ensure that the Minister is able to speak to the Corporation’s plans and actions if called upon to answer publicly for them.	Will communicate to the Corporation, when Briefing Notes are required, and for what purposes they are required (e.g., Legislative sitting, Minister or Premier meetings, etc.)
Legislative Assembly	Will ensure the Minister has any information required in order to answer questions or respond to issues raised in the Legislative Assembly on the Corporation’s performance.	Will ensure the Corporation is aware of any issues raised on its performance in the Legislature.
Issues management	Will raise pertinent issues in a timely manner to discuss and resolve.	Will raise pertinent issues in a timely manner to discuss and resolve.
Legislative Coordination	Will through the Department, bring forth any issues that may impact the legislative calendar.	Will communicate to the Corporation, any legislative matters that may impact them.

BOARD COMPOSITION, APPOINTMENT AND CHAIR

The Board composition and general functioning is established in the *Electricity Act* and its regulations.

CORPORATE PLANNING AND REPORTING CYCLE

Pursuant to the *Electricity Act – Division D – “Financial Matters and Reporting”*, the fiscal year of the Corporation ends on March 31 in each year and the Corporation shall:

1. Within 60 days after each three-month period ending June 30, September 30, and December 31 in each year, submit to the Minister a report, in the form that the Minister directs, on the operations of the Corporation and subsidiaries of the Corporation for the three-month period.
2. Within 90 days after March 31, submit to the Minister the audited financial statements of the Corporation for that fiscal year, and the Minister shall, within ten days after receiving the financial statements, table them in the Legislative Assembly if it is sitting or with the Clerk of the Legislative Assembly, if it is not then sitting.

In addition to the public quarterly report, the Corporation shall report to the Minister on a monthly basis on the state of the business affairs of the corporation in such a form as the parties agree to.

In addition to any corporate planning and reporting requirements imposed upon the Corporation by regulations and legislation, both Parties agree to share relevant information and developments on a timely basis and work together cooperatively to resolve issues that may impact either party.

FINANCIAL ARRANGEMENTS

In addition to the financial matters requirements contained in sections 45 through 47 (inclusive) and General Regulation under the *Electricity Act*, the members of the Board are paid the remuneration that the Lieutenant-Governor in Council determines, and the payment is made out of the funds of the Corporation.

AMENDMENTS

The parties may agree to amend the terms of this MOU from time to time:

- a. In response to legislative changes or judicial decisions that materially affect either party's responsibilities respecting the supply, price, or reliability of electricity in the Province of New Brunswick;
- b. As required to maintain effective and efficient business practices for the Corporation, in a fair and open manner with Government.

An amendment becomes part of this MOU when it has been recorded in writing, dated, signed by both parties, and attached to this MOU.

PUBLIC DOCUMENT

The parties agree that this MOU, including the schedules and appendices hereto, and any amendments, shall be made available to the public by either party upon request to that party by any member of the public and that each party will post the MOU, schedules and any amendments to that party's website within 30 days of the date of execution.

In accordance with subsection 7(1) of the *Accountability and Continuous Improvement Act*, a Crown entity "may refuse to disclose any information required to be disclosed under [the Act] that would reveal commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to (a) harm the competitive position of the Crown entity, or (b) interfere with contractual or other negotiations of the Crown entity."

Additionally, subsection 7(2) states that "if subsection (1) is inconsistent with or in conflict with a provision of the *Right to Information and Protection of Privacy Act*, subsection (1) prevails."

April 14, 2023

Date



Honourable Mike Holland
Minister
Natural Resources and Energy Development

April 26, 2023

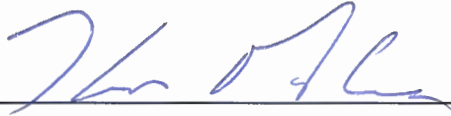
Date



Andrew MacGillivray
Chair
New Brunswick Power Corporation

April 14, 2023

Date



Tom MacFarlane
Deputy Minister
Natural Resources and Energy Development

April 26, 2023

Date



Lori Clark
President and CEO
New Brunswick Power Corporation