

**Final Comments of the Electric Power Supply Association on the Proposed
NERC – NAESB Memorandum of Understanding
(November 15, 2002)**

The Electric Power Supply Association (EPSA) appreciates the time and effort that the NERC and NAESB negotiating teams devoted to drafting the proposed Memorandum of Understanding (MOU). EPSA joins many other industry stakeholders in the hopeful expectation that the MOU will inaugurate a successful working relationship between the two organizations. Under the circumstances, and given the limited time available to work on it, the MOU provides an acceptable framework for meaningful and effective coordination to accomplish this goal. Therefore, subject to the unresolved concerns explained below, EPSA recommends that the NAESB and NERC boards approve the MOU so that the coordination process can commence as soon as possible.

As presently written, the MOU could advance the effort to rationalize standards development by harmonizing the reliability and commercial dimensions embedded in energy standards. EPSA especially welcomes the formal recognition that all standards have both reliability and commercial implications, the focus on avoiding duplication, the establishment of a Joint Interface Committee (JIC) and the flexibility the JIC will need to formulate the coordination guidelines and criteria they will need to do their job.

However, several provisions in the final draft raise concerns about the MOU's effectiveness, particularly the role of the JIC. Several other parties submitting comments, including NAESB board members David McMillan, John Anderson, Carol Guthrie and John Rouse, have questioned, among other things,¹ the wisdom of section 2.8, which allows either organization to unilaterally reject any JIC determination. To restate the comments EPSA submitted to the negotiating teams prior to their final drafting session:

“The JIC’s role, and the integrity and credibility of its decisions, are clearly central to the effectiveness and success of the coordination effort. It is difficult to imagine how section 2.8 ensures meaningful coordination when both parties have unfettered discretion to separately pursue their own organizational prerogatives. Given the universal recognition of the virtual inseparability of reliability and commercial concerns, accountability — in accordance with mutually agreed upon terms, provisions and criteria — is a sine qua non for meaningful coordination. Creating ways for either

¹ EPSA also shares the concerns expressed in Mr. McMillan’s letter regarding the provision for tie-breaking in section 2.3 and the failure to include express provisions relating to economic compensation for products, services or operational processes provided by market participants in accordance with energy standards.

organization to avoid coordination decisions, even when all procedures in the MOU are followed, is inconsistent with this goal.”

Nevertheless, the proposed MOU recognizes and accommodates the ultimate autonomy of both organizations. Despite this shortcoming and the concerns it raises, EPSA views the MOU as a good starting point² that reflects the best efforts of the negotiating teams, which were subject to both practical and institutional limitations. However, such constraints and concerns require all interested stakeholders to use the MOU process so that its intended objectives are fulfilled. In this regard, EPSA urges both organizations to be vigilant in their support for the JIC, and prudent in relying on section 2.8 in administering the JIC process to “ensure” that the MOU provides an “effective mechanism” for coordination.³

Finally, we once again recommend that both the NAESB and NERC boards approve the MOU as soon as possible. The agenda for next week's NERC Standards Authorization Committee (SAC) meeting highlights the importance of implementing the MOU without delay. The SAC agenda raises questions about the timing and effectiveness of a key provision in the MOU. In his e-mail regarding the Nov. 20th meeting, Tim Gallagher states that the drafting teams view two SARs as ready for drafting: (1) "Balance Load and Resources" and (2) "Monitor and Assess Short-Term Transmission Reliability--Operate Within Limits."

The NERC/NAESB negotiating teams recognized the need for the JIC to review **both** prospective proposed standards and existing SARs. Therefore, footnote 1 was added to section 1.2, stating that "the JIC is not limited to new standards but can receive existing proposed standards referred to it by either Party." It appears that language was added for the express purpose of preventing NERC's SARs process from getting too far out ahead of the NAESB WEQ and the MOU coordination process.

The representatives from NAESB and NERC have completed their negotiations and the MOU is actually drafted and ready for approval. Therefore, we have arrived at the appropriate moment for the participants in the SARs process to connect with the NAESB WEQ and commence the coordination effort. EPSA understands that participants in the WEQ are committed to assembling the JIC as soon as possible and urge NERC to likewise select those persons it intends to represent it on the JIC so the coordination process can move forward.

² One of the Whereas clauses states that “the Parties intend this MOU to be a living document and recognize that the coordination procedures detailed in this MOU are likely to require revision as the Parties gain experience working under these procedures.”

³ In its May 16th order, the Commission stated that it considers coordination to be "critical to the efficient operation of the market" and that "the Commission stands ready to establish its own process to **ensure** coordination if the industry cannot agree on an **effective mechanism**." (emphasis added.)