

**PROPOSED I.B.E.W. LOCAL 37 TRAINING TRUST AGREEMENT**

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 2008.

AMONG: LOCAL 37 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F. OF L., C.I.O.-C.L.C.,  
  
(hereinafter called the "Employee Association")

OF THE FIRST PART

AND: NEW BRUNSWICK POWER HOLDING CORPORATION,  
  
(hereinafter sometimes called the "Corporation")

OF THE SECOND PART

AND: NEW BRUNSWICK POWER TRANSMISSION CORPORATION, NEW BRUNSWICK POWER GENERATION CORPORATION, NEW BRUNSWICK POWER NUCLEAR CORPORATION and NEW BRUNSWICK POWER DISTRIBUTION AND CUSTOMER SERVICE CORPORATION,

(hereinafter individually called the "Employer" and collectively called the "Employers")

OF THE THIRD PART

AND: ROSS GALBRAITH, BERIT WATSON, BERNADETTE CULLIGAN, LUCILLE M. AUBE, PAMELA FOGARTY, DOUGLAS E. WALLACE, RHONDA L. NICHOLSON, WANDA M. M. HIERLIHY, PHILIP HEPDITCH, STEPHEN GRAY and CAROLE VOLPE,

(hereinafter called the "Trustees")

OF THE FOURTH PART

## WHEREAS:

A. The I.B.E.W. Local 2309 Training Trust Fund (the "Local 2309 Trust Fund") was established pursuant to a Trust Agreement among International Brotherhood of Electrical Workers Local 2309, New Brunswick Power Corporation (referred to therein as "NB Power") and John E. Cole, Kevin C. Roherty, Robert C. Tucker, Colin E. Nichols, Sharon Jordan, Jill Boreland and Jane K. Murray, as the trustees thereunder, to take effect the 31<sup>st</sup> day of March, 1989, to provide training and retraining for employees to upgrade their skills;

B. An Agreement was entered into the 31<sup>st</sup> day of March, 1989 between the Canada Employment and Immigration Commission (the "Commission") and the trustees of Local 2309 Trust Fund pursuant to which grants based on a percentage of the contributions made by Local 2309 and New Brunswick Power Corporation were to be made by the Commission to the Local 2309 Trust Fund for retraining purposes (the "Local 2309 Grant Agreement");

C. The I.B.E.W. Local 1733 Training Trust Fund (the "Local 1733 Trust Fund") was established pursuant to a Trust Agreement among International Brotherhood of Electrical Workers Local 1733, New Brunswick Power Corporation (referred to therein as "NB Power") and Jean-Paul Morel, Jane Murray, Larry Calhoun, Clinton Sharpe, Jim Hunziker, Anthony Pitre and Frank Hartt, as the trustees thereunder, to take effect the 28<sup>th</sup> day of September, 1992, to provide training and retraining for employees to upgrade their skills;

D. An Agreement was entered into the 23<sup>rd</sup> day of November, 1992 between the Commission and the trustees of Local 1733 Trust Fund, pursuant to which contributions based on a percentage of the contributions made by Local 1733 and New Brunswick Power Corporation were to be made by the Commission to the Local 1733 Trust Fund for training and retraining purposes (the "Local 1733 Contribution Agreement");

E. The Employee Association is the successor Local resulting from the amalgamation of International Brotherhood of Electrical Workers Locals 1733 and 2309. The President of the International Brotherhood of Electrical Workers approved the amalgamation and agreed to charter Local 37 effective April 2, 2000. As a result of that amalgamation, the Local 2309 Trust Fund and the Local 1733 Trust Fund were merged into and continued and managed as one fund, namely the I.B.E.W. Local 37 Training Trust Fund;

F. Pursuant to the *Electricity Act*, S.N.B. 2003, c. E-4.6, the restructuring of the New Brunswick Power Corporation was provided for and pursuant thereto NB

Power was continued under the *Business Corporations Act* of New Brunswick on October 1, 2004 under the name of New Brunswick Power Holding Corporation, the Corporation hereunder, and each of the Employers was incorporated under the *Business Corporations Act* on May 4, 2005;

G. The employment of the members of the Employee Association who were employees of NB Power was transferred to each Employer according to the skills, knowledge and experience of each employee, all as provided in the *Electricity Act*;

H. All obligations of the trustees of the Local 2309 Trust Fund under the 2309 Grant Agreement and all obligations of the trustees of the Local 1733 Trust Fund under the Local 1733 Contribution Agreement to the Government of Canada were fulfilled by 1996 and the said agreements were thereafter of no further force or effect;

I. The Employees and the Employers continue to contribute to the Trust Fund ;

J. Because job specific training for the Employees has for many years been provided by the Employers and others, the Trust Fund is no longer required for its original purposes. The Trust Fund is now used for training and education relating to general workplace skills and development;

K. The terms of each of the Trust Agreements are the same and the Trustees hereunder are the successor trustees following the merger of Locals 1733 and 2309 and the merger of the Local 2309 Trust Fund and the Local 1733 Trust Fund;

L. The parties are desirous of consolidating the provisions of the said Trust Agreements, varying the provisions to recognize the above-mentioned reorganizations and changes, including the termination of the Grant Agreement and the Contribution Agreement and the requirements thereunder, and to enlarge the powers of the Trustees under certain provisions thereof for the better management and administration of the Trust Fund;

M. This Agreement was approved by \_\_\_[name of Judge]\_\_\_ on behalf of all persons, whether ascertained or not, who may become entitled at some future time to an interest under the Local 2309 Trust Fund and the Local 1733 Trust Fund;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements herein contained, it is hereby covenanted and agreed by and among the parties hereto as follows:

## 1. DEFINITIONS

- (a) AAuditor@ means the duly qualified chartered accountant or firm of chartered accountants appointed at a meeting of Trustees to conduct the annual audit of the Trust Fund;
- (b) AEmployees@ means persons who are members of the Employee Association who contribute a portion of their wages to the Trust Fund ;
- (c) AEmployers@ means the parties of the Third Part and the Corporation, and AEmployer@ means any one of them;
- (d) AInvestment Advisor@ means a corporation or firm of investment counsel or dealers retained by the Trustees to assist in investing the Trust Fund;
- (e) ATrust Fund@ means the Local 2309 Trust Fund and the Local 1733 Trust Fund as merged and continued hereby and includes all property held by the Trustees from time to time pursuant to this Agreement and all undistributed income from such property and all contributions to the Trust Fund accepted by the Trustees;
- (f) ATrustee@ or ATrustees@ means the persons appointed from time to time to act as Trustees under this Agreement;
- (g) ATuition Reimbursement Policy@ means the policy established by the Trustees, as may be amended from time to time by them, with respect to tuition reimbursement.

## 2. PURPOSE AND USE OF THE TRUST FUND

### 2.1 Purpose of the Trust Fund

The purpose of the Trust Fund is to assist Employees by supporting and encouraging training, learning and development activities which contribute to success in the workplace, career development and planning for the future. Such assistance and support may include, but not be limited to, workshops and group learning events and individual learning activities for which tuition reimbursement may be provided in whole or in part.

### 2.2 Distribution and Use of the Trust Fund

The Trustees shall hold in trust, invest and keep invested the Trust Fund and pay or apply all or any part of the income and so much of the capital as they deem advisable to or for the purposes of the Trust Fund as set forth in this Agreement. The Trust Fund shall not be used for any other purpose except to pay the costs and expenses of the administration of the Trust Fund that are properly incurred pursuant to this Agreement.

### 2.3 Title to Trust Fund

Title to all monies and property comprising the Trust Fund shall be and remain exclusively in the Trustees= possession and neither the Employers nor the Employee Association nor any Employee shall have any right, title or interest in any such monies or property.

## 3. TRUSTEES

### 3.1 Number of Trustees

There shall be a maximum of 14 Trustees to administer the Trust Fund as may be appointed from time to time in the manner set forth in Section 3.3.

### 3.2 Term of Office

The term of office for a Trustee shall be from the date of appointment until his or her successor is appointed.

### 3.3 Appointment of Trustees

(a) Each Employer shall be entitled, but not obligated, to nominate one (1) person to act as a Trustee hereunder.

(b) The Employee Association shall be entitled, but not obligated, to nominate nine (9) persons to act as Trustees hereunder, one of whom shall be the person who holds the position of business manager of the Employee Association.

(c) No person so nominated shall act as a Trustee unless and until appointed at a meeting of Trustees. If a person nominated is not appointed a Trustee hereunder, the party which nominated such person shall be entitled to nominate another person to

act as a Trustee hereunder and such other person so nominated shall only act as a Trustee unless and until appointed at a meeting of Trustees.

#### 3.4 Consent to Appointment

Each Trustee appointed under this Agreement shall consent in writing to his or her appointment and shall agree to observe and perform the terms of this Agreement and all policies adopted by the Trustees from time to time for the administration of the Trust Fund.

#### 3.5 Resignation of Trustees

Any Trustee may at any time resign from the office of Trustee hereof on giving not less than thirty (30) days notice to the Trust Fund Administrator/Training Coordinator.

#### 3.6 Automatic Termination of Office

The office of a Trustee shall be immediately vacated if such Trustee shall be found to be mentally incompetent or incapable of managing some or all of his or her affairs within the meaning of the *Infirm Persons Act*, c. 1-8, R.S.N.B. 1973, if he or she shall be declared bankrupt or insolvent, if he or she refuses to act as a Trustee, or if he or she dies.

#### 3.7 Removal of a Trustee

The Trustees may, by resolution passed at a meeting of the Trustees, remove any Trustee.

#### 3.8 Discharge of a Trustee

In the event of the resignation, termination of office or removal of a Trustee, such Trustee, his or her heirs, executors and administrators, shall be fully discharged from all future duties and responsibilities.

#### 3.9 Vacancies

In the event of a vacancy among the Trustees caused by the resignation, termination of office or removal of a Trustee, such vacancy shall be filled in the manner provided in Section 3.3.

#### 3.10 Vesting in Trustee

Any person who becomes a Trustee shall become vested with all of the property, rights, powers and duties of a Trustee hereunder immediately upon his or her appointment as a Trustee.

### 3.11 Powers of Remaining Trustees to Act

The powers of the remaining Trustees to act as such shall not be impaired or limited in any way pending the appointment of a new Trustee to fill any vacancy so long as the provisions with respect to a quorum for meetings are observed.

### 3.12 Obligation of Retiring Trustee

Any retiring Trustee shall forthwith turn over to the remaining Trustees any and all records, books, documents, monies and other properties in his or her possession relating to the administration of the Trust Fund and this Agreement.

### 3.13 Compensation to Trustees

The Trustees shall not receive any compensation or remuneration from the Trust Fund for the performance of their duties but shall be reimbursed from the Trust Fund for all reasonable and necessary expenses properly incurred by them in the performance of their duties.

### 3.14 Liability of Trustees

No Trustee shall be liable for any error of judgment or mistake of law or other mistake or for anything, save the willful neglect or default of such Trustee or the willful misconduct of such Trustee or willful breach of the terms of this Trust by such Trustee or obtaining a benefit from the Trust Fund and each Trustee shall be indemnified and held harmless against any claims and/or losses (except those arising from the willful neglect or default of such Trustee or Trustee), taxes and impositions arising in connection with the Trust Fund.

## 4. OFFICERS OF THE TRUST

### 4.1 Appointment of Officers

The Trustees shall select from among themselves the following officers who shall hold office until their successors are appointed:

Two Co-Chairpersons, one of whom shall be a representative of the Employee Association and the other of which shall be a representative of an Employer;

The Trustees shall also select a person, who is not a Trustee, to be the Trust Fund Administrator/Training Coordinator.

#### 4.2 Duties of Officers

##### (a) *Co-Chairpersons*

The Co-Chairpersons shall, together or individually, chair each meeting of the Trustees and shall be responsible for insuring compliance in all respects by the Trustees, members of the Sub-committees and officers, with the provisions of this Agreement.

##### (b) *Trust Fund Administrator/Training Coordinator*

The Trust Fund Administrator/Training Coordinator shall provide the administrative and logistical support required by the Trustees and the Sub-committees to carry out the provisions of this Agreement and shall coordinate the training programs

#### 4.3 Signing Authorities

Both Co-Chairpersons or such other persons as may be appointed by the Trustees from time to time shall sign all cheques, banking documents, contracts, agreements, documents and instruments as may be required to be signed on behalf of the Trustees.

### 5. POWERS OF TRUSTEES

#### 5.1 Powers

The Trustees, in addition to such powers as are set forth in this Agreement or are conferred by law, are hereby empowered:

- (a) to establish and administer the Trust Fund and to enter into any and all contracts and agreements for carrying out of the terms of this Agreement and for the administration of the Trust Fund and do all acts as they, in their discretion, may deem necessary and advisable;



- (b) To invest and reinvest all or any part of the Trust Fund=s monies in such manner and upon such terms and for such length of time as the Trustees in their discretion deem proper;
- (c) To establish and accumulate, as part of the Trust Fund, such reserve or reserves as are adequate, in the opinion of the Trustees, to carry out the purposes of the Trust Fund;
- (d) To have full authority to determine all questions of coverage, liability and methods of providing or arranging for provisions of payments and all other related matters;
- (e) To rent premises, purchase supplies and purchase training from an authorized third party;
- (f) To employ an administrator and administrative and clerical personnel to whom they may delegate such portion of the duties as they may in their sole discretion deem proper and necessary for the sound efficient administration of the Trust Fund;
- (g) To retain, employ and compensate investment advisors, accountants, valuers and legal counsel as they may in their discretion deem proper and necessary in connection with the Trust Fund and this Agreement.
- (h) To appoint any one or more of the Trustees or any other person or persons to sign all or any banking documents, stock transfers, receipts, promissory notes, other negotiable instruments and any other documents of any kind required to be signed on behalf of the Trustees at any time.
- (i) To accept or to refuse to accept contributions or donations to the capital of the Trust Fund made by any person or persons whatsoever as the Trustees in their unfettered discretion shall from time to time determine.

## 5.2 Restriction on Power of Trustees

(a) Subject to the provisions of Section 5.2 (b), the Trustees shall not distribute, expend, apply or deal with any part of the Trust Fund to themselves or obtain any benefit for themselves.

(b) Nothing in this Section 5.2 or otherwise in this Agreement shall prevent a Trustee who is an Employee from participating in the training, learning and development activities referred to in Section 2 on the same basis and subject to the same conditions as any other Employee.

## 6. MEETINGS OF TRUSTEES

### 6.1 Meetings

The Trustees shall meet quarterly in February, May, September and November of each year, or more frequently if deemed necessary, to review the administration of the Trust Fund and, in particular, to review the operations to ensure full compliance with the terms of this Agreement. At a meeting of Trustees, they shall appoint an Auditor for the ensuing year and shall receive and review the audited financial statements for the preceding fiscal year. At each quarterly meeting, the date for the next quarterly meeting shall be determined. Other meetings of the Trustees may be called by one of the Co-Chairpersons upon giving not less than seven (7) days notice.

### 6.2 Quorum

A quorum for all meetings shall be 50% of the Trustees plus one, of which one shall be a representative of one of the Employers, if any.

### 6.3 Place of Meetings

Meetings shall be held at 138 Neill Street, Fredericton, New Brunswick or at such other location as the Trustees may determine from time to time.

### 6.4 Inability of Trustee to Attend Meeting

Any Trustee who is unable to attend a meeting shall give notice to the Trust Fund Administrator/Training Coordinator not less than five (5) days prior to the meeting.

### 6.5 Chairperson

One of the Co-Chairpersons shall act as chair of each meeting of Trustees.

### 6.6 Decisions by Majority, etc.

Decisions at meetings shall be by majority vote. The Co-Chairperson acting as chair of the meeting shall not have a vote, either original or casting.

## 7.0 SUB-COMMITTEES

### 7.1 Constitution of Sub-committees

The following Sub-committees, namely, Sub-committee on Tuition Reimbursement, Sub-committee on Investments and Sub-committee on Communications, shall be constituted to assist the Trustees in the administration of the Trust Fund.

### 7.2 Appointment and Removal of Sub-committee Members

The Trustees may, at any meeting of Trustees, appoint from among themselves, or remove, the members of each of the Sub-committees referred to in Section 7.1. The members of the Sub-committees shall serve for a term of two (2) years unless they cease to be Trustees, resign or are removed as a Sub-committee member.

### 7.3 Duties of Sub-committees

#### (a) *Sub-committee on Tuition Reimbursement*

The Sub-committee on Tuition Reimbursement will administer the reimbursement program according to the Tuition Reimbursement Policy. The Sub-committee will review, approve or deny applications for tuition reimbursement. In the event that the Sub-committee cannot come to agreement, the issue will be brought forward at the next quarterly meeting of the Trustees.

#### (b) *Sub-committee on Investments*

The Sub-committee on Investments will administer the Trust Fund by working with the Investment Advisor to develop an investment strategy, monitor the return on investment and make decisions to reallocate funds within the portfolio based on market conditions. In the event that the Sub-committee cannot come to agreement, the issue will be brought forward at the next quarterly meeting of the Trustees.

#### (c) *Sub-committee on Communications*

The Sub-committee on Communications will be responsible for developing an overall communication plan for the Trust Fund and for

researching and bringing forward new training ideas. The Sub-committee will make recommendations to the Trustees for an annual training calendar.

#### 7.4 Resignation of Sub-committee Members

A Sub-committee member may at any time resign from the Sub-committee on giving not less than thirty (30) days notice to the Trust Fund Administrator/Training Coordinator and the Sub-committee. The Trustees at their next quarterly meeting shall appoint a replacement member.

#### 7.5 Meetings of Sub-committees

Meetings of the Sub-committees will be held as required by telephone or at a location agreed upon by the members of such Sub-committee but not less than quarterly and at least two weeks in advance of the quarterly meetings of the Trustees. Questions arising at any meeting of a Sub-committee shall be decided by a majority of votes. The Sub-committee will report to the Trustees at their quarterly meetings.

#### 7.6 Other Committees

The Trustees may from time to time constitute such other Sub-committees as they deem necessary and shall prescribe their duties.

### 8. POLICIES

The Trustees may establish policies from time to time with respect to any matter relating to the purposes or administration of the Trust Fund and shall take into consideration the recommendations of a Sub-committee on any particular issue.

### 9. TRUST FUND RECORDS

#### 9.1 Maintenance of Records

The Trustees shall prepare and maintain proper books of account and records in accordance with generally accepted accounting principles. The Trustees shall also prepare and maintain proper records relating to the administration of the Trust Fund by the Trustees and the Sub-committees.

#### 9.2 Situs of Records

All records relating to the Trust Fund and its administration shall be kept at 138 Neill Street, Fredericton, N.B. E3A 2Z6, or at such other place as the Trustees may designate in writing.

10. AMENDMENT TO TRUST AGREEMENT

This Agreement may be amended only by an agreement in writing signed by the Employee Association and the Employers.

11. TERMINATION OF TRUST AGREEMENT

This Agreement may be terminated by agreement in writing signed by the Employee Association and the Employers and all assets comprising the Trust Fund, after payment of all liabilities in respect thereof, shall be distributed to the Employee Association and in no event shall any part of the Trust Fund, whether of capital or income, be distributed to any Trustee, Employee or Employer.

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

LOCAL 37 OF THE INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS A.F. OF L., C.I.O.-C.L.C.

per \_\_\_\_\_

per \_\_\_\_\_

NEW BRUNSWICK POWER HOLDING  
CORPORATION

per \_\_\_\_\_

per \_\_\_\_\_

NEW BRUNSWICK POWER TRANSMISSION  
CORPORATION

per \_\_\_\_\_

per \_\_\_\_\_



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	)	Pamela Fogarty
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	)	Douglas E. Wallace
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	)	Rhonda L. Nicholson
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	)	Wanda M. M. Hierlihy
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	)	Philip Hepditch
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	)	Carole Volpe