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February 9, 2009

US Department of Energy

FEB - 9 2009

Electricity, Delivery and Energy Reliability

Mr. Anthony J. Como  
The Department of Energy  
Office of Electricity Delivery and Energy Reliability  
OE-20, Room 6H-034  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: EPCOR Energy Marketing (US) Inc., Docket No. EA-260-C  
Application to Renew Authority to Export Electric Energy to Canada

Dear Mr. Como:

Please find enclosed an original and fifteen (15) copies of the application of EPCOR Energy Marketing (US) Inc. to renew its blanket authorization under Section 202(e) of the Federal Power Act to export electric energy from the United States to Canada. An extra copy of the application is enclosed to be date-stamped and returned with the waiting messenger.

Pursuant to 10 C.F.R. § 205.309 a copy of the application has been served on the following:

Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive, S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

New York State Department of Public Service  
3 Empire State Plaza  
Albany, New York 12223-1350

Mr. Anthony J. Como  
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Also pursuant to 10 C.F.R. § 205.309, please find enclosed a check made payable to the Treasurer of the United States in the amount of \$500.00. If you should have any questions regarding this filing, please contact the undersigned.

Sincerely,

*Lisa H. Tucker / M.A.*

Lisa H. Tucker

Enclosure

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

EPCOR Energy Marketing (US) Inc.      )

Docket No. EA-260- C

**APPLICATION TO RENEW THE AUTHORITY OF EPCOR ENERGY  
MARKETING (US) INC. TO EXPORT ELECTRIC ENERGY TO CANADA**

Pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824a(e) (2000), the Department of Energy ("DOE") Regulations set forth in 10 C.F.R. §§ 205.300-309 (2008), Order No. EA-260-A, which authorized EPCOR Merchant and Capital (US) Inc. ("EMCUS") to export electric energy from the United States to Canada through April 9, 2009,<sup>1</sup> and Order No. EA-260-B, which authorized EMCUS to transfer its authority to export electric energy into Canada to its affiliate, EPCOR Energy Marketing (US) Inc. ("EEMUS"),<sup>2</sup> EEMUS hereby applies to renew its blanket authority to export electric energy to Canada. EEMUS requests that authorization be granted for a five-year term beginning April 10, 2009.

**I. CONTENTS OF APPLICATION**

In accordance with 10 C.F.R. § 205.302, EEMUS states the following:

**A. Legal Name of Applicant**

The legal name of the Applicant is EPCOR Energy Marketing (US) Inc.

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<sup>1</sup> *EPCOR Merchant and Capital (US) Inc.*, Order Authorizing Electricity Exports to Canada, Order No. EA-260-A (Oct. 13, 2004) ("Order No. EA-260-A").

<sup>2</sup> *EPCOR Energy Marketing (US) Inc.*, Order Authorizing Electricity Exports to Canada, Order No. EA-260-B (Nov. 21, 2006) ("Order No. EA-260-B").

**B. Legal Name of All Partners**

EEMUS has no partners.

**C. Persons to Whom Correspondence Shall be Addressed**

All correspondence and communications regarding this Application should be addressed to the following individuals:

Ken Tsukishima  
Director, Commodity Portfolio  
Management  
EPCOR Energy Marketing (US) Inc.  
EPCOR Place  
505 - 2nd Street S.W.  
8th Floor  
Calgary, Alberta T2P 1N8  
Canada  
Tel: (403) 717-4625  
Fax: (403) 717-4601  
E-mail: ktsukishima@epcor.ca

Lisa H. Tucker, Esq.  
William M. Keyser, Esq.  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006  
Tel: (202) 778-9000  
Fax: (202) 778-9001  
E-mail: lisa.tucker@klgates.com  
william.keyser@klgates.com

**D. State or Territory of Incorporation**

EEMUS is a Delaware corporation with its principal place of business at 505 – 2<sup>nd</sup> Street S.W., 8<sup>th</sup> Floor, Calgary, Alberta, Canada, T2P 1N8. EEMUS is an indirect, wholly owned subsidiary of EPCOR Utilities Inc. of Edmonton, Alberta, Canada.

**E. Government Agencies Having Jurisdiction Over Action to Be Taken**

Pursuant to Section 202(e) of the FPA, DOE has jurisdiction over the export of electric energy to Canada. No other federal, state, or local government agency has jurisdiction over the activity to be conducted in accordance with the authorization received pursuant to this Application except to the extent that EEMUS must comply with the regulations of the Federal Energy Regulatory Commission ("Commission") in making sales at wholesale of electric energy in

the United States.<sup>3</sup> The Commission exercises regulatory authority over the rates for the transmission and sale of electric energy at wholesale in the United States.

#### **F. Description of Transmission Facilities**

EEMUS intends to export electric energy over the existing transmission facilities of the various entities identified in Exhibit C. These facilities are the same facilities that were approved by DOE for use in Order No. EA-260-A.<sup>4</sup> Exhibit C identifies the location, voltage and owner of the transmission facilities and provides information regarding the Presidential Permits issued to the owners. EEMUS's export activity generally has been limited to the use of facilities owned by the Bonneville Power Administration ("BPA") and the New York Power Authority and facilities operated by the Midwest Independent System Operator, Inc. However, during the term of its authorization, EEMUS may wish to use additional facilities such as those listed in Exhibit C.

#### **G. Technical Discussion of the Proposed Export of Electricity**

EEMUS is a power marketer engaged in the business of marketing electric energy in the United States and Canada. EEMUS will take title to electricity it exports to Canada. EEMUS does not own or control any electric generation facilities<sup>5</sup> or transmission facilities in the United States and does not have a

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<sup>3</sup> EEMUS is a power marketer authorized by the Commission to sell wholesale electric energy and capacity at market-based rates. *EPCOR Energy Mkt'g. (US) Inc.*, Docket No. ER06-1135-000 (Letter Order issued July 14, 2006).

<sup>4</sup> Order No. EA-260-A at 5.

<sup>5</sup> EEMUS is affiliated with the following entities that own generation facilities in the United States: EPCOR Power (Castleton) LLC, which owns a 72 MW generating facility in Castleton-on-Hudson, New York; Frederickson Power LP, which owns a 50.15% interest in a 249 MW generating facility in Frederickson, Washington; Manchief Power

franchised service area in the United States. In this Application, EEMUS seeks to renew its authority to engage in open-ended transactions to export electricity to Canada under terms and conditions to be negotiated in the future.

Before granting an export authorization, DOE must find that (1) the proposed export will not impair the sufficiency of the electricity supply within the United States and (2) will not impede the coordinated use of regional transmission facilities.<sup>6</sup> DOE's conclusions in Order Nos. EA-260-A and EA-260-B that EMCUS's and, subsequently, EEMUS's proposed export of electricity will not impair the sufficiency of the electric supply within the United States remain valid.<sup>7</sup> As noted above, EEMUS is a power marketer that owns no generation and has no franchised service territory. EEMUS will purchase energy for export that is not needed by the seller and, thus, by definition is surplus to the system of the seller. Accordingly, EEMUS's export activity will not impair the sufficiency of the power supply in the United States.<sup>8</sup>

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Company LLC, which owns a 300 MW generating facility in Brush, Colorado; EPCOR USA North Carolina LLC, which owns a 52 MW generating facility in Roxboro, North Carolina and a 103 MW qualifying facility in Southport, North Carolina; Applied Energy LLC, which owns three qualifying facilities in San Diego, California with a combined seasonal capacity of 112 MW; Cokenergy LLC, which owns a 95 MW qualifying facility in Chicago, Illinois; Curtis Palmer Hydroelectric Co. L.P., which owns a 60 MW qualifying facility in Corinth, New York; EF Kenilworth LLC, which owns a 30 MW qualifying facility in Kenilworth, New Jersey; EF Oxnard LLC, which owns a 49 MW qualifying facility in Oxnard, California; Ironside Energy LLC, which owns a 50 MW qualifying facility in Chicago, Illinois; North Lake Energy LLC, which owns a 75 MW qualifying facility in Chicago, Illinois; Portside Energy LLC, which owns a 64 MW qualifying facility in Portage, Indiana; and Thermo Power & Electric LLC, which owns an 82 MW qualifying facility in Greeley, Colorado.

<sup>6</sup> 16 U.S.C. § 824a(e) (2000).

<sup>7</sup> Order No. EA-260-A at 4; Order No. EA-260-B at 1.

<sup>8</sup> See, e.g., *DC Energy LLC*, Order Authorizing Electricity Exports to Canada, Order No. EA-327, at 2 (Jul. 11, 2007) ("Order No. EA-327") ("Because a marketer has no native load obligations and because power purchased by a marketer would be surplus to the

EEMUS will make all necessary commercial arrangements and obtain all required regulatory approvals to affect any power exports. Specifically, EEMUS will schedule each transaction with the appropriate control area in compliance with good utility practice and the appropriate market rules and obtain all necessary transmission access over the existing facilities listed in Exhibit C.

As DOE noted in Order No. EA-260-A:

In determining the reliability impacts of moving the export through a border system and across the border, DOE relies on the traditional technical studies that were performed in support of electricity export authorizations issued to the border system. Allowing these technical studies to suffice in this docket is sound and, thus DOE need not perform additional reliability assessments here, provided the maximum rate of transmission for all exports through [the] border system does not exceed the authorized limit of the system.<sup>9</sup>

EEMUS respectfully requests that DOE continue to apply this standard to this Application. EEMUS commits to abide by all applicable export limits on transmitting facilities, including those of the border facilities it uses. EEMUS also commits to comply fully with the terms and conditions of any export authorization granted to it by DOE. In addition, EEMUS agrees to abide by the transmission limits DOE recognizes for the transport of electric energy over specific international transmission ties.<sup>10</sup> Thus, EEMUS's proposed export of electric energy to Canada will not impair the sufficiency of energy supply within the

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needs of entities selling the power to the marketer, an export occurring under such circumstances would meet the first statutory criterion of section 202(e) of the FPA of not impairing the sufficiency of supply within the United States.")

<sup>9</sup> Order No. EA-260-A at 2-3.

<sup>10</sup> See Order No. 260-A at 3; Order No. 327 at 3-4.

United States or impede regional coordination of electricity utility planning or operation.

**H. Verification**

The signed verification of William S. Wright, Assistant Corporate Secretary of EEMUS is attached to this Application as Exhibit G.

**II. REQUIRED EXHIBITS**

Pursuant to 10 C.F.R. § 205.303, EEMUS provides the following exhibits to support its request for authorization to export electric energy to Canada.

**Exhibit A:** Agreement or Proposed Agreement Under Which the Electricity Is To Be Transmitted. EEMUS seeks blanket approval to negotiate export agreements in the future. This filing requirement is therefore not applicable.

**Exhibit B:** Signed Opinion of Counsel.

**Exhibit C:** Map showing Applicant's Electrical System and the Location of Generation and Transmission Facilities to be used in the Exporting of Electricity to Canada. As noted above, EEMUS is a power marketer with no electrical system or system maps. EEMUS has included a list of the border transmission facilities that it may use to export electric energy to Canada in Exhibit C.

**Exhibit D:** Designation of Power of Attorney by Applicant Having Principal Office Outside of the United States.

**Exhibit E:** Statement of Corporate Relationship between Applicant and any Other Person Relating to the Control or Fixing of Rates for the Purchase or Sale of Transmission of Electric Energy.

**Exhibit F:** Operating Procedures to Notify Neighboring Electric Utilities of Capacity and Energy Available in the United States before Delivery of Such Capacity to a Foreign Purchaser.

**Exhibit G:** Verification by William S. Wright, Assistant Corporate Secretary of EEMUS, of Facts and Representations in this Application.

### **III. CONCLUSION**

For the reasons set forth above, EEMUS respectfully requests that the DOE consider and approve the instant application to renew EEMUS's authority to export electric energy from the United States to Canada.

Respectfully submitted,

By *Lisa H. Tucker* *Esq.*  
Lisa H. Tucker, Esq.  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006

*Attorney for EPCOR Energy Marketing (US) Inc.*

Dated: February 9, 2009

**EXHIBIT A**  
**Agreement or Proposed Agreement**  
**Under Which Electricity Is to Be Transmitted**

Not applicable.

**EXHIBIT B**  
**Legal Opinion of Corporate Counsel**  
**of EPCOR Energy Marketing (US) Inc.**

February 9, 2009

EPCOR Energy Marketing (US) Inc.  
505 – 2<sup>nd</sup> Street S.W., 8<sup>th</sup> Floor  
Calgary, Alberta  
Canada T2P 1N8

Ladies and Gentlemen:

We have acted as counsel to EPCOR Energy Marketing (US) Inc. ("EEMUS"), a Delaware corporation, in connection with the filing with the United States Department of Energy, Office of Fossil Energy, of an application in Docket No. EA-260-\_\_\_ to renew EEMUS's authority to export electric energy from the United States to Canada (the "Application"). This opinion letter is being furnished to you as a supporting document for the Application.

For purposes of rendering our opinion, we have examined a certified copy of EEMUS's Certificate of Incorporation as certified by the Secretary of State of the State of Delaware on February 9, 2009, a copy of EEMUS's Bylaws as certified in the Fact Certificate (as defined below), and the Application, and we have made such other investigation as we have deemed appropriate. We have examined and relied upon certificates of public officials and, as to certain matters of fact that are material to our opinion, we also have relied on a certificate of an officer of EEMUS (the "Fact Certificate"), which is attached hereto as Exhibit 1. In rendering our opinion, we also have made the assumptions that are customary in opinion letters of this kind. We have not verified any of those assumptions.

Our opinion, as set forth herein, is based on the facts in the Fact Certificate and the laws in effect on the date hereof and is limited to the General Corporation Law of the State of Delaware. We are not members of the Delaware Bar, and the opinions set forth below with respect to the law of the State of Delaware are based solely on our examination of the General Corporation Law of the State of Delaware. We express no opinion on, and we assume no responsibility for, the applicability to or effect on any of the matters covered herein of the laws of any other jurisdiction, or the laws of any county, municipality or other political subdivision or any local governmental authority.

Based upon and subject to the foregoing, we are of the opinion that EEMUS has the corporate power to export electric energy from the United States to Canada as contemplated by the Application.

EPCOR Energy Marketing (US) Inc.  
February 9, 2009  
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The opinions set forth in this opinion letter are limited to the matters expressly stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein. This opinion is rendered as of the date hereof and based on facts in existence and law in effect on the date hereof, and we disavow any obligation or duty, and undertake no obligation or duty, to update these opinions or advise you of any changes in our opinions in the event of changes in applicable law or facts or if additional or newly discovered information is brought to our attention that may affect the opinions expressed herein.

We are furnishing this opinion letter to you solely in connection with the Application. You may not rely on this opinion letter in any other connection, and it may not be furnished to or relied upon by any other person for any purpose, without our specific prior written consent in each instance. We hereby consent to the submission of this opinion letter with the United States Department of Energy as an exhibit to the Application.

Very truly yours,

A handwritten signature in dark ink, appearing to read "K&L Gates LLP", is written over the typed name.

K&L Gates LLP

## FACT CERTIFICATE

To: K&L Gates LLP:

This Certificate is made and delivered to K&L Gates LLP by EPCOR Energy Marketing (US) Inc. (the "Company"). The undersigned understands that K&L Gates LLP will rely on this Certificate in giving its legal opinion in connection with the Application to Renew Authority to Export Electric Energy to Canada.

I hereby certify that I am the duly elected, qualified and incumbent Assistant Corporate Secretary of the Company, that I am authorized by the Company to make, execute and deliver this Certificate, and that I am personally familiar with the following facts. On behalf of the Company in my capacity set forth above, I further certify that:

1. Certificate of Incorporation. Attachment 1 attached to this Certificate is a true, complete and correct copy of the Certificate of Incorporation of the Company in effect on the date of this Certificate. Except as set forth in Attachment 1, there has not been any amendment or other modification of the Certificate of Incorporation nor any proceeding of the Board of Directors or shareholders of the Company with respect to any proposed such amendment or modification.
2. Bylaws. Attachment 2 attached to this Certificate is a true, complete and correct copy of the Bylaws of the Company in effect on the date of this Certificate. Except as set forth in Attachment 2 there has not been any amendment or other modification of the Bylaws nor any proceeding of the Board of Directors or shareholders of the Company with respect to any proposed such amendment or modification.
3. Legal Power. The Company has the corporate power and authority to export electricity to Canada.
4. Reliance. K&L Gates LLP may rely on the statements made in this Certificate as a basis for its legal opinion to be given in connection with the application mentioned above.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate and caused it to be delivered to K&L Gates LLP this 2<sup>nd</sup> day of February, 2009.

EPCOR Energy Marketing (US) Inc.

By: \_\_\_\_\_

William S. Wright

Assistant Corporate Secretary

## Attachment 1

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "EPCOR ENERGY MARKETING (US) INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE TWENTY-THIRD DAY OF JUNE, A.D. 2006, AT 7:37 O'CLOCK P.M.

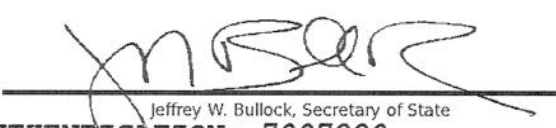
AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "EPCOR ENERGY MARKETING (US) INC.".

4180652 8100H

090063742

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7097220

DATE: 01-23-09

**CERTIFICATE OF INCORPORATION  
OF  
EPCOR ENERGY MARKETING (US) INC.**

Pursuant to the provisions of Section 102 of the General Corporation Law of the state of Delaware, the following Certificate of Incorporation is submitted for filing:

**ARTICLE 1  
NAME**

The name of this corporation is EPCOR Energy Marketing (US) Inc.

**ARTICLE 2  
REGISTERED OFFICE AND AGENT**

The respective names of the County and of the City within the County in which the registered office of the Corporation is to be located in the state of Delaware are the county of New Castle and the city of Wilmington. The name and address by street and number of said registered agent is The Corporation Trust Company, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

**ARTICLE 3  
PURPOSE**

This corporation is organized for the purposes of transacting any and all lawful business for which a corporation may be incorporated under Section 102 of the General Corporation Law of the State of Delaware, as amended.

**ARTICLE 4  
CAPITAL STOCK**

The authorized capital stock of this corporation shall consist of One Thousand (1,000) shares of common stock each having a par value of \$0.001.

**ARTICLE 5  
DURATION**

This corporation shall have perpetual existence.

## **ARTICLE 6 BOARD OF DIRECTORS**

The number of directors of this corporation shall be fixed from time to time by the bylaws or amendment thereof duly adopted by the Board of Directors or by the stockholders. The names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualified are:

Donald J. Lowry	c/o EPCOR Centre, 18 <sup>th</sup> Floor 10065 Jasper Avenue Edmonton, Alberta T5J 3B1 Canada
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Mark Wiltzen	c/o EPCOR Centre, 18 <sup>th</sup> Floor 10065 Jasper Avenue Edmonton, Alberta T5J 3B1 Canada
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## **ARTICLE 7 AUTHORITY OF THE BOARD OF DIRECTORS**

The authority of the board of directors is limited and the shareholders will perform some or all of the duties of the board of directors, as permitted by Section 141(a) of the Delaware General Corporation Law, as set forth in the Bylaws of the Corporation

## **ARTICLE 8 LIMITATION OF DIRECTOR LIABILITY**

A director of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article 8, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article 8 or the adoption of any provision of this Certificate of Incorporation inconsistent with this Article 8 by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

**ARTICLE 9**  
**INDEMNIFICATION OF DIRECTORS**

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article 9 shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

**ARTICLE 10**  
**POWERS OF INCORPORATOR**

The powers of the incorporator shall terminate upon the filing of the Certificate of Incorporation.

The undersigned, for the purposes of forming a corporation under the laws of the state of Delaware, hereby executes this Certificate of Incorporation on June 23, 2006.

/s/ Warren M. Clemans  
Warren M. Clemans, Incorporator

c/o Preston Gates & Ellis LLP  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104-1158

## Attachment 2

**BYLAWS OF EPCOR ENERGY MARKETING (US) INC.**

**ADOPTED ON August 1<sup>st</sup>, 2006**

**ARTICLE I**

**OFFICES AND BUSINESS**

The corporation shall have offices at such places, either within or without the State of Delaware, as the board of directors of the corporation may from time to time determine or the business of the corporation may require. The business of the corporation shall be trading electricity and other energy related products and services, and to engage in activities directly or indirectly related to those matters, and any and all lawful business for which a corporation may be incorporated under Section 102 of the General Corporation Law of the State of Delaware, as amended.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

**SECTION 2.01.** Place of Meetings. All meetings of stockholders for the election of directors shall be held at such place, either within or without the State of Delaware, as shall be designated from time to time by the board of directors and stated in the notice of the meeting.

**SECTION 2.02.** Annual Meetings. The annual meeting of stockholders shall be held at such date and time as shall be designated from time to time by the board of directors and stated in the notice of the meeting.

**SECTION 2.03.** Voting List. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days before the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

**SECTION 2.04.** Special Meetings. Unless otherwise prescribed by statute or by the Corporation's certificate of incorporation, a special meeting of the stockholders for any purpose may be called by the Chairman of the Corporation, by the President of the Corporation, by the board of directors of the Corporation or by written order of a majority of the directors, and shall be called by the Chairman or the President or the Secretary of the Corporation at the request in writing of stockholders owning at least fifty percent (50%) in amount of any class of stock of the Corporation issued and outstanding and entitled to vote.

A request of stockholders shall state the purpose of the proposed meeting. The board of directors of the Corporation shall fix the time and place for holding the meeting.

SECTION 2.05. Notice of Meeting. Written notice of any meeting of stockholders, stating the time, place and purpose of the meeting, shall be given to each stockholder entitled to vote at the meeting, not less than 10 nor more than 60 days before the meeting.

SECTION 2.06. Quorum. The holders of one hundred percent (100%) of the stock issued and outstanding and entitled to vote at a meeting, present in person or represented by proxy, shall constitute a quorum at the meeting of stockholders for the transaction of business except as otherwise provided by statute, the corporation's certificate of incorporation or these bylaws. Notwithstanding the other provisions of the corporation's certificate of incorporation or these bylaws, the holders of a majority of the shares of capital stock entitled to vote, present in person or represented by proxy, whether or not a quorum is present, shall have power to adjourn a meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally notified.

SECTION 2.07. Proxies and Voting.

- (a) At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. The proxy may not be voted if it is dated more than three years before voting, unless the proxy provides for a longer period. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 2.07(a) may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, but the copy, facsimile telecommunication or other reproduction must be a complete reproduction of the entire original writing or transmission.
- (b) Unless otherwise required by law, all voting, including the election of directors, may be by a voice vote; if a stockholder entitled to vote or its proxy so demands, a stock vote shall be taken. Every stock vote shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. The corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report on the meeting. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before beginning his duties, shall

take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability. Every vote taken by ballots shall be counted by an inspector or inspectors appointed by the chairman of the meeting.

SECTION 2.08. Vote Required. With respect to any matter, the vote of one hundred percent (100 %) of the stock having voting power on that matter and present in person or represented by proxy at a meeting of stockholders at which a quorum is present, shall decide the matter, unless the matter is one upon which a different vote is required by express provision of law, the certificate of incorporation of the Corporation or these bylaws, in which case that express provision shall govern and control. Unless otherwise required by express provision of law, in which case that express provision shall govern, directors shall be elected as provided in the corporation's certificate of incorporation.

SECTION 2.09. Consent of Stockholders. Whenever the vote of stockholders at a meeting is required or permitted to be taken for or in connection with any action by applicable law, the meeting and vote of stockholders may be dispensed with if all the stockholders who would have been entitled to vote on the action if the meeting were held shall consent in writing to the action being taken; or if the holders of stock having not less than the minimum percentage of the vote required by statute for the proposed action shall consent in writing to the action being taken, if prompt notice is given to all stockholders of the taking of the action without a meeting by less than unanimous written consent.

SECTION 2.10. Voting of Stock of Certain Holders. Shares of the Corporation standing in the name of another corporation or other entity, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws (or analogous document) of the shareholder corporation or other entity may prescribe, or in the absence of a provision, as the board of directors or analogous managing body of that corporation or other entity may determine. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held in that capacity unless the shares are held in the name of the trustee. Shares standing in the name of a receiver may be voted by the receiver. A stockholder whose shares are pledged shall be entitled to vote its shares, unless in the transfer by the pledger on the books of the corporation, the stockholder has expressly empowered the pledgee to vote those shares, in which case only the pledgee, or the pledgee's proxy, may represent the stock and vote.

SECTION 2.11. Treasury Stock. The Corporation shall not vote, directly or indirectly, shares of its own stock owned by it; and those shares shall not be counted in determining the total number of outstanding shares.

SECTION 2.12. Fixing Record Date. To determine the stockholders entitled to notice of or to vote at a meeting, the board of directors may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted by the board of directors, and which shall not be more than 60 nor less than 10 days before the date of the meeting. To determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted by the board of directors, and which shall

not be more than 10 days after the date on which the resolution fixing the record date is adopted by the board of directors. To determine the stockholders entitled to receive payment of a dividend or the distribution or allotment of any rights or the stockholders entitled to exercise rights in respect of a change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted, and which shall be not more than 60 days before the action. The record date shall be determinative, notwithstanding any transfer of stock on the books of the corporation after the record date is fixed.

### ARTICLE III

#### BOARD OF DIRECTORS

SECTION 3.01. Powers. All corporate powers shall be exercised by or under the authority of, and the business affairs of the corporation shall be managed under the direction of, the board of directors, except as may be otherwise provided in these bylaws, the certificate of incorporation or the General Corporation Law of the State of Delaware.

At the date of adoption of these bylaws, the Corporation and the sole shareholder have executed a Shareholder Agreement, the provisions of which abrogate in whole the powers of the board of directors in favor of the sole shareholder to the fullest extent permitted by law. For so long as the powers of the board are wholly abrogated in favor of the sole shareholder, any provisions of the bylaws authorizing or directing the board or any one or more directors to take any action or do any thing shall be interpreted subject to the provisions of the Shareholder Agreement and shall be read as meaning that the sole shareholder board shall or may take any such action or do any such thing. Where the General Corporation Law of the State of Delaware or any applicable law requires any director to take any action, a director shall take such action only in accordance with the direction of the shareholder and shall be entitled to rely on any such direction without further inquiry and, in so doing, shall be indemnified as provided for in these bylaws and the certificate of incorporation. If the said Shareholder Agreement is amended from time to time such that any or all of the powers of the directors to manage the business and affairs of the Corporation are restored to the board, the provisions of these bylaws shall, to the extent applicable, apply to the exercise of such restored powers.

SECTION 3.02. Number and Term. Subject to the provisions of the Corporation's certificate of incorporation, the number of directors that shall constitute the whole board shall be not less than two, shall be fixed and determined by the directors from time to time and shall be set forth in the notice of any meeting of stockholders held for the purpose of electing directors. Unless a director dies, resigns or is removed, his or her term of office shall expire at the next annual meeting of the shareholders; provided, however that a directors shall continue to serve until his or her successor is elected or until there is a decrease in the authorized number of directors. Directors need not be residents of the State of Delaware or stockholders of the Corporation.

SECTION 3.03. Vacancies, Additional Directors and Removal From Office. If any vacancy occurs in the board of directors for any reason or any new directorship is created by an increase in the authorized number of directors, then a successor to fill the vacancy or newly

created directorship may be elected solely by the unanimous vote of one hundred percent (100%) of the outstanding shares of common stock. Any director may be removed, with or without cause, by the unanimous vote of one hundred percent (100%) of the outstanding shares of common stock.

SECTION 3.04. Regular Meeting. A regular meeting of the board of directors shall be held each year, without notice other than this Section 3.04, at the place of, and immediately following, the annual meeting of stockholders; and other regular meetings of the board of directors shall be held, at such time and place as the board of directors may provide, by resolution, either within or without the State of Delaware, if notice of the resolution has been given to all directors.

SECTION 3.05. Special Meeting. A special meeting of the board of directors may be called by the Chairman of the Board or by the President of the corporation and shall be called by the Secretary of the corporation on the written request of any director. The Chairman of the Board or President of the corporation so calling, or the directors so requesting, the meeting shall fix the time and any place, either within or without the State of Delaware, as the place for holding the meeting.

SECTION 3.06. Notice of Special Meeting. Written notice of special meetings of the board of directors shall be given to each director at least 72 hours before the time of the meeting. Any director may waive notice of a special meeting. The attendance of a director at a special meeting shall constitute a waiver of notice of the meeting, unless the director attends the meeting for the purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any special meeting of the board of directors need be specified in the notice or waiver of notice of a special meeting, except that notice shall be given of any proposed amendment to these bylaws if it is to be adopted at the special meeting or with respect to any other matter if notice is required by statute.

SECTION 3.07. Quorum and Voting. A majority of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors, and the unanimous act of all the directors present at any meeting at which there is a quorum shall be the act of the board of directors, unless otherwise specified by statute, by the certificate of incorporation or by these bylaws. If a quorum is present at a meeting of the board of directors, the directors present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

SECTION 3.08. Action Without a Meeting. Unless otherwise restricted by the corporation's certificate of incorporation or these bylaws, any action required or permitted to be taken at a meeting of the board of directors, or of any committee of the board of directors as provided in Article IV of these bylaws, may be taken without a meeting, if a written consent to the action is signed by all members of the board or of the committee, as applicable, and the consent is filed with the minutes of proceedings of the board or committee.

SECTION 3.09. Compensation. Unless otherwise restricted by the corporation's certificate of incorporation, the board of directors shall have the authority to fix any compensation of directors.

SECTION 3.10. Telephonic Participation at Meeting. Unless otherwise restricted by the corporation's certificate of incorporation, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and that participation shall constitute presence in person at the meeting.

## ARTICLE IV

### COMMITTEES OF THE BOARD OF DIRECTORS

SECTION 4.01. Designation, Powers and Name. The board of directors may designate one or more committees, including, if they shall so determine, an executive committee, each such committee to consist of one or more of the directors of the Corporation. A committee shall have and may exercise such of the powers of the board of directors in the management of the business and affairs of the Corporation as may be provided in the resolution. The board of directors may designate one or more as alternate members of a committee, who may replace any absent or disqualified member at any meeting of the committee. A committee shall have such name and such limitations of authority as may be determined from time to time by resolution adopted by the board of directors. No committee shall have the power or authority in reference to amending the Corporation's certificate of incorporation (except as provided by applicable law), adopting an agreement of merger or consolidation of the Corporation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders the dissolution of the Corporation or revocation of a dissolution, amending the bylaws of the Corporation, declaring a dividend, authorizing the issuance of stock or adopting a certificate of ownership and merger of the Corporation and any subsidiary.

SECTION 4.02. Minutes. Each committee of directors shall keep regular minutes of its proceedings and report the same to the board of directors when required.

SECTION 4.03. Compensation. Members of special or standing committees may be allowed compensation for attending committee meetings, if the board of directors shall so determine.

## ARTICLE V

### NOTICES

SECTION 5.01. Methods of Giving Notice. If a provision of applicable law, the Corporation's certificate of incorporation or these bylaws requires notice to be given to any director or member of any committee, the notice must be in writing and may be delivered personally, mailed to the director or member or made by telegram or other facsimile. If a provision of applicable law, the Corporation's certificate of incorporation or these bylaws

requires notice to be given to any stockholder, the notice must be in writing and delivered personally or mailed to the stockholder. If mailed, notice to a director, member of a committee or stockholder shall be deemed to be given when deposited in the United States mail first class in a sealed envelope, with postage prepaid, addressed, in the case of a stockholder, to the stockholder at the stockholder's address as it appears on the records of the Corporation or, in the case of a director or a member of a committee, to the director at his business address. If sent by telegram or other facsimile, notice to a director or member of a committee shall be deemed to be given when the telegram or other facsimile, so addressed, is actually received by the director or member.

SECTION 5.02. Written Waiver. Whenever any notice is required to be given under the provisions of applicable law, the Corporation's certificate of incorporation or these bylaws, a written waiver of notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, shall be deemed equivalent to appropriate notice having been given and received.

## ARTICLE VI

### OFFICERS

SECTION 6.01. Officers. The officers of the Corporation shall consist of a Chairman of the Board, a President and a Secretary. The Chairman and the President shall report directly to the board of directors of the Corporation. One or more Vice Presidents (any one or more of which may be designated Executive Vice President or Senior Vice President), and a Treasurer may also be elected by the board of directors. The board of directors may appoint such other officers and agents, including Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined by the board of directors. Except for the offices of Chairman and President, which shall not be held by the same individual, any two or more offices may be held by the same person. No officer shall execute, acknowledge, verify or countersign any instrument on behalf of the Corporation in more than one capacity, if the instrument is required to be executed, acknowledged, verified or countersigned by two or more officers. No officer need be a director or stockholder of the Corporation.

SECTION 6.02. Election and Terms of Office. The officers of the Corporation shall be elected annually by the board of directors at its first regular meeting held after the annual meeting of stockholders or as soon thereafter as conveniently possible. Each officer shall hold office until his successor shall have been chosen and shall have been qualified or until his death or the effective date of his resignation or removal.

SECTION 6.03. Removal and Resignation. Any officer elected or appointed by the board of directors may be removed without cause by the board of directors whenever, in its judgment, the removal is in the best interests of the Corporation, but the removal shall be without prejudice to the contractual rights, if any, of the person so removed. Any officer may resign at any time by giving written notice to the Corporation. A resignation shall be effective on the date of the receipt of the notice or at any later time specified in the notice. Unless otherwise specified

in the notice, the acceptance of an officer's resignation shall not be necessary to make it effective.

SECTION 6.04. Vacancies. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, may be filled by the board of directors for the unexpired portion of the term, subject to the provisions of Section 6.01.

SECTION 6.05. Salaries. The salaries of all officers and agents of the Corporation shall be fixed by the board of directors or pursuant to its direction. No officer shall be prevented from receiving a salary by reason of his also being a director.

SECTION 6.06. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the board of directors and of the stockholders of the corporation. In the Chairman's absence, his duties shall be attended to by the President. The Chairman shall formulate and submit to the board of directors matters of general policy for the corporation. In the absence of a determination by the board of directors of the corporation regarding the voting of any shares of stock of another corporation in the name of the corporation, the Chairman, together with the President, shall vote, or give a proxy to any other officer of the corporation to vote, those shares of stock. In general, he shall perform all other duties normally incident to the office of chairman and such other duties as may be prescribed by the stockholders or the board of directors from time to time.

SECTION 6.07. President. The President shall, subject to the control of the board of directors, be the chief executive officer of the Corporation and shall generally supervise and control the business and affairs of the Corporation. In the absence of the Chairman, the President shall preside at meetings of the board of directors and of the stockholders. He shall have the power to appoint and remove subordinate agents and employees, except those elected or appointed by the board of directors. The President shall keep the board of directors fully informed and shall consult the directors concerning the business of the Corporation. He may sign with the Secretary or any other officer of the Corporation authorized by the board of directors, certificates representing shares of the Corporation and any deeds, bonds, mortgages, contracts, checks, notes, drafts or other instruments that the board of directors has authorized to be executed, unless the signing and execution of an instrument has been expressly delegated to another officer or agent of the Corporation or shall be required by law to be otherwise executed. In the absence of a determination by the board of directors of the Corporation regarding the voting of any shares of stock of another Corporation standing in the name of the Corporation, the President, together with the Chairman, shall vote, or give a proxy to any other officer of the Corporation to vote, those shares of stock. In general he shall perform all other duties normally incident to the office of President and such other duties as may be prescribed by the stockholders or the board of directors from time to time. If the President is not also a director of the Corporation, he will attend meetings of the Corporation's board of directors, except for instances in which his compensation or performance is being reviewed or acted upon. The President shall present for approval by the Corporation's board of directors compensation policies and programs, including without limitation base salary, benefits, incentive compensation and perquisites, and other matters regarding the Corporation's personnel.

SECTION 6.08. Vice Presidents. Each Vice President (if one or more is elected by the board of directors of the corporation) shall, in the absence of the President, perform the duties and exercise the powers of the President. Each Vice President may sign, with the Secretary or Assistant Secretary, certificates representing shares of the corporation. Each Vice President shall perform such other duties as from time to time may be prescribed by the board of directors or the President.

SECTION 6.09. Secretary. The Secretary shall (a) keep the minutes of the meetings of the stockholders, the board of directors and committees of directors; (b) see that all notices are duly given in accordance with the provisions of these bylaws and as required by law; (c) be custodian of the corporate records and of the seal of the Corporation, and see that the seal of the Corporation or a facsimile of the seal is affixed to all certificates representing shares before their issuance and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these bylaws; (d) keep or cause to be kept a register of the post office address of each stockholder, which shall be furnished by the stockholder; (e) sign with the President, or a Vice President, certificates representing shares of the Corporation, the issue of which shall have been authorized by resolution of the board of directors; (f) have general charge of the stock transfer books of the Corporation; and (g) in general, perform all duties normally incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Chairman, the President or the board of directors.

SECTION 6.10. Treasurer. If required by the board of directors, the Treasurer (if one is elected by the board of directors of the Corporation) shall give a bond for the faithful discharge of his duties in such sum and with such surety as the board of directors shall determine. He shall (a) have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for moneys due and payable to the Corporation, and deposit all moneys received in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Section 7.03 of these bylaws; (b) prepare, or cause to be prepared, for submission at each regular meeting of the board of directors, at each annual meeting of the stockholders, and at such other times as may be required by the board of directors, the Chairman or the President, a statement of financial condition of the Corporation in such detail as may be required; and (c) in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the board of directors, the Chairman or the President.

SECTION 6.11. Assistant Secretary or Treasurer. The Assistant Secretaries and Assistant Treasurers shall, in general, perform such duties as shall be assigned to them by the Secretary or the Treasurer, as applicable, or by the Chairman, the President or the board of directors. The Assistant Secretaries and Assistant Treasurers shall, in the absence of the Secretary or Treasurer, as applicable, perform all functions and duties that the absent officer may delegate, but that delegation shall not relieve the absent officer from the responsibilities and liabilities of his office. The Assistant Secretaries may sign, with the President or a Vice President, certificates representing shares of the Corporation, the issue of which shall have been authorized by a resolution of the board of directors. The Assistant Treasurers shall, if required by the board of directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors shall determine.

## ARTICLE VII

### CONTRACTS, CHECKS AND DEPOSITS

SECTION 7.01. Contracts. The board of directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and the authority may be general or confined to specific instances.

SECTION 7.02. Checks, etc. All checks, demands, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers or such agent or agents of the Corporation, and in such manner, as shall be determined by the board of directors.

SECTION 7.03. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the board of directors may select.

## ARTICLE VIII

### CERTIFICATES OF STOCK

SECTION 8.01. Issuance. Each stockholder of this Corporation shall be entitled to a certificate or certificates showing the number of shares of stock registered in his or its name on the books of the Corporation. The certificates shall be in such form as may be determined by the board of directors, shall be issued in numerical order and shall be entered in the books of the Corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the President or a Vice President and by the Secretary or an Assistant Secretary. If any certificate is countersigned (a) by a transfer agent other than the Corporation or any employee of the Corporation or (b) by a registrar other than the Corporation or any employee of the Corporation, any other signature on the certificate may be a facsimile. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative participating, optional or other special rights of each class of stock or series and the qualifications, limitations or restrictions of the preferences and rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent the stock; provided that, except as otherwise provided by statute, in lieu of the foregoing requirements, there may be set forth on the face or back of a stock certificate, a statement that the Corporation will furnish to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class of stock or series and the qualifications, limitations or restrictions of the preferences and rights. All certificates surrendered to the Corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the case of a lost, stolen, destroyed or mutilated certificate, a substitute certificate may be issued on such terms and with such indemnity, if any, to the Corporation as the board of directors may prescribe. Certificates representing fractional shares of stock shall not be issued.

SECTION 8.02. Lost Certificates. The board of directors may direct a new certificate to be issued in place of any previously issued certificate alleged to have been lost,

stolen or destroyed, on the making of an affidavit of that fact by the person making the allegation. When authorizing the issue of a new certificate, the board of directors may, in its discretion and as a condition precedent to the issuance, require the owner of the lost, stolen or destroyed certificate, or his or its legal representative, to advertise the loss in such manner as it shall require or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed, or both.

SECTION 8.03. Transfers. On surrender to the Corporation or the transfer agent of the Corporation of a certificate representing shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled to it, cancel the old certificate and record the transaction on the Corporation's books. Transfers of shares shall be made only on the books of the Corporation by the registered holder of the shares, or by his or its attorney authorized by power of attorney and filed with the Secretary of the Corporation or the transfer agent.

SECTION 8.04. Registered Stockholders. The Corporation shall be entitled to treat the holder of record of any shares of stock as the holder in fact and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in the shares on the part of any other person, whether or not it shall have express or other notice to the contrary, except as otherwise provided by law.

## ARTICLE IX

### DIVIDENDS

SECTION 9.01. Declaration. Dividends on the capital stock of the Corporation may be declared by the board of directors at any meeting, in accordance with applicable law. Dividends may be paid in cash, in property or in shares of capital stock, subject to the provisions of applicable law.

SECTION 9.02. Reserve. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum as the board of directors from time to time, in their discretion, think proper as a reserve or reserves to meet contingencies, to equalize dividends, to repair or maintain property of the Corporation or for such other purpose as the board of directors shall determine to be in the best interest of the Corporation, and the board of directors may modify or abolish any reserve in the manner in which it was created.

## ARTICLE X

### INDEMNIFICATION

SECTION 10.01. Third Party Actions. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was (i) a director, officer or employee of the corporation, (ii) a director or officer of the Partnership, or (iii) serving at the request of the corporation as a director, officer or employee of another corporation,

partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

SECTION 10.02. Actions by or in the Right of the Corporation. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer or employee of the corporation, or is or was serving at the request of the corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which the indemnifiable person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the indemnifiable person is fairly and reasonably entitled to indemnity for such expenses that the court shall deem proper.

SECTION 10.03. Mandatory Indemnification. To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 10.01 and 10.02, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

SECTION 10.04. Determination of Conduct. The determination that a director, officer, employee or agent has met the applicable standard of conduct set forth in Sections 10.01 and 10.02 (unless indemnification is ordered by a court) shall be made (a) by the unanimous vote of the directors of the corporation who are not parties to the action, suit or proceeding, even though less than a quorum, or (b) if there are no disinterested directors or if the disinterested directors so direct, by independent legal counsel in a written opinion, or (c) by the stockholders.

SECTION 10.05. Payment of Expenses in Advance. Expenses (including attorneys' fees) incurred by an officer or a director in defending a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article X. Such expenses (including

attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

SECTION 10.06. Indemnity Not Exclusive. The indemnification and advancement of expenses provided by, or granted pursuant to, the other sections of this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office.

SECTION 10.07. Insurance. The board of directors of the corporation may cause the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer or employee of the corporation, or is or was serving at the request of the corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against that person and incurred by that person in his capacity as an officer, director or employee, or arising out of his status as an officer, director or employee, whether or not the corporation would be required to indemnify the person under the provisions of this Article X or would have the power to indemnify the person under applicable law.

SECTION 10.08. Definitions. For purposes of this Article X:

- (a) "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees, so that any person who is or was a director, officer or employee of the constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article X with respect to the resulting or surviving corporation as he would have with respect to the constituent corporation if its separate existence had continued;
- (b) "other enterprises" shall include employee benefit plans;
- (c) "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan;
- (d) "serving at the request of the corporation" shall include any service as a director, officer or employee of the corporation that imposes duties on, or involves services by, the director, officer or employee with respect to an employee benefit plan or its participants or beneficiaries; and
- (e) a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article X.

SECTION 10.09. Survival of Indemnification. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of the heirs, executors and administrators of that person.

SECTION 10.10. Exclusive Jurisdiction of Delaware Court of Chancery. The Court of Chancery of the State of Delaware shall have exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this Article X and may summarily determine the corporation's obligation to advance expenses (including attorneys' fees).

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.01. Seal. The name of the Corporation shall be inscribed on the Corporation's seal. The seal may be used by causing it or a facsimile of it to be impressed, affixed or otherwise reproduced. Unless otherwise required by law or by the specific provisions of an instrument, no instrument otherwise properly executed and delivered by the Corporation shall be deemed ineffective by virtue of the fact that its seal has not been impressed, affixed or otherwise reproduced on the instrument.

SECTION 11.02. Books. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at the offices of the Corporation or at such other place or places as may be designated from time to time by the board of directors.

## ARTICLE XII

### AMENDMENT

These bylaws may be altered, amended or repealed and new bylaws may be adopted by the board, except that the board may not repeal or amend any bylaw that the shareholders have expressly provided, in amending or repealing such bylaw, may not be amended or repealed by the board. The shareholders may also alter, amend and repeal these bylaws or adopt new bylaws. All bylaws made by the board may be amended, repealed, altered or modified by the shareholders.

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**EXHIBIT C**  
**List of Border Facilities**

<u>Presidential Permit Holder</u>	<u>Permit Number</u>	<u>Voltage</u>	<u>Location</u>
Basin Electric Power Cooperative	PP-64	230-kV	Tioga, ND
BPA	PP-10	2-500-kV	Blaine, WA
	PP-36	230-kV	Nelway, WA
	PP-46	230-kV	Nelway, WA
Vermont Electric Co.	PP-66	120-kV	Derby Line, VT
Eastern Maine Electric Cooperative	PP-32	69-kV	Calais, ME
International Transmission Company	PP-230	345-kV 230-kV 230-kV 230-kV	St. Clair, MI Marysville, MI Detroit, MI St. Clair, MI
Joint Owners of Highgate Project	PP-82	120-kV	Highgate, VT
Long Sault, Inc.	PP-24	2-115-kV	Massena, NY
Maine Electric Power Company	PP-43	345-kV	Houlton, ME
Maine Public Service Company	PP-12 PP-12	69-kV 69-kV	Limestone, ME Fort Fairfield, ME
Minnesota Power, Inc.	PP-78	115-kV	International Falls, MN
Minnkota Power Cooperative, Inc.	PP-61	230-kV	Roseau County, MN
New York Power Authority	PP-56 PP-25 PP-74 PP-30	765-kV 2-230-kV 2-345-kV 230-kV	Massena, NY Massena, NY Niagara Falls, NY Devils Hole, NY
Niagara Mohawk Power Corp.	PP-190	230-kV	Devils Hole, NY
Northern States Power Company	PP-45 PP-63	230-kV 500-kV	Red River, ND Roseau County, MN
Vermont Electric Transmission Co.	PP-76	+/- 450-kV DC	Norton, VT

**EXHIBIT D**  
**Power of Attorney for Applicants Residing Outside of the United States**

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

EPCOR Energy Marketing (US) Inc. )

) Docket No. EA-260-\_\_  
)

**Irrevocable Limited Power of Attorney**

Be it known that, I, B. Kathryn Chisholm, Senior Vice President, General Counsel and Corporate Secretary of EPCOR Utilities Inc., with its principal place of business at 505 – 2<sup>nd</sup> Street S.W., 8<sup>th</sup> Floor, Calgary, Alberta, Canada, T2P 1N8, do hereby grant a limited power of attorney to my designated agent, K&L Gates LLP, 1601 K Street NW, Washington, DC 20006 as my attorney-in-fact ("Attorney in Fact"), for the limited purposes of receiving service of process for all matters relating to or arising from the request to authorize the export of electric energy to Canada of EPCOR Energy Marketing (US) Inc. ("Principal") before the Department of Energy.

This Power of Attorney is irrevocable by the Principal, subject only to the Principal's right to re-designate or substitute the Attorney in Fact upon 30 days' prior notice to the Department of Energy and the Attorney in Fact.

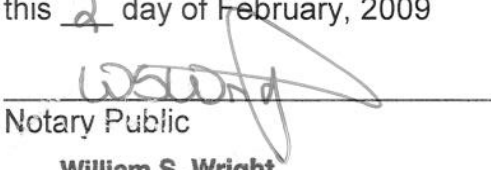
IN WITNESS WHEREOF, the Principal has caused this Power of Attorney to be executed on this 2nd day of February, 2009.

EPCOR Energy Marketing (US) Inc.

By: 

B. Kathryn Chisholm,  
Senior Vice President, General  
Counsel, Corporate Secretary,  
EPCOR Utilities Inc.

Subscribed and sworn to before me  
this 2 day of February, 2009

  
Notary Public

**William S. Wright**  
**Barrister and Solicitor**

**EXHIBIT E**  
**Existing Relationship or Existing Contracts**  
**Relating to Control or Fixing of Rates**

Not applicable.

**EXHIBIT F**  
**Operating Procedures Relating to Available Capacity and Energy**

Not applicable.

**EXHIBIT G**  
**Verification by EPCOR Energy Marketing (US) Inc.**

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

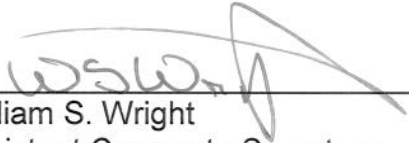
EPCOR Energy Marketing (US) Inc.

)  
) Docket No. EA-260-\_\_\_\_  
)

**Verification**

Province of Alberta )

I, William S. Wright, being duly sworn, state that I am the Assistant Corporate Secretary of EPCOR Energy Marketing (US) Inc.; that I am authorized to execute this verification; that I have read the foregoing document and its exhibits and attachments and am familiar with the contents thereof; and that to the best of my knowledge and belief, all allegations of fact contained therein are true and correct.

  
\_\_\_\_\_  
William S. Wright  
Assistant Corporate Secretary

Subscribed and sworn to before me  
this 5<sup>th</sup> day of February, 2009

  
\_\_\_\_\_  
Notary Public

Colleen T. Legge  
Barrister & Solicitor