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March 20, 2012

Mr. Charles Stockhausen  
Public Utilities Commission of Ohio  
Docketing Division 13<sup>th</sup> Floor  
180 East Broad Street  
Columbus, OH 43215-3793

RE: Certification Application for Aggregator / Power Broker Certification 01-134-EL-AGG

Dear Mr. Stockhausen:

Enclosed is the Renewal Application for Affiliated Power Purchasers International, LLC, case #01-134-EL-AGG. Please docket this Renewal Application.

Should there be any questions or additional information required please contact Michael S. Payne.

Thank you,

A handwritten signature in black ink, appearing to read "M. S. Payne", written over the printed name.

Michael S. Payne  
Executive Vice President & Corporate Counsel

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician JD Date Processed 3-22-12



*The Public Utilities Commission of Ohio*

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Date Received	Case Number	Version
MAR 22 2012	01-134-EL-AGG	August 2004

## **CERTIFICATION APPLICATION FOR AGGREGATORS/POWER BROKERS**

Please print or type all required information. Identify all attachments with an exhibit label and title (Example: Exhibit A-5 Experience). All attachments should bear the legal name of the Applicant. Applicants should file completed applications and all related correspondence with the Public Utilities Commission of Ohio, Docketing Division; 180 East Broad Street, Columbus, Ohio 43215-3793.

**This PDF form is designed so that you may input information directly onto the form.  
You may also download the form, by saving it to your local disk, for later use.**

### **A. APPLICANT INFORMATION**

#### **A-1 Applicant's legal name, address, telephone number and web site address**

Legal Name Affiliated Power Purchasers International, LLC  
Address 224 Phillip Morris Drive, Suite 402 Salisbury, MD 21804  
Telephone # (800) 520-6685 Web site address (if any) www.appienergy.com

#### **A-2 List name, address, telephone number and web site address under which Applicant will do business in Ohio**

Legal Name Affiliated Power Purchasers International, LLC  
Address 224 Phillip Morris Drive, Suite 402 Salisbury, MD 21804  
Telephone # (800) 520-6685 Web site address (if any) www.appienergy.com

#### **A-3 List all names under which the applicant does business in North America**

Affiliated Power Purchasers International, LLC  
APPI  
APPI Energy

#### **A-4 Contact person for regulatory or emergency matters**

Name Michael S. Payne  
Title Executive Vice President & Corporate Counsel

Business address 224 Phillip Morris Drive, Suite 402 Salisbury, MD 21804  
Telephone # (800) 520-6685 Fax # (410) 749-8769  
E-mail address (if any) mpayne@appienergy.com

**A-5 Contact person for Commission Staff use in investigating customer complaints**

Name Michael S. Payne  
Title Executive Vice President & Corporate Counsel  
Business address 224 Phillip Morris Drive, Suite 402 Salisbury, MD 21804  
Telephone # (800) 520-6685 Fax # (410) 749-8769  
E-mail address (if any) mpayne@appienergy.com

**A-6 Applicant's address and toll-free number for customer service and complaints**

Customer Service address 224 Phillip Morris Drive, Suite 402 Salisbury, MD 21804  
Toll-free Telephone # (800) 520-6685 Fax # (410) 749-8769  
E-mail address (if any) customerservice@appienergy.com

**A-7 Applicant's federal employer identification number # 522270096**

**A-8 Applicant's form of ownership (check one)**

- |  |  |
|--|--|
| <input type="checkbox"/> Sole Proprietorship                 | <input type="checkbox"/> Partnership                     |
| <input type="checkbox"/> Limited Liability Partnership (LLP) | <input type="checkbox"/> Limited Liability Company (LLC) |
| <input type="checkbox"/> Corporation                         | <input type="checkbox"/> Other _____                     |

**A-9 (Check all that apply) Identify each electric distribution utility certified territory in which the applicant intends to provide service, including identification of each customer class that the applicant intends to serve, for example, residential, small commercial, mercantile commercial, and industrial. (A mercantile customer, as defined in (A) (19) of Section 4928.01 of the Revised Code, is a commercial customer who consumes more than 700,000 kWh/year or is part of a national account in one or more states).**

- |  |                                      |                                     |                                     |                                     |
|--|--------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> <b>First Energy</b>             |                                      |                                     |                                     |                                     |
| <input type="checkbox"/> Ohio Edison                     | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Toledo Edison                   | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Cleveland Electric Illuminating | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Cincinnati Gas & Electric       | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Monongahela Power               | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> American Electric Power         |                                      |                                     |                                     |                                     |
| <input type="checkbox"/> Ohio Power                      | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Columbus Southern Power         | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Dayton Power and Light          | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |

- A-10** Provide the approximate start date that the applicant proposes to begin delivering services

April 30, 2005

**PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:**

- A-11** **Exhibit A-11 "Principal Officers, Directors & Partners"** provide the names, titles, addresses and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.
- A-12** **Exhibit A-12 "Corporate Structure,"** provide a description of the applicant's corporate structure, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply retail or wholesale electricity or natural gas to customers and companies that aggregate customers in North America.
- A-13** **Exhibit A-13 "Company History,"** provide a concise description of the applicant's company history and principal business interests.
- A-14** **Exhibit A-14 "Articles of Incorporation and Bylaws,"** if applicable, provide the articles of incorporation filed with the state or jurisdiction in which the Applicant is incorporated and any amendments thereto.
- A-15** **Exhibit A-15 "Secretary of State,"** provide evidence that the applicant has registered with the Ohio Secretary of the State.

**B. APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE**

**PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:**

- B-1** **Exhibit B-1 "Jurisdictions of Operation,"** provide a list of all jurisdictions in which the applicant or any affiliated interest of the applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail or wholesale electric services including aggregation services.
- B-2** **Exhibit B-2 "Experience & Plans,"** provide a description of the applicant's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4928.10 of the Revised Code.

**B-3** **Exhibit B-3 "Summary of Experience,"** provide a concise summary of the applicant's experience in providing aggregation service(s) including contracting with customers to combine electric load and representing customers in the purchase of retail electric services. (e.g. number and types of customers served, utility service areas, amount of load, etc.).

**B-4** **Exhibit B-4 "Disclosure of Liabilities and Investigations,"** provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocation of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational status or ability to provide the services it is seeking to be certified to provide.

**B-5** Disclose whether the applicant, a predecessor of the applicant, or any principal officer of the applicant have ever been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years.

☒ No ☐ Yes

If yes, provide a separate attachment labeled as **Exhibit B-5 "Disclosure of Consumer Protection Violations"** detailing such violation(s) and providing all relevant documents.

**B-6** Disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail or wholesale electric service including aggregation service denied, curtailed, suspended, revoked, or cancelled within the past two years.

☒ No ☐ Yes

If yes, provide a separate attachment labeled as **Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation"** detailing such action(s) and providing all relevant documents.

## **C. APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE**

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

**C-1** **Exhibit C-1 "Annual Reports,"** provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information in Exhibit C-1 or indicate that Exhibit C-1 is not applicable and why.

**C-2** **Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 that the applicant is not required to file with the SEC and why.

- C-3 Exhibit C-3 “Financial Statements,”** provide copies of the applicant’s two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer certified financial statements covering the life of the business.
- C-4 Exhibit C-4 “Financial Arrangements,”** provide copies of the applicant's financial arrangements to conduct CRES as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.,).
- C-5 Exhibit C-5 “Forecasted Financial Statements,”** provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant’s CRES operation, along with a list of assumptions, and the name, address, e-mail address, and telephone number of the preparer.
- C-6 Exhibit C-6 “Credit Rating,”** provide a statement disclosing the applicant’s credit rating as reported by two of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody’s Investors Service, Standard & Poors, or a similar organization. In instances where an applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the applicant submits a statement signed by a principal officer of the applicant’s parent or affiliate organization that guarantees the obligations of the applicant.
- C-7 Exhibit C-7 “Credit Report,”** provide a copy of the applicant’s credit report from Experian, Dun and Bradstreet or a similar organization.
- C-8 Exhibit C-8 “Bankruptcy Information,”** provide a list and description of any reorganizations, protection from creditors or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligations of the applicant or any officer of the applicant in the current year or within the two most recent years preceding the application.

C-9 **Exhibit C-9 "Merger Information,"** provide a statement describing any dissolution or merger or acquisition of the applicant within the five most recent years preceding the application.

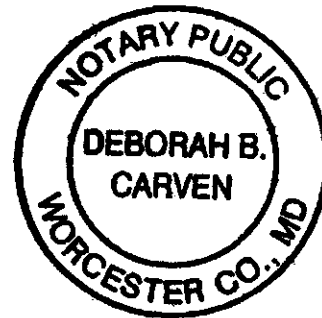
McKays, E.V.P. & Corporate Counsel  
Signature of Applicant & Title

Sworn and subscribed before me this 16<sup>th</sup> day of March, 2012  
Month Year

[Signature]  
Signature of official administering oath

Deborah B. Carven, Notary  
Print Name and Title

My commission expires on 10 April 2013  
State of Maryland  
County of Worcester



My Commission Exps.

# **AFFIDAVIT**

State of Maryland :

Salisbury ss.  
(Town)

County of Wicomico :

Michael S. Payne, Affiant, being duly sworn/affirmed according to law, deposes and says that:

(He/She is the E.V.P. & Corporate Counsel (Office of Affiant) of Affiliated Power Purchases International, LLC (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant,

1. The Applicant herein, attests under penalty of false statement that all statements made in the application for certification are true and complete and that it will amend its application while the application is pending if any substantial changes occur regarding the information provided in the application.
2. The Applicant herein, attests it will timely file an annual report with the Public Utilities Commission of Ohio of its intrastate gross receipts, gross earnings, and sales of kilowatt-hours of electricity pursuant to Division (A) of Section 4905.10, Division (A) of Section 4911.18, and Division (F) of Section 4928.06 of the Revised Code.
3. The Applicant herein, attests that it will timely pay any assessments made pursuant to Sections 4905.10, 4911.18, or Division F of Section 4928.06 of the Revised Code.
4. The Applicant herein, attests that it will comply with all Public Utilities Commission of Ohio rules or orders as adopted pursuant to Chapter 4928 of the Revised Code.
5. The Applicant herein, attests that it will cooperate fully with the Public Utilities Commission of Ohio, and its Staff on any utility matter including the investigation of any consumer complaint regarding any service offered or provided by the Applicant.
6. The Applicant herein, attests that it will fully comply with Section 4928.09 of the Revised Code regarding consent to the jurisdiction of Ohio Courts and the service of process.
7. The Applicant herein, attests that it will comply with all state and/or federal rules and regulations concerning consumer protection, the environment, and advertising/promotions.
8. The Applicant herein, attests that it will use its best efforts to verify that any entity with whom it has a contractual relationship to purchase power is in compliance with all applicable licensing requirements of the Federal Energy Regulatory Commission and the Public Utilities Commission of Ohio.
9. The Applicant herein, attests that it will cooperate fully with the Public Utilities Commission of Ohio, the electric distribution companies, the regional transmission entities, and other electric suppliers in the event of an emergency condition that may jeopardize the safety and reliability of the electric service in accordance with the emergency plans and other procedures as may be determined appropriate by the Commission.
10. If applicable to the service(s) the Applicant will provide, the Applicant herein, attests that it will adhere to the reliability standards of (1) the North American Electric Reliability Council (NERC), (2) the appropriate regional reliability council(s), and (3) the Public Utilities Commission of Ohio. (Only applicable if pertains to the services the Applicant is offering)



11. The Applicant herein, attests that it will inform the Commission of any material change to the information supplied in the application within 30 days of such material change, including any change in contact person for regulatory purposes or contact person for Staff use in investigating customer complaints.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

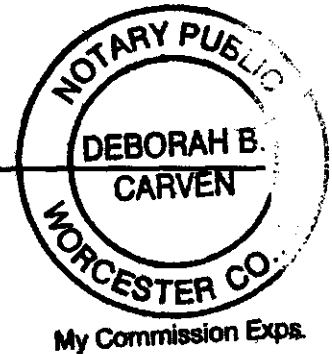
MS. Kelly E.V.P. & Corporate Counsel  
Signature of Affiant & Title

Sworn and subscribed before me this 16<sup>th</sup> day of March, 2012  
Month Year

Deborah B. Carven  
Signature of official administering oath

Deborah B. Carven  
Print Name and Title

My commission expires on 10 April 2013  
State of Maryland  
County of Worcester



## **Attachments for Affiliated Power Purchasers International, LLC**

### **A. APPLICANT INFORMATION**

#### **Exhibit A-11 “Principal Officers, Directors and Partners”**

##### **Partners:**

Walter W. Moore, President and Chairman of the Board of Directors  
224 Phillip Morris Drive, Suite 402  
Salisbury, MD 21804  
(410) 749-5507

Michael S. Payne, J.D., L.L.M., Executive Vice President & Corporate Counsel and Director  
224 Phillip Morris Drive, Suite 402  
Salisbury, MD 21804  
(410) 749-5507

Kathleen M. Kiernan, Senior Vice President and Director  
224 Phillip Morris Drive, Suite 402  
Salisbury, MD 21804  
(410) 749-5507

Kevin Smyth, Director  
8816 Lake Sheen Court  
(407) 876-6741

Michael Housley, Director  
32 Waterloo Street  
Warrenton, VA 20186  
(540) 351-0981

Mr. Housley is President of and represents The Legacy Energy Group, LLC.

#### **Exhibit A-12“Corporate Structure”**

Affiliated Power Purchasers International, LLC (“APPI”) is a Maryland Limited Liability Company. Its members are:

##### **Unit of Participation**

Walter W. Moore	51.98
Kevin Smyth	23.00
Michael S. Payne	10.00
Kathleen Kiernan	5.00
The Legacy Energy Group, LLC	10.02

There are no affiliates or subsidiary companies of APPI that supply retail or wholesale electricity or natural gas to customers in North America.

## **Attachments for Affiliated Power Purchasers International, LLC**

**Exhibit A-13 “Company History”** See attached document entitled: APPI Business History, Services, and Operations

**Exhibit A-14 “Articles of Incorporation and Bylaws”** A copy of the Operating Agreement of Affiliated Power Purchasers International, LLC is enclosed. There are no Articles of Incorporation and Bylaws.

**Exhibit A-15 “Secretary of State”** A Copy of Registration is enclosed.

## **B. APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCES**

### **Exhibit B-1 “Jurisdiction of Operations”**

State	License Number
Delaware	11-460
District of Columbia	EA11-30
Illinois	0233171-3
Maryland	IR-279
Massachusetts	EB-004
New Jersey	EA-0011, PA-011
Ohio	01-062
Pennsylvania	A-110041
Rhode Island	D-96-6 (H5)
Texas	07078453

### **Exhibit B-2 “Experience and Plans”**

Affiliated Power Purchasers International, LLC (“APPI”) is an independent consulting firm that assists electricity users by providing education, market information, and access to supply contracts offered by retail suppliers. APPI began operations in 1996 and has provided energy consulting services to more than 5,000 customers across the United States.

APPI analyzes customer data, prepares requests for pricing proposal, and negotiates contracts with the suppliers on behalf of the customers. If the customer signs an APPI negotiated contract with a competitive retail electric supplier (CRES), APPI receives a fee based on customer’s usage. The customer is billed by the supplier or its electric utility. The supplier remits APPI’s fee payments to APPI. APPI never buys or sells electricity or natural gas. APPI never receives or processes customer payments for energy.

APPI provides its customers and the public a toll free number, email access, and full-time consultants to answer questions and provide information.

**Exhibit B-3 “Summary of Experience”** See attached document entitled: APPI Business History, Services, and Operation.

## **Attachments for Affiliated Power Purchasers International, LLC**

### **Exhibit B-4 “Disclosure of Liabilities and Investigations”**

There are currently no known existing, pending, or past rulings, judgments, contingent liabilities, revocations of authority, regulatory investigations, or any other matter that could adversely impact APPI's financial or operational status or ability to provide the services it is seeking to be certified to provide.

## **C. APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE**

### **Exhibit C - FINANCIAL CAPABILITY AND EXPERIENCE**

**Exhibit C-1 “Annual Reports”** Not applicable to Applicant as it is a privately-held company.

**Exhibit C-2 “SEC Filings”** Not applicable to Applicant as it is a privately-held company.

**Exhibit C-3 “Financial Statements”** Applicant's financial statements are provided herein.

**Exhibit C-4 “Financial Arrangements”** Not applicable to Applicant.

**Exhibit C-5 “Forecasted Financial Statements”** Forecasted financials for 2012 and 2013 for Applicant's activities in Ohio are:

2012: Income:	\$ 404,000	2012: Income:	\$ 460,000
Expenses:	\$ 200,000	Expenses:	\$ 200,000
Net Income:	\$ 204,000	Net Income:	\$ 260,000

**Exhibit C-6 “Credit Rating”** Not Applicable. Applicant does not have a credit rating issued by a credit agency or entity. Applicant has no parent or affiliated organization.

**Exhibit C-7 “Credit Report”** Not Applicable. Applicant does not have a credit report from Experion, Dun and Bradstreet, or a similar organization. APPI's banking reference is:

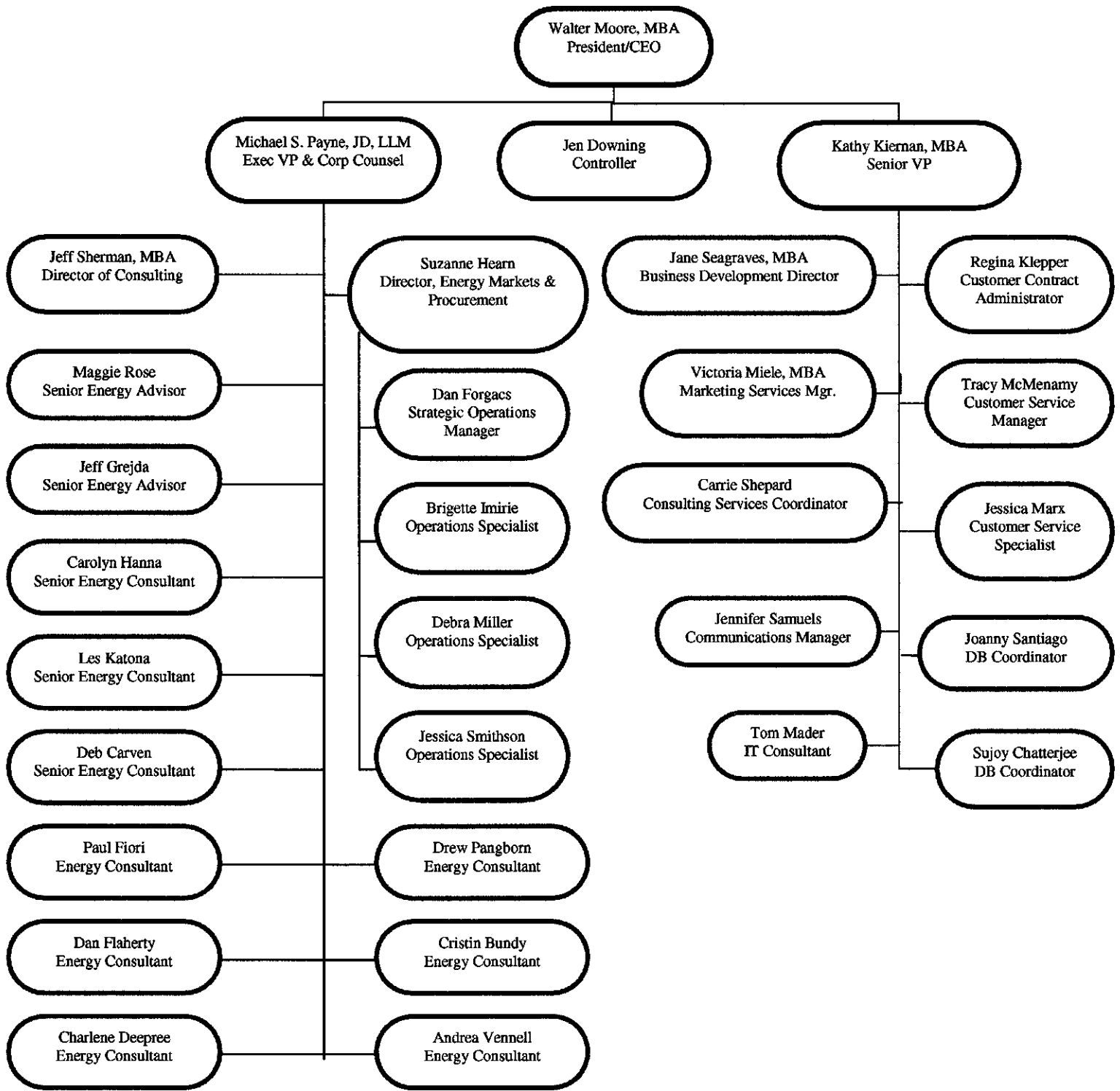
Michelle Thomas or John Aukward  
Vice Presidents  
Bank of Delmarva  
12 E. State Street  
Delmar, MD 21875 (410) 548-1100

**Exhibit C-8 “Bankruptcy Information”** Not applicable as Applicant has never had any reorganizations, bankruptcy filings, not has any officer had a bankruptcy filing or guaranteed the obligations of Applicant in the current year or the two most recent years.

**Exhibit C-9 “Merger Information”** Not Applicable. Applicant has not been involved in any dissolution or merger or acquisition in the five most recent years preceding the Application.

# APPI Energy Organization Chart

March 2012





## **APPI BUSINESS HISTORY, SERVICES, and OPERATIONS**

Affiliated Power Purchasers International, LLC (APPI) is an energy consultant that began operations in 1996. Since inception, APPI has consulted with more than 5,000 electricity customers in deregulated electricity states across the United States.

APPI assists electricity customers by providing education and information regarding electricity deregulation, electricity markets, electricity suppliers, electricity supply contracts, and electric utility supply tariffs. APPI reviews with the customer the customer's historical, current, and projected usage and consumption of energy. APPI reviews with customers electric utility supply tariffs, electricity supply contracts, and electricity prices provided to APPI by retail electricity suppliers for consideration by the customer. If a customer chooses to accept and to implement a supply contract offer from a retail supplier, APPI assists the customer in finalizing the supply contract with the supplier chosen by the customer. APPI never favors one supplier over another supplier and strives to match APPI customers with a supplier and a supply contract that best meets the customer's needs. APPI takes utmost care to present relevant information regarding each supplier, supplier prices, and supplier supply contracts.

APPI's efforts are focused on serving each customer by fully understanding that specific customer's electricity profile, usage characteristics, financial goals, and business needs. APPI provides ongoing education about electricity markets and customer service to its electricity customers. APPI's management team actively performs initial and ongoing due diligence of electricity suppliers, supplier contracts, and regulatory matters. APPI's staff meets regularly with the APPI management team and third party energy experts to review the Illinois electricity market, regulatory matters, electricity suppliers, electricity price trends, and other related business developments.

APPI has 32 full-time employees who, combined, have more than 135 years of experience in the energy industry. APPI's staff includes electricity analysts, energy industry operations specialists, financial experts, database specialists, customer support persons, and business consultants. The APPI Organization Chart is enclosed

APPI works closely with consumer advocate entities including 140 national, state, and local trade associations, chambers of commerce, and other affinity groups. All of these entities performed due diligence of APPI and determined that APPI is capable of providing professional energy consulting services and customer service to their members. These affinity groups selected APPI as their exclusively endorsed energy consultant.

During its 15 years of business activity, APPI has acquired, stored, and analyzed electricity usage data and electricity account information for more than 25,000 electricity accounts served by more than 50 electric utilities. APPI has assisted more than 3,300 commercial, industrial, and residential customers with the review and implementation of an electricity supply contract. These electricity supply contracts have been with 25 different competitive electricity suppliers. Over the years, APPI has analyzed more than 100 different types of supplier electricity contracts and negotiated terms and conditions favorable to its customers on many occasions.

**OPERATING AGREEMENT**  
**OF**  
**AFFILIATED POWER PURCHASERS INTERNATIONAL, LLC**  
dated as of October 5, 2000

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OPERATING AGREEMENT  
OF  
AFFILIATED POWER PURCHASERS INTERNATIONAL, LLC

This is an Operating Agreement dated as of August 30, 2000 (this "Agreement"), by and between (i) Affiliated Power Purchasers, Inc. ("APPI"), a Delaware corporation, 2129 Northwood Drive, Salisbury, Maryland 21801; (ii) Walter Moore ("Moore"); and (iii) The Legacy Energy Group, LLC ("Legacy"), a Kentucky limited liability company, 32 Waterloo Street, Warrenton, Virginia 20186. The foregoing parties are collectively referred to herein as "Members," and individually as a "Member." For purposes of this Agreement, the term "Members" shall include all persons and entities then acting in such capacity in accordance with the terms of this Agreement.

ARTICLE 1  
FORMATION

1.1 Formation. The Members hereby form a limited liability company pursuant to the provisions of the Maryland Limited Liability Company Act (the "Act").

ARTICLE 2  
NAME AND OFFICE

2.1 Name. The name of the Company shall be Affiliated Power Purchasers International, LLC ("APPI, LLC").

2.2 Principal Office. The principal office of the Company shall be located at 2129 Northwood Drive, Salisbury, Maryland 21801, or at such other place as shall be determined by the Board of Directors from time to time. The books of the Company shall be maintained at such principal office or such other place as the Board of Directors shall deem appropriate.

ARTICLE 3  
PURPOSE AND TERM

3.1 Purpose. The purpose of the Company is to develop and manage electricity and natural gas buyers' pools for trade associations, telephone services for trade associations, and to carry on any and all activities related thereto.

3.2 Company's Powers. In furtherance of the purpose of the Company as set forth in Section 3.1, the Company shall have the power to do any and all things whatsoever necessary, appropriate or advisable in connection with such purpose, or as otherwise contemplated in this Agreement. No Member shall, on behalf of the Company, engage in any business other than as set forth in Section 3.1, or take any action not contemplated in this Agreement.

3.3 Term. The term of the Company shall commence as of the date of the filing of the Articles of Organization with the Maryland State Department of Assessments and Taxation, and shall continue until dissolved in accordance with Article 12.

#### ARTICLE 4 CAPITAL

##### 4.1 Units of Participation.

(a) As used in this Agreement, the term "Units of Participation" shall mean the units of participation in the Company which reflect the Members' relative ownership interests in the Company. Distributions or allocations made in proportion to or in accordance with the Units of Participation will be based upon relative Units of Participation as of the record date for distributions and in accordance with §§ 706(c) and (d) of the Code (as that term is defined in Section 4.6 below).

(b) The Company's initial capital will consist of 100 Units of Participation. The Company shall issue additional Units of Participation to Legacy as described in Section 4.2(c) below, and may also issue additional Units of Participation for adequate consideration upon the approval of the Board of Directors and Members.

##### 4.2 Capital Contributions.

(a) Contemporaneously with the execution of this Agreement, APPI is transferring substantially all of its assets and liabilities to the Company in exchange for 82.81 Units of Participation, a list of which assets and liabilities will be attached hereto as Exhibit A (no later than September 30, 2000). APPI shall receive a capital account credit (to be determined no later than September 30, 2000) in exchange for such assets and liabilities. APPI's assets and liabilities shall be transferred to the Company pursuant to an Instrument of Transfer and an Assignment of Contracts, which shall be in form and substance satisfactory to the Members.

(b) Moore shall initially receive 9 Units of Participation and shall receive a capital account credit (to be determined no later than September 30, 2000) therefor.

(c) Legacy shall initially receive 2.65 Units of Participation in exchange for its agreement to perform its services described on Exhibit B hereto (provided, however, that Legacy shall be reimbursed for its costs and expenses as described in Section 14.2 below), and shall receive a capital account credit (to be determined no later than September 30, 2000) therefor. Additionally, upon the occurrence of each of the events listed on Exhibit C hereto, a total of 5.54 additional Units of Participation shall be issued to Legacy according to the Schedule as set forth on Exhibit C, with Legacy eventually having a total of 8.19 Units of Participation.

(d) Additional capital contributions shall be made to the Company, upon the unanimous approval of the Members. All such additional capital contributions shall be made pro rata by the Members in accordance with their Units of Participation.

The provisions of this Section 4.2 shall not be for the benefit of any third parties, and no third parties shall be deemed to be beneficiaries hereof.

4.3 No Liability of Members. Except as otherwise specifically provided in the Act, no Member shall have any personal liability for the obligations of the Company. Except as provided in Section 4.2 hereof, no Member shall be obligated to contribute additional funds or loan money to the Company.

4.4 No Interest on Capital Contributions. No Member shall be entitled to interest on any capital contributions made to the Company.

4.5 Withdrawal of Capital. No Member shall be entitled to withdraw any part of such Member's capital contributions to the Company, except as provided in Articles 9 and 12. No Member shall be entitled to demand or receive any property from the Company other than cash, except as otherwise expressly provided for herein.

4.6 Capital Account. There shall be established on the books of the Company a capital account (a "Capital Account") for each Member. It is the intention of the Members that such Capital Accounts be maintained in accordance with the provisions of Treas. Reg. §1.704-1(b)(2)(iv), and this Agreement shall be so construed. Accordingly, such Capital Account shall initially be credited with the Member's initial capital contribution to the Company, and thereafter shall be increased by (i) any cash or the fair market value of any property contributed by such Member (net of any liabilities assumed by the Company or to which the contributed property is subject), and (ii) the amount of all net income (whether or not exempt from tax) and gain allocated to such Member hereunder, and decreased by (i) the amount of all net losses allocated to such Member hereunder (including expenditures described in Section 705(a)(2)(B) of the Internal Revenue Code of 1986, as amended (the "Code"), or treated as such an expenditure by reason of Treas. Reg. §1.704-1(b)(2)(iv)(i)), and (ii) the amount of cash, and the fair market value of property (net of any liabilities assumed by such Member or to which the distributed property is subject), distributed to such Member pursuant to Articles 9 and 12. If the Company has made an election under Section 754 of the Code, capital accounts shall also be adjusted to the extent required by Treas. Reg. §1.704-1(b)(2)(iv)(m). If a Member transfers all or any part of such Member's interest in the Company (a "Company Interest," which is denominated by that Member's Units of Participation) in accordance with the terms of this Agreement, then the Capital Account of the transferor shall become the Capital Account of the transferee to the extent of the Company Interest transferred.

## ARTICLE 5 ACCOUNTING

5.1 Books and Records. The Company shall maintain full and accurate books of the Company at the Company's principal office, or such other place as the Board of Directors shall determine, showing all receipts and expenditures, assets and liabilities, net income and loss, and all other records necessary for recording the Company's business and affairs, including those sufficient to record the allocations and distributions provided for in Articles 7, 9, 12 and 14. Except as otherwise specifically provided herein, such books and records shall be maintained, and the net income and net loss of the Company shall be determined, in the same manner as the Company computes its income and expenses for Federal income tax purposes; provided, however, that (a) the installment method shall not be used for book purposes, (b) gain or loss from the disposition of an asset shall be determined by reference to the adjusted book value of the asset rather than its adjusted basis and (c) depreciation, amortization or cost recovery deductions should be based upon the adjusted book value of an asset. Such books and records shall be open to the inspection and examination of all Members in person or by their duly authorized representatives at all reasonable times.

5.2 Fiscal Year. The fiscal year of the Company shall be the calendar year (the "Fiscal Year").

5.3 Reports.

(a) Within 90 days after the close of each Fiscal Year of the Company, the Board of Directors shall furnish to each person who was a Member at any time during such Fiscal Year all the information relating to the Company which shall be necessary for the preparation by each such person of their Federal and state income or other tax returns.

(b) Within 90 days after the close of each Fiscal Year of the Company, the Board of Directors shall furnish to each Member a report of the business and operations of the Company during such Fiscal Year. Such report shall contain unaudited financial statements, shall include a balance sheet as of the end of such Fiscal Year, a statement of Company net income or net loss for such Fiscal Year, and such other information as in the judgment of the Company shall be reasonably necessary for the Members to be advised of the results of the Company's operations.

5.4 Tax Returns. It shall be the duty of the Board of Directors to prepare, or cause to be prepared, and timely file, all Federal, state and local income tax returns and information returns, if any, which the Company is required to file. All expenses incurred in connection with such tax returns and information returns, as well as for the reports referred to in Sections 5.3 and 5.5, shall be expenses of the Company.

5.5 Member's Request for Additional Information. The Company shall also furnish to any Member such other reports of the Company's operations and condition as may reasonably be requested by any Member.

5.6 Revaluation of Company Property. If there shall occur (a) an acquisition of a Company Interest for more than a de minimis capital contribution, or (b) a distribution (other than a de minimis distribution) to a Member in consideration for a Company Interest, then the Board of Directors may revalue the assets of the Company at their then fair market value and adjust the Capital Accounts of the Members in the same manner as provided in Section 9.2 in the case of a property distribution. If there is a reallocation pursuant to this Section 5.6, then the Capital Accounts shall thereafter be adjusted for allocations of depreciation (cost recovery) and gain or loss in accordance with the provisions of Treas. Reg. §1.704-1(b)(2)(iv)(f) and (g), and the Members' distributive shares of depreciation (cost recovery) and gain or loss computed in accordance with the principles of Section 704(c) of the Code and the regulations promulgated thereunder using the method selected by the Board of Directors.

## ARTICLE 6 BANK ACCOUNTS

6.1 Bank Accounts. All funds of the Company shall be deposited in its name into such checking, savings and/or money market accounts or time certificates as shall be designated by the Board of Directors. Withdrawals therefrom shall be made upon such signature or signatures as the Board of Directors may designate. Company funds shall not be commingled with those of any other person or entity.

## ARTICLE 7 ALLOCATION OF NET INCOME AND LOSS

### 7.1 Net Income and Net Loss.

(a) Except as otherwise provided herein, the net income and net loss of the Company for each Fiscal Year shall be allocated among the Members in accordance with their Units of Participation.

(b) Notwithstanding anything herein to the contrary, if a Member has a deficit balance in such Member's Capital Account (excluding from such Member's deficit Capital Account any amount which such Member is obligated to restore in accordance with Treas. Reg. §1.704-1(b)(2)(ii)(c), as well as any amount such Member is treated as obligated to restore under Treas. Reg. §§1.704-2(g)(1) and 1.704-2(i)(5)) and unexpectedly receives an adjustment, allocation or distribution described in Treas. Reg. §1.704-1(b)(2)(ii)(d)(4), (5) or (6), then such Member will be allocated items of income and gain in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account as quickly as possible. If there is an allocation to a Member pursuant to this Section 7.1(b), then future allocations of net income pursuant to this Section 7.1 shall be adjusted so that those Members who were allocated less income, or greater amount of loss, by reason of the allocation made pursuant to this Section 7.1(b), shall be allocated additional net income in an equal amount. It is the intention of the parties that the

(c) If there is a net decrease in the Company's Minimum Gain (as that term is defined in Treas. Reg. §1.704-2(b)(2)) or Partner Nonrecourse Debt Minimum Gain (within the meaning of Treas. Reg. §1.704-2(i)(3)) during any Fiscal Year, each Member shall be allocated, before any other allocations hereunder, items of income and gain for such Fiscal Year (and subsequent Fiscal Years, if necessary) in an amount equal to such Member's share (determined in accordance with Treas. Reg. §§1.704-2(g) and 1.704-2(i)(5), as applicable) of the net decrease in the Company's Minimum Gain or Member Nonrecourse Debt Minimum Gain, as applicable, for such Fiscal Year; provided, however, that no such allocation shall be required if any of the exceptions set forth in Treas. Reg. §1.704-2(f) apply. It is the intention of the parties that this provision constitute a "minimum gain chargeback" within the meaning of Treas. Reg. §§1.704-2(f) and 1.704-2(i)(4), and this provision shall be so construed.

(e) Notwithstanding the provisions of Section 7.1(a), no net losses shall be allocated to a Member if such allocation would result in such Member having a deficit balance in such Member's Capital Account (excluding from such Member's deficit Capital Account any amount such Member is obligated to restore in accordance with Treas. Reg. § 1.704-1(b)(2)(ii)(c), as well as any amount such Member is treated as obligated to restore under Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5)). In such case, the net loss that would have been allocated to such Member shall be allocated to the other Members to whom such loss can be allocated without violation of the provisions of this Section 7.1(e) in proportion to their respective Units of Participation among themselves.

(g) For federal, state and local income tax purposes only, with respect to any assets contributed by a Member to the Company ("Contributed Assets") which have an agreed fair market value on the date of their contribution which differs from the Member's adjusted basis therefor as of the date of contribution, the allocation of depreciation and gain or loss with respect to such Contributed Assets shall be determined in accordance with the provisions of Section 704(c) of the Code and the regulations promulgated thereunder using the method selected by the Board of Directors. For



purposes of this Agreement, an asset shall be deemed a Contributed Asset if it has a basis determined, in whole or in part, by reference to the basis of a Contributed Asset (including an asset previously deemed to be a Contributed Asset pursuant to this sentence). Notwithstanding the foregoing, if the gain from the sale of any Contributed Asset is being reported on the installment method for income tax purposes, then the total amount of gain which is to be recognized by each of the Members in accordance with the above provision in all taxable years shall be computed and the amount of gain to be recognized by each of the Members in each taxable year shall be in proportion to the total gain to be recognized by each of the Members in all taxable years.

7.2 Allocations in Event of Transfer or Admission of New Member. In the event of the transfer of all or any part of a Member's Company Interest (in accordance with the provisions of this Agreement) at any time other than at the end of a Fiscal Year, or the admission of a new Member, the transferring Member's, new Member's and continuing Members' shares of the Company's income, gain, loss, deductions and credits allocable to such interest, as computed both for accounting purposes and for Federal income tax purposes, shall be allocated between the transferor Member and the transferee Member (or Members), or the new Member and the other Members, as the case may be, in the same ratio as the number of days in such Fiscal Year before and after the date of such transfer or admission; provided, however, that the Members shall have the option to treat the periods before and after the date of such transfer or admission as separate Fiscal Years and allocate the Company's net income, gain, net loss, deductions and credits for each of such deemed separate Fiscal Years in accordance with the Members' respective interests in the Company for such deemed separate Fiscal Years. Notwithstanding the foregoing, if the Company uses the cash receipts and disbursements method of accounting, the Company's "allocable cash basis items," as that term is used in Section 706(d)(2)(B) of the Code, shall be allocated as required by Section 706(d)(2) of the Code and the regulations promulgated thereunder.

7.3 Allocation of Excess Nonrecourse Liabilities. For purposes of Section 752 of the Code and the regulations thereunder, the excess nonrecourse liabilities of the Company (within the meaning of Treas. Reg. §1.752-3(a)(3)), if any, shall be allocated to the Members in accordance with their respective Units of Participation.

## ARTICLE 8

### DISTRIBUTIVE SHARES AND FEDERAL INCOME TAX ELECTIONS

8.1 Distributive Shares. For purposes of Subchapter K of the Code, the distributive shares of the Members of each item of Company taxable income, gains, losses, deductions or credits for any Fiscal Year shall be in the same proportions as their respective shares of the net income or net loss of the Company allocated to them pursuant to Section 7.1. Notwithstanding the foregoing, to the extent not inconsistent with the allocation of gain provided for in Section 7.1, gain recognized by the Company which represents ordinary income by reason of recapture of depreciation or cost recovery deductions for Federal income tax purposes shall be allocated to the Member (or the

Member's successor-in-interest) to whom such depreciation or cost recovery deduction to which such recapture relates was allocated.

8.2 Elections. The election permitted to be made by Section 754 of the Code, and any other elections required or permitted to be made by the Company under the Code, shall be made in such a manner as shall be determined by the Board of Directors.

8.3 Partnership Tax Treatment. It is the intention of the Members that the Company be treated as a partnership for Federal, state and local income tax purposes, and the Members shall not take any position or make any election, in a tax return or otherwise, inconsistent with such treatment.

## ARTICLE 9 DISTRIBUTIONS

9.1 Cash Distributions. With respect to any fiscal year or portion thereof, the Company shall make distributions to the Members equal to (a) the Company's taxable income for such fiscal year, times (b) the maximum combined marginal income tax rates at which such taxable income may be taxed to the Members under the Code and the pertinent provisions of any state income tax laws applicable to any Member. The Company shall make such distributions to the Members in cash on or before the April 15 next following the fiscal year with respect to which the distributions are payable. All such distributions shall be made to the Members in accordance with their respective Units of Participation.

9.2 Property Distributions. If any property of the Company other than cash is distributed by the Company to a Member (in connection with the liquidation of the Company or otherwise), the fair market value of such property shall be used for purposes of determining the amount of such distribution. The difference, if any, of such fair market value over (or under) the value at which such property is carried on the books of the Company shall be credited or charged to the Capital Accounts of the Members in accordance with the ratio in which the Members share in the gain and loss of the Company pursuant to Section 7.1. The fair market value of the property distributed shall be agreed to by the distributee Member and the Board of Directors in good faith. If any such property distribution is made other than in exchange for a Company Interest, such property shall be distributed in the same manner as cash would be distributed.

## ARTICLE 10 MANAGEMENT

### 10.1 Rights and Duties of the Board of Directors.

(a) Control and management of the business of the Company as described in Article 3 hereof shall be vested in the Company's Board of Directors. The members of the Board of Directors shall constitute the "managers" of the Company as contemplated under the Act; provided, however, that they hereby delegate certain of their



(iii) The issuance of any additional Units of Participation or other equity interests in the Company.

(iv) The issuance of any securities which are convertible into, or options, warrants or similar rights to acquire, any Units of Participation or other equity interests in the Company.

(v) Any amendment to the Company's Certificate of Formation.

(vi) A merger of the Company, or a sale, lease or exchange of all or substantially all of the Company's assets.

(vii) The granting by the Company to any one or more of its officers, directors or employees of any employment contract, increase in salary or other compensation, severance-pay, employee benefit, or any other similar agreement, arrangement or commitment.

(viii) Any action which would cause the Company to incur in the aggregate debt in excess of \$10,000, whether such debt is evidenced by a promissory note or otherwise.

(ix) Any action which would result in the Company making a capital expenditure in excess of \$5,000, or which would result in the Company making in the aggregate capital expenditures in excess of \$50,000 during any twelve consecutive month period.

(x) Any business transaction between the Company and any officer or director of the Company, or between the Company and any of such person's relatives or affiliates.

(xi) The terms of the reimbursement of expenses described in Section 14.2(d) below.

(xii) The dissolution of the Company.

## 10.2 Officers.

(a) The Company shall have a President and a Secretary, and may have one or more Vice Presidents, all of whom shall be appointed by the Board of Directors. The Company may also have such assistant officers as the Board of Directors may deem necessary, all of whom shall be appointed by the Board of Directors or appointed by an officer or officers authorized by it.

(b) An officer may resign at any time by delivering notice to the Company. A resignation shall be effective when the notice is delivered unless the notice

specifies a later effective date. The Board of Directors may remove any officer at any time with or without cause.

(c) The President shall:

(i) **Be the chief executive officer of the Company;**

(ii) Be in general and active charge of the entire business and all of the affairs of the Company;

(iii) Have authority acting alone to sign and deliver any document on behalf of the Company which has first been approved by the Board of Directors;

(iv) Have authority to preside at all meetings of the Company's Members and of the Board of Directors; and

(v) Have such other powers and duties as the Board of Directors may assign to him.

(d) The Secretary shall:

(i) Issue notices of all meetings for which notice is required to be given;

(ii) Have responsibility for preparing minutes of the meetings of the Members and the Board of Directors and for authenticating records of the Company;

(iii) Have charge of the Company's record books; and

(iv) Have such other duties and powers as the President or the Board of Directors may assign to him.

(e) The Vice President, or if there be more than one Vice President, the Vice Presidents in the order of their seniority by designation (or, if not designated, in the order of their seniority of election), shall:

(i) Perform the duties of the President whenever the President is unable to serve by reason of sickness, absence or otherwise; and

(ii) Have such other powers and duties as the President or the Board of Directors may assign to them.

(g) The initial officers of the Company shall be as follows:

Walter Moore	President
David Downes	Senior Vice President/Treasurer
George Owens	Senior Vice President/Secretary
Michael L.R. Housley	Senior Vice President/ <del>Power</del> Supply

**10.4 Standard of Care; Indemnification.**

(b) To the full extent permitted by the Act, the Company shall indemnify each director and officer for, and hold each of them harmless from and against, any loss or damage incurred by the individual by reason of any act or omission so performed or omitted by him (and not involving gross negligence or willful misconduct). To the full extent permitted by the Act, the Company shall pay or reimburse reasonable expenses (including reasonable attorneys' fees) incurred by any such individual who is a party to a proceeding in advance of final disposition of such proceeding provided such person agrees, in such manner as the Board of Directors shall reasonably request, to reimburse the Company if it is ultimately determined that the individual was not entitled to indemnification pursuant to the terms of this Agreement.

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ARTICLE 11  
WITHDRAWAL, ASSIGNMENT AND  
ADDITION OF MEMBERS

11.1 Assignment of a Member's Interest. A Member may not sell, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of his Company Interest, except as provided in this Article 11. Any purported transfer which is not in compliance with the provisions of this Article 11 shall be null and void, and the Member purporting to make such transfer shall for all purposes hereof remain a Member. No Member may voluntarily or involuntarily resign or withdraw from the Company.

11.2 Voluntary Transfers.

(a) If a Member desires to transfer all or any part of its Company Interest by any voluntary means, then first the Company and then the other Members shall have the option to purchase the Company Interest which is subject to the proposed transfer, at the price and upon the terms and conditions set forth in Sections 11.4 and 11.5 hereof.

(b) Written notice of the option shall be given by the Member who wishes to transfer its Company Interest to the Company and to the other Members. Such notice shall state the Company Interest being offered (which shall not be less than all of the Company Interest owned by the Member). The option period shall commence upon the date of the proper mailing of the notice and unless exercised shall terminate, with respect to the option given to the Company, thirty (30) days after the mailing of such option, and with respect to the other Member's option, thirty (30) days after the expiration of the Company's option, unless sooner terminated by written refusal of the Company or the other Member, as the case may be. An election to exercise any option shall be made in writing and transmitted to the Member who wishes to transfer its Company Interest.

(c) Upon the failure or neglect of the Company or the remaining Member to purchase all of the Company Interest offered in accordance with Section 11.2(a) above, the Member desiring to transfer its Company Interest shall, for a period of one hundred twenty (120) days from the date when the last option to purchase expired, have the right to sell all of its Company Interest, but not less than all of its Company Interest, to any other Person at any price; provided, however, that before selling such Company Interest to another Person at a price less than the price set forth in Section 11.4 hereof, or upon any terms more favorable than the terms set forth in Section 11.5 hereof, such Member shall first offer to sell its Company Interest to the Company and the other Member, in the same manner as set forth in Section 11.2(a) hereof, at the same price and upon the same terms as such Company Interest was offered to such other Person. In the event that the Company and the remaining Member fail to purchase such Company Interest, then the Member shall have a period of one hundred twenty (120) days thereafter in which to sell its Company Interest to any other Person at such price and upon such terms.

### 11.3 Involuntary Transfers.

(a) In the event that any Company Interest is sought to be transferred by any Member by any involuntary means, including, but not by way of limitation, attachment, garnishment, execution, levy or seizure, then the Company and the remaining Member shall have the option to purchase all of the Company Interest then sought to be involuntarily transferred, in accordance with the procedures set forth in Section 11.2 (a) above, at the price and upon the terms and conditions set forth in Sections 11.4 and 11.5 hereof. The first such option period shall commence upon the Company's receipt of actual notice of the attempted involuntary transfer.

(b) Upon the failure or neglect of the Company or the remaining Member to purchase all of the Company Interest sought to be involuntarily transferred, then the Member desiring to transfer the Company Interest shall have the right to transfer such Company Interest in accordance with (and subject to) the provisions of Section 11.2(c) above.

(c) In determining the fair market value of any Company Interest, the appraisers shall treat all of the Company Interests as having an equal value, and there shall be no minority or other discounts applied.

11.4. Purchase Price and Terms. For purposes of Sections 11.2 and 11.3 hereof, the option purchase price for the Company Interest shall be as follows (the "Contract Price"):

(a) If the Company and/or the remaining Member who wishes to purchase the Company Interest (in either case, the "Purchaser") and the selling Member are able to agree upon the price, then the price shall be such agreed amount. If the Purchaser and the selling Member are unable to agree upon the price, then the price shall be the "Appraised Value" (as determined pursuant to Section 11.4(b) below) as of the last day of the calendar month prior to the calendar month in which the applicable option is exercised.

(b) The "Appraised Value" of the Company Interest shall be the fair market value of the Company Interest as determined by an appraiser mutually acceptable to the Purchaser and the selling Member. One-half of the costs of such appraisal shall be borne by each of the parties. If such parties are unable to agree upon an appraiser within thirty (30) days after the exercise of the option, then the Purchaser and the selling Member shall each appoint an appraiser within fifteen (15) days after the expiration of such thirty (30) day period, who shall appraise the fair market value of the Company Interest. All appraisers selected by each of the parties must have at least five (5) years experience in valuing companies such as the Company. The cost of each appraiser shall be borne by the party appointing such appraiser or on whose behalf the appraiser has been appointed. If the Appraised Value of the Company Interest determined by such two appraisers is different and such difference is less than ten percent (10%) of the higher value, then the Appraised Value for the Company Interest shall be the average of such





## ARTICLE 12 DISSOLUTION

12.1 Dissolution. Notwithstanding anything in the Act to the contrary, the Company shall dissolve upon, but not before, a decision of a majority of the Members to dissolve the Company, which such majority shall be determined and computed by membership rights and interests as measured by Units Of Participation. .

No event of disassociation of a Member under the Act shall cause a dissolution of the Company.

Dissolution of the Company shall be effective upon the date on which the event giving rise to the dissolution occurs, but the Company shall not terminate until the assets of the Company shall have been distributed as provided in Section 12.3 hereof. Notwithstanding the dissolution of the Company, prior to the liquidation and termination of the Company, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

12.2 Sale of Assets Upon Dissolution. Following the decision of the Members to dissolve the Company, the Company shall be wound up and the Board of Directors shall determine whether the assets of the Company are to be sold or whether some or all of such assets are to be distributed to the Members in kind in liquidation of the Company.

12.3 Distributions Upon Dissolution. Upon the dissolution of the Company, the properties of the Company to be sold shall be liquidated in orderly fashion and the proceeds thereof, and the property to be distributed in kind, shall be distributed on or before the later to occur of (i) the close of the Company's taxable year, or (ii) 90 days following the date of such dissolution, as follows:

(a) First, to the payment and discharge of all of the Company's debts and liabilities (including any debts which are owed to the Members in their capacities as creditors), to the necessary expenses of liquidation, and to the establishment of any cash reserves which the Board of Directors determines to create for unmatured and/or contingent liabilities or obligations of the Company.

(b) Second, to the Members, in accordance with their respective Capital Accounts; provided, however, that if the Board of Directors establishes any reserves in accordance with the provisions of Section 12.3(a), the distributions pursuant to this Section 12.3(b) (including distributions of such reserves) shall be pro rata in accordance with the balances of the Members' Capital Accounts.

No Member shall be required to contribute any property to the Company or any third party by reason of having a negative Capital Account.

ARTICLE 13  
TAX MATTERS PARTNER

13.1 Tax Matters Partner. The tax matters partner (the "TMP") for the Partnership shall be APPI until such time as it shall cease to be a Member or is removed by the Board of Directors and a new TMP is appointed by the Board of Directors. The TMP shall have such authority as is granted a TMP under the Code.

ARTICLE 14  
ADDITIONAL AGREEMENTS

14.1 Consulting Agreement. Effective September 1, 1999, Legacy will cease to be a paid consultant of APPI.

14.2 Costs and Expenses.

(a) Exhibit D to this Agreement (to be completed no later than September 30, 2000) lists the costs and expenses incurred by APPI prior to September 1, 1999, which relate to the Company. The Members agree that all such amounts shall be repaid to APPI prior to the time when any distributions (in excess of those specified in Section 9.1) are made to Legacy.

(b) APPI, Moore and Legacy shall keep track of all of the costs and expenses which they incur in connection with the Company (including, without limitation, travel, labor and telecommunications) from and after September 1, 1999, and shall deliver to one another a monthly list of all such amounts. Exhibit E hereto (to be completed no later than September 30, 2000) lists each such Member's costs and expenses from September 1, 1999 through the date of this Agreement. Each Member shall be repaid such costs and expenses upon the earlier of (i) the date on which the Company executes an investment agreement with an outside investor and actually receives such funding, or the Board of Directors elects not to seek outside capital, or (ii) after having paid in full all existing indebtedness, the time at which the Company generates positive cash flow for three consecutive months (after payment of the salaries of Company employees, including Walter Moore, and the Company's overhead including without limitation the expenses set forth in Exhibit D) (the earlier of such dates being the "Funding Date").

(c) Costs and expenses incurred by the Members during the period from September 1, 1999 through the Funding Date shall be reimbursed to the Members pro rata, based on the percentage of each Member's individual costs and expenses relative to the total costs and expenses incurred by all Members. The percentages shall be calculated on a monthly basis, commencing in September 1999. Notwithstanding the foregoing, however, the oldest costs and expenses, calculated on a monthly basis, shall be paid in full to each Member, prior to any Member receiving reimbursements for any subsequent month's costs and expenses.

(d) From and after the Funding Date, the Company shall reimburse Legacy, Downes Associates, and Moore for services on a per hour or fixed price basis (as the parties may agree), plus expenses.

## ARTICLE 15 GENERAL

15.1 Notices. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed delivered (a) on the date of personal delivery or confirmed transmission by facsimile transmission, or (b) on the third day (excluding Sundays and national holidays) after the date of deposit in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (c) on the day actually delivered by a nationally recognized overnight courier service, in each case addressed to a party's address set forth in the preamble hereto, or to such other address, person or entity as either party shall designate by written notice to the other in accordance with this Section 15.1.

15.2 Voting. All matters which require a vote of the Members shall be determined by a vote of a majority of the Units of Participation either in favor of or against the matter.

15.3 Amendment. This Agreement may be modified or amended from time to time only with the consent of all of the Members.

15.4 Captions; Section References. Sections, titles or captions contained in this Agreement are inserted only as a matter of convenience and reference, and in no way define, limit, extend or describe the scope of this Agreement, or the intent of any provision hereof. All references herein to Sections shall refer to Sections of this Agreement unless the context clearly otherwise requires.

15.5 Number and Gender. Unless the context otherwise requires, when used herein the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

15.6 Severability. If any provision of this Agreement, or the application thereof to any person, entity or circumstance, shall be invalid or unenforceable to any extent, then the remainder of this Agreement, and the application of such provision to other persons, entities or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15.7 Binding Agreement. Except as otherwise provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective executors, administrators, heirs, successors and permitted assigns.

15.8 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware.

15.9 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior written and oral agreements among the parties with respect to the subject matter hereof.

15.10 Counterparts. This Agreement (and any amendments hereto) may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All of the counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

AFFILIATED POWER PURCHASERS, INC.

By Walter Moore  
Walter Moore, President

WALTER MOORE

By Walter Moore  
Walter Moore

THE LEGACY ENERGY GROUP, LLC

By Michael L. R. Housley  
Michael L. R. Housley, President



DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
01/29/2001	200102902888	REGISTRATION OF FOREIGN LIMITED LIABILITY CO (LFA)	10.00	.00	.00	.00	.00

**Receipt**

This is not a bill. Please do not remit payment.

AFFILIATED POWER PURCHASERS INTERNATIONAL, LLC  
2129 NORTHWOOD DRIVE  
SALISBURY, MD 21801

# STATE OF OHIO

**Ohio Secretary of State, J. Kenneth Blackwell**

**1204123**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
**AFFILIATED POWER PURCHASERS INTERNATIONAL, LLC**  
and, that said business records show the filing and recording of:

Document(s)

**REGISTRATION OF FOREIGN LIMITED LIABILITY CO**

Document No(s):

**200102902888**



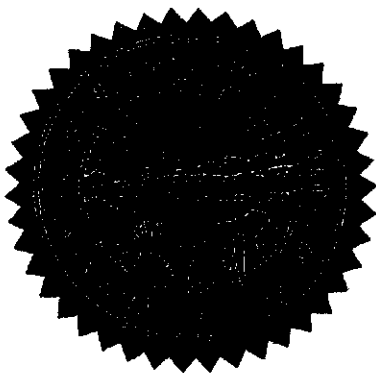
United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of  
the Secretary of State at Columbus,  
Ohio this 18th day of December,  
A.D. 2000.

*J. Kenneth Blackwell*  
Ohio Secretary of State

**UNITED STATES OF AMERICA  
STATE OF OHIO  
OFFICE OF THE SECRETARY OF STATE**

*I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show AFFILIATED POWER PURCHASERS, INC., a Delaware Corporation, License No. 1184602, was licensed on September 15, 2000, was SURRENDERED on December 11, 2000.*



*Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio  
this 9th day of March, A.D. 2004.*

*J. Kenneth Blackwell*  
Ohio Secretary of State

Validation Number: 200406803046

9:07 AM  
02/22/12  
Accrual Basis

Affiliated Power Purchasers Int'l, LLC  
**Profit & Loss**  
January through December 2010

	<u>Jan - Dec 10</u>
Ordinary Income/Expense	
Income	
40000 · Gas Consulting Fees	40,271.07
41000 · Electric Consulting Fees	418,673.13
41005 · Demand Side Services	3,777.07
41010 · Legacy Electric Commissions	97,639.98
41020 · Utility Auditing Income	23,985.08
41500 · Telephone Commissions	4,020.19
41700 · Marketing Fees	5,784.35
71000 · Interest Income	6.33
Total Income	<u>436,2218.20</u>
Cost of Goods Sold	
50150 · Wages- Direct Marketing	110,6940.93
50152 · Wages- AM Bonuses	61,436.00
50155 · Wages- Sales Commissions	170,567.04
51450 · Payroll Taxes- Dir Marketing	96,370.06
51600 · G/A Fedl /State Unemploy't Tax	9,681.25
60000 · Advertising	23,837.72
60100 · Customer Service Expense	22,448.97
60400 · Sponsorships	52,318.96
61300 · Assoc. Commission Exp.	368,006.06
61310 · Channel Partner Commissions	300,773.28
61500 · Marketing Services	16,450.53
62550 · Direct Mail/Fac Exp/Email	3,204.22
62557 · Website	17,219.85
62610 · Membership Dues	8,320.50
63500 · Printing	12,294.32
63600 · Travel & Lodging	80,911.93
63601 · Conventions- Exhibits	29,557.17
63602 · Meals and Entertainment	25,696.05
Total COGS	<u>240,6034.84</u>
Gross Profit	195,6183.36
Expense	
*Uncategorized Expenses	0.00
50100 · Wages- G & A	633,666.66
50120 · Bonus Pool	160,000.00
51900 · Retirement Benefits Expense	30,970.36
51925 · Retirement Advisor Fee	4,022.31
51950 · Officers' Retirement Expense	68,889.57



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Affiliated Power Purchasers Int'l, LLC  
Profit & Loss  
January through December 2010

	Jan - Dec 10
60500 · Accounting	29,980.00
60700 · Outside Services	1,000.00
60750 · IT Consultant	38,403.93
61100 · Prof Recruitment & Development	838.00
62000 · Legal Fees	6,467.00
62300 · Licenses & Taxes	5,778.88
62500 · Postage	5,786.68
62600 · FedEx/UPS	3,386.00
62800 · Automobile Expense	7,486.64
63000 · Insurance	30,922.66
63100 · Life Insurance	1,779.20
63200 · Health Insurance	63,698.54
63225 · Officers' Life Insurance	155.16
63250 · Officers' Health Insurance	17,235.00
63700 · Dues & Subscriptions	1,922.63
64000 · Office Expense	29,311.79
64400 · ADP Payroll Charges	3,165.85
64500 · Bank Charges	70.00
64700 · Finance Charges	206.77
64800 · Cleaning and Maintenance	3,120.00
64850 · Alarm Services	330.12
64900 · Computer Services	55,685.42
65000 · Telephone	31,651.29
65600 · Depreciation	30,347.52
66400 · Contributions	4,440.00
66500 · Continuing Education	5,422.58
67400 · Rent	73,448.30
67500 · Utilities	8,329.82
69000 · Taxes	6,664.20
72000 · Interest Expense	3,326.21
Total Expense	1367909.09
Net Ordinary Income	588,274.27
Net Income	588,274.27

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Affiliated Power Purchasers Int'l, LLC  
**Balance Sheet**  
As of December 31, 2010

	<u>Dec 31, 10</u>
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
10205 · Bank of Delmarva	254,153.62
10305 · Bank of Delmarva-Payroll	2,995.51
10405 · Bank of Delmarva-Savings	<u>2,536.44</u>
Total Checking/Savings	259,685.57
Other Current Assets	
10520 · Accounts Receivable-A*	9071972.00
10530 · Accounts Receivable-Legacy	65,110.00
10725 · Due from Officers	115,397.69
10726 · Agent Draw-pw=b	(136.50)
10727 · Due from Employees	<u>571.22</u>
Total Other Current Assets	<u>9252914.41</u>
Total Current Assets	9512599.98
Fixed Assets	
15000 · Furniture & Fixtures	5,767.82
15050 · A/D- F & F Depreciation	(5,767.82)
15100 · Computer Equipment	49,169.63
15200 · A/D-Computer Equipment	(48,561.68)
15400 · Auto	83,820.55
15450 · A/D- Auto	(21,670.00)
16000 · Leasehold Improveme	3,075.00
16050 · A/D-Leasehold Improvements	<u>(121.56)</u>
Total Fixed Assets	<u>65,711.94</u>
<b>TOTAL ASSETS</b>	<u><u>9578311.92</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
20100 · Accounts Payable	<u>5,184.62</u>
Total Accounts Payable	5,184.62
Other Current Liabilities	
20110 · Accrued Expense	48,230.25
20115 · Accrued Association Commission	120,000.00
22100 · Payroll Taxes Payable	<u>3,689.61</u>
Total Other Current Liabilities	<u>171,919.86</u>
Total Current Liabilities	177,104.48

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Affiliated Power Purchasers Int'l, LLC  
**Balance Sheet**  
As of December 31, 2010

	<u>Dec 31, 10</u>
Long Term Liabilities	
21300 · N/P Mercedes	28,305.54
23000 · Deferred Contracted Rev. APPI	8234883.00
23001 · Def. Contract Rev. Ch. Partner	837,089.00
Total Long Term Liabilities	<u>9100277.54</u>
Total Liabilities	9277382.02
Equity	
30000 · Retained Earnings	136,350.76
30050 · Draw- W. Moore	(215,717.00)
30051 · Draw- K. Smyth	(92,994.00)
30052 · Draw-Legacy (M. Housley)	(37,527.00)
30053 · Draw- M. Payne	(45,229.04)
30054 · Draw- K. Kiernan	(32,228.09)
Net Income	<u>588,274.27</u>
Total Equity	<u>300,929.90</u>
TOTAL LIABILITIES & EQUITY	<u><u>9578311.92</u></u>