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Ohio

Public Utilities
Commission

16-1513-GA-CRS

61

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Date Received	Case Number	Certification Number
	- GA-CRS	

INITIAL CERTIFICATION APPLICATION
COMPETITIVE RETAIL NATURAL GAS SUPPLIERS

Please type or print all required information. Identify all attachments with an exhibit label and title (*Example: Exhibit A-15 - Company History*). 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 directly input information onto the form. You may also download the form by saving it to your local disk.

SECTION A - APPLICANT INFORMATION AND SERVICES

A-1 Applicant intends to be certified as: (check all that apply)

☐ Retail Natural Gas Aggregator ☐ Retail Natural Gas Broker ☒ Retail Natural Gas Marketer

RECEIVED

A-2 Applicant information:

Legal Name Provision Power & Gas, LLC
Address 716 Pedernales St Unit A, Austin, TX 78702
Telephone No. 800-930-5427

Web site Address

DOCKETING DIVISION
Public Utilities Commission of Ohio
Provisionpg.com

JUN 30 2016

A-3 Applicant information under which applicant will do business in Ohio:

Name Provision Power & Gas, LLC
Address 716 Pedernales St Unit A, Austin, TX 78702
Web site Address Provisionpg.com Telephone No. 800-930-5427

A-4 List all names under which the applicant does business in North America:

Provision Power & Gas, LLC

A-5 Contact person for regulatory or emergency matters:

Name Lisa Huston Title Sales & Marketing Manager
Business Address 716 Pedernales St Unit A, Austin, TX 78702
Telephone No. 800-930-5427 Fax No. 866-593-9771 Email Address gasmarketing@elevationeg.com

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This is to certify that the information provided is accurate and complete. This document delivered in the regular course of business.
Technician Jim Date Processed JUL 01 2016

A-6 Contact person for Commission Staff use in investigating customer complaints:

Name Lisa Huston Title Sales & Marketing manager
Business address 716 Pedernales St Unit A, Austin, TX 78702
Telephone No. 800-930-5427 Fax No. 866-593-9771 Email Address gasmarketing@elevationeg.com

A-7 Applicant's address and toll-free number for customer service and complaints

Customer service address 716 Pedernales St Unit A, Austin, TX 78702
Toll-Free Telephone No. 800-930-5427 Fax No. 866-593-9771 Email Address care@provisionpg.com

A-8 Provide "Proof of an Ohio Office and Employee," in accordance with Section 4929.22 of the Ohio Revised Code, by listing name, Ohio office address, telephone number, and Web site address of the designated Ohio Employee

Name Steven Ross Title Consultant
Business address 2711 Gary Ave Euclid, OH 44132
Telephone No. 800-930-5427 Fax No. 866-593-9771 Email Address team@elevationeg.com

A-9 Applicant's federal employer identification number 47-1681808

A-10 Applicant's form of ownership: (Check one)

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

A-11 (Check all that apply) Identify each natural gas company service area in which the applicant is currently providing service or intends to provide service, including identification of each customer class that the applicant is currently serving or intends to serve, for example: *residential, small commercial, and/or large commercial/industrial (mercantile) customers*. (A mercantile customer, as defined in Section 4929.01(L)(1) of the Ohio Revised Code, means a customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within the state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. In accordance with Section 4929.01(L)(2) of the Ohio Revised Code, "Mercantile customer" excludes a not-for-profit customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state that has filed the necessary declaration with the Public Utilities Commission.)

<input checked="" type="checkbox"/> Columbia Gas of Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial
<input checked="" type="checkbox"/> Dominion East Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial
<input checked="" type="checkbox"/> Duke Energy Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial
<input checked="" type="checkbox"/> Vectren Energy Delivery of Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial

A-12 If applicant or an affiliated interest previously participated in any of Ohio's Natural Gas Choice Programs, for each service area and customer class, provide approximate start date(s) and/or end date(s) that the applicant began delivering and/or ended services.

☒ **Columbia Gas of Ohio**

<input checked="" type="checkbox"/> Residential	Beginning Date of Service	10/2013	End Date	n/a
<input checked="" type="checkbox"/> Small Commercial	Beginning Date of Service	10/2013	End Date	n/a
<input checked="" type="checkbox"/> Large Commercial	Beginning Date of Service	10/2013	End Date	n/a
<input checked="" type="checkbox"/> Industrial	Beginning Date of Service	10/2013	End Date	n/a

☒ **Dominion East Ohio**

<input checked="" type="checkbox"/> Residential	Beginning Date of Service	5/2012	End Date	n/a
<input checked="" type="checkbox"/> Small Commercial	Beginning Date of Service	5/2012	End Date	n/a
<input checked="" type="checkbox"/> Large Commercial	Beginning Date of Service	5/2012	End Date	n/a
<input checked="" type="checkbox"/> Industrial	Beginning Date of Service	5/2012	End Date	n/a

☐ **Duke Energy Ohio**

<input type="checkbox"/> Residential	Beginning Date of Service		End Date	
<input type="checkbox"/> Small Commercial	Beginning Date of Service		End Date	
<input type="checkbox"/> Large Commercial	Beginning Date of Service		End Date	
<input type="checkbox"/> Industrial	Beginning Date of Service		End Date	

☐ **Vectren Energy Delivery of Ohio**

<input type="checkbox"/> Residential	Beginning Date of Service		End Date	
<input type="checkbox"/> Small Commercial	Beginning Date of Service		End Date	
<input type="checkbox"/> Large Commercial	Beginning Date of Service		End Date	
<input type="checkbox"/> Industrial	Beginning Date of Service		End Date	

A-13 If not currently participating in any of Ohio's four Natural Gas Choice Programs, provide the approximate start date that the applicant proposes to begin delivering services:

<input type="checkbox"/>	Columbia Gas of Ohio	Intended Start Date	
<input type="checkbox"/>	Dominion East Ohio	Intended Start Date	
<input checked="" type="checkbox"/>	Duke Energy Ohio	Intended Start Date	7/1/2016
<input checked="" type="checkbox"/>	Vectren Energy Delivery of Ohio	Intended Start Date	7/1/2016

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

- A-14 Exhibit A-14 "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-15 Exhibit A-15 "Company History," provide a concise description of the applicant's company history and principal business interests.
- A-16 Exhibit A-16 "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-17 Exhibit A-17 "Secretary of State," provide evidence that the applicant is currently registered with the Ohio Secretary of the State.

SECTION 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 current 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 natural gas service, or retail/wholesale electric services.
- B-2 Exhibit B-2 "Experience & Plans," provide a current 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 4929.22 of the Revised Code and contained in Chapter 4901:1-29 of the Ohio Administrative Code.
- B-3 Exhibit B-3 "Summary of Experience," provide a concise and current summary of the applicant's experience in providing the service(s) for which it is seeking to be certified to provide (e.g., number and types of customers served, utility service areas, volume of gas supplied, etc.).
- B-4 Exhibit B-4 "Disclosure of Liabilities and Investigations," provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocations 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 Exhibit B-5 "Disclosure of Consumer Protection Violations,"** disclose whether the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant has 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 Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation,"** disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail natural gas or retail/wholesale electric service denied, curtailed, suspended, or revoked, or whether the applicant or predecessor has been terminated from any of Ohio's Natural Gas Choice programs, or been in default for failure to deliver natural gas.

☒ 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.

SECTION 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, labeled as Exhibit C-1, or indicate that Exhibit C-1 is not applicable and why.
(This is generally only applicable to publicly traded companies who publish annual reports)
- 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. An applicant may submit a current link to the filings or provide them in paper form. 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. If the applicant does not have a balance sheet, income statement, and cash flow statement, the applicant may provide a copy of its two most recent years of tax returns (with social security numbers and account numbers redacted).

C-4 Exhibit C-4 "Financial Arrangements," provide copies of the applicant's current financial arrangements to conduct competitive retail natural gas service (CRNGS) as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.)

Renewal applicants can fulfill the requirements of Exhibit C-4 by providing a current statement from an Ohio local distribution utility (LDU) that shows that the applicant meets the LDU's collateral requirements.

First time applicants or applicants whose certificate has expired as well as renewal applicants can meet the requirement by one of the following methods:

1. The applicant itself stating that it is investment grade rated by Moody's, Standard & Poor's or Fitch and provide evidence of rating from the rating agencies.
2. Have a parent company or third party that is investment grade rated by Moody's, Standard & Poor's or Fitch guarantee the financial obligations of the applicant to the LDU(s).
3. Have a parent company or third party that is not investment grade rated by Moody's, Standard & Poor's or Fitch but has substantial financial wherewithal **in the opinion of the Staff reviewer** to guarantee the financial obligations of the applicant to the LDU(s). The guarantor company's financials must be included in the application if the applicant is relying on this option.
4. Posting a Letter of Credit with the LDU(s) as the beneficiary.

If the applicant is not taking title to the electricity or natural gas, enter "N/A" in Exhibit C-4. An N/A response is only applicable for applicants seeking to be certified as an aggregator or broker.

C-5 Exhibit C-5 "Forecasted Financial Statements," provide two years of forecasted income statements for the applicant's **NATURAL GAS related business activities in the state of Ohio Only**, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer. The forecasts should be in an annualized format for the two years succeeding the Application year.

C-6 Exhibit C-6 "Credit Rating," provide a statement disclosing the applicant's current 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. If an applicant or its parent does not have such a credit rating, enter "N/A" in Exhibit C-6.

C-7 Exhibit C-7 "Credit Report," provide a copy of the applicant's current credit report from Experian, Dun and Bradstreet, or a similar organization. An applicant that provides an investment grade credit rating for Exhibit C-6 may enter "N/A" for Exhibit C-7.

- 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 two most recent years preceding the application.
- C-10 Exhibit C-10 "Corporate Structure,"** provide a description of the applicant's corporate structure, not an internal organizational chart, 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 in North America. If the applicant is a stand-alone entity, then no graphical depiction is required and applicant may respond by stating that they are a stand-alone entity with no affiliate or subsidiary companies.

SECTION D - APPLICANT TECHNICAL CAPABILITY

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

- D-1 Exhibit D-1 "Operations,"** provide a current written description of the operational nature of the applicant's business. Please include whether the applicant's operations will include the contracting of natural gas purchases for retail sales, the nomination and scheduling of retail natural gas for delivery, and the provision of retail ancillary services, as well as other services used to supply natural gas to the natural gas company city gate for retail customers.
- D-2 Exhibit D-2 "Operations Expertise,"** given the operational nature of the applicant's business, provide evidence of the applicant's current experience and technical expertise in performing such operations.
- D-3 Exhibit D-3 "Key Technical Personnel,"** provide the names, titles, email addresses, telephone numbers, and background of key personnel involved in the operational aspects of the applicant's current business.

Applicant Signature and Title



President

Sworn and subscribed before me this

15th

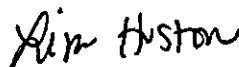
day of

June

Month

2016

Year



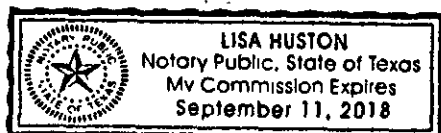
Tri Vo - President

Signature of official administering oath

Print Name and Title

My commission expires on

Sept 11, 2018



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The Public Utilities Commission of Ohio

Competitive Retail Natural Gas Service
Affidavit Form
(Version 1.07)

In the Matter of the Application of)
)
)
)
)

for a Certificate or Renewal Certificate to Provide
Competitive Retail Natural Gas Service in Ohio.

Case No. -GA-CRS

County of
State of

Provision Power & Gas

[Affiant], being duly sworn/affirmed, hereby states that:

- (1) The information provided within the certification or certification renewal application and supporting information is complete, true, and accurate to the best knowledge of affiant.
- (2) The applicant will timely file an annual report of its intrastate gross receipts and sales of hundred cubic feet of natural gas pursuant to Sections 4905.10(A), 4911.18(A), and 4929.23(B), Ohio Revised Code.
- (3) The applicant will timely pay any assessment made pursuant to Section 4905.10 or Section 4911.18(A), Ohio Revised Code.
- (4) Applicant will comply with all applicable rules and orders adopted by the Public Utilities Commission of Ohio pursuant to Title 49, Ohio Revised Code.
- (5) Applicant will cooperate with the Public Utilities Commission of Ohio and its staff in the investigation of any consumer complaint regarding any service offered or provided by the applicant.
- (6) Applicant will comply with Section 4929.21, Ohio Revised Code, regarding consent to the jurisdiction of the Ohio courts and the service of process.
- (7) Applicant will inform the Public Utilities Commission of Ohio of any material change to the information supplied in the certification or certification renewal application within 30 days of such material change, including any change in contact person for regulatory or emergency purposes or contact person for Staff use in investigating customer complaints.
- (8) Affiant further sayeth naught.

Affiant Signature & Title

Sworn and subscribed before me this

15th

day of

June

Month

2016

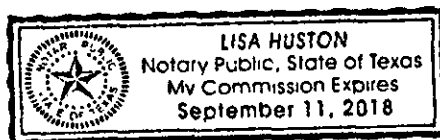
Year

Lisa Huston

Signature of Official Administering Oath

tr: vs President

Print Name and Title



My commission expires on

Sept 11 2018

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EXHIBIT A-14 "Principal Officers, Directors & Partners"

Provide the names, titles, addresses, and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.

Name	Title	Address	Phone
Tri Vo	President	716 Pedernales St, Austin, TX 78702	512-237-7791

EXHIBIT A-15 "Company History"

Provide a concise description of the applicant's company history and principal business interests.

Provision Power & Gas is a Delaware limited liability company with its principal place of business in Austin, TX. Provision Power & Gas is a wholly-owned subsidiary of Elevation Energy Group, LLC. Provision Power & Gas engaged in the retail sale of natural gas in Michigan in 2014. Currently, Provision Power & Gas supplies retail natural gas to customers through DTE and CMS.

EXHIBIT A-16 “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.

Please see next page.

**LIMITED LIABILITY COMPANY AGREEMENT
OF
PROVISION POWER AND GAS, LLC**

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ARTICLE I

DEFINITIONS

Section 1.1 Terms Defined. When used in this Agreement, the following terms shall have the meanings set forth below:

“Act” shall mean the Delaware Limited Liability Company Act as amended from time to time, and any successor statute.

“Adjusted Capital Account Deficit” means the deficit balance, if any, in a Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) there shall be credited to such Capital Account any amounts which such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g) and 1.704-2(i)(5) of the Treasury Regulations; and

(b) there shall be debited to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

“Affiliate” shall mean a Person (i) which is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Person in question, or (ii) in which the Person in question is a manager, officer, director or has a financial interest.

“Agreement” shall mean this Limited Liability Company Agreement of Elevation Energy Group, LLC as may subsequently be amended.

“Capital Account” shall have the meaning set forth in Section 3.4.

“Capital Contribution” shall mean the cash and the fair market value of property other than cash (net of liabilities which the Company assumes or takes the property subject to) contributed to the capital of the Company by a Member.

“Certificate” shall mean the Certificate of Formation filed on behalf of the Company with the Secretary of State of the state of Delaware in accordance with all applicable statutes, as may be subsequently amended.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations thereunder.

“Company” shall mean Provision Power and Gas, LLC, the limited liability company created pursuant to the Certificate and governed by this Agreement.

“Company Minimum Gain” has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

"Electronically" shall mean by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the world wide web), by electronic mail in portable document format (".pdf") form, or by any other electronic means, or by a combination of such means.

"Interest" shall mean a Member's interest, expressed as a percentage, in the Company, except as may be otherwise provided in this Agreement. The initial Interests of the Members are set forth on Exhibit A.

"Involuntary Assignment Event" mean, with respect to a Member, the acquisition by all other Members of knowledge of any of the following: the filing by the Member of any petition or action for relief under any bankruptcy, reorganization, insolvency, or moratorium law, or any law for the relief of, or relating, to debtors; the expiration of ten (10) days following the filing of an involuntary petition under any bankruptcy statute against the Member, or the appointment of a custodian, receiver, sequestrator, trustee, assignee for the benefit of creditors, or other similar official to take possession, custody, or control of any of the properties of the Member, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within ten (10) days from the date of such filing or appointment; the expiration of ten (10) days following the levy of a writ of execution, attachment, garnishment, charging order, or other similar process of law against the Interest of the Member, unless such writ is paid, released, quashed, or bonded within ten (10) days following the date of such levy or charging order; or any act, demand, or attempt to realize upon the Interest of the Member as collateral security for any indebtedness or obligation. The Member suffering any of such events shall have the duty to give prompt notice thereof to the other Members charging order.

"Managers" shall mean Tri Vo, so long as he shall continue as a manager hereunder, and any other Person who has been elected as and continues to be, a manager of the Company under this Agreement.

"Majority in Interest of the Members" shall mean Members owning more than fifty percent (50%) of the Interests.

"Members" shall mean the Persons listed on Exhibit A as members, so long as each shall continue as a member hereunder, and any other Person who has been admitted as, and who continues to be, a member of the Company.

"Member Nonrecourse Debt" has the same meaning as the term "partner nonrecourse debt" set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

"Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.

"Member Nonrecourse Deductions" has the same meaning as the term "partner nonrecourse deductions" set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Treasury Regulations.

"Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations.

"Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.

"Person" shall mean an individual, partnership, joint venture, corporation, trust, limited liability company, estate or other entity or organization.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

"Profits" and "Losses" mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this paragraph shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits or Losses pursuant to this paragraph shall be subtracted from such taxable income or loss;

(c) in the event that the Value of any Company asset is adjusted pursuant to clause (b) or (c) of the definition of "Value" below, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Value of such property, notwithstanding that the adjusted tax basis of such property differs from its Value; and

(e) if the Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of any fiscal year or other period, in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account for such fiscal year or other period the depreciation, amortization, or other cost recovery deduction which bears the same ratio to such beginning Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, the

depreciation, amortization, or other cost recovery deduction shall be determined with reference to such beginning Value using any reasonable method selected by the Managers.

"Section" shall mean any section or subsection in this Agreement.

"Service" shall mean the Internal Revenue Service.

"Transfer" shall mean the sale, transfer, gift, conveyance, assignment, pledge, hypothecation, mortgage or other encumbrance or disposition of all or any part of an Interest.

"Treasury Regulations" means the Income Tax Regulations promulgated under the Code as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Value" means, with respect to any asset of the Company, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) the initial Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager;

(b) the Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relevant economic interests of the Members in the Company;

(c) the Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

(d) the Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations hereof; provided, however, that Values shall not be adjusted pursuant to this clause to the extent that the Manager determines that an adjustment pursuant to clause (b) is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (d).

If the Value of an asset has been determined or adjusted pursuant to clauses (a), (b), or (d) of this paragraph, such Value shall thereafter be adjusted by the depreciation, amortization, or

other cost recovery deduction taken into account with respect to such asset for purposes of computing Profits and Losses.

Section 1.2 **Number and Gender.** Whenever the context requires, references in this Agreement to the singular number shall include the plural, and the plural number shall include the singular, and words denoting gender shall include the masculine, feminine and neuter.

ARTICLE II

GENERAL

Section 2.1 **Formation.** The Certificate for the Company has been filed with the Secretary of State for the state of Delaware as required by the Act. The Managers shall do all other things requisite to the organization and operation of the Company as a limited liability company pursuant to the Act.

Section 2.2 **Purpose.** The purpose of the Company and the character of its business shall be to engage in oil and gas and mineral marketing, such other activities as a Majority in Interest of the Members may from time to time determine, and such other activities as may be reasonably related or incidental thereto.

Section 2.3 **Name.** The business of the Company shall be conducted under the name "Provision Power and Gas, LLC" or such modifications or variations thereof as the Manager may determine.

Section 2.4 **Principal Place of Business; Registered Office; Registered Agent.** The Manager may determine the principal place of business and principal office of the Company. The initial registered agent and registered office of the Company shall be as set forth in the Certificate. The registered office and registered agent of the Company may be changed upon approval by the Manager and compliance with the Act.

Section 2.5 **Term.** The Company shall continue until dissolved pursuant to Section 10.1.

Section 2.6 **Characterization.** For federal income tax purposes, the Company shall be characterized as a partnership. However, for state law purposes, the Company shall not be characterized as, nor treated as, a partnership, nor shall any Member be characterized as, nor treated as, a partner. The Manager shall operate the Company in a manner consistent with such characterizations and neither the Manager nor any Member shall take any act, or fail to take any act, which is not consistent with such characterizations.

ARTICLE III

CAPITAL CONTRIBUTIONS; LOANS; CAPITAL ACCOUNTS

Section 3.1 **Capital Contributions.** Upon execution of this Agreement, each Member shall make a Capital Contribution to the Company in the amount set opposite such Member's name on Exhibit A.

Section 3.2 Additional Capital Contributions. If at any time the Manager determines that additional funds are required by the Company to pay Company expenses, to operate the Company's business, or to expand the Company's business, then the Manager may call for additional capital contributions ("Additional Capital Contributions") to be made by the Members, by providing notice to each Member. Such notice shall include a statement of the proposed uses of the Additional Capital Contributions and a date (which date may be no earlier than the tenth calendar day following each Member's receipt of its notice) before which the Additional Capital Contributions are due. Each call for Additional Capital Contributions shall be made to all Members in accordance with their respective Interests at the time of such call.

Section 3.3 Remedies for Failure to Contribute Capital. No Member shall be required to contribute any capital to the Company except as provided in Section 3.1, but if any Member (a "Non-Contributing Member") fails to timely make all or any portion of any such Member's share of any Additional Capital Contributions called pursuant to Section 3.2 (a "Shortfall Amount") and such failure continues for ten (10) business days following notice thereof from the Manager, then the Interests of the Members shall be automatically adjusted so that they are in proportion to the cumulative Capital Contributions made by each of the Members (after taking into account any Capital Contributions made pursuant to the following sentence). The Managers may permit one or more of the other Members who contributed their corresponding shares of the Additional Capital Contributions (the "Contributing Members") to fund the Shortfall Amount to the Company and treat the Shortfall Amount so funded as additional Capital Contributions to the Company by the Contributing Members.

Section 3.4 Capital Accounts.

(a) The Company shall maintain a capital account ("Capital Account") for each Member. Each Member's Capital Account shall be increased by (i) the amount of money contributed by such Member to the Company and the amount of any Company liabilities assumed by such Member (as determined pursuant to Section 752(c) of the Code and any other applicable provisions of the Code and Treasury Regulations), other than liabilities described in clause (v) of this Section 3.4, (ii) the fair market value of any property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations to such Member of Profits. Each Member's Capital Account shall be decreased by (iv) the amount of money distributed to such Member by the Company and the amount of such Member's liabilities that are assumed by the Company (as determined pursuant to Section 752(c) of the Code and any other applicable provisions of the Code and Treasury Regulations), other than liabilities described in clause (ii) of this Section 3.4, (v) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), and (vi) allocations to such Member of Losses.

(b) In the event that all or a portion of an Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the transferred Interest. If such transfer causes a termination of the Company under Section 708 of the Code, the carried over Capital Account shall be appropriately adjusted to reflect the liquidating distributions and

contributions deemed to have occurred pursuant to the Treasury Regulations under Section 708 of the Code.

(c) The provisions of this Section 3.4 and the other provisions of this Agreement relating to the maintenance of the Capital Accounts are intended to comply with Section 1.704-1(b) of the Treasury Regulations, and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company, or the Members), are computed in order to comply with such Treasury Regulations, the Manager may make such modification, provided that such modification is not likely to have a material effect on the amounts distributable to any Member pursuant to Section 7.2 hereof upon the liquidation of the Company. The Manager also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts and the amount of Company capital reflected in the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modification in the event that unanticipated events might cause this Agreement not to comply with Section 1.704-1(b) of the Treasury Regulations.

Section 3.5 **Member Loans.** A Member, or an Affiliate of a Member, may, but is not obligated to, loan or cause to be loaned to the Company such additional sums as the Manager deems appropriate or necessary for the conduct of the Company's business. Loans made by a Member, or an Affiliate of a Member, shall be upon such terms as the lender and a Manager shall determine.

Section 3.6 **Other Matters Relating to Capital Contributions.**

(a) Loans by any Member to the Company shall not be considered contributions to the capital of the Company.

(b) No Member shall be required to make contributions to the capital of the Company except to the extent expressly provided by this Article III.

(c) No Member shall be entitled to withdraw, or to obtain a return of, any part of his contribution to the capital of the Company, or to receive property or assets other than cash in return thereof, and no Member shall be liable to any other Member for a return of his contributions to the capital of the Company, except as provided in this Agreement.

(d) No Member shall be entitled to priority over any other Member, either with respect to a return of his contributions to the capital of the Company, or to allocations of taxable income, gains, losses or credits, or to distributions, except as provided in this Agreement.

(e) No interest shall be paid on any Member's Capital Contribution.

Section 3.7 **Deficit Capital Account Balances.** Upon liquidation of the Company or of a Member's Interest, no Member with a deficit balance in his Capital Account shall have any obligation to restore such deficit balance, or to make any contribution to the capital of the Company, except to the extent such Member is personally liable to make contributions to the capital of the Company pursuant to Article III of this Agreement.

ARTICLE IV

MEMBERS

Section 4.1 **Initial Members.** The names and addresses of the initial Members of the Company are set forth on Exhibit A.

Section 4.2 **Additional Members.** The Manager shall have the right to admit additional Persons as Members of the Company upon such terms and conditions as the Manager may deem appropriate, subject to the following provisions of this Section. Prior to admitting any such additional Member, the Company will first offer to each existing Member the right to acquire a portion of the Interest proposed to be issued to the additional Member on the same pro rata terms and conditions of the proposed issuance to the additional Member. Each Member shall have the right to purchase a portion of such Interest offered to the existing Members based on such Member's percentage Interest. A Member must exercise such purchase right by giving written notice to the Company within fifteen (15) days after receipt of the notice of the proposed issuance from the Company. The sale of Interests to existing Members as to which such purchase rights have been exercised shall occur concurrently with the issuance by the Company of the remaining Interest to the third party, or if the entire proposed Interest is subscribed for by existing Members than not later than thirty (30) days following the notice of the proposed issuance from the Company. Upon expiration of the fifteen (15) day offering period described above, the Manager may cause the Company to issue the Interest proposed to be issued to the additional Member (or the portion thereof not subscribed for by the existing Members) on terms and conditions no more favorable to the additional Member than those offered to the existing Members.

Section 4.3 **Liability.** No Member shall be bound by, or personally liable for, obligations or liabilities of the Company beyond the amount of its required contributions to the capital of the Company, and no Member shall be required to contribute any capital to the Company except as provided in Article III hereof.

Section 4.4 **Management.** No Member shall participate in the operation or management of the business of the Company (except in his capacity as an officer or Manager), or transact any business for or in the name of the Company, nor shall any Member have any right or power to sign for or bind the Company in any manner.

Section 4.5 **Special Meetings.** Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute or this Agreement, may be called by (a) the President, if any, (b) a Manager, or (c) the holders of at least ten percent (10%) of all Interests entitled to vote at such meetings. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting. Such meetings may be held at such time and place, within or without the state of Texas, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 4.6 **Notice.** Written or printed notice stating the place, day and hour of a meeting of Members, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the individual calling the meeting, to each Member entitled to vote at the meeting.

Section 4.7 **Quorum.** At each meeting the holders of a majority of Interests issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall be required and shall constitute a quorum of the Members for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 4.8 **Voting by Members.** Except with respect to matters for which the affirmative vote of the holders of a specified portion of the Interests entitled to vote is required by the Act, the affirmative vote of a Majority in Interest of the Members shall be the act of the Members.

Section 4.9 **Voting Procedure.** At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person, by proxy appointed by an instrument in writing subscribed by such Member, or by his duly authorized attorney-in-fact. No form of proxy or power of attorney bearing a date more than eleven (11) months prior to said meeting shall be valid, unless said instrument provides for a longer period. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Such proxy shall be filed with the Secretary of the Company prior to or at the time of the meeting.

Section 4.10 **Action Without Meeting; Telephone Meetings.**

(a) Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of Interests having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all Interests entitled to vote on the action were present and voted.

(b) Subject to applicable notice provisions and unless otherwise restricted by the Articles, Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all individuals participating in the meeting can hear each other, and participation in such meeting shall constitute presence in person at such meeting, except where an individual's participation is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE V

MANAGERS

Section 5.1 **Management.** The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, its Manager. All decisions with respect to the Company's business shall require the approval of the Manager.

Section 5.2 **Number; Election.** There shall be one (1) Manager of the Company, who need not be a Member or a resident of the state of Delaware. The initial Manager is Tri Vo. Each Manager shall hold office until his resignation, removal in accordance with this Agreement, or death. The Managers succeeding the initial Manager, if any, shall be elected by a Majority in Interest of the Members.

Section 5.3 **Change in Number.** The number of Managers may be increased or decreased from time to time by amendment to this Agreement, but no decrease shall have the effect of shortening the term of any incumbent Manager.

Section 5.4 **Removal and Vacancies.** A Manager may be removed only for "Cause" by a Majority in Interest of the Members. "Cause" means a material breach by the Manager of this Agreement, repeated dishonesty or fraud with respect to the management of the Company, or dereliction of duty that continues for a period of sixty (60) days after notice thereof from a Majority in Interest of the Members. Any vacancy occurring by reason of the resignation, removal, or death of a Manager may be filled by the vote of a Majority in Interest of the Members. Any vacancy occurring in the Managers by reason of an increase in a number of Managers shall be filled by the vote of the Managers, or by election at a meeting of the Members duly called for such purpose.

Section 5.5 **Place of Meetings.** The Managers may hold their meetings, both regular and special, either within or without the state of Texas.

Section 5.6 **Regular Meetings.** Regular meetings of the Managers may be held at such time and place as shall from time to time be determined by the Managers. No notice shall be required for regular meetings.

Section 5.7 **Special Meetings.** Special meetings of the Managers may be called by any Manager on three (3) days' notice to each Manager, either personally or by mail or telegram. Except as may be otherwise expressly provided by statute, the Articles, or this Agreement, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in a notice or waiver of notice. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.8 **Voting by Managers.** The affirmative vote of a majority of the Managers shall be the act of the Managers.

Section 5.9 **Quorum.** At all meetings of the Managers, the presence of a majority of the Managers shall be necessary and sufficient to constitute a quorum for the transaction of

business. If a quorum shall not be present at any meeting of Managers, the Managers present thereat may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present.

Section 5.10 Action Without Meeting; Telephone Meetings.

(a) Any action required or permitted to be taken at a meeting of the Managers or members of any committee designated by the Managers may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Managers or members of the committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting.

(b) Subject to applicable notice provisions and unless otherwise restricted by the Articles, the Managers, or members of any committee designated by the Managers, may participate in and hold 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 participation in such meeting shall constitute presence in person at such meeting, except where a person's participation is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.11 Chairman of the Managers. The Managers may elect a Chairman to preside at their meetings and to perform such other duties as the Managers may from time to time assign to him.

Section 5.12 Compensation. No Manager or member of any committee designated by the Managers shall be entitled to receive a salary for their services as such.

Section 5.13 Committees. The Managers may by resolution designate from among the Managers one or more committees comprised of one or more of the Managers to exercise such authority, and perform such duties as designated by the Managers, subject to any limitations imposed by the Managers, this Agreement, or the Act. Any member of a committee may be removed by a Manager at any time and for any reason or for no reason.

Section 5.14 Liability. The Managers shall perform their duties under this Agreement with ordinary prudence and in a manner reasonable under the circumstances. The Managers and any persons serving as officers of the Company shall not be liable, responsible, or accountable in damages or otherwise to the Company or the Members for any mistake of fact or judgment in operating the business of the Company or for any act performed (or omitted to be performed) in good faith (including, without limitation, pursuant to advice of legal counsel) and within the scope of this Agreement, unless such actions or inactions shall have resulted from gross negligence, willful misconduct, or fraud. Except as expressly set forth in this Agreement, (i) no Member, Manager, or Affiliate of any of them shall have any duties or liabilities, including fiduciary duties, to the Company or any Member and (ii) the provisions of this Agreement, to the extent that they restrict or otherwise modify the duties and liabilities, including fiduciary duties, of the Members, Managers or any of their Affiliates otherwise existing at law or in equity, are agreed by the Company and the Members to replace such other duties and liabilities of the Members, Managers or any of their Affiliates.

Section 5.15 Tax Matters Partner.

(a) The Managers shall designate a tax matters partner (the "TMP") of the Company (as defined in the Code) who shall be authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with the TMP and to do or refrain from doing any or all things reasonably required by the TMP to conduct such proceedings. In addition, each Member agrees that: (i) he will not file a statement under Section 6224(c)(3)(B) of the Code prohibiting the TMP from entering into a settlement on his behalf with respect to Company items; (ii) he will not form or become a member of a group of Members having a five (5%) or greater interest in the profits of the Company under Section 6223(b)(2) of the Code; and (iii) the TMP is authorized to file a copy of this Agreement with the Service pursuant to section 6224(b) of the Code if necessary to perfect the Member's waiver of rights hereunder.

(b) Subject to the limitations set forth in this Agreement, the TMP is authorized to:

(i) enter into a settlement agreement with the Service with respect to any tax audit or judicial review, in which agreement the TMP may expressly state that the agreement will bind all Members;

(ii) file a petition for judicial review of a final administrative adjustment pursuant to Section 6226 of the Code;

(iii) intervene in any action brought by any other Member for judicial review of a final administrative adjustment;

(iv) file a request for an administrative adjustment with the Service at any time and, if any part of the request is not allowed by the Service, to file a petition for judicial review with respect to the request; and

(v) take any other action on behalf of the Members or the Company in connection with his duties as TMP and any administrative or judicial tax proceeding to the extent permitted by applicable law or regulations.

(c) The Company will reimburse the TMP for all expenses incurred by him in connection with his duties as TMP and any administrative or judicial proceeding with respect to the tax liabilities of the Members.

ARTICLE VI

OFFICERS

Section 6.1 **Officers.** If the Managers determine that the Company should have officers, the officers of the Company shall be elected by the Managers. An officer of the Company may also be a Manager. The Managers may elect a President, one or more Vice

Presidents, a Secretary, a Treasurer and such assistants and other officers as the Managers may determine. Any two or more offices may be held by the same person.

Section 6.2 President. The President shall be the principal executive and operating officer of the Company and, subject to the control of the Managers, shall in general supervise and control all of the business and affairs of the Company. He shall, when present, preside at all meetings of the Members, and of the Managers unless a Chairman of the Managers has been elected and is present. He may sign on behalf of the Company any deeds, mortgages, bonds, contracts or other instruments except those which shall be required by law, by this Agreement or by resolution of the Managers to be otherwise signed or executed; make such contracts and take such actions on behalf of the Company as the ordinary conduct of its business may require, unless the Managers shall otherwise direct; appoint and remove, employ and discharge, and prescribe the duties and fix the compensation of all agents and employees of the Company other than its duly appointed officers, subject to the approval of the Managers; control all the officers, agents, employees of the Company, subject to the direction of the Managers; and in general shall perform all duties as may be prescribed by the Managers from time to time.

Section 6.3 Vice Presidents. Each Vice-President shall have such powers and duties as the Managers or the President may prescribe or delegate to him.

Section 6.4 Secretary. The Secretary shall: (i) prepare and keep the minutes of the Managers' and the Members' meetings; (ii) see that all notices are duly given in accordance with the provisions of this Agreement or as required by law; (iii) be custodian of the Company records and of the seal of the Company and see to it that the Company seal is affixed to all documents the execution of which on behalf of the Company under its seal is duly authorized; (iv) keep a register of the post office address of each member; (v) have general charge of the membership books of the Company; (vi) authenticate records of the Company; and (vii) in general perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him by the President or by the Managers.

Section 6.5 Treasurer. The Treasurer shall: (i) have charge and custody of and be responsible for funds and securities of the Company; receive and give receipts for monies due and payable to the Company from any source whatsoever; and (ii) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time shall be assigned to him by the President or by the Managers.

Section 6.6 Compensation. The compensation of all officers and agents of the Company shall be fixed by a Manager.

Section 6.7 Removal and Vacancies. Each officer of the Company shall hold office until his successor is chosen and qualified in his stead or until his death, resignation, or removal from office. Any officer elected or appointed by the Managers may be removed either for or without cause by the Managers, but such removal shall be without prejudice to the contract rights, if any, of the individual so removed. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Managers.

ARTICLE VII

ALLOCATIONS AND DISTRIBUTIONS

Section 7.1 **Distributions.** Except as provided in Section 7.2 hereof, any amounts available for distribution to the Members shall be distributed to the Members at such times and in such amounts as determined by the Managers, *pro rata* in accordance with the respective Interests of the Members.

Section 7.2 **Distributions Upon Liquidation of Company.**

(a) Upon liquidation of the Company the assets of the Company shall be distributed no later than the later of (i) ninety (90) days after the date of such liquidation or (ii) the end of the Company's taxable year in which the liquidation occurs, and shall be applied in the following order of priority:

(i) To the payment of debts and liabilities of the Company (including amounts owed to Members or former Members);

(ii) Unless inconsistent with Treasury Regulation Section 1.704-1(b)(2)(ii)(b), or any successor provision, to set up any reserves which the Managers deem reasonably necessary for contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the business of the Company, provided that the unused portion of such reserves shall be distributed pursuant to paragraph (iv) below as soon as practicable;

(iii) After giving effect to all Capital Account adjustments for the Company's taxable year in which the liquidation occurs (including without limitation adjustments required under Treasury Regulation Section 1.704-1(b)(2)(iv)(e), relating to distributions in kind), the balance, if any, shall be distributed to the Members in accordance with the Members' respective positive Capital Account balances.

(b) If a transfer or transfers of an Interest or Interests results in a termination of the Company for federal income tax purposes under Section 708(b)(1)(B) of the Code (or any successor provision thereto), Section 7.2(a) shall not apply and a Member's portion of the constructive liquidating distribution of the Company's assets that is deemed to occur under Treasury Regulation Section 1.708-1(b)(1)(iv) (or any similar or successor provision) shall be determined in accordance with the Capital Accounts of the Members as determined after taking into account all Capital Account adjustments for the Company's taxable year ending on the date of such termination.

Section 7.3 **Liquidation of Member's Interest.** Except as may otherwise be required in this Agreement, if a Member's Interest is to be liquidated, liquidating distributions shall be made in accordance with the positive Capital Account balance of such Member, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which such liquidation occurs, by the end of the taxable year, or if later, within ninety (90) days after the date of such liquidation. Where a Member's Interest is to be liquidated by a series of distributions, such Member's Interest shall not be considered liquidated until the final

distribution has been made. For purposes of this Section 7.3, a liquidation of a Member's Interest means the termination of the Member's entire Interest by means of a distribution or series of distributions to the Member by the Company.

Section 7.4 Allocation of Profits and Losses. After giving effect to the allocations set forth in Sections Section 7.5 and Section 7.6 hereof, Profits and Losses for any fiscal year shall be allocated among the Members as follows:

(a) Profits.

(i) First, to those Members receiving allocations pursuant to Section 7.4(b)(i) hereof until the aggregate Profits allocated to them pursuant to this Section 7.4(a)(i) for such fiscal year and all previous fiscal years is equal to the aggregate Losses allocated to them pursuant to Section 7.4(b)(ii) hereof for all previous fiscal years; and

(ii) The balance, if any, among the Members pro rata in accordance with their respective Interests.

(b) Losses.

(i) Subject to the limitation in (ii) below, Losses for any fiscal year shall be allocated among the Members pro rata in accordance with their respective Interests;

(ii) The Losses allocated to a Member pursuant to Section 7.4(b)(i) hereof shall not exceed the maximum amount of Losses that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any fiscal year. All Losses in excess of such limitation shall be allocated to the other Members, pro rata in accordance with their respective Interests, except that if such allocation would cause all Members to have Adjusted Capital Account Deficits at the end of the fiscal year, then such Losses shall be allocated among all Members, pro rata in accordance with their respective Interests.

Section 7.5 Special Allocations. The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Treasury Regulations, notwithstanding any other provision of this Article VII, if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Section 1.704-2(g) of the Treasury Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Treasury Regulations. This Section 7.5(a) is intended to comply with the minimum gain chargeback

requirement in Section 1.704-2(f) of the Treasury Regulations and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Treasury Regulations, notwithstanding any other provision of this Article VII, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations, shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Treasury Regulations. This Section 7.5(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event that any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations, items of Company income and gains shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 7.5(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VII have been tentatively made as if this Section 7.5(c) were not in this Agreement.

(d) Gross Income Allocation. In the event that any Member has a deficit Capital Account at the end of any Company taxable year that is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 7.5(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VII had been tentatively made as if Section 7.5(c) hereof and this Section 7.5(d) were not in this Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period shall be allocated among the Members in accordance with their respective Interests.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Member who bears

the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

(g) Code Section 754 Adjustments. To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or Section 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, as the result of a distribution to a Member in complete liquidation of its interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Section 1.704-1(b)(2)(iv)(m)(2) of the Treasury Regulations applies, or to the Member to which such distribution was made in the event Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations applies.

Section 7.6 Curative Allocations. The allocations set forth in Sections 7.5(a), (b), (c), and (d) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Section 1.704-1(b) of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 7.6. Therefore, notwithstanding any other provisions of this Article VII (other than the Regulatory Allocations), a Manager may make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Sections 7.4(a) and 7.4(b)(i) of this Agreement.

Section 7.7 Section 704(c) Allocations. In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial value. In the event that the value of any Company asset is adjusted pursuant to this Agreement, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its fair market value in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by a Manager in a manner that reasonably reflects the purpose and intent of this Agreement. Allocations pursuant to this Section 7.7 are solely for tax purposes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

ARTICLE VIII

FISCAL MATTERS

Section 8.1 **Fiscal Year.** The fiscal year of the Company shall be as required under Section 706 of the Code.

Section 8.2 **Books and Records.** The Company shall keep full and accurate books and records, including, without limitation, the following:

- (a) A current list of the following items:
 - (i) the name and mailing address of each Member;
 - (ii) the last known street address of the business or residence of each Manager; and
 - (iii) the Interest of each Member;
- (b) Copies of the Company's federal, state and local tax returns for each of the Company's six most recent tax years;
- (c) A copy of this Agreement, the Articles, all amendments and restatements, and executed copies of any powers of attorney under which this Agreement, the Articles and any and all amendments or restatements thereto have been executed;
- (d) A written statement of
 - (i) the amount of any cash contribution made by each Member in addition to the contributions set forth in Section 3.1 and a description and statement of the agreed value of any other contribution made by each Member; and
 - (ii) the date on which each Member became a member;

All of such books and records shall be maintained at the principal place of business of the Company and the Members shall have the right to inspect and copy any of them, at their own expense, during normal business hours.

Section 8.3 **Tax Returns.** The Company shall cause to be prepared and filed all federal and any required state and local income tax returns for the Company. The Company shall furnish to each Member such information relating to the Company necessary for the Member to complete his federal income tax returns.

Section 8.4 **Bank Accounts.** The Company shall open and maintain a separate bank account or accounts in a bank or savings and loan association, the deposits of which are insured by an agency of the United States government, in which shall be deposited all funds of the Company.

Section 8.5 **Tax Elections.** The Managers shall be entitled to determine all federal income tax elections available to the Company.

Section 8.6 **Examination.** A Member or an assignee of an Interest, on written request stating the purpose, may examine and copy, in person or by the Member's or assignee's representative, at any reasonable time, for any proper purpose, and at the Member's expense, records required to be kept under this Article and other information regarding the business, affairs, and financial condition of the Company as is just and reasonable for the person to examine and copy. On the written request of any Member or an assignee of an Interest, made to the Managers at the principal place of business of the Company, the Company shall provide to the requesting Member or assignee, without charge, true copies of:

- (a) the Certificate and this Agreement, and all amendments or restatements thereof; and
- (b) any of the tax returns described in Section 8.2(b).

ARTICLE IX

TRANSFERS

Section 9.1 **Restriction on Transfers.** Except as provided in Section 9.5, no Interest may be Transferred without the written approval of the Manager.

Section 9.2 **Assumption by Transferee.** Any transferee to whom all or any part of an Interest may be Transferred pursuant to this Agreement shall take such Interest subject to all of the terms and conditions of this Agreement and shall not be considered to have title thereto until said transferee shall have accepted and assumed the terms and conditions of this Agreement by a written agreement to that effect satisfactory to a Manager and delivered to the Company. Such transferee shall not be entitled to be admitted as a substitute Member or succeed to all rights of his transferor until the Company shall have received such agreement plus reimbursement of its expenses in accordance with Section 9.3 below.

Section 9.3 **Cost of Transfers.** The transferor and, if he fails or refuses to do so, then the transferee, of any Interest shall reimburse the Company for all costs incurred by the Company resulting from any Transfer.

Section 9.4 **Effect of Attempted Disposition in Violation of this Agreement.** Any attempted Transfer of any Interest in breach of this Agreement shall be null and void and of no effect whatever.

Section 9.5 **Purchase of Interest Upon Certain Events.**

(a) **Involuntary Assignment Event.** Upon the occurrence of an Involuntary Assignment Event with respect to a Member, the Company and the Manager shall have the option, commencing on the date of such Involuntary Assignment Event, to purchase from such Member or the legal representative or transferee of such Member, such Member's Interest.

(b) Termination of Employment. If the employment of a Member terminates for any reason, whether voluntary or involuntary, or if any Member otherwise ceases to perform services on behalf of the Company for any reason, the Company and the Manager shall have the option to purchase all of such Member's Interest, commencing on the date of such termination.

(c) Purchase Price. The purchase price in any purchase pursuant to this Section 9.5 shall be the amount of the Capital Account attributable to the purchased Interest. The purchase price in a purchase under this Section 9.5 shall be paid in the form of immediately available funds.

(d) Options. The Company shall have the option until sixty (60) days after the date of the event giving rise to the option under this Section 9.5 to purchase the offered Interest. If the Company declines to exercise such option or fails to do so within such time period, the Manager shall have the right to exercise such option until seventy-five (75) days after the date of the event giving rise to the option under this Section 9.5.

(e) Exercise of Option and Closing. Any option under this Agreement may be exercised by giving written notice of such exercise to the affected Member within the applicable option period. The closing of a purchase and sale pursuant to this Section 9.5 shall be held at the office of the Company thirty (30) days following the exercise of an option hereunder. At such closing, (a) the selling party shall assign his entire interest in the Company to the purchasing party, free and clear of all liens, claims, and encumbrances, and shall execute and deliver to the purchasing party all documents which may be reasonably required to give effect to such purchase and sale; and (b) the purchasing party shall pay to the selling party the purchase price for the selling party's interest.

Section 9.6 Drag-Along Rights. If Members holding sixty-five percent (65%) or more of the Interests (collectively, the "Initiating Members") propose a sale, merger, or other Transfer involving sixty-five percent (65%) or more of the Interests to a Person that is not a Member or an Affiliate of a Member, then all Members shall consent to and raise no objection with respect to (and will not exercise statutory appraisal or other rights or remedies in connection with and hereby waives any such rights and remedies) such transaction and, if requested by the Initiating Members and if such transaction is structured as a sale of Interests (including a sale structured as a merger, consolidation, or combination), then each Member shall sell, assign and/or Transfer all of the Interest of such Member ("Drag-Along Interest") for the same consideration (as determined on a pro-rata basis) and otherwise on the same terms and conditions approved by the Initiating Members. To exercise the drag-along rights provided in this Section, the Initiating Members shall give the other Members written notice (a "Drag-Along Notice") containing (i) the name and address of the proposed transferee and (ii) the proposed purchase price, terms of payment, and other material terms and conditions of the proposed transferee's offer, and (iii) copies of all executed documents relating to the proposed Transfer existing at the time of such notice. The Members shall thereafter be obligated, subject to the terms and conditions of this Section, to sell to the proposed transferee, simultaneously with the Initiating Members, all of the Members' Interests and each Member hereby irrevocably severally appoints and constitutes the Initiating Members and their successors and assigns hereunder as their true and lawful attorney in fact, with full power and authority, on his or her behalf and in his or her name, to execute, acknowledge, swear to, deliver and, where appropriate, file in such offices and

places as may be required any agreements or documents necessary to effect the same. The power of attorney granted by the Members to the Initiating Members under this Section is a special power coupled with an interest and is irrevocable. Such power of attorney shall survive the death or legal disability of a Member and any Transfers or abandonment of his or her Interest, or his or her withdrawal from the Company. At the closing of any transaction pursuant to this Section, each Member shall enter into agreements with the purchaser of the Interests containing terms substantially similar to the terms on which the Initiating Members are transferring their Interests. Each holder of an Interest shall bear his or her pro-rata share (based upon his or her Interest transferred) of the costs and expenses incurred by the Initiating Members in connection with any Transfer of Interests pursuant to a sale, merger or otherwise described in this Section to the extent such costs and expenses are incurred for the benefit of all holders of Interests and are not otherwise paid by the Company or the acquiring party, with the understanding that the Company shall pay such costs and expenses unless prohibited from doing so by the terms of the transaction. Costs and expenses incurred by holders of Interests on their own behalf shall not be considered costs and expenses of the transaction hereunder.

ARTICLE X

DISSOLUTION

Section 10.1 **Dissolution.** The Company shall be dissolved as provided in the Act.

Section 10.2 **Wind-Up of Affairs.** If the Company is dissolved, then the affairs of the Company shall be wound up and its assets distributed as provided in the Act and Section 7.2 of this Agreement.

ARTICLE XI

INDEMNIFICATION

Section 11.1 **Right to Indemnification.** Subject to the limitations and conditions provided in this Article XI, each Person who was or is made a party or is threatened to be made a party to or is involved in any Proceeding, by reason of the fact that such Person is or was a Manager, officer, employee or agent of the Company or while a Manager, officer, or employee of the Company is or was serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, shall be indemnified, defended and held harmless by the Company to the fullest extent permitted by the Act, as the same exist or may hereinafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) against claims, damages, liabilities, judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs or expenses (including, without limitation, attorneys' fees) actually incurred by such Person in connection with such Proceeding, whether or not such Person is acting in such capacity at the time such liability or expense is paid or incurred, if, in the matter giving rise to such Proceeding, the Person acted, or omitted to act, in good faith and in a manner the Person reasonably believed to be not opposed to the best interest of the Company. The termination of any Proceeding by judgment, order or settlement shall not, of itself, create a

presumption that the Person did not act, or omit to act, in good faith and in a manner that the Person reasonably believed to be not opposed to the best interest of the Company. The right of indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which any Person may otherwise be entitled by contract or as a matter of law or equity and shall extend to his, her or its heirs, successors, assigns and personal representatives. It is expressly acknowledged that the indemnification provided in this Article XI could involve indemnification for negligence of the Person indemnified or under theories of strict liability.

Section 11.2 **Advance Payment.** To the fullest extent permitted by applicable law, the right to indemnification conferred in this Article XI shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a Person of the type entitled to be indemnified under Section 11.1 in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such Person in advance of the final disposition of a Proceeding, shall be made only upon delivery to the Company of a written affirmation by such Person of such Person's good faith belief that such Person has met the standard of conduct necessary for indemnification under this Article XI and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified Person is not entitled to be indemnified under this Article XI or otherwise.

Section 11.3 **Insurance.** The Managers may cause the Company to purchase and maintain insurance, at its expense, to protect itself and any Person of the type entitled to be indemnified under Section 11.1, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under Section 11.1.

Section 11.4 **Savings Clause.** If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Manager or any other Person indemnified pursuant to this Article XI as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article XI that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE XII

MISCELLANEOUS

Section 12.1 **Amendments.** The Manager may, by instrument in writing, amend any of the provisions of this Agreement other than this Section 12.1, provided, however, no amendment can adversely affect the rights of Members to share income, gain, distributions, unless such amendment is approved by all Members adversely affected thereby.

Section 12.2 **Other Activities.** Except as specifically provided in this Section, the Manager and any Member may, independently or with others, engage or possess an interest in other business ventures or activities of every nature and description, including those that are competitive with the business of the Company, and neither the Company nor any of the other Members shall have any right by virtue of this Agreement in and to such other ventures or

activities or to the income or property derived therefrom and no party shall have any liability to the Company or the Members as a result of participating in such other ventures or activities. Notwithstanding the foregoing, the Manager may not acquire an interest in any other business venture whose primary business is retail energy marketing; provided, however, that the restrictions of this sentence shall not apply to any business interest or activities held by or being conducted by the Manager as of the date of this Agreement.

Section 12.3 Confidential Information. No Member shall make a public announcement or disclosure of any information related to this Agreement or any transaction entered into with respect to this Agreement without the prior written approval of the Manager, except as otherwise provided below. No Member shall, directly or indirectly, disclose or provide to any other person any non-public information of a confidential nature concerning the business or operations of the Company (including, without limitation, any and all Company business records, data, or other information regarding the business of the Company or the Company assets), except as is required in governmental filings or judicial, administrative or arbitration Proceedings or as authorized by the Manager. If any Member is required in connection with governmental filings or judicial, administrative or arbitration Proceedings (by oral questions, interrogatories, requests for information or document subpoena, civil investigative demand or similar process) to disclose any such information, that Member shall provide the Manager with prompt prior notice of such request so that the Manager may seek an appropriate protective order or take other appropriate action. In the event of any dispute between any of the Members, such information of the Company filed with any court or arbitrator (including, without limitation, any brief, other court paper, discovery request or response, or deposition) shall, to the extent permitted under applicable law, be only filed under seal; provided that at the conclusion of such dispute, including all appeals, such information shall be returned to the Manager. Each Member agrees that any unauthorized disclosure of such information would not be adequately compensable in damages and, thus, agrees that, in the event of any such disclosure, the Company shall, in addition to any claim for damages for breach of this Agreement, be entitled to seek and obtain equitable relief by way of injunction or otherwise in a court of competent jurisdiction. This confidentiality provision may be enforced by specific performance.

Section 12.4 Partition. No Member shall be entitled to a partition of any property or assets of the Company, notwithstanding any provision of law to the contrary. An Interest is personal property.

Section 12.5 Provisions Severable. Every provision of this Agreement is intended to be severable and, if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

Section 12.6 Headings. The headings of the various Sections are intended solely for convenience of reference, and shall not be deemed or construed to explain, modify or place any construction upon the provisions hereof.

Section 12.7 Certificates of Interest. The Company may issue certificates evidencing each Member's Interest in the Company.

Section 12.8 Electronic Signatures and Communications. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have


been signed by each of the Members and delivered to the other Members; it being understood that all initial Members need not sign the same counterpart. The exchange of copies of this Agreement and of signature pages Electronically shall constitute the effective execution and delivery of this Agreement as to the parties and may be used in lieu of an original Agreement for all purposes. Signatures of the parties transmitted by any such means shall be deemed to be their original signatures for all purposes. Similarly, any consent or notice under this Agreement, or any amendment of this Agreement, may be signed and delivered Electronically and may be used in lieu of an original of such document for all purposes. Any Electronically stored copy of this Agreement or of any other related document, by means intended to preserve the original graphic and pictorial appearance of the document, shall constitute an original for all purposes.

Section 12.9 **Legal Counsel.** The Members acknowledge and agree that Nathan Sommers Jacobs, A Professional Corporation ("NSJ"), has represented Tri Vo in connection with this Agreement and the formation of the Company. From time to time, NSJ shall be permitted to render legal advice and to provided legal services to Tri Vo and his affiliates with respect to the Company or otherwise. In no event shall an attorney/client relationship exist between NSJ and any other Member.

IN WITNESS WHEREOF, the Members have adopted this Agreement as of August 19, 2014.

COMPANY:

PROVISION POWER AND GAS, LLC

By: 
Tri Vo, Manager

MEMBER:

ELEVATION ENERGY GROUP, LLC

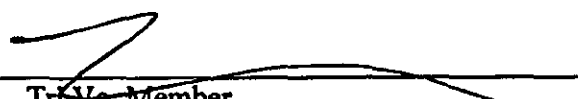
By: 
Tri Vo, Member

Exhibit A to the Limited Liability Company Agreement of Provision Power and Gas, LLC

Members

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Initial Interest</u>
Elevation Energy Group 640 Tillery St Austin, TX 78702	\$1,750,000.00	100%
Total:	\$1,750,000.00	100%

EXHIBIT A-17 "Secretary of State"

Provide evidence that the applicant is currently registered with the Ohio Secretary of the State.

Please see next page.



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
03/08/2016	201606702416	REGISTRATION OF FOREIGN FOR PROFIT LLC (LFP)	99.00	100.00	0.00	0.00	0.00

Receipt

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

PROVISION POWER & GAS LLC
PO BOX 6036
AUSTIN, TX 78762

**STATE OF OHIO
CERTIFICATE**

Ohio Secretary of State, Jon Husted
3875227

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

PROVISION POWER & GAS, LLC

and, that said business records show the filing and recording of:

Document(s)

REGISTRATION OF FOREIGN FOR PROFIT LLC

Effective Date: 03/07/2016

Document No(s):

201606702416



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
8th day of March, A.D. 2016.

Jon Husted
Ohio Secretary of State

EXHIBIT B-1 "Jurisdictions of Operation"

Provide a current 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 natural gas service, or wholesale electric services.

Provision Power & Gas has been granted authorization to provide retail natural gas in the state of Michigan from the MPSC. In addition to natural gas markets, Provision Power & Gas has been granted authorization from PUCO, FERC, and PJM to supply retail electric service in Ohio.

EXHIBIT B-2 "Experience and Plans"

Provide a current 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 4929.22 of the Revised Code and contained in Chapter 4901:1-29 of the Ohio Administrative Code.

[T1]

Provision Power & Gas plans to contract customers via door-to-door marketing, phone sales, online marketing, and traditional media (including print).

Natural gas will be supplied according to industry standards and regulations.

Provision Power & Gas plans to utilize Utility Consolidated Billing (UCB), where available, to bill its customers.

Customer inquiries and complaints will be quickly addressed by dedicated customer care representatives. All calls will be recorded for quality assurance purposes, and complaints will be logged in accordance with both Provision Power & Gas's internal processes and the Revised Code.

EXHIBIT B-3 "Summary of Experience"

Provide a concise and current summary of the applicant's experience in providing the service(s) for which it is seeking to be certified to provide (e.g., number and types of customers served, utility service areas, volume of gas supplied, etc.).

Provision Power & Gas is experienced in contracting customers, resolving customer concerns, providing billing information to the utility, and buying/selling natural gas. Provision Power & Gas is committed to ensuring that all facets of its business meet or exceed industry standards.

EXHIBIT B-4 "Disclosure of Liabilities and Investigations"

Provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocations 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 for which it is seeking to be certified to provide.

Provision Power & Gas, LLC has no liabilities or investigations that may adversely impact its financial or operational status.

EXHIBITS B-5 "Disclosure of Consumer Protection Violations"

Disclose whether the applicant, affiliate, predecessor of the applicant, or any principle offers of the applicant have been convicted of or held liable for fraud or for violation of any consumer protection of antitrust laws since applicant last filed for certification.

No

Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation"

Disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail natural gas or retail/wholesale electric service denied, curtailed, suspended, or revoked, or whether the applicant or predecessor has been terminated from any of Ohio's Natural Gas Choice programs, or been in default for failure to deliver natural gas.

No

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, labeled as Exhibit C-1, or indicate that Exhibit C-1 is not applicable and why.

As Provision Power & Gas, LLC is a privately held company, it does not publish Annual Reports.

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 whether the applicant is not required to file with the SEC and why.

As Provision Power & Gas, LLC is a privately held company, it does not file with the SEC.

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. If the applicant does not have a balance sheet, income statement, and cash flow statement, the applicant may provide a copy of its two most recent years of tax returns (with social security numbers and account numbers redacted).

The response to this Exhibit is considered privileged and confidential. As such, the response will be filed under seal.

EXHIBIT C-4 "Financial Arrangements"

Provide copies of the applicant's current financial arrangements to conduct competitive retail natural gas service (CRNGS) as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.)

The response to this Exhibit is considered privileged and confidential. As such, the response will be filed under seal.

EXHIBIT C-5 "Forecasted Financial Statements"

Provide two years of forecasted income statements for the applicant's NATURAL GAS related business activities in the state of Ohio Only, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer. The forecasts should be in an annualized format for the two years succeeding the Application year

.

The response to this Exhibit is considered privileged and confidential. As such, the response will be filed under seal.

EXHIBIT C-6 "Credit Rating"

Provide a statement disclosing the applicant's current 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. .

As Provision Power & Gas, LLC is a privately held company, it does not have a credit rating.

EXHIBIT C-7 "Credit Report"

Provide a copy of the applicant's current credit report from Experian, Dun and Bradstreet, or a similar organization.

As Provision Power & Gas, LLC is a privately held company, it does not have a credit report.

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 since applicant last filed for certification.

Provision Power & Gas, LLC has not filed for bankruptcy or reorganized since it was formed in 2014.

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.

No mergers, acquisitions, or dissolutions have occurred in the five most recent years preceding this application.

EXHIBIT C-10 "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 natural gas or electricity to customers in North America.

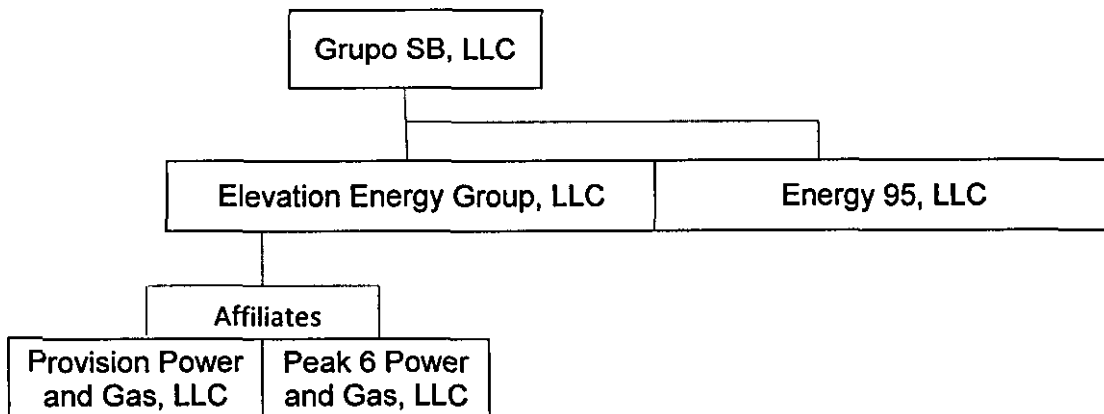


EXHIBIT D-1 "Operations"

Provide a current written description of the operational nature of the applicant's business. Please include whether the applicant's operations will include the contracting of natural gas purchases for retail sales, the nomination and scheduling of retail natural gas for delivery, and the provision of retail ancillary services, as well as other services used to supply natural gas to the natural gas company city gate for retail customers.

Provision Power & Gas, LLC's operations currently include contracting with customers, managing all facets of natural gas procurement, delivery to the city gate, nominating, scheduling, and providing ancillary services as required to meet or exceed industry standards.

EXHIBIT D-2 "Operations Expertise"

Given the operational nature of the applicant's business, provide evidence of the applicant's current experience and technical expertise in performing such operations.

Provision Power & Gas, LLC's staff has extensive experience managing the many aspects of supplying retail natural gas. This expertise includes trading and scheduling for delivery, providing customer care, and meeting all requirements as outlined in utility tariffs and corresponding state-specific administrative codes.

EXHIBIT D-3 "Key Technical Personnel"

Provide the names, titles, email addresses, telephone numbers, and background of key personnel involved in the operational aspects of the applicant's current business.

Tri Vo, President
E: tri@elevationeg.com
P: 512-237-7791

Tri Vo is the President and CEO of Provision Power & Gas. Tri began his career as a natural gas scheduler at Texla Energy Management. At United Energy Trading, Tri traded the Gulf, Southeast, Northeast, and Appalachia regions. Additionally, he developed retail natural gas programs in California and Ohio. In addition to founding Energy 95 in 2012, Tri is also the founder of Provision Power and Gas, LLC which is focused in providing industry-leading customer service.

Harmony Cummings, Controller
E: harmony@elevationeg.com
P: 303-620-6021

Harmony Cummings is the Controller for Provision Power & Gas. She has fourteen years of accounting experience, eight of which are in the energy sector. She has overseen the operational accounting functions for multifaceted energy logistics projects involving over \$700 million in monthly transactions. She is currently responsible for monthly settlements, regulatory reporting, budgeting, and projections. Harmony holds an Executive MBA and an MBA in Human Resource Management.

Lisa Huston, Senior Sales and Marketing Manager
E: lisa@elevationeg.com
P: 512-865-6981

Lisa Huston is the Senior Sales and Marketing Manager for Provision Power & Gas. Lisa has nine years of outside sales and marketing experience in industries ranging from healthcare to energy. For the past three years, Lisa has served as the Sales and Marketing Manager for Energy 95, LLC. Lisa is responsible for ensuring Provision Power and Gas's marketing efforts meet or exceed industry standards. Lisa also created the "customer-first" model for monitoring sales quality and customer concerns. Lisa holds a Bachelor of Science in both Psychology and Sociology as well as a minor in Political Science.