

**AMENDED AND RESTATED BYLAWS**  
**of**  
**ENERGY HARBOR CORP.**

*(Effective as of February 27, 2020)*

ARTICLE I  
Offices

1. Business Offices. The Corporation may have one or more offices at such place or places, either within or outside the State of Delaware, as the Board of Directors may from time to time determine or as the business of the Corporation may require.
2. Registered Office. The registered office of the Corporation shall be as set forth in the Amended and Restated Certificate of Incorporation of the Corporation (as amended from time to time, the "Restated Certificate of Incorporation"), unless changed as provided by the provisions of the Delaware General Corporation Law (as amended from time to time, the "DGCL").

ARTICLE II  
Stockholders Meetings

1. Annual Meetings. An annual meeting of stockholders of the Corporation for the election of directors shall be held in each year beginning in 2020, on such date and at such time as the Board of Directors shall designate, at which the stockholders entitled to vote thereon shall elect directors of the Corporation, each to serve for a term ending immediately after the next annual meeting of stockholders or until their earlier death, resignation or removal, and shall transact such other business as may properly come before the meeting.
2. Special Meetings. Special meetings of stockholders may be called at any time by the Chairman of the Board or the President of the Corporation, and shall be called by the President of the Corporation when directed to do so by resolution of the Board of Directors (adopted by majority vote of the directors then in office) or upon the written request (which shall be delivered to and received by the Secretary of the Corporation and shall state the purpose or purposes therefor) of the holders of shares representing not less than twenty-five percent (25%) of the total voting power of all shares entitled to vote on any issue proposed to be considered at the meeting (such meeting called upon the written request of the stockholders, a "Stockholder-Requested Meeting"). The record date for determining the stockholders entitled to request a special meeting shall be the date of the earliest of any of the requests pursuant to which the meeting is called or such later date as may be required in order to comply with applicable law. A Stockholder-Requested Meeting shall be held no later than the later of (i) the date designated by the requesting stockholders for such special meeting and (ii) sixty (60) days after the date on which requests for the special meeting shall have been received by the Secretary of the Corporation from the holders of shares representing at least twenty-five percent (25%) of the total voting power of all shares entitled to vote on the proposed issue.

Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice described in Section 4 of this Article II.

3. Place of Meetings. Meetings of stockholders may be held (i) at any place within or outside the State of Delaware designated by the Board of Directors, or (ii) if the Board of Directors so determines, by means of remote communication. Any stockholder participating in a meeting by remote communication is deemed to be present in person at the meeting. In the absence of any such designation by the Board of Directors, stockholder meetings shall be held at the principal place of business of the Corporation.

4. Notice of Meetings. Not less than ten (10) or more than sixty (60) days prior to each annual or special meeting of the Corporation's stockholders, written notice of the meeting shall be given to each stockholder entitled to vote at such meeting; *provided, however*, that if greater notice is required by the DGCL, the provisions of the DGCL shall govern. Notices shall be delivered by (i) personal delivery, (ii) mail, postage prepaid, (iii) nationally recognized overnight or other express courier service with next-business day delivery guaranteed, (iv) confirmed facsimile, or (v) other means of electronic transmission to the extent permitted under Section 116 of the DGCL (or any successor statute; "DGCL Section 116"). All notices shall be effective and shall be deemed delivered (v) if by personal delivery, when delivered, (w) if by mail, on the third day after deposit in the mail, addressed to the stockholder at the address of such stockholder appearing in the records of the Corporation, (x) if by courier service, on the next business day after deposit with such service of a notice addressed to the stockholder at the address of such stockholder appearing in the records of the Corporation, (y) if by facsimile, when sent to the party to be notified at its facsimile number set forth in the stock records of the Corporation, and (z) if by other means of electronic transmission, as determined by DGCL Section 116. The notice of any meeting shall state the place, if any, date and time of the meeting. The notice of a special meeting shall, in addition, state the purposes of the meeting.

5. Stockholders List. A complete record of the stockholders entitled to vote at each meeting (or an adjourned meeting described in Section 9 of this Article II), arranged in alphabetical order, showing the address of each stockholder and the number of shares of common stock registered in the name of such stockholder, shall be prepared by the officer or agent of the Corporation who has charge of the stock transfer books of the Corporation. Such record of stockholders shall be available for inspection by any stockholder beginning on the earlier of ten (10) days before the meeting or two (2) days after notice is given and continuing through the meeting and any adjournment thereof, subject to the requirements of the DGCL, either on a reasonably accessible electronic network, provided that the information required to gain access to such network is provided with the notice of the meeting, or during normal business hours at the principal place of business of the Corporation. Such record of stockholders shall also be produced and kept at the time and place of the meeting during the whole time thereof and shall be subject to inspection for any purpose germane to the meeting by any stockholder who may be present.

6. Organization. The Chairman of the Board or, in the Chairman's absence, the President (or, in the President's absence, any Vice President) shall call meetings of stockholders to order and act as chairperson of such meetings. In the absence of said officers, any stockholder entitled to vote at the meeting, or any proxy of any such stockholder, may call the meeting to order and a chairperson shall be elected by a majority of the stockholders present and entitled to vote at the meeting. The Secretary or any Assistant Secretary of the Corporation or any person appointed by the chairperson may act as secretary of such meetings.

7. Fixing Record Date. Subject to the provisions of Section 2 of this Article II, the Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to a notice of or to vote at any meeting of stockholders or any adjournment thereof or to express consent (or dissent) to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action. Such record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than ten (10) days prior to any other action to which the same relates. Only such stockholders as shall be stockholders of record on the date so fixed shall be so entitled with respect to the matter to which the same relates. If the Board of Directors shall not fix a record date as above provided, and if the Board of Directors shall not for such purpose close the stock transfer books as provided by statute, then the record date shall be established by applicable law.

8. Agenda and Procedure. The Board of Directors shall have the responsibility of establishing an agenda for each meeting of stockholders, subject to the rights of stockholders, in compliance with Section 13 of this Article II, to raise matters for consideration which may otherwise properly be brought before an annual meeting although not included within the agenda. The chairperson shall be charged with the orderly conduct of all meetings of stockholders.

9. Quorum. Unless otherwise provided in the Restated Certificate of Incorporation, these Bylaws, the DGCL or other applicable law, at any annual or special meeting of stockholders, the holders of shares representing a majority of the voting power of the then-issued and outstanding shares entitled to vote on a matter at the meeting, either present in person or represented by proxy, shall constitute a quorum with respect to action on such matter, and action may be taken with respect to any matter presented at the meeting only if a quorum exists with respect to such matter. However, in the absence of a quorum at any meeting of stockholders, the holders of shares representing a majority of the voting power of the then-issued and outstanding shares that are present in person or represented by proxy at the meeting and are entitled to vote on one or more matters at the meeting may adjourn the meeting from time to time without further notice (except as provided in Section 10 of this Article II) until a quorum shall be present or represented.

10. Adjournment. When a meeting for any reason is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, any business may be transacted which might have been transacted at the original meeting. However, if the adjournment is for more than thirty (30) days from the date of the original meeting, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

11. Voting.

(a) Except as otherwise required by law or otherwise provided in the Restated Certificate of Incorporation or these Bylaws, and subject to the rights of holders of any series of preferred stock of the Corporation, (i) at every meeting of stockholders (or with respect to corporate action which may be taken without a meeting), every holder of record of stock of the Corporation entitled to vote on any matter at such meeting shall be entitled, with respect to such matter, to such number of votes for each share of such stock held of record by such stockholder on

the record date designated therefor pursuant to Article II, Section 7 of these Bylaws (or the record date established pursuant to applicable law in the absence of such designation) as provided in the Restated Certificate of Incorporation or, if not so provided, one (1) vote for each share of such stock held of record as aforesaid; (ii) whenever directors are to be elected by vote of stockholders, they shall be elected in accordance with the provisions of Article III, Section 2 of these Bylaws; and (iii) whenever any corporate action, other than the election of directors, is to be taken by vote of stockholders, such corporate action shall be authorized by the affirmative vote of holders of a majority of the shares of common stock present in person or represented by proxy and entitled to vote with respect to such corporate action or as otherwise may be required by the Restated Certificate of Incorporation, applicable law or the rules and regulations of any national securities exchange on which the shares of the Corporation are then listed for trading.

(b) At any meeting of stockholders, a stockholder may vote the stockholder's shares either in person or by proxy. A stockholder may appoint a proxy in person or through an attorney-in-fact and such appointment may be transmitted in any manner permitted by the DGCL. The appointment of a proxy shall be effective for eleven (11) months from the date of such appointment unless a different period is expressly specified in the appointment form.

(c) The voting rights of fiduciaries, beneficiaries, pledgors, pledgees and joint, common and other multiple owners of shares of stock shall be as provided from time to time by the DGCL and any other applicable law.

(d) Shares of the Corporation held of record by another corporation or other entity that are entitled to vote may be voted by such officer, agent or proxy as the bylaws or similar charter document of such other corporation or other entity may prescribe, or, in the absence of such provision, as the board of directors or similar body of such other corporation or entity may determine.

12. Inspectors. The chairperson of the meeting may at any time appoint one or more inspectors to serve at a meeting of the stockholders. Such inspectors shall decide upon the qualifications of voters, including the validity of proxies, accept and count the votes for and against the questions presented, report the results of such votes, and subscribe and deliver to the secretary of the meeting a certificate stating the number of shares of stock issued and outstanding and entitled to vote thereon and the number of shares voted for and against the questions presented. The voting inspectors need not be stockholders of the Corporation, and any director or officer of the Corporation may be an inspector on any question other than a vote for or against such director's or officer's election to any position with the Corporation or on any other question in which such officer or director may be directly interested.

13. Stockholder Business.

(a) Stockholders shall be entitled to bring business to be voted upon by stockholders at any annual meeting of stockholders as provided in this Section 13. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, a stockholder (a "Proposing Stockholder") must have given timely notice thereof in proper form to the Secretary of the Corporation.

(b) The business must be brought by a Proposing Stockholder who shall be a record holder on the record date for determining stockholders entitled to receive notice of and to vote at the annual meeting.

(c) To be timely, a Proposing Stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days prior to the one-year anniversary of the preceding year's annual meeting; *provided, however*, that if the date of the annual meeting is more than thirty (30) days before or after such anniversary date, or there was no annual meeting held by the Corporation in the preceding year, notice by the Proposing Stockholder to be timely must be so delivered, or mailed and received, not later than the sixtieth (60<sup>th</sup>) day prior to such annual meeting or, if later, the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual meeting was first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of timely notice as described in this Section 13(c).

(d) To be in proper form, a Proposing Stockholder's notice to the Secretary must be in writing and must set forth as to each matter the Proposing Stockholder proposes to bring before the annual meeting of stockholders:

(i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting;

(ii) the name and record address of the Proposing Stockholder and the name and address of any other beneficial owner on whose behalf the proposal is being made;

(iii) as to the Proposing Stockholder and any Stockholder Associated Person, (A) the class or series and number of shares of capital stock of the Corporation which are directly or indirectly owned beneficially (as beneficial ownership is defined in Rule 13d-3(a) under the Securities Exchange Act of 1934) or of record by such persons and (B) the type and amount of any swaps (as such term is defined in Section 1a(47) of the Commodity Exchange Act), whose value is dependent upon or related to any class or series of capital stock of the Corporation, which are directly or indirectly owned by such persons;

(iv) a description of all arrangements or understandings between the Proposing Stockholder and any other person or persons (including their names) in connection with the proposal of such business by such Proposing Stockholder and any material interest of the Proposing Stockholder in such business; and

(v) a representation that the Proposing Stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

(e) If the Proposing Stockholder (or a qualified representative of the Proposing Stockholder) does not appear, then at the meeting of stockholders to present the stockholder business such business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 13, to be considered a

qualified representative of the stockholder, a person must be duly authorized in writing (including an electronic transmission).

(f) “Stockholder Associated Person” means with respect to any stockholder, any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder; *provided*, that for purposes of this definition, “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

#### 14. Stockholder Director Nominations.

(a) Stockholders shall be entitled to submit nominees for election as directors at any annual meeting or at any special meeting of the stockholders called for such purpose as provided in this Section 14. In addition to any other applicable requirements, for nominees to be properly submitted for election by a stockholder (a “Nominating Stockholder”) at an annual meeting or special meeting, such stockholder must have given timely notice of such nomination in proper form to the Secretary of the Corporation.

(b) The nominees must be submitted by a Nominating Stockholder who shall be a record holder on the record date for determining stockholders entitled to receive notice of and to vote at such annual meeting or special meeting.

(c) To be timely, a Nominating Stockholder’s notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days prior to the one-year anniversary of the preceding year’s annual meeting; *provided, however*, that if (i) the date of the annual meeting is more than thirty (30) days before or after such anniversary date, (ii) there was no annual meeting held by the Corporation in the preceding year, or (iii) in the event of a special meeting, notice by the Nominating Stockholder to be timely must be so delivered, or mailed and received, not later than the sixtieth (60<sup>th</sup>) day prior to such annual or special meeting or, if later, the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual or special meeting was first made. In no event shall any adjournment or postponement of an annual or special meeting or the announcement thereof commence a new time period for the giving of timely notice as described in this Section 14(c).

(d) To be in proper form, a Nominating Stockholder’s notice to the Secretary must be in writing and must set forth:

(i) as to each person whom the Nominating Stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, and (C) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person; and

(ii) as to the Nominating Stockholder (A) the name and record address of the Nominating Stockholder, (B) the class or series and number of shares of capital stock of

the Corporation which are owned beneficially or of record by the Nominating Stockholder, (C) a description of all arrangements or understandings between the Nominating Stockholder and each proposed nominee and any other person and persons (including their names) pursuant to which the nomination(s) are to be made by the Nominating Stockholder, and (D) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the person or persons named in its notice.

(e) The notice of the Nominating Stockholder must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a Director if elected.

15. Action by Written Consent. Any action required or permitted to be taken at an annual or special meeting of the stockholders of the Corporation may be taken without a meeting and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Anything to the contrary in these Bylaws notwithstanding, such action by written consent shall be governed in all respects by Section 211 of the DGCL, as it may be amended, or any successor statute.

### ARTICLE III Board of Directors

1. Management of the Corporation. The business and affairs of the Corporation shall be managed by a Board of Directors.

2. Election and Term.

(a) Directors shall be elected at the annual meetings of stockholders or special meetings of stockholders called for such purpose. Each director shall be elected to serve and to hold office until the next succeeding annual meeting of stockholders and until such director's successor shall be elected and shall qualify, or until such director's earlier death, resignation or removal.

(b) In uncontested elections, except as otherwise provided in the Stockholders Agreement (for so long as it shall be in effect), the election of a director shall require the affirmative vote of a majority of the votes cast by stockholders of record present in person or by proxy. In contested elections, the election of a director shall be by such vote as specified by applicable law, or if not specified by applicable law, a plurality of votes cast by stockholders of record present in person or by proxy. Notwithstanding the foregoing, the election of directors by any class or series of capital stock of the Corporation voting separately as a class in the manner prescribed in the Restated Certification of Incorporation shall be as provided in the Restated Certificate of Incorporation.

(c) Notwithstanding the foregoing, the initial directors of the Corporation shall be appointed in accordance with the Plan, the order of the United States Bankruptcy Court for the Northern District of Ohio confirming the Plan and the Stockholders Agreement.

(d) As used in these Bylaws—

“Plan” means the plan of reorganization of the Corporation approved by order of the United States Bankruptcy Court for the Northern District of Ohio in *In re: FirstEnergy Solutions Corp., et al.*, under Chapter 11 of the United States Bankruptcy Code, which Plan became effective on February 27, 2020.

“Stockholders Agreement” means the Stockholders Agreement, dated as of the date the Plan became effective, among the Corporation and the holders of common stock (as the same may be amended from time to time in accordance with the provisions thereof).

3. Number and Qualification.

(a) The Board of Directors shall at all times consist of no fewer than five (5) directors and no more than nine (9) directors. Subject to the foregoing and to the provisions of the Stockholders Agreement (for so long as the Stockholders Agreement shall be in effect), the size of the Board of Directors shall be determined from time to time by the majority vote of the directors then in office.

(b) Directors must be natural persons at least eighteen (18) years of age but need not be stockholders.

4. Annual Meetings. Immediately following each annual stockholders meeting, the Board of Directors shall meet for the purpose of organization, election of officers and the transaction of any other business.

5. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time or times (not less frequently than once each calendar quarter) as may be determined by the Board of Directors and specified in the notice of such meetings.

6. Special Meetings. Special meetings of the Board of Directors may be called (i) by the Chairman of the Board or (ii) on the written request of any two (2) directors.

7. Place of Meetings. Meetings of the Board of Directors may be held at such place or places as shall from time to time be determined by the Board of Directors and as shall be designated in the notice of the meeting. If no other place is designated in the notice of the meeting, such meeting shall be held at the Corporation’s principal executive offices.

8. Notice of Meetings. Notice of each meeting of directors, whether annual, regular or special, shall be given to each director (unless such notice is waived by such director as provided in Section 10 of this Article III). Each such notice shall be given no later than two (2) business days prior to the respective meeting. The notice shall state the date and time thereof, but need not, unless otherwise required by the DGCL, state the purposes of the meeting.

9. Meetings by Telecommunication. One or more members of the Board of Directors or any committee designated by the Board of Directors may hold or participate in a meeting of the Board of Directors or such committee through the use of any means of conference telephone or other communication equipment by means of which all persons participating can hear each other

at the same time. Any director participating in a meeting by any such means of communication is deemed to be present in person at the meeting.

10. Waiver of Notice of Meeting. A director may waive any notice of a meeting of directors, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. Attendance or participation by a director at a meeting of the Board of Directors shall be deemed a waiver of objection to lack of required notice or defective notice of the meeting, unless the director, at the beginning of the meeting or promptly upon his or her later arrival, expressly objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

11. Quorum; Acts of the Board. A majority of the number of directors fixed by or in accordance with Section 3 of this Article III that are entitled to vote shall constitute a quorum at all meetings of the Board of Directors. In the absence of a quorum at any such meeting, a majority of the directors present and entitled to vote may adjourn the meeting from time to time without further notice, other than announcement at the meeting, until a quorum shall be present.

The vote of a majority of the directors present and entitled to vote at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the express provision of applicable law, the Restated Certificate of Incorporation, these Bylaws or the Stockholders Agreement (for so long as it shall be in effect) requires a greater vote, in which case such express provision shall govern and control.

12. Organization, Agenda and Procedure. The Chairman of the Board or, if the Chairman of the Board is not present, another director chosen by the directors present at such meeting shall preside over the meetings of the Board of Directors. The Secretary, any Assistant Secretary, or any other person appointed by the Chairman of the Board shall act as secretary of each meeting of the Board of Directors. The agenda of and procedure for such meetings shall be as determined by the Board of Directors. All proposed agenda topics and documents to be reviewed at the annual meetings and the regular meetings shall be delivered to each director at least two (2) business days prior to any such meeting.

13. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee. Such action shall be effective as of the time the last director signs a writing describing the action taken unless before such time the Secretary has received a written revocation of the consent of any other director, and any action so taken shall be effective at the time taken unless the directors specify a different effective time.

14. Resignation. Any director of the Corporation may resign at any time by giving written notice of such director's resignation to the Board of Directors and the Secretary of the Corporation. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein or the effective date determined upon the happening of an event or events.

Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

15. Removal. Any director may be removed at any time, with or without cause, upon the affirmative vote of holders of at least a majority of the then-issued and outstanding shares of capital stock of the Corporation entitled to vote in the election of directors; *provided, however*, that nothing herein shall override the voting obligations of stockholders under the Stockholders Agreement (so long as it shall be in effect) with respect to removal of directors.

No officer of the Corporation shall be appointed or nominated by the Board of Directors to serve as a director unless such officer shall deliver to the Corporation a conditional resignation as director that shall become effective if and when the employment of such officer is terminated, unless the Board of Directors otherwise determines.

16. Vacancies. Except as otherwise set forth in the Stockholders Agreement, any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office, or other cause, shall be filled within ninety (90) days by a majority vote of the remaining directors then in office (even if less than a quorum), including, for the avoidance of doubt, with respect to the Independent Director (as defined in the Stockholders Agreement so long as the Stockholders Agreement is in effect). If (so long as the Stockholders Agreement is in effect), the board seat of the Independent Director becomes vacant for any reason, the vacancy shall be filled with a person who is independent of the Corporation and from each stockholder with director designation rights under the terms of the Stockholders Agreement, as determined in accordance with the independence standards for directors of The New York Stock Exchange or The Nasdaq Stock Market, *mutatis mutandis*, and who is not an affiliate of any stockholder with director designation rights under the terms of the Stockholders Agreement.

Any director(s) so chosen shall hold office until their respective successors are duly elected at the next annual meeting of stockholders.

17. Committees.

(a) *General.* The Board of Directors (i) shall from time to time designate from among its members an audit committee, a compensation committee, a finance and strategy committee, a nominating and corporate governance committee, and a nuclear committee (each to consist of not less than three (3) directors); and (ii) may, from time to time, designate from among its members an executive committee and one or more other committees to exercise such powers as the Board of Directors may determine. Unless otherwise provided by the Board of Directors, the committees of the Board of Directors shall have the authority, at the expense of the Corporation, to engage independent counsel and other advisors.

Anything to the contrary herein notwithstanding, no Board of Directors committee will have the authority to: (i) declare a dividend; (ii) authorize the issuance of common stock or any other class or series of capital stock; (iii) approve or propose to stockholders any action that Delaware law requires to be approved by stockholders; (iv) fill vacancies on the Board of Directors or on any of its committees; (v) approve any amendment to the Restated Certificate of Incorporation; (vi) adopt, amend or repeal the Bylaws; (vii) terminate the Corporation's chief

executive officer or replace the Chairman of the Board; or (viii) take any action that pursuant to the DGCL must be approved by the full Board of Directors.

(b) *Audit Committee.* The Audit Committee shall be responsible for making recommendations to the Board of Directors with respect to (i) the discharge of the Board of Directors' responsibilities with respect to overseeing the integrity of the Corporation's financial statements, compliance with legal and regulatory requirements, risk assessment and risk management policies and procedures, and performance of the internal and external audit functions, and (ii) the hiring, monitoring the performance of and, if necessary, replacing the independent auditors. In carrying out the responsibilities set forth in clause (ii) above, the Audit Committee shall review the terms of engagement of the independent auditors, including the fees, scope and timing of the audit and any other services rendered by the independent auditors, approve any significant non-audit relationship with the independent auditors and assess the independent auditors' qualifications and independence. In connection with the foregoing, the Audit Committee shall: (x) review with the independent auditors and management the Corporation's policies and procedures with respect to internal auditing, accounting and financial controls; (y) review audit results, reports and recommendations made by any of the auditors with respect to changes in accounting procedures and internal controls; and (z) oversee the Corporation's system of internal accounting controls. The Audit Committee shall have the authority to communicate directly with the Corporation's financial officers and employees, internal auditors and independent auditors as it deems desirable. The Audit Committee shall perform any other duties or functions as determined by the Board of Directors.

(c) *Compensation Committee.* The Compensation Committee shall be responsible for making recommendations to the Board of Directors with respect to: (i) the compensation of the senior executives and the directors of the Corporation, (ii) the compensation plans of the Corporation and (iii) the evaluation and retention of senior executives of the Corporation. The Compensation Committee shall also be responsible for administering the compensation plans of the Corporation. The Compensation Committee shall perform any other duties or functions otherwise determined by the Board of Directors.

(d) *Finance and Strategy Committee.* The Finance and Strategy Committee shall be responsible for making recommendations to the Board of Directors with respect to (i) the financial affairs of the Corporation, including its debt facilities, investments and credit-related matters and (ii) potential significant acquisitions, divestitures, joint ventures, business combinations, restructuring and other strategic initiatives. The Finance and Strategy Committee shall perform any other duties or functions otherwise determined by the Board of Directors.

(e) *Nominating and Corporate Governance Committee.* The Nominating and Corporate Governance Committee shall be responsible for making recommendations to the Board of Directors with respect to (i) the composition of the Board of Directors, (ii) corporate governance matters and (iii) succession planning. In carrying out these responsibilities, the Nominating and Corporate Governance Committee shall develop procedures and criteria for selecting qualified directors, identifying qualified candidates, and recommending to the Board of Directors a slate of directors to be presented for election by stockholders at each annual meeting of the stockholders of the Corporation, or any special meeting of the stockholders called for the purposes thereof, subject in each case to the provisions of the Stockholders Agreement (so long as it shall be in

effect). The Nominating and Corporate Governance Committee shall also develop, recommend to the Board of Directors and periodically review a set of corporate governance guidelines, and provide oversight and guidance for the annual evaluation of the Board of Directors as a whole. The Nominating and Corporate Governance Committee shall perform any other duties or functions otherwise determined by the Board of Directors.

(f) *Nuclear Committee.* The Nuclear Committee shall be responsible for making recommendations to the Board of Directors with respect to matters involving the nuclear power generating facilities of the Corporation and its subsidiaries, as well as interests or agreements that the Corporation may have in respect of such facilities. The Nuclear Committee shall review and advise on operation, maintenance, decommissioning, fuel cycle, regulatory compliance and government advocacy relating to any such nuclear power generation facilities. The Nuclear Committee shall perform any other duties or functions otherwise determined by the Board of Directors.

18. Compensation of Directors. Each non-employee director shall be paid annual or other compensation as determined by the Board of Directors on the recommendation of the Compensation Committee, including for attendance at meetings of the Board of Directors and its committees. Directors shall also be entitled to reimbursement for the reasonable and documented expenses incurred in connection with the performance of their responsibilities as directors (including, but not limited to, expenses incurred in attending meetings of the Board of Directors). Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity, or any of its subsidiaries in any other capacity, and receiving proper compensation therefor.

19. Observation Rights. Unless otherwise determined by the Board of Directors, no party will have observation rights with respect to the Board of Directors.

#### ARTICLE IV Officers

1. Election and Tenure. The officers of the Corporation shall consist of a Chairman of the Board, a Chief Executive Officer, a President, a Chief Financial Officer, a Secretary and a Treasurer, each of whom shall be appointed annually, or otherwise from time to time (including upon the occurrence of a vacancy), by the Board of Directors. The Board of Directors may also designate and appoint such other officers and assistant officers as may be deemed necessary. The Board of Directors may expressly delegate to any such officer the power to appoint or remove subordinate officers, agents or employees. Any two or more offices may be held by the same person. Each officer so appointed shall continue in office until such officer's successor is elected and qualified or until the officer's earlier death, resignation or removal by the Board of Directors. Each officer shall be a natural person who is eighteen years of age or older.

2. Resignation, Removal and Vacancies. Any officer may resign at any time by giving written notice of resignation to the Board of Directors or the President. Such resignation shall take effect when the notice is received by the Corporation unless the notice specifies a later date, and acceptance of the resignation shall not be necessary to render such resignation effective unless such resignation so states. An officer appointed to fill a vacancy shall be appointed for the

unexpired term of such officer's predecessor in office or as otherwise determined by the Board of Directors upon such appointment. The appointment of an officer shall not itself create contract rights in favor of the officer, the removal of an officer shall not affect the officer's contract rights, if any, with the Corporation, and the resignation of an officer does not affect the Corporation's contract rights, if any, with the officer.

3. Chairman of the Board. The Chairman of the Board shall, subject to Article II, Section 6 and Article III, Section 12 of these Bylaws, preside over the meetings of stockholders and meetings of the Board of Directors, and shall have such powers and responsibilities as are incident thereto. The Chairman of the Board may either be an Executive Chairman of the Board or a Non-Executive Chairman of the Board. An Executive Chairman of the Board shall have general supervisory responsibility for the conduct of the business, affairs and operations of the Company, as is customary for an executive chairman of the board of a corporation. A Non-Executive Chairman of the Board shall not have responsibility for the day-to-day business, affairs and operations of the Corporation.

4. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation. The Chief Executive Officer (i) shall have general and active management power over the business of the Corporation, and shall preside over the day-to-day business operations of the Corporation as is customary for the chief executive officer of a corporation; and (ii) shall have such other duties and responsibilities as may from time to time be assigned by the Board of Directors.

5. President. The President (i) shall have such duties and responsibilities as are customary for the president of a corporation; and (ii) shall have such other duties and responsibilities as may from time to time be assigned by the Board of Directors.

6. Chief Financial Officer. The Chief Financial Officer (i) shall have responsibility for the financial affairs of the Corporation and shall perform such duties and responsibilities incident thereto as is customary for the chief financial officer of a corporation; and (ii) shall have such other duties and responsibilities as may from time to time be assigned by the Board of Directors.

7. Vice Presidents. The Vice Presidents, if any, shall perform such duties and possess such powers as from time to time may be assigned to them by the Board of Directors or the President. In the absence of the President or in the event of the inability or refusal of the President to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board of Directors, or in the absence of any designation, then in the order of the election or appointment of the Vice Presidents) shall perform the duties of the President, and when so performing shall have all the powers of and be subject to all the restrictions upon the President.

8. Secretary. The Secretary (i) shall have such duties and responsibilities as are customary for the secretary of a corporation; and (ii) shall have such other duties and responsibilities as may from time to time be assigned by the Board of Directors or the President. Without limiting the foregoing, the Secretary shall give notice of all meetings of stockholders and the Board of Directors; prepare and maintain minutes of the meetings of the Board of Directors

and meetings of stockholders; maintain other records and information of the Corporation; where required, authenticate records of the Corporation; and maintain custody of the corporate seal of the Corporation and affix the same and attest to documents, the execution of which on behalf of the Corporation is authorized by these Bylaws or by the action of the Board of Directors.

9. Treasurer. The Treasurer (i) shall have such duties and responsibilities as are customary for the treasurer of a corporation; and (ii) shall have such other duties and responsibilities as may from time to time be assigned by the Board of Directors or the President. Without limiting the foregoing, the Treasurer shall be responsible for all funds and securities of the Corporation; deposit funds of the Corporation in depositories selected in accordance with these Bylaws or otherwise approved by the Board of Directors, the President or the Chief Financial Officer; disburse such funds as ordered by the Board of Directors, the President or the Chief Financial Officer and make proper accounts thereof; and render as required by the Board of Directors, the President or the Chief Financial Officer statements of all such transactions as Treasurer and of the financial condition of the Corporation.

10. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers, if any, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the Board of Directors or the President. In the absence, inability or refusal to act of the Secretary or the Treasurer, the Assistant Secretaries or Assistant Treasurers, respectively, in the order designated by the Board of Directors, or in the absence of any designation, then in the order of their election or appointment, shall perform the duties and exercise the powers of the Secretary or Treasurer, as the case may be.

11. Salaries. Officers of the Corporation shall be entitled to such salaries, emoluments, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors on the recommendation of the Compensation Committee or in such manner as the Board of Directors shall provide.

## ARTICLE V Indemnification and Insurance

1. Indemnification. The Corporation shall indemnify and advance (or if previously incurred, reimburse) expenses to the directors and officers of the Corporation to the extent provided in the Restated Certificate of Incorporation, or if not so provided, to the maximum extent permitted by the DGCL. The Corporation may in its discretion, but is not obligated in any way to, indemnify and advance (or if previously incurred, reimburse) expenses to an employee, fiduciary or agent of the Corporation to the same extent as to a director or officer, provided such indemnification or advancement is not in violation of public policy.

2. Provisions Not Exclusive. The foregoing provisions for indemnification, advancement and reimbursement of expenses are not exclusive, and the Corporation may at its discretion provide for indemnification, advancement or reimbursement of expenses in a resolution of its stockholders or the Board of Directors, or by contract.

3. Effect of Modification. Any repeal or modification of the foregoing provisions of this Article for indemnification and advancement (or reimbursement) of expenses shall not affect

adversely any right or protection stated in such provisions with respect to any act or omission occurring prior to the time of such repeal or modification.

4. Insurance. The Corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the Corporation, or who, while a director, officer, employee, fiduciary, or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, fiduciary or agent of another domestic or foreign corporation or other person or of an employee benefit plan, against liability asserted against or incurred by the person in that capacity or arising from his or her status as a director, officer, employee, fiduciary or agent, whether or not the Corporation would have the power to indemnify the person against the same liability under the DGCL.

5. Expenses as a Witness. The Corporation may pay or reimburse expenses incurred by a director, officer, employee, fiduciary or agent in connection with an appearance as a witness in a proceeding at a time when he or she has not been made a named defendant or respondent in the proceeding.

## ARTICLE VI Execution of Instruments; Borrowing; Checks and Endorsements; Deposits; Proxies

1. Execution of Instruments. Any officer of the Corporation shall have the power to execute and deliver on behalf of and in the name of the Corporation any instrument requiring the signature of an officer of the Corporation, except as otherwise provided in these Bylaws or when the execution and delivery of the instrument shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. Unless authorized to do so by these Bylaws or by the Board of Directors, or a committee designated by the Board of Directors, or the President or Chief Financial Officer, no officer, agent or employee shall have any power or authority to bind the Corporation in any way, to pledge its credit or to render it liable pecuniarily for any purpose or in any amount.

2. Checks and Endorsements. All checks, drafts or other orders for the payment of money, obligations, notes or other evidences of indebtedness, bills of lading, warehouse receipts, trade acceptances and other such instruments shall be signed or endorsed for the Corporation by such officers or agents of the Corporation as shall from time to time be determined by resolution of the Board of Directors, or a committee designated by the Board of Directors, or by the President or Chief Financial Officer. Any such signature or endorsement may be by facsimile or other electronic signatures to the extent permitted under DGCL Section 116, except as otherwise determined by the Board of Directors.

3. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the Corporation's credit in such banks or other depositories as shall from time to time be determined by resolution of the Board of Directors, or a committee designated by the Board of Directors, which resolution may specify the officers or agents of the Corporation who shall have the power, and the manner in which such power shall be exercised, to make such deposits and to endorse, assign and deliver for collection and deposit checks, drafts and other orders for the payment of money payable to the Corporation or its order.

4. Proxies. Unless otherwise provided by resolution adopted by the Board of Directors, the President or any Vice President: (a) may from time to time appoint one or more agents of the Corporation, in the name and on behalf of the Corporation, (i) to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, association or other entity whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, association or other entity, or (ii) to consent in writing to any action by such other corporation, association or other entity; (b) may instruct the person so appointed as to the manner of casting such votes or giving such consent; and (c) may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal, or otherwise, all such written proxies or other instruments as may be deemed necessary or proper.

## ARTICLE VII Shares of Stock

1. Certificates of Stock. The shares of the Corporation may, but need not, be represented by certificates. If the shares are represented by certificates, such certificates shall be signed by the President and the Secretary or Treasurer, or any Assistant Secretary or Assistant Treasurer, or such other representatives of the Corporation as are designated by the Board of Directors; *provided, however*, that where any such certificate is signed or countersigned by a transfer agent or registrar the signatures of such officers of the Corporation may be in facsimile or other electronic form to the extent permitted under DGCL Section 116. In case any officer of the Corporation who shall have signed, or whose facsimile or other electronic signature shall have been placed on, any certificate shall cease for any reason to be such officer before such certificate shall have been issued or delivered by the Corporation, such certificate may nevertheless be issued and delivered by the Corporation as though the person who signed such certificate, or whose facsimile or other electronic signature shall have been placed thereon, had not ceased to be such officer of the Corporation. Every certificate representing shares issued by the Corporation shall state the number of shares owned by the holder in the Corporation represented by such certificate, shall designate the class of stock to which such shares belong, and shall otherwise be in such form as is required by law and as the Board of Directors shall prescribe.

2. Shares Without Certificates. The Board of Directors may authorize the issuance of any class or series of shares of the Corporation without certificates. Such authorization shall not affect shares already represented by certificates until they are surrendered to the Corporation, or its transfer agent. Within a reasonable time following the issue or transfer of shares without certificates, the Corporation shall send, or direct its transfer agent to send, the stockholder a complete written statement of the information required on certificates by Section 1 of this Article VII.

3. Record. A record shall be kept of the name of each person or entity holding the stock represented by each certificate for shares issued by the Corporation, the number of shares represented by each such certificate, the date thereof and, in the case of cancellation, the date of cancellation. A record shall similarly be kept of shares without certificates. The person or other entity in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof, and thus a holder of record of such shares of stock, for all purposes as regards the Corporation, except as otherwise provided in these Bylaws or pursuant to applicable law.

4. Transfer of Stock. Transfers of shares of the stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by such registered holder's attorney thereunto authorized, and, in the case of shares represented by certificates, on the surrender of the certificate or certificates for such shares properly endorsed. The stock record book and other transfer records shall be in the possession of the Secretary or of a transfer agent for the Corporation.

5. Transfer Agents and Registrars; Regulations. The Corporation, by resolution of the Board of Directors, shall from time to time appoint a transfer agent and a registrar, under such arrangements and upon such terms and conditions as the Board of Directors deems advisable, but until and unless the Board of Directors appoints some other person, firm or corporation as its transfer agent (and upon the revocation of any such appointment, thereafter until a new appointment is similarly made) the Secretary of the Corporation shall be the transfer agent of the Corporation without the necessity of any formal action of the Board of Directors, and the Secretary, or any person designated by the Secretary, shall perform all of the duties of such transfer agent. The Board of Directors may make such procedural rules and regulations as it may deem expedient and as are not inconsistent with the Restated Certificate of Incorporation and these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation.

6. Lost, Destroyed or Mutilated Certificates. In case of the alleged loss, destruction or mutilation of a certificate representing stock of the Corporation, a new certificate may be issued in place thereof, generally or in specific instances, in such manner and upon such terms and conditions as the Board of Directors may prescribe, and shall be issued in such situations as required by the DGCL.

## ARTICLE VIII

### Fiscal Year

The fiscal year of the Corporation shall be the year ending on December 31, unless another fiscal year is established by the Board of Directors.

## ARTICLE IX

### Corporate Books and Records

1. Books and Records. The books and records of the Corporation may be kept (subject to any provision contained in the DGCL or other applicable law) at such place or places as may be from time to time designated by the Board of Directors. The Corporation shall keep correct and complete books and records of account, including the amount of its assets and liabilities, and the minutes of its proceedings of its stockholders and Board of Directors and any committee of the Board of Directors.

2. Addresses of Stockholders. Each stockholder shall furnish to the Secretary of the Corporation or the Corporation's transfer agent an address to which notices from the Corporation, including notices of meetings, may be directed and if any stockholder shall fail so to designate such an address, it shall be sufficient for any such notice to be directed to such stockholder at such stockholder's address last known to the Secretary or transfer agent.

ARTICLE X  
Amendments

In addition to any approval required by law or the Restated Certificate of Incorporation, the affirmative vote of holders of at least a majority of the voting power of the Corporation shall be required to amend these Bylaws; *provided, however*, that the Corporation may, in the Restated Certificate of Incorporation, also confer the power to alter, amend or repeal these Bylaws upon the directors of the Corporation.

ARTICLE XI  
Definitions

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Restated Certificate of Incorporation.