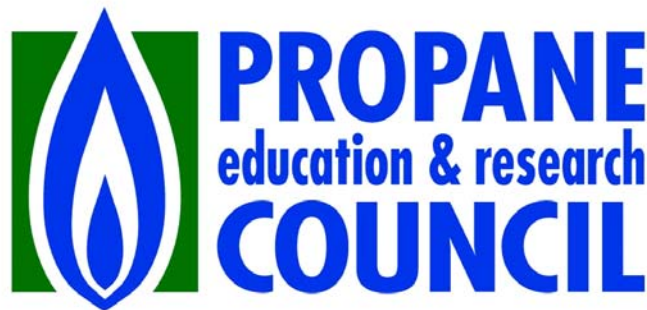


BYLAWS
of the
Propane Education and Research Council, Inc.

Suite 1075
1140 Connecticut Avenue, NW
Washington, DC 20036



As Amended Through

July 15, 2015

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**BYLAWS
OF
PROPANE EDUCATION AND RESEARCH COUNCIL, INC.**

(formed under the Delaware
General Corporation Law)

ARTICLE I

Definitions

For purposes of these Bylaws, the following terms shall have the following meanings:

"Act" means the Propane Education and Research Act of 1996, 15 U.S.C. §6401-6411, as amended.

"Code" means the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended.

"Council" means the "Propane Education and Research Council, Inc."

"Industry" means those persons involved in the production, transportation, and sale of propane, and in the manufacture and distribution of propane utilization equipment in the United States.

"Industry Trade Association" means an organization exempt from tax, under section 501(c) (3) or (6) of the Code representing the propane industry.

"Member" means member of the Council.

"Odorized Propane" means propane which has had odorant added to it.

"Producer" means the owner of propane at the time it is recovered at a gas processing plant or refinery.

"Propane" means a hydrocarbon whose chemical composition is predominantly C₃H₈ whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures thereof.

"Public Member" means a member of the Council, other than a representative of producers or retail marketers, representing significant users of propane, public safety officials, academia, the propane research community, or other groups knowledgeable about propane.

"Qualified Industry Organization" means the National Propane Gas Association, the Gas Processors Association, a successor association of such associations, or a group of retail marketers or producers who collectively represent at least 25 percent of the volume of propane sold or produced in the United States.

"Retail Marketers" means persons engaged primarily in the sale of odorized propane to the ultimate consumer or to retail propane dispensers.

"Retail Propane Dispensers" means a person who sells odorized propane to the ultimate consumer but is not engaged primarily in the business of such sales.

ARTICLE II

Name

Section 2.01 *Name.* The name of this corporation is "Propane Education and Research Council, Inc."

ARTICLE III

Object

Section 3.01 *Object.* The Council was created pursuant to section 4 of the Act. The Council is organized for, and shall be operated for, such purpose or purposes as are set forth in the Act and in the Certificate of Incorporation. Any ambiguity in these Bylaws shall be interpreted in a manner that is consistent with the language and intent of the Act.

ARTICLE IV

Offices

Section 4.01 *Location.* The principal office of the Council shall be located within or without the State of Delaware, at such place as the members of the Council shall from time to time designate. The Council may maintain additional offices at such other places as the members may designate. The Council shall have and maintain within the State of Delaware a registered office at such place as may be designated by the members.

ARTICLE V

Members

Section 5.01 *Power of Members.* The business and affairs of the Council shall be managed and all of the powers of the Council shall be exercised by the members of the Council.

Section 5.02 *Who Shall Be Members.* The Council shall consist of 21 members divided into the following 3 classes: 9 members representing retail marketers; 9 members representing producers; and 3 public members. Other than the public members, Council members shall be full-time employees or owners of businesses in the industry or representatives of agricultural

cooperatives. No employee of a qualified industry organization or other industry trade association shall serve as a member of the Council. No member of the Council may serve concurrently as an officer of the board of directors of a qualified industry organization or other industry trade association. Only one person at a time from any company or its affiliate may serve on the Council.

Section 5.03 *Selection of Members.* The qualified industry organizations shall select all retail marketer members, public members, and producer members of the Council. The producer organizations shall select the producer members of the Council, the retail marketer organizations shall select retail marketer members, and all qualified industry organizations shall jointly select the public members. Vacancies in unfinished terms of Council members shall be filled in the same manner as were the original appointments and in accordance with Section 5.06.

In selecting members of the Council, the qualified industry organizations shall give due regard to selecting a Council that is representative of the industry, including representation of:

- (a) gas processors and oil refiners among producers;
- (b) interstate and intrastate operators among retail marketers;
- (c) large and small companies among producers and retail marketers, including agricultural cooperatives; and
- (d) diverse geographic regions of the country.

Section 5.04 *Compensation.* Council members shall receive no compensation for their services, nor shall Council members be reimbursed for expenses relating to their service, except that public members, upon request, may be reimbursed for reasonable expenses directly related to their participation in Council meetings.

Section 5.05 *Term of Membership.* Council members shall serve terms of 3 years and may serve no more than 2 full consecutive terms. Members filling unexpired terms as provided in Section 5.06 may serve not more than a total of 7 consecutive years. Former members of the Council may be returned to the Council if they have not been members for a period of 2 years. Council members shall be divided into three classes (Class A, Class B and Class C), and shall serve staggered three-year terms with the term of office of one class expiring each year. Each class shall be comprised of seven (7) members and shall be composed of 3 members representing retail marketers, 3 members representing producers, and 1 public member. The three year term of each Class shall begin on July 1 and expire at the end of the three years on June 30 or until their successors are appointed and qualified. The term of office for each class of members appointed shall be three years from the date of their appointment or such shorter period if filling a vacancy pursuant to Section 5.06. All members may continue in office after the expiration of their terms until their successors are

appointed and qualified, except in the event of early resignation, removal or disqualification.

Section 5.06 *Resignation, Removal and Vacancy.* Notwithstanding section 5.05 herein, any Council member may resign at any time by mailing or delivering written notice to the Secretary of the Council (any resignation to take effect as specified therein or, if not specified, upon receipt by the Secretary). A member shall be deemed to resign if the member ceases to be eligible under section 5.02 to be a member. Any member may be removed for good cause, by majority vote of the disinterested members at a meeting for which notice was properly given and the notice included notice of a vote to remove the member. Vacancies in unfinished terms of Council members shall be filled in the same manner as were the original appointments and serve for the remainder of the term of the Class for which the vacancy exists.

Section 5.07 *Member Certification.* Each member shall, upon the commencement of each term of membership on the Council, certify to the Council that they fulfill the membership requirements prescribed in section 5(c) of the Act. Such certification shall also state that a member shall promptly notify the chairman if, at any time during their term, they cease to fulfill the membership requirements of the aforementioned section.

A member who fails to provide the certification required under this section shall be deemed to resign from the Council.

Section 5.08 *Meetings.* Meetings, if any, of Council members shall be held at such times as may be determined by the members to (i) receive the reports on compliance, violations, and complaints regarding the implementation of the Act; (ii) receive the annual reports of officers, the members, and committees, if any; and (iii) transact such other business as may properly be brought before the meeting. These Bylaws require that meetings of the Council be held on a regular basis.

Section 5.09 *Meetings by Conference Telephone.* Unless otherwise restricted by Delaware General Corporation Law, any one or more Council members may participate in a meeting of the Council, or any committee or task force designated by the Council, by means of conference telephone or similar communications equipment that permits all persons participating in the meeting to hear each other. Participation in a meeting by such means shall constitute presence in person at the meeting.

Section 5.10 *Place and Time of Meetings.* Meetings of Council members may be held at such place, within or without the State of Delaware, and at such hour as may be fixed in the notice of the meeting, bearing in mind the likely attendance of members of the public, congressional and other governmental representatives, and the media.

Section 5.11 *Notice of Meetings.* Public notice of all meetings of the Council shall be published at least 30 days in advance of the meeting. Such public notice should be published in an industry publication or means reasonably

likely to reach propane retail marketers and producers. The published announcement should give notice of the time and place for the Council meeting. In compliance with the Act, section 5(l), timely notice of all meetings shall be provided to the Secretary of Energy.

Section 5.12 *Quorum; Vote Required for Action.* At all Council member meetings, a majority of the Council members will constitute a quorum for the transaction of business. Unless otherwise required by the General Corporation Law of the State of Delaware, the certificate of incorporation or these bylaws, the vote of a majority of the Council members present at a meeting at which a quorum is present will be the act of the Council. If less than a majority is present at a meeting, a majority of the members present may adjourn the meeting from time to time without further notice. Once a quorum has been established at a duly organized meeting, the Council members may continue to transact corporate business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum; however, any vote of the Council shall be governed by the preceding sentences of section 5.12.

Section 5.13 *Action by Written Consent.* Any action required or permitted to be taken at a meeting of the Council members may be taken without a meeting if all members of the Council sign a written consent with respect to such action. Such consent will be filed with the minutes of proceedings of the Council.

Section 5.14 *Public Access to Council Proceedings.* All meetings of the Council shall be open to the public. The minutes of all meetings of the Council shall be available to the public.

ARTICLE VI

Officers, Agents and Employees

Section 6.01 *Officers.* The officers of the Council shall be a Chairman, a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of this Article. The Council members may elect as many Vice Chairmen, (including but not limited to a Vice Chairman who shall be a Producer Council member and a Vice Chairman who shall be a Retail Marketer Council member), Assistant Secretaries, and Assistant Treasurers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the members. Any two or more offices may be held by the same person, provided that at least two persons are officers at any given time. Only members may hold offices.

Section 6.02 *Term of Office, Vacancies and Removal.* The officers of the Council shall be elected by a majority vote of the Council members at the annual meeting of the Council members. Each officer of the Council shall serve for a term of one year or such shorter period if such officer resigns, the members terminate the officer's term, the members elect a successor, the members

terminate the position, or an officer ceases to be a member of the Council. The election of officers shall be by written ballot. Vacancies may be filled, new offices created and filled, or existing offices (to the extent permitted by law) terminated at any meeting of the members by a majority vote of the members. Each officer shall hold office until his or her successor shall have been duly elected and qualified. An officer may serve no more than 2 full consecutive terms. Any member of the Council shall have standing to nominate and move the election of any other member or himself/herself.

Section 6.03 Resignation. Any officer may resign at any time by giving written notice to the Council. Unless otherwise specified in the written notice, the resignation shall be effective upon delivery to the Council.

Section 6.04 Powers and Duties of Officers. Subject to the control of the Council members, all officers as between themselves and the Council shall have such authority and perform such duties in the management of the Council as may be provided by the members and, to the extent not so provided, as generally pertain to their respective offices.

A. *Chairman.* The Chairman shall preside at all meetings of the Council members and, subject to the supervision of the members, shall perform all duties customary to that office and shall supervise and control all of the affairs of the Council in accordance with policies and directives approved by the members.

B. *Vice-Chairmen.* In the absence of the Chairman or in the event of his or her inability or refusal to act, the Vice-Chairmen (if any) shall jointly perform the duties of the Chairman, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The Vice-Chairmen shall jointly perform such other duties and have such other powers as the Council members may from time to time prescribe by standing or special resolution, or as the Chairman may from time to time provide, subject to the powers and the supervision of the members.

C. *Secretary.* The Secretary shall be responsible for the keeping of an accurate record of the proceedings of all meetings of the Council, shall give or cause to be given all notices in accordance with these Bylaws or as required by law, and, in general shall perform all duties customary to the office of Secretary. The Secretary shall have custody of the corporate seal of the Council, if any; and the Secretary shall have authority to affix the same to any instrument requiring it; and, when so affixed, it may be attested by the signature of the Secretary. The Council members may give general authority to any officer to affix the seal of the Council, if any, and to attest the affixing by his or her signature.

D. *Treasurer.* The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Council. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Council, and shall deposit all monies and other valuable property of the Council in the name and to the credit of the Council in such banks or depositories as the Council members may designate. Whenever required by

the members, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit the books and accounts to any officer or member of the Council, and shall perform all duties incident to the office of Treasurer, subject to the supervision of the members, and such other duties as shall from time to time be assigned by the members. The Treasurer shall give bond or security for the faithful performance of the duties of Treasurer as the members may require, for which the Treasurer shall be reimbursed.

Section 6.05 *President.* The members of the Council shall employ a President as the chief executive officer of the Council. The President shall not be a member or an officer of the Council. The President shall have the authority to hire and supervise staff employees of the Council. The President shall have such additional authority and perform such additional duties as may be prescribed by the members.

Section 6.06 *Agents and Employees.* The members of the Council and the President may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the members and the President. The members and the President may remove any agent or employee at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

Section 6.07 *Compensation of Officers, Agents and Employees.* The Council shall not pay any compensation nor reimburse any members for service in the capacity as officer, except that public members, upon request, may be reimbursed for reasonable expenses directly related to their participation in Council-related meetings.

The Council may pay compensation in reasonable amounts to agents and employees for services rendered, such amount to be fixed by the members or, if the members delegate power to any officer or officers, then by such officer or officers.

The members may require officers, agents or employees to give security for the faithful performance of their duties.

ARTICLE VII

Committees

Section 7.01 *General Provisions.* The Council may establish one or more committees and subcommittees, each committee to consist of one or more members of the Council. The Council may designate one or more members as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided by the Council, shall have the ability to research issues and offer recommendations to the Council and carry out such other duties as are

authorized by the Council. Under no circumstances shall such committee have the power or authority to make decisions or act in the name of the Council, unless specifically authorized by the Council.

Section 7.02 *Committee Rules.* Unless the Council otherwise provides, each committee designated by the Council may make, alter and repeal rules for the conduct of its business. In the absence of a contrary provision by the Council or in rules adopted by such committee, the following shall apply: a majority of the entire authorized number of members of each committee shall constitute a quorum for the transaction of business; the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee; and each committee shall otherwise conduct its business in the manner prescribed by the Council.

Section 7.03 *Service of Committees.* Each committee of the Council shall serve at the pleasure of the Council. The designation of any such committee and the delegation thereto of authority shall not alone relieve any member of his or her duty under law to the Council.

Section 7.04 *Records.* Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the corporate records.

Section 7.05 *Advisory Committee.* The Council may establish advisory committees composed of persons other than Council members.

Section 7.06 *Executive Committee.* The Executive Committee shall be chaired by the Chairman of the Council and be composed of all officers duly elected by the Council and the most immediate past chairman who is a member of the Council; shall exercise all powers of the Council when the Council is not in session as to the management and operations of the Council, provided that it may act only upon the approval of a two-thirds majority vote of its members, and further provided that its actions shall be reported to and be subject to the ratification of the Council at its next regularly scheduled meeting. The Executive Committee shall provide overall leadership for the Council and facilitate the work of the Council; and shall provide direction to and supervision of the president, including but not limited to issues related to staff compensation, benefits, performance review and, as appropriate, termination.

Section 7.07 *Budget and Finance Committee.* The Budget and Finance Committee shall be chaired by the Treasurer of the Council, with a membership of not less than three nor more than five Council members, and shall be responsible for recommending for Council approval the annual budget that shall include the probable costs of all programs, projects and contracts to be undertaken in the coming year, and a recommended rate of assessment sufficient to cover such costs; and shall facilitate and ensure assessments collections, including but not limited to recommending for Council consideration enforcement actions under Section 7 of the Act.

Section 7.08 Audit Committee. The Audit Committee shall be composed of not fewer than three members of the Council. All members of the Audit Committee shall be appointed by the Council Chairman. The composition of the Audit Committee shall be at least half non-Executive Committee members and shall include at least one member of the Executive Committee, excepting the Council Chairman and Treasurer. The Chairman of the Audit Committee shall be selected by the Council Chairman, who shall evaluate the qualifications of the committee members for the position of Chairman, however, giving first preference (but not requirement) to non-executive members. The Audit Committee shall meet at least two times per year.

The Audit Committee shall:

- Assist the Council in its oversight responsibilities by reviewing the financial information provided to stakeholders, the systems of internal control established by management and the Council, and the internal and external audit processes.
- Provide an open avenue of communication between the outside auditors, management, and the Council.
- Periodically review and determine that the Council has implemented policies and procedures to identify financial risks and that adequate internal controls are in place to mitigate identified financial risks.
- Advise the Council of the outside auditor the Audit Committee appointed, the scope of work to be performed, and the applicable fees and charges. The outside auditor is ultimately accountable to the Audit Committee, who has the ultimate authority and responsibility to select, evaluate, and replace this auditor.
- Oversee the outside auditor, and ensure that the outside auditor does not provide any non-audit services to the Council, including bookkeeping or accounting services, financial information systems design or implementation, appraisal or valuation services, fairness opinions, investment advice or legal counsel. The outside auditor may engage in providing non-audit services to the Council, including tax services, which are not listed above, but only if the activity pre-approved by the Audit Committee.
- Update the Council periodically on Audit Committee activities and issues, including the reports and findings of the outside auditor.
- Review and update the Audit Committee's charter periodically, as needed, to fulfill its responsibilities to the Council.

ARTICLE VIII

Statutory Requirements

Section 8.01 *Functions.* The Council shall develop programs and projects and enter into contracts or agreements for implementing the Act, including programs to enhance consumer and employee safety and training, to train propane distributors and consumers in strategies to mitigate negative effects of future propane price spikes, to provide for research and development of clean and efficient propane utilization equipment, to inform and educate the public about safety and other issues associated with the use of propane, and to provide for the payment of the costs thereof with funds collected pursuant to the Act. The Council shall coordinate its activities with industry trade associations and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

Section 8.02 *Use of Funds.* Not less than 5 percent of the funds collected through assessments pursuant to the Act shall be used for programs and projects intended to benefit the agriculture industry in the United States. The Council shall coordinate its activities in this regard with agriculture industry trade associations and other organizations representing the agriculture industry. The percentage of funds collected through assessments pursuant to the Act to be used for projects relating to the use of propane as an over-the-road motor fuel shall not exceed the percentage of the total market for odorized propane that is used as a motor vehicle fuel, based on the historical average of such use over the previous 3-year period.

Section 8.03 *Priorities.* Issues related to research and development, safety, education, and training shall be given priority by the Council in the development of its programs and projects.

Section 8.04 *Administration.* The Council shall adopt rules for the conduct of business and establish procedures for the solicitation of industry comment and recommendations on any significant plans, programs, and projects to be funded by the Council.

Section 8.05 *Administrative Expenses.* The administrative expenses of operating the Council (not including costs incurred in the collection of the assessment pursuant to section 7 of the Act) plus amounts paid under the following paragraph shall not exceed 10 percent of the funds collected in any fiscal year.

The Council shall annually reimburse the Secretary of Energy for costs incurred by the Federal Government relating to the Council, except that such reimbursement for any fiscal year shall not exceed the amount that the Secretary of Energy determines is the average annual salary of two employees of the Department of Energy.

Section 8.06 Budget. Before August 1 each year, the Council shall publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. Following this review and comment, the Council shall submit the proposed budget to the Secretary of Energy and to the Congress. The Secretary of Energy may recommend programs and activities the Secretary of Energy considers appropriate.

Section 8.07 Records. The Council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Council and make public such information. The books of the Council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the Council may designate. Copies of such audit shall be provided to all members of the Council, all qualified industry organizations, and to other members of the industry upon request. Copies of reports on the activities of the Council, as well as reports on compliance, violations, and complaints regarding the implementation of the Act, shall be sent to the Secretary of Energy.

Section 8.08 Annual Report. Each year the Council shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Council during the previous year as well as those planned for the coming year. Such report shall also detail the allocation or planned allocation of Council resources for each such program and project.

Section 8.09 Assessments.

(a) *Amount.* The Council shall set the initial assessment at no greater than one tenth of 1 cent per gallon of odorized propane. Thereafter, annual assessments shall be sufficient to cover the costs of the plans and programs developed by the Council. The assessment shall not be greater than one-half cent per gallon of odorized propane, unless approved by a majority of those voting in a referendum in both the producer and the retail marketer class. In no case may the assessment be raised by more than one tenth of 1 cent per gallon of odorized propane annually.

(b) *Ownership.* The owner of odorized propane at the time of odorization, or the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce. Assessments collected are payable to the Council on a monthly basis by the 25th of the month following the month of such collection. Propane exported from the United States to another country is not subject to the assessment.

(c) *Alternative Collection Rules.* The Council may establish an alternative means of collecting the assessment if another means is found to be more efficient and effective. The Council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the Council any amount due under the Act.

(d) *Investment of Funds.* Pending disbursement pursuant to a program, plan, or project, the Council may invest funds collected through assessments, and any other funds received by the Council, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(e) *State Programs.* The Council shall establish a program coordinating the operation of the Council with those of any State propane education and research council created by State law or regulation, or similar entity. Such coordination shall include a joint or coordinated assessment collection process, a reduced assessment, or an assessment rebate. A reduced assessment or rebate shall be 20 percent of the regular assessment collected in that State under this section 8.09. Assessment rebates shall be paid only to:

(1) a State propane education and research council created by State law or regulation that meets requirements established by the Council for specific programs approved by the Council; or

(2) a similar entity, such as a foundation established by the retail propane gas industry in that State, that meets requirements established by the Council for specific programs approved by the Council.

Section 8.10 *Lobbying Restrictions.* No funds collected by the Council shall be used in any manner for influencing legislation or elections, except that the Council may recommend to the Secretary of Energy changes in the Act or other statutes that would further the purposes of the Act.

Section 8.11 *Market Survey and Consumer Protection.*

(a) *Price Analysis.* Beginning 2 years after establishment of the Council and annually thereafter, the Secretary of Commerce, using the refiner price to end users of consumer grade propane, as published by the Energy Information Administration and other public sources, shall prepare and make available to the Council, the Secretary of Energy, and the public an analysis of changes in the price of propane relative to other energy sources. The propane price analysis shall compare indexed changes in the price of consumer grade propane to a composite of indexed changes in the price of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil on an annual national average basis. For purposes of indexing changes in consumer grade propane, residential electricity, residential natural gas, and end user No. 2 fuel oil prices, the Secretary of Commerce shall use a 5-year rolling average price beginning with the year 4 years prior to the establishment of the Council.

(b) *Authority to Restrict Activities.* If in any year the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil in an amount greater than 10.1 percent, the

activities of the Council shall be restricted to research and development, training, and safety matters. The Council shall inform the Secretary of Energy and the Congress of any restriction of activities under this subsection 8.11(b). Upon expiration of 180 days after the beginning of any such restriction of activities, the Secretary of Commerce shall again conduct the propane price analysis described in subsection 8.11(a). Activities of the Council shall continue to be restricted under this subsection 8.11(b) until the price index excess is 10.1 percent or less.

Section 8.12 Pricing. In all cases, the price of propane shall be determined by market forces. Consistent with the antitrust laws, the Council may take no action, nor may any provision of the Act be interpreted as establishing an agreement to pass along to consumers the cost of the assessment provided for in section 6 of the Act.

Section 8.13 Relation to Other Programs. Nothing in the Act or these Bylaws may be construed to preempt or supersede any other programs relating to propane education and research organized and operated under the laws of the United States or any State.

ARTICLE IX

Miscellaneous

Section 9.01 Fiscal Year. The fiscal year of the Council shall be the calendar year or such other period as may be fixed by the members of the Council.

Section 9.02 Corporate Seal. The corporate seal shall be circular in form, shall have the name of the Council inscribed thereon and shall contain the words "Corporate Seal" and "Delaware" and the year the Council was formed in the center, or shall be in such form as may be approved from time to time by the members of the Council.

Section 9.03 Checks, Notes, Contracts. The members of the Council shall determine who shall be authorized from time to time on the Council's behalf to sign checks, drafts, or other orders for payment of money; to sign acceptances, notes or other evidences of indebtedness; to enter into contracts; or to execute and deliver other documents and instruments.

Section 9.04 Amendment of Certificate of Incorporation and Bylaws. The Certificate of Incorporation of the Council may be amended in whole or in part by a majority vote of Council members then in office pursuant to the procedure outlined in title 8, § 242(b)(3) of the Delaware General Corporation Law. The Bylaws of the Council may be adopted, amended or repealed in whole or in part by a majority vote of the members then in office.

A resolution authorizing a proposed amendment to the Certificate of Incorporation may provide that at a time prior to the filing of the amendment with

the Secretary of State of Delaware, the members may abandon such proposed amendment.

ARTICLE X

Indemnification

Section 10.01 *Indemnification and Insurance.* Except to the extent prohibited by the Act, the Council shall indemnify any member, officer, employee or agent, any former member, officer, employee or agent, any person who may have served at its request as a director, officer, committee member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, whether for profit or not for profit, against expenses (including attorneys' fees), judgments and amounts paid in settlement, actually and reasonably incurred by him or her in connection with any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Council,) to which he or she may be or is made a party by reason of being or having been such member, officer, employee or agent if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Council and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. However, there shall be no indemnification in respect of any claim, issue or matter as to which he or she shall have been adjudged to be liable to the Council unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Except to the extent prohibited by the Act, the Council may pay expenses (including attorneys' fees) incurred by a member, officer, employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such member, officer, employee or agent, to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Council under this Article.

Any indemnification (unless ordered by a court) shall be made by the Council only as authorized in the specific case upon a determination that indemnification of the member, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in title 8, § 145(a) and (b) of the Delaware General Corporation Law as now in effect, and as may be amended from time to time. Such determination shall be made (1) by a majority vote of the Council members who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) if there are no members to direct, by independent legal counsel in a written opinion.

The provisions of this Article shall be applicable to claims, actions, suits, or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions occurring before or after adoption hereof.

The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which such member, officer, employee or agent may be entitled under any statute, Bylaw, agreement of members or otherwise, and shall not restrict the power of the Council to make any indemnification permitted by law.

The indemnification and advancement of expenses provided by this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a member, officer, employee or agent and shall inure to the benefits of the heirs, executors and administrators of such a person.

The members of Council may authorize the purchase of insurance on behalf of any person who is or was a member, officer, employee, or agent of the Council, or who is or was serving at the request of the Council as a director, officer, committee member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against or incurred by him or her in any such capacity, or which arises out of such person's status as a member, officer, employee, or agent whether or not the Council would have the power to indemnify such person against the liability under law.

In no case, however, shall the Council indemnify, reimburse, or insure any person for any taxes imposed on such individual under chapter 42 of the Code. Further, if at any time the Council is deemed to be a private foundation within the meaning of § 509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure, as defined in §§ 4941 or 4945(d), respectively, of the Code.

If any part of this Article shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.

ARTICLE XI

Rules of Construction

Section 11.01 *Rules of Construction.* In case of any inconsistency between these Bylaws and the Act, the provision of the Act shall apply.

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