

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF THE  
NORTH AMERICAN ENERGY STANDARDS BOARD, INC.

**Article I**

**Name, Duration, and Registered Agent**

**Section 1.** The name of the corporation is the **NORTH AMERICAN ENERGY STANDARDS BOARD, INC.** (hereinafter referred to as “NAESB”). NAESB is a non-stock corporation.

**Section 2.** The period of duration of NAESB is PERPETUAL. NAESB may be dissolved at any time in the manner provided in the Statute; provided, however, that no later than December 31, 2004, NAESB’s Board of Directors shall submit to the members a resolution recommending whether NAESB shall continue. An affirmative vote of both the Board of Directors and the members, as defined in Article V of this Certificate, shall be required to continue NAESB.

**Section 3.** Reserved.

**Section 4.** No later than October 1, 1996, the Board of Directors shall submit to the membership a proposal on whether to consolidate the functions of the Board of Directors and the Executive Committee. An affirmative vote of both the Board of Directors and the members, as defined in Article V of this Certificate, shall be required to consolidate the functions of the Board of Directors and the Executive Committee. If the functions of the Board of Directors and the Executive Committee are consolidated, the surviving entity shall become the Board of Directors.

**Section 5.** NAESB is not organized for pecuniary profit or for the pecuniary profit of its members, or to engage in a regular business ordinarily carried on for profit. No part of the net earnings of NAESB shall inure to the benefit of any member or members or other private persons. During its functioning life, and in the event of its dissolution, all net earnings of NAESB and its assets shall be devoted solely to the objects and purposes stated in this

Certificate. Upon dissolution of NAESB, its assets may be distributed in any manner consistent with this Section and with the applicable provisions of law.

**Section 6.** The registered office and registered agent of NAESB is The Prentice-Hall Corporation System, Inc., 32 Loockerman Square, Suite L-100, Dover, Kent County, Delaware, 19904.

## **Article II**

### **Purposes and Scope**

**Section 1.** The objects and purposes of NAESB are to propose and adopt voluntary standards and model business practices designed to promote more competitive and efficient natural gas and electric service, as such standards apply to electronic data interchange ("EDI") record formats and communications protocols and related business practices that streamline the transactional processes of the natural gas and electric industries.

**Section 2.** NAESB shall engage in any lawful activities necessary or desirable to achieve the objectives and purposes of NAESB set forth in Section 1 of this Article II to the extent consistent with the provisions of Section 501(c)(6) of the Internal Revenue Code of 1986 (or any corresponding provision of any future revenue law) and the regulations promulgated thereunder (as they now exist or as they may be amended in the future, the "Code").

**Section 3.** NAESB shall be a non-profit organization qualifying under Section 501 (c) (6) of the Code and shall not have the authority to issue capital stock.

**Section 4.** NAESB shall not have any formal relationship with any regulatory agency. NAESB shall not have an advocacy role regarding its standards before the FERC or any other regulatory agency.

## **Article III**

### **Organization and Management**

**Section 1.** The business and affairs of NAESB shall be managed by the Board of Directors except to the extent that specific powers and duties are conferred upon the Executive Committee by this Certificate. The Board of Directors may delegate additional powers to the Executive Committee, provided that the Board of Directors may not delegate its power to approve an amendment of the Certificate of Incorporation, a merger or consolidation, a sale of substantially all the assets or dissolution of NAESB, or amendment of the By-Laws.

**Section 2.** The Board of Directors and Executive Committee members shall be elected for such terms as provided in the By-Laws. The number of members of the Board of Directors and Executive Committee shall as provided in the By-Laws. There may be as many as four Quadrants and each Quadrant shall be composed of industry Segments.. The members of each Segment shall vote separately for the election of Directors and Executive Committee members for such Segment pursuant to procedures set forth in the By-Laws.

**Section 3.** Each representative of the Board of Directors and the Executive Committee shall have one vote. Neither the Board of Directors nor the Executive Committee shall allow substitutes for any member thereof at their respective meetings; provided, however, that, as provided in the By-Laws, the Executive Committee may have designated alternates as selected by their segment. The Board of Directors and Executive Committee shall further establish procedures for notational voting, attendance by telephone or video conferencing, and determination of quorums. These procedures shall be included in, or attached to, the By-Laws. The Board of Directors and the Executive Committee shall each elect a chairman from among their own members. The Chairman of the Board of Directors may request that any vote or action be taken by the Board of Directors without a meeting and without unanimous consent, and such action may be taken if approved by the appropriate voting levels specified in Article V. The Chairman of the Executive Committee may request that any vote or action be taken by the Executive Committee without a meeting and without unanimous consent, and such action may be taken if approved by the appropriate voting levels specified in Article V.

**Section 4.** Among its other duties of governance, the Board of Directors shall be responsible for approving the budget and Annual Plan(s), initiating and recommending charter changes, maintaining contacts within the natural gas and electric industries and with government agencies, and selecting counsel and the external auditor for NAESB. The Board of Directors shall also have the authority to adopt and amend the By-Laws pursuant to Section 5 of Article V.

**Section 5. (a)** The Executive Committee shall be responsible for (1) the development and formation of NAESB technical standards that are based upon broad industry consensus and recognize the particular needs of each Segment, (2) considering and coordinating its work with existing standards-setting organizations and with regard to standards already developed, and (3) establishing an accessible library of transactions developed by members of NAESB for future consideration by NAESB in the standards development process.

**(b)** In addition, the Executive Committee shall be responsible for: (1) recommending the initiation, maintenance, and approval of standards-related activities; (2) establishing working

committees as it deems necessary to perform NAESB's standards development functions pursuant to procedures set forth in the By-Laws; (3) preparing recommendations to the Board on the Annual Plan; (4) setting priorities for standards to be developed or modified pursuant to the Annual Plan; and, (5) directing activities for reviewing standards interpretation pursuant to the appropriate voting levels specified in Article V.

**Section 6.** The personal liability of the members of the Board of Directors and the Executive Committee, and such other persons acting for NAESB, to the extent applicable under the Statute, is hereby eliminated to the fullest extent permitted by Section 102(b)(7) of the Statute, as the same may be amended and supplemented.

Any person who is or was a director, officer, agent, or employee of NAESB, or is or was serving, at the request of NAESB, as a director, officer, agent, or employee of another corporation, trust, or enterprise, shall be entitled to be indemnified by NAESB to the fullest extent now or hereafter permitted by the Statute in connection with any actual or threatened action or proceeding (including civil, criminal, administrative or investigative proceedings) arising out of their service to such entity. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which an indemnified person may be entitled under any by-law, agreement, insurance policy, or otherwise.

**Section 7.** The Chairman of the Board of Directors shall be the Chief Executive Officer of NAESB. An Executive Director shall be selected by the Board of Directors and shall exercise the duties of the chief operating officer of NAESB.

**Section 8.** Advisory Committee. The Board of Directors shall establish a permanent, standing advisory committee to be composed of representatives of federal, state, and local agencies; public interest groups; non-profit research organizations; and similar organizations, selected pursuant to procedures set forth in the By-Laws. The Board of Directors and the Executive Committee shall seek the advice of this committee as either deems appropriate.

**Section 9.** NAESB shall have no standing relationships with any technical or trade association; provided, however, NAESB may establish an appropriate relationship with the American National Standards Institute (ANSI) for the purpose of seeking ANSI adoption of its standards, and further provided, however, that any Board-approved arrangement for financial support of NAESB by any technical or trade association shall not be deemed to create a prohibited standing relationship. NAESB may work with such associations on an ad hoc basis. Furthermore, any such association may become a non-voting member of NAESB.

## **Article IV**

### **Membership**

**Section 1.** NAESB shall have two classes of members, voting members and non-voting members. The requirements for becoming a member of NAESB shall facilitate to the greatest extent possible a wide based membership consistent with NAESB's fiscal requirements and shall be consistent with all applicable law. Membership criteria for each Segment shall be established separately and set forth in or attached to the By-Laws; provided that the adoption of the requirements for membership in any Segment and any amendment thereof must first be approved by a majority of the Directors representing such Segment.

**Section 2.** Voting members. The voting members of NAESB shall be individuals, partnerships, firms or corporations, which shall apply for membership in one or more Segments and are in good standing in accordance with the procedures of their Segment(s). As a condition of membership, each voting member will be required to execute a revocable appointment, in a form approved by the Board of Directors, authorizing a designated proxy to vote in support of any of the proposals adopted by the Board of Directors described in Article V, Section 3 of this Certificate of Incorporation which may be submitted to a vote of the general membership. Any voting member may resign from NAESB by written notice to the Executive Director, whereupon that member's participation in all NAESB activities shall cease.

A voting member which is delinquent in the payment of its dues shall continue as a member, but shall not be allowed to vote until it is current in the payment of its dues.

**Section 3.** Non-voting members. Non-voting members shall include any person or entity, including a governmental entity, that has a legitimate business interest in a Quadrant of NAESB and desires to join as a non-voting member.

## **Article V**

### **Voting**

**Section 1.** All actions within the respective responsibilities of the Board and the Executive Committee, as the case may be, shall be by majority vote, except as otherwise provided in this Certificate of Incorporation. A quorum shall be a majority of the Board or Executive Committee, respectively.

**Section 2.** Voting members shall be entitled to one vote each at meetings of members, except that procedures attached to the By-Laws may provide for weighted or limited voting for

members of any Segment, if such By-Law provision is first approved by a majority of the Directors representing such Segment, provided such Segment is fully populated to the extent determined in the By-laws. The quorum for meetings of members shall be one-third of the total number of votes eligible to be cast unless a different number is established by this Certificate.

**Section 3.** An affirmative vote of at least seventy-five percent (75%) from the Board, including an affirmative vote of at least forty percent (40%) from Directors representing each Segment within each Quadrant, provided such Segment is fully populated to the extent determined in the By-laws. which vote must be ratified by a ninety percent (90%) affirmative vote of the general membership, shall be required to approve an amendment of this Certificate, including NAESB's scope and purposes described in Article II, to continue NAESB pursuant to Section 2 of Article I, to expand or contract the activities of NAESB pursuant to Section 3 of Article I and to consolidate the functions of the Board of Directors and the Executive Committee pursuant to Section 4 of Article I. No quorum of the members shall be required for such votes.

**Section 4.** An affirmative vote of at least sixty-seven percent (67%) from each of the applicable Quadrant(s) of the Executive Committee, including an affirmative vote of at least forty percent (40%) from representatives of each Segment within each of the applicable Quadrant(s), provided such Segment is fully populated to the extent determined in the By-laws. which vote must be ratified by a sixty-seven percent (67%) affirmative vote of those members of the applicable Quadrants of the general membership voting, shall be required to adopt, promulgate, amend, revise, modify, interpret, or rescind a standard. No quorum of the members shall be required for such vote.

**Section 5.** The By-Laws may be adopted or amended by the Board on an affirmative vote of at least seventy-five percent (75%) from the Board, including an affirmative vote of at least forty percent (40%) from Directors representing each Segment within each Quadrant, provided such Segment is fully populated to the extent determined in the By-laws. The procedures of any Quadrant attached to the By-Laws as an Exhibit, or any amendment of such procedures, may be accepted for consistency by the Board by a simple majority vote.

## **Article VI**

### **Meetings**

**Section 1.** The Board of Directors and Executive Committee shall meet as often as necessary to consider matters within their respective responsibilities. Notice of such meetings,

which shall be appropriate under the circumstances and comply with all applicable statutory requirements, shall be given.

**Section 2.** The Board of Directors shall instruct the Executive Director to call such meetings of the general membership of NAESB as are required by statute or are necessary to transact the business of NAESB. Meetings of NAESB may also be called by a majority of the members of NAESB or by a majority of the members of the Board of Directors. Between meetings of NAESB, votes of the membership may be taken by written ballot.

**Section 3.** Written notice of the annual meeting of NAESB shall be given in such manner as is prescribed by Statute, but not less than ten (10) nor more than sixty (60) days prior to the date of the annual meeting. Notice of other meetings shall be given in a manner as may reasonably permit attendance at such meeting, but in any event in a time and manner sufficient to satisfy any statutory requirements.

## **Article VII**

### **Funding**

**Section 1.** The funds necessary to conduct the business of NAESB shall be determined by the NAESB Board of Directors. The NAESB Board of Directors shall determine the amount of the membership fee to be assessed to each member on the year prior to its assessment, provided that except for promotional dues, the dues shall be the same for all voting members. NAESB may elect to receive funds from non-dues sources to the extent authorized by the Board of Directors and permitted by law and NAESB's bylaws. The Executive Director of NAESB shall ensure that NAESB expenditures in any year shall not exceed the sum of: (x) the aggregate amount of membership fees received (or projected to be collected) during the year to which such annual budget relates and (y) all other monies or income received (or projected to be received) by NAESB from whatever source during such year.

Section 2. A vote of at least seventy-five percent (75%) from the Board, including an affirmative vote of at least forty percent (40%) from the Directors representing each Segment within each Quadrant, provided such Segment is fully populated to the extent determined in the By-laws, shall be required to determine how to fund a budget deficit or to establish or modify a promotional dues program.

**Article VIII**

**Amendment of Certificate of Incorporation**

**Section 1.** The provisions contained in this Certificate of Incorporation may be amended by the adoption of a resolution pursuant to the voting procedures set forth at Article V.