

# BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Choose Energy, Inc., d/b/a "Choose Energy", for approval to offer, render, furnish, or as a(n) [as specified in item #8 below] to the public in the Commonwealth of Pennsylvania.

To the Pennsylvania Public Utility Commission:

1. **IDENTITY OF THE APPLICANT:** The name, address, telephone number, and FAX number of the Applicant are:

Company: Choose Energy, Inc.  
John Tough  
Director of Business Development  
Address: 330 Townsend Street, Unit 102, San Francisco, CA 94107  
Web address: <http://www.chooseenergy.com/>  
Telephone number: 312.450.5253; E-Mail: [jtough@chooseenergy.com](mailto:jtough@chooseenergy.com)

Please identify any predecessor(s) of the Applicant and provide other names under which the Applicant has operated within the preceding five (5) years, including name, address, and telephone number.

2. a. **CONTACT PERSON:** The name, title, address, telephone number, and FAX number of the person to whom questions about this Application should be addressed are:

Name: John Tough  
Title: Director of Business Development  
Address: 330 Townsend St., Unit 102, San Francisco, CA 94107  
E-Mail: [jtough@chooseenergy.com](mailto:jtough@chooseenergy.com)

- b. **CONTACT PERSON-PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY:** The name, title, address telephone number and FAX number of the person with whom contact should be made by PEMA:

Name: John Tough  
Title: Director of Business Development  
Address: 330 Townsend St., Unit 102, San Francisco, CA 94107  
E-Mail: [jtough@chooseenergy.com](mailto:jtough@chooseenergy.com)

3. a. **ATTORNEY:** If applicable, the name, address, telephone number, and FAX number of the Applicant's attorney are:

Legal Representation: Gunderson-Dettmer -- contact:  
Louis D. Soto, Corporate Partner. Phone: 650.463.5232; Fax: 877-881-9635  
Email: [lsoto@gunder.com](mailto:lsoto@gunder.com)  
Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP  
1200 Seaport Blvd., Redwood City, CA 94063

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- b. **REGISTERED AGENT:** If the Applicant does not maintain a principal office in the Commonwealth, the required name, address, telephone number and FAX number of the Applicant's Registered Agent in the Commonwealth are:

001 Northwest Registered Agent, LLC.  
1150 First Ave STE 511  
King of Prussia, Pennsylvania 19406  
Montgomery County

4. **FICTITIOUS NAME:** (select and complete appropriate statement)

The Applicant will be using a fictitious name or doing business as ("d/b/a"):

Attach to the Application a copy of the Applicant's filing with the Commonwealth's Department of State pursuant to 54 Pa. C.S. §311, Form PA-953.

**OR**

The Applicant will not be using a fictitious name.

5. **BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:** (select and complete appropriate statement)

The Applicant is a sole proprietor.

If the Applicant is located outside the Commonwealth, provide proof of compliance with 15 Pa. C.S. §4124 relating to Department of State filing requirements.

**OR**

The Applicant is a:

- domestic general partnership (\*)
- domestic limited partnership (15 Pa. C.S. §8511)
- foreign general or limited partnership (15 Pa. C.S. §4124)
- domestic limited liability partnership (15 Pa. C.S. §8201)
- foreign limited liability general partnership (15 Pa. C.S. §8211)
- foreign limited liability limited partnership (15 Pa. C.S. §8211)

**Provide proof of compliance with appropriate Department of State filing requirements as indicated above.**

Give name, d/b/a, and address of partners. If any partner is not an individual, identify the business nature of the partner entity and identify its partners or officers.

- \* If a corporate partner in the Applicant's domestic partnership is not domiciled in Pennsylvania, attach a copy of the Applicant's Department of State filing pursuant to 15 Pa. C.S. §4124.

or

- The Applicant is a:
- domestic corporation (none)
  - foreign corporation (15 Pa. C.S. §4124)
  - domestic limited liability company (15 Pa. C.S. §8913)
  - foreign limited liability company (15 Pa. C.S. §8981)
  - Other \_\_\_\_\_

Provide proof of compliance with appropriate Department of State filing requirements as indicated above. Additionally, provide a copy of the Applicant's Articles of Incorporation.

Give name and address of officers.

See Attachment 1 for proof of compliance with appropriate filing requirements, Attachment 2 for articles of incorporation, and Attachment 3 for the name and address of Choose Energy, Inc.'s officers.

The Applicant is incorporated in the state of Delaware.

6. **AFFILIATES AND PREDECESSORS WITHIN PENNSYLVANIA:** (select and complete appropriate statement)

- Affiliate(s) of the Applicant doing business in Pennsylvania are:

Give name and address of the affiliate(s) and state whether the affiliate(s) are jurisdictional public utilities.

- Does the Applicant have any affiliation with or ownership interest in:
- (a) any other Pennsylvania retail natural gas supplier licensee or licensee applicant,
  - (b) any other Pennsylvania retail licensed electric generation supplier or license applicant,
  - (c) any Pennsylvania natural gas producer and/or marketer,
  - (d) any natural gas wells or
  - (e) any local distribution companies (LDCs) in the Commonwealth

If the response to parts a, b, c, or d above is affirmative, provide a detailed description and explanation of the affiliation and/or ownership interest.

- Provide specific details concerning the affiliation and/or ownership interests involving:
- (a) any natural gas producer and/or marketers,
  - (b) any wholesale or retail supplier or marketer of natural gas, electricity, oil, propane or other energy sources.

- Provide the Pa PUC Docket Number if the applicant has ever applied:
- (a) for a Pennsylvania Natural Gas Supplier license, or

(b) for a Pennsylvania Electric Generation Supplier license.

- If the Applicant or an affiliate has a predecessor who has done business within Pennsylvania, give name and address of the predecessor(s) and state whether the predecessor(s) were jurisdictional public utilities.

**or**

- The Applicant has no affiliates doing business in Pennsylvania or predecessors which have done business in Pennsylvania.

7. **APPLICANT'S PRESENT OPERATIONS:** (select and complete the appropriate statement)

- The Applicant is presently doing business in Pennsylvania as a

- natural gas interstate pipeline.
- municipal providing service outside its municipal limits.
- local gas distribution company
- retail supplier of natural gas services in the Commonwealth
- a natural gas producer
- Other. (Identify the nature of service being rendered.)

Applicant is presently doing business in Pennsylvania as an electric broker. Choose Energy's license number as an electric broker in the state is PA PUC: A-2012-2331930.

**or**

- The Applicant is not presently doing business in Pennsylvania.

8. **APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as a:

- supplier of natural gas services.
- Municipal supplier of natural gas services.
- Cooperative supplier of natural gas services.
- Broker/Marketer engaged in the business of supplying natural gas services.
- Aggregator engaged in the business of supplying natural gas services.
- Other (Describe):

9. **PROPOSED SERVICES:** Generally describe the natural gas services which the Applicant proposes to offer. Choose Energy has created the most advanced system that allows consumers to shop for energy rates based on price, provider, energy type, and many other factors. We have built a service for electricity consumers, and now are rolling out the same service for natural gas consumers. As with our existing electricity comparison-shopping service, our new natural gas comparison-shopping service will allow consumers to gain a greater understanding of their energy choices to make it easier to select an energy provider. We do not purchase natural gas from suppliers but merely connect them with consumers. In order to fulfill our goal of empowering consumers, Choose Energy continues to innovate and provide outstanding power choices for residential and commercial energy customers nationwide.

Choose Energy also operates a number of additional energy marketing websites including EnergyTX.com, ElectricityTX.com, PowerToChooseGreen.com, and many others that focus on energy savings.

10. **SERVICE AREA:** Provide each Natural Gas Distribution Company (NGDC) in which Applicant proposes to offer services.

Choose Energy proposes to offer services in every NGDC territory, to include: Valley Energy, National Fuel Gas Distribution, UGI Central Penn, Peoples Natural Gas Company, Peoples TWP, UGI, UGI Penn Natural, Equitable Gas Company, PECO, Columbia Gas of Pennsylvania, and Philadelphia Gas Works.

11. **CUSTOMERS:** Applicant proposes to initially provide services to:

- Residential Customers
- Commercial Customers - (Less than 6,000 Mcf annually)
- Commercial Customers - (6,000 Mcf or more annually)
- Industrial Customers
- Governmental Customers
- All of above
- Other (Describe):

12. **START DATE:** The Applicant proposes to begin delivering services on December 17, 2013 (approximate date).

13. **NOTICE:** Pursuant to Section 5.14 of the Commission's Regulations, 52 Pa. Code §5.14, serve a copy of the signed and verified Application with attachments on the following:

Irwin A. Popowsky  
Office of Consumer Advocate  
5th Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17120-1921

Office of the Attorney General  
Bureau of Consumer Protection  
Strawberry Square, 14th Floor  
Harrisburg, PA 17120

William R. Lloyd, Jr.  
Commerce Building, Suite 1102  
Small Business Advocate  
300 North Second Street  
Harrisburg, PA 17101

Commonwealth of Pennsylvania  
Department of Revenue  
Bureau of Compliance  
Harrisburg, PA 17128-0946

Any of the following Natural Gas Distribution Companies through whose transmission and distribution facilities the applicant intends to supply customers:

<p><b>Valley Energy Inc.</b> Robert Crocker 523 South Keystone Avenue Sayre, PA 18840-0340 PH: 570.888-9664 FAX: 570.888.6199 email: <a href="mailto:rcrocker@ctenterprises.org">rcrocker@ctenterprises.org</a></p>	<p><b>National Fuel Gas Distribution Corp.</b> David D. Wolford 6363 Main Street Williamsville, NY 14221 PH: 716.857.7483 FAX: 716.857.7479 email: <a href="mailto:wolfordd@natfuel.com">wolfordd@natfuel.com</a></p>
<p><b>UGI Central Penn</b> David Beasten 2525 N. 12<sup>th</sup> Street, Suite 360 Reading, PA 19612-2677 PH: 610.796.3425 FAX: 610.796.3559</p>	<p><b>Peoples Natural Gas Company LLC</b> Lynda Petrichevich 375 North Shore Drive, Suite 600 Pittsburgh, PA 15212 email: <a href="mailto:Lynda.w.petrichevich@peoples-gas.com">Lynda.w.petrichevich@peoples-gas.com</a> PH: 412.208.6528 FAX: 412.208.6577</p>
<p><b>Peoples TWP LLC (Formerly T. W. Phillips)</b> Andrew Wachter 375 North Shore Drive, Suite 600 Pittsburgh, PA 15212 PH: 724.431.4935 FAX: 724.287.5021 email: <a href="mailto:Andrew.Wachter@peoplestwp.com">Andrew.Wachter@peoplestwp.com</a></p>	<p><b>UGI</b> David Beasten 2525 N. 12<sup>th</sup> Street, Suite 360 Reading, PA 19612-2677 PH: 610.796.3425 FAX: 610.796.3559</p>
<p><b>UGI Penn Natural</b> David Beasten 2525 N. 12<sup>th</sup> Street, Suite 360 Reading, PA 19612-2677 PH: 610.796.3425 FAX: 610.796.3559</p>	<p><b>Equitable Gas Company</b> Jerald Moody 225 North Shore Drive Pittsburgh, PA 15212-5352 PH: 412.395.3209 FAX: 412.395.3335</p>
<p><b>PECO</b> Carlos Thillet, Manager, Gas Supply and Transportation 2301 Market Street, S9-2 Philadelphia, PA 19103 email: <a href="mailto:carlos.thillet@exeloncorp.com">carlos.thillet@exeloncorp.com</a> PH: 215.841.6452</p>	<p><b>Columbia Gas of Pennsylvania Inc.</b> Thomas C. Heckathorn 200 Civic Center Drive Columbus, OH 43215 PH: 614.460.4996 FAX: 614.460.6442 email: <a href="mailto:theckathorn@nisource.com">theckathorn@nisource.com</a></p>
<p><b>Philadelphia Gas Works</b> Douglas Moser 800 West Montgomery Avenue Philadelphia, PA 19122 email: <a href="mailto:douglas.moser@pgworks.com">douglas.moser@pgworks.com</a> PH: 215.684.6899</p>	

Pursuant to Sections 1.57 and 1.58 of the Commission's Regulations, 52 Pa. Code §§1.57 and 1.58, attach Proof of Service of the Application and attachments upon the above named parties. Upon review of the Application, further notice may be required pursuant to Section 5.14 of the Commission's Regulations, 52 Pa. Code §5.14.

See Attachment 12.

14. **TAXATION:** Complete the TAX CERTIFICATION STATEMENT attached as Appendix ~~B~~ to this application.  
See Appendix A.
15. **COMPLIANCE:** State specifically whether the Applicant, an affiliate, a predecessor of either, or a person identified in this Application has been convicted of a crime involving fraud or similar activity. Identify all proceedings, by name, subject and citation, dealing with business operations, in the last five (5) years, whether before an administrative body or in a judicial forum, in which the Applicant, an affiliate, a predecessor of either, or a person identified herein has been a defendant or a respondent. Provide a statement as to the resolution or present status of any such proceedings.  
Neither Choose Energy, Inc., nor any affiliate, predecessor, or person identified in this application has ever been convicted of a crime involving fraud or similar activity.
16. **STANDARDS, BILLING PRACTICES, TERMS AND CONDITIONS OF PROVIDING SERVICE AND CONSUMER EDUCATION:** All services should be priced in clearly stated terms to the extent possible. Common definitions should be used. All consumer contracts or sales agreements should be written in plain language with any exclusions, exceptions, add-ons, package offers, limited time offers or other deadlines prominently communicated. Penalties and procedures for ending contracts should be clearly communicated.
- a. **Contacts for Consumer Service and Complaints:** Provide the name, title, address, telephone number and FAX number of the person and an alternate person responsible for addressing customer complaints. These persons will ordinarily be the initial point(s) of contact for resolving complaints filed with Applicant, the Distribution Company, the Pennsylvania Public Utility Commission or other agencies.  
See Attachment 4.
- b. Provide a copy of all standard forms or contracts that you use, or propose to use, for service provided to residential customers.  
See Attachment 5.
- c. If proposing to serve Residential and/or Small Commercial customers, provide a disclosure statement. A sample disclosure statement is provided as Appendix B to this Application.  
See Attachment 6.
17. **FINANCIAL FITNESS:**
- A. Applicant shall provide sufficient information to demonstrate financial fitness commensurate with the service proposed to be provided. Examples of such information which may be submitted include the following:
- Actual (or proposed) organizational structure including parent, affiliated or subsidiary companies.  
See Attachment 7.
  - Published parent company financial and credit information.
  - Applicant's balance sheet and income statement for the most recent fiscal year. Published financial information such as 10K's and 10Q's may be provided, if available.  
See Attachment 8.
  - Evidence of Applicant's credit rating. Applicant may provide a copy of its Dun and Bradstreet Credit Report and Robert Morris and Associates financial form or other independent financial service reports.  
See Attachment 9.
  - A description of the types and amounts of insurance carried by Applicant which are specifically intended to provide for or support its financial fitness to perform its obligations as a licensee.
  - Audited financial statements  
See Attachment 10.
  - Such other information that demonstrates Applicant's financial fitness.  
See Attachment 11.
- B. Applicant must provide the following information:
- Provide proof of compliance with bonding/credit requirements for each NGDC the applicant is proposing to provide service in. This requirement is designated by each NGDC and can commonly be found in the NGDC supplier tariff.  
See Attachment 12.
  - Identify Applicant's chief officers including names and their professional resumes.  
See Attachment 13.



- Provide the name, title, address, telephone number and FAX number of Applicant's custodian for its accounting records.

See Attachment 14.

18. **TECHNICAL FITNESS:** To ensure that the present quality and availability of service provided by natural gas utilities does not deteriorate, the Applicant shall provide sufficient information to demonstrate technical fitness commensurate with the service proposed to be provided. Examples of such information which may be submitted include the following:

- The identity of the Applicant's officers directly responsible for operations, including names and their professional resumes.  
See Attachment 15.
- A copy of any Federal energy license currently held by the Applicant.  
See Attachment 16.
- Proposed staffing and employee training commitments.  
See Attachment 17.
- Business plans.  
See Attachment 18.

19. **TRANSFER OF LICENSE:** The Applicant understands that if it plans to transfer its license to another entity, it is required to request authority from the Commission for permission prior to transferring the license. See 66 Pa. C.S. Section 2208(D). Transferee will be required to file the appropriate licensing application.

20. **UNIFORM STANDARDS OF CONDUCT AND DISCLOSURE:** As a condition of receiving a license, Applicant agrees to conform to any Uniform Standards of Conduct and Disclosure as set forth by the Commission.

21. **REPORTING REQUIREMENTS:** Applicant agrees to provide the following information to the Commission or the Department of Revenue, as appropriate:

- a. **Reports of Gross Receipts:** Applicant shall report its Pennsylvania intrastate gross receipts to the Commission on an annual basis no later than 30 days following the end of the calendar year.

**Applicant will be required to meet periodic reporting requirements as may be issued by the Commission to fulfill the Commission's duty under Chapter 22 pertaining to reliability and to inform the Governor and Legislature of the progress of the transition to a fully competitive natural gas market.**

22. **FURTHER DEVELOPMENTS:** Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.

23. **FALSIFICATION:** The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to 18 Pa. C.S. §§4903 and 4904, relating to perjury and falsification in official matters.

24. **FEE:** The Applicant has enclosed the required initial licensing fee of \$350.00 payable to the Commonwealth of Pennsylvania.

Applicant: Choose Energy, Inc.

By: Ethan Wais

Title: Senior Manager of Business Development

# AFFIDAVIT

[Commonwealth/State] of CALIFORNIA :

ss.

County of SAN FRANCISCO :

Ethan Wais, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

[He/she is the Sr. Manager of Business Development (Office of Affiant) of Choose Energy, Inc. (Name of Applicant);]

[That he/she is authorized to and does make this affidavit for said Applicant;]

That Choose Energy, Inc., the Applicant herein, acknowledges that [Applicant] may have obligations pursuant to this Application consistent with the Public Utility Code of the Commonwealth of Pennsylvania, Title 66 of the Pennsylvania Consolidated Statutes; or with other applicable statutes or regulations including Emergency Orders which may be issued verbally or in writing during any emergency situations that may unexpectedly develop from time to time in the course of doing business in Pennsylvania.

That Choose Energy, Inc., the Applicant herein, asserts that [he/she/it] possesses the requisite technical, managerial, and financial fitness to render natural gas supply service within the Commonwealth of Pennsylvania and that the Applicant will abide by all applicable federal and state laws and regulations and by the decisions of the Pennsylvania Public Utility Commission.

That Choose Energy, Inc., the Applicant herein, certifies to the Commission that it is subject to , will pay, and in the past has paid, the full amount of taxes imposed by Articles II and XI of the Act of March 4, 1971 (P.L. 6, No. 2 ), known as the Tax Reform Act of 1971 and any tax imposed by Chapter 22 of Title 66. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of, shall be cause for the Commission to revoke the license of the Applicant. The Applicant acknowledges that it shall report to the Commission its jurisdictional natural gas sales for ultimate consumption, for the previous year or as otherwise required by the Commission. The Applicant also acknowledges that it is subject to 66 Pa. C.S. §506 (relating to the inspection of facilities and records).

Applicant, by filing of this application waives confidentiality with respect to its state tax information in the possession of the Department of Revenue, regardless of the source of the information, and shall consent to the Department of Revenue providing that information to the Pennsylvania Public Utility Commission.

That Choose Energy, Inc., the Applicant herein, acknowledges that it has a statutory obligation to conform with 66 Pa. C.S. §506, and the standards and billing practices of 52 PA. Code Chapter 56.

That the Applicant agrees to provide all consumer education materials and information in a timely manner as requested by the Commission's Office of Communications or other Commission bureaus. Materials and information requested may be analyzed by the Commission to meet obligations under applicable sections of the law.

That the facts above set forth are true and correct/true and correct to the best of his/her knowledge, information, and belief.

Ethan Waits  
Signature of Affiant

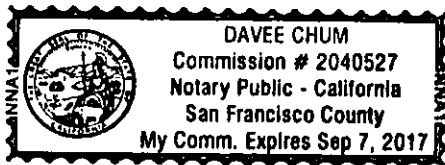
Sworn and subscribed before me this 21<sup>st</sup> day of NOVEMBER, 1013

\_\_\_\_\_  
Signature of official administering oath

My commission expires \_\_\_\_\_

State of California County of San Francisco  
Subscribed and Sworn to (or affirmed)  
Before me on this 21<sup>st</sup> day of NOV 2013 by

ETHAN WAIS  
proved to me on the basis of satisfactory evidence  
to be the person(s) who appeared before me.  
signature [Signature]



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PER A DISCUSSION WITH A PUC OFFICIAL,  
IT IS CHOOSE ENERGY, INC.'S  
UNDERSTANDING THAT, AS A BROKER,  
THIS FORM IS NOT NECESSARY.

# AFFIDAVIT

[Commonwealth/State] of \_\_\_\_\_ :

: ss.

County of \_\_\_\_\_ :

\_\_\_\_\_, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

[He/she is the \_\_\_\_\_ (Office of Affiant) of \_\_\_\_\_ (Name of Applicant);]

[That he/she is authorized to and does make this affidavit for said Applicant;]

That \_\_\_\_\_, the Applicant herein certifies that it has caused the notice of the filing of its license applica  
published in the following newspapers on \_\_\_\_\_:  
(date)

A copy of the notice as it appeared in each of the above newspapers is attached. Noted on each copy is the newspaper  
section (name, number or letter), if applicable, and the page number on which the notice appeared.

That \_\_\_\_\_, the Applicant will submit to the Commission the proof of publication from each  
newspaper in which notice of the application filing was published as soon as it is available.

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

\_\_\_\_\_  
Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Signature of official administering oath

My commission expires \_\_\_\_\_.

AFFIDAVIT

[Commonwealth/State] of CALIFORNIA :

ss.

County of SAN FRANCISCO :

Ethan Wais, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

[He/she is the Sr. Manager of Business Development (Office of Affiant) of Choose Energy, Inc. (Name of Applicant);]

[That he/she is authorized to and does make this affidavit for said Applicant;]

That the Applicant herein Choose Energy, Inc. has the burden of producing information and supporting documentation demonstrating its technical and financial fitness to be licensed as a natural gas supplier pursuant to 66 Pa. C.S. §2208(c)(1).

That the Applicant herein Choose Energy, Inc. has answered the questions on the application correctly, truthfully, and completely and provided supporting documentation as required.

That the Applicant herein Choose Energy, Inc. acknowledges that it is under a duty to update information provided in answer to questions on this application and contained in supporting documents.

That the Applicant herein Choose Energy, Inc. acknowledges that it is under a duty to supplement information provided in answer to questions on this application and contained in supporting documents as requested by the Commission.

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

[Handwritten signature of Ethan Wais]
Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature of official administering oath

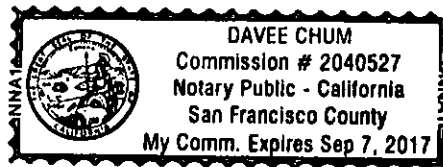
My commission expires \_\_\_\_\_

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State of California County of San Francisco
Subscribed and Sworn to (or affirmed)
Before me on this 21st day of Nov 20 13 by

ETHAN WAIS
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
signature [Handwritten signature]



## APPENDIX A

COMMONWEALTH OF PENNSYLVANIA  
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### TAX CERTIFICATION STATEMENT

A completed Tax Certification Statement must accompany all applications for new licenses, renewals or transfers. Failure to provide the requested information and/or any outstanding state income, corporation, and sales (including failure to file or register) will cause your application to be rejected. If additional space is needed, please use white 8 1/2" x 11" paper. Type or print all information requested.

<b>1. CORPORATE OR APPLICANT NAME</b> Choose Energy, Inc.	<b>2. BUSINESS PHONE NO. ( 415 ) 829-3660</b> <b>CONTACT PERSON(S) FOR TAX ACCOUNTS:</b> David Yi
--	---

**3. TRADE/FICTITIOUS NAME (IF ANY)**

**4. LICENSED ADDRESS (STREET, RURAL ROUTE, P.O. BOX NO.) (POST OFFICE) STATE (ZIP)**  
 330 Townsend street, Suite 102, San Francisco, CA 94107

**5. TYPE OF ENTITY**     SOLE PROPRIETOR     PARTNERSHIP     CORPORATION

**8. LIST OWNER(S), GENERAL PARTNERS, OR CORPORATE OFFICER(S)**

NAME (PRINT)	SOCIAL SECURITY NUMBER (OPTIONAL)
Kerry Cooper, Chief Executive Officer	
Jerry Dyess, Chief Commerce Officer	
Jay Webster, Chief Product Officer	

**9. LIST THE FOLLOWING STATE TAX IDENTIFICATION NUMBERS. (ALL ITEMS: A, B, AND C MUST BE COMPLETED)**

<b>A. SALES TAX LICENSE (8 DIGITS)</b> APPLICATION PENDING?    N/A [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] <input type="checkbox"/> <input checked="" type="checkbox"/>	<b>C. CORPORATE BOX NUMBER (7 DIGITS)</b> APPLICATION PENDING?    N/A Entity Number: [ 4 ] [ 1 ] [ 3 ] [ 0 ] [ 9 ] [ 6 ] [ 5 ] <input type="checkbox"/> <input type="checkbox"/>
<b>B. EMPLOYER ID (EIN) (9 DIGITS)</b> APPLICATION PENDING?    N/A [ 9 ] [ 0 ] - [ 0 ] [ 8 ] [ 3 ] [ 7 ] [ 6 ] [ 6 ] [ 7 ] <input type="checkbox"/> <input type="checkbox"/>	

**10. Do you have PA employees either resident or non-resident?**     YES     NO

**11. Do you own any assets or have an office in PA?**     YES     NO

**NAME AND PHONE NUMBER OF PERSON(S) RESPONSIBLE FOR FILING TAX RETURNS**

David Yi	David Yi	David Yi
PA SALES AND USE TAX	EMPLOYER TAXES	CORPORATE TAXES
PHONE (415) 829-3660	PHONE (415) 829-3660	PHONE (415) 829-3660

Telephone inquiries about this form may be directed to the Pennsylvania Department of Revenue at the following numbers: (717) 772-2673, TDD# (717) 772-2252 (Hearing Impaired Only)

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Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com



**Appendices to Natural Gas Broker Application**  
**Pennsylvania**

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SECRETARY'S BUREAU

**General**

**Attachment 1 - Proof of Compliance**

- Name of the corporation:  
Choose Energy, Inc.
- Name of the jurisdiction under the laws of which it is incorporated:  
Delaware
- The address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it is incorporated:

160 Greentree Drive  
Suite 101  
Dover, DE 19904

- Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its proposed registered office in this Commonwealth:

Choose Energy's registered agent in the State of Pennsylvania is:

001 Northwest Registered Agent, LLC.  
1150 First Ave STE 511  
King of Prussia, Pennsylvania 19406  
Montgomery County

- A statement that it is a corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise:

Choose Energy, Inc. is a for profit corporation.



**Attachment 2 - Articles of Incorporation**

*Delaware*

PAGE 1

*The First State*

I, JEFFREY W. HULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "CHOOSE ENERGY, INC.", FILED IN THIS OFFICE ON THE FOURTH DAY OF MAY, A.D. 2012, AT 10:59 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

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You may verify this certificate online at [corp.delaware.gov/cslibrev.shtml](http://corp.delaware.gov/cslibrev.shtml)



*Jeffrey W. Hullock*  
JEFFREY W. HULLOCK, Secretary of State  
AUTHENTICATION: 9549816

DATE: 05-04-12

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PA PUBLIC UTILITY COMMISSION  
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State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:59 AM 05/04/2012  
FILED 10:59 AM 05/04/2012  
SRV 120510509 - 5148128 FILE

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION

OF

CHOOSE ENERGY, INC.

The undersigned, Jerry Dyess, hereby certifies that:

1. The undersigned is the duly elected and acting Chief Executive Officer of Choose Energy, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on May 1, 2012.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is Choose Energy, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, 19904. The name of its registered agent at such address is National Registered Agents, Inc.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

(A) Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 12,400,000 shares, each with a par value of \$0.00001 per share. 8,400,000 shares shall be Common Stock and 4,000,000 shares shall be Preferred Stock.

(B) Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation (the "Restated Certificate") may be issued from time to time in one or more series. 4,000,000 shares of Preferred Stock shall be designated "Series A Preferred Stock". The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Article IV(L).

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1. **Dividend Provisions.** The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.03 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series A Preferred Stock then held by them; payable when, as and if declared by the Board of Directors of the Corporation (the "Board of Directors"). Such dividends shall not be cumulative. After payment of such dividends, any additional dividends shall be distributed among the holders of Series A Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock, by reason of their ownership thereof, an amount per share equal to \$1.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each outstanding share of Series A Preferred Stock then held by them; plus any declared or accrued but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation.

(c) **Deemed Conversion.** Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Transaction, as defined below, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock immediately prior to the Liquidation Transaction if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

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(d) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey or otherwise dispose of all or substantially all of its property or business or merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Corporation) (any such transaction, a "Liquidation Transaction"), provided that none of the following shall be considered a Liquidation Transaction: (A) a merger effected exclusively for the purpose of changing the domicile of the Corporation, (B) an equity financing in which the Corporation is the surviving corporation or (C) a transaction in which the stockholders of the Corporation immediately prior to the transaction own 50% or more of the voting power of the surviving corporation following the transaction. In the event of a merger or consolidation of the Corporation that is deemed pursuant to this section to be a Liquidation Transaction, all references in this Section 2 to "assets of the Corporation" shall be deemed instead to refer to the aggregate consideration to be paid to the holders of the Corporation's capital stock in such merger or consolidation. Nothing in this subsection 2(d)(i) shall require the distribution to stockholders of anything other than proceeds of such transaction in the event of a merger or consolidation of the Corporation. The holders of at least a majority of the Corporation's outstanding Preferred Stock, voting together as a separate class on an as converted basis, shall be entitled to waive the treatment of a Liquidation Transaction under this section.

(ii) Valuation of Consideration. In the event of a deemed liquidation as described in Section 2(d)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange, the value shall be based on a formula approved by the Board of Directors and derived from the closing prices of the securities on such exchange over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on a formula approved by the Board of Directors and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as specified above in Section 2(d)(i)(A) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

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(e) Notice of Liquidation Transaction. The Corporation shall give each holder of record of Series A Preferred Stock written notice of any impending Liquidation Transaction not later than 10 days prior to the stockholders' meeting called to approve such Liquidation Transaction, or 10 days prior to the closing of such Liquidation Transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Transaction. The first of such notices shall describe the material terms and conditions of the impending Liquidation Transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. Unless such notice requirements are waived, the Liquidation Transaction shall not take place sooner than 10 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein. Notwithstanding the other provisions of this Restated Certificate, all notice periods or requirements in this Restated Certificate may be shortened or waived, either before or after the action for which notice is required, upon the vote or written consent of the holders of a majority of the voting power of the outstanding shares of Preferred Stock that are entitled to such notice rights.

(f) Effect of Noncompliance. In the event the requirements of Section 2(e) are not complied with, the Corporation shall forthwith either cause the closing of the Liquidation Transaction to be postponed until the requirements of this Section 2 have been complied with, or cancel such Liquidation Transaction, in which event the rights, preferences, privileges and restrictions of the holders of Series A Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section 2(e).

3. Redemption. The Preferred Stock is not mandatorily redeemable.

4. Conversion. The holders of shares of Preferred Stock shall be entitled to conversion rights as follows:

(a) Right to Convert. Subject to Section 4(c), each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 in the case of the Series A Preferred Stock, by the Conversion Price applicable to such shares (the conversion rate for Preferred Stock into Common Stock is referred to herein as the "Conversion Rate"), determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share shall be \$1.00 in the case of the Series A Preferred Stock. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d) below.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate then in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), which results in aggregate cash proceeds to the Corporation of not less than \$50,000,000,

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net of underwriting discounts and commissions, at a pre-issuance valuation of at least \$250,000,000 or (ii) the date specified by vote or written consent of the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted to Common Stock basis.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert such Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with a firm commitment underwritten public offering of securities, the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering. In which event any persons entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) Issuance of Additional Stock Below Purchase Price. If the Corporation should issue, at any time after the date upon which any shares of Series A Preferred Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series A Preferred Stock in effect immediately prior to the issuance of such Additional Stock (as adjusted for stock splits, stock dividends, reclassification and the like), the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) Adjustment Formula. Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation,

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the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) Definition of "Additional Stock". For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date, other than:

(1) Up to 2,000,000 shares of Common Stock (or options therefor) (or such greater number of shares approved by the Board of Directors (including a Series A Preferred Director (as defined below)) issued to employees, consultants, or directors of the Corporation pursuant to the Company's 2012 Stock Plan or pursuant to stock option plans or restricted stock plans or agreements approved by the Board of Directors (including a Series A Preferred Director);

(2) securities issued in connection with the acquisition by the Corporation of other entities or assets, in each case approved by the Board of Directors (including a Series A Preferred Director);

(3) securities issued to banks, equipment lessors or other financial institutions in connection with debt financing transactions, commercial credit arrangements or equipment leasing transactions, in each case approved by the Board of Directors (including a Series A Preferred Director);

(4) securities issued in connection with (A) sponsored research, collaboration, technology licensing or development activities, (B) original equipment manufacturing or marketing of the Corporation's products or services or (C) other similar agreements or strategic partnerships, in each case as approved by the Board of Directors (including a Series A Preferred Director); and

(5) Common Stock issued in an initial public offering.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be

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deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) Deemed Issuance of Common Stock. In the case of the issuance of securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for all purposes of this Section 4(d)(I):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(I)(D)).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents, other than a change resulting from the antidilution provisions thereof, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

(4) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 4(d)(I)(D) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(I)(E)(2) or (3).

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section 4(d)(I), except to the limited extent provided for in Sections 4(d)(I)(E)(2) and (3), no adjustment of the Conversion Price pursuant to this

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Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time after the filing date of this Restated Certificate fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock that is convertible into Common Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate number of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the filing date of this Restated Certificate is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each series of Preferred Stock that is convertible into Common Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(c) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(i) or in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(c), the holders of each series of Preferred Stock that is convertible into Common Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in Section 2 or this Section 4) provision shall be made so that the holders of each series of Preferred Stock that is convertible into Common Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the

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Conversion Price then in effect and the number of shares issuable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If the conversion would result in any fractional share, the Corporation shall, in lieu of issuing any such fractional share, pay the holder thereof an amount in cash equal to the fair market value of such fractional share on the date of conversion, as determined in good faith by the Board of Directors.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of such Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of each series of Preferred Stock that is convertible into Common Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without

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limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate.

(i) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the U.S. mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. Voting Rights.

(a) General. Except as expressly provided by this Restated Certificate or as provided by law, the holders of Preferred Stock shall have the same voting rights as the holders of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and the holders of Common Stock and the holders of Preferred Stock shall vote together as a single class on all matters. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Election of Directors. With respect to the election of directors, the holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors of the Corporation (the "Series A Preferred Directors"); the holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors of the Corporation; and the holders of the Preferred Stock and the Common Stock, voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect two (2) members of the Board of Directors of the Corporation.

6. Protective Provisions. So long as at least 500,000 shares (as adjusted for stock splits, stock dividends, reclassification and the like) of Preferred Stock are outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted to Common Stock basis:

(a) amend in any manner or otherwise change the rights, powers or preferences of the Preferred Stock;

(b) increase or decrease the total number of authorized shares of Common Stock or Preferred Stock;

(c) authorize any other equity security, including any security (other than Series A Preferred Stock) convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A Preferred Stock with respect to rights, powers or preferences set forth in this Restated Certificate;

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(d) amend, alter, restate or repeal any provision of this Restated Certificate or Bylaws of the Corporation;

(e) redeem or repurchase any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at the original cost thereof upon the occurrence of termination of services;

(f) declare or pay any dividend or any other distribution with respect to any shares of the Corporation's capital stock;

(g) consent, agree, commit to, or effect a Liquidation Transaction;

(h) exclusively license any technology or intellectual property rights in a manner that constitutes the effective disposition of a material portion of the technology or intellectual property of the Corporation;

(i) increase or decrease the number of authorized directors;

(j) permit any subsidiary of the Corporation to do any of the foregoing.

7. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Restated Certificate shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. **Redemption.** The Common Stock is not mandatorily redeemable.

4. **Voting Rights.** Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. Subject to the provisions in Section 6 of Article IV(B), the number of authorized shares of Common Stock may be increased or decreased (but

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not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

**ARTICLE V**

Except as otherwise set forth herein, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

**ARTICLE VI**

*Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.*

**ARTICLE VII**

1. To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

2. The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

3. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

**ARTICLE VIII**

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

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ARTICLE IX

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (A) any derivative action or proceeding brought on behalf of the Corporation, (B) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation's stockholders, (C) any action or proceeding asserting a claim against the Corporation arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or Bylaws or (D) any action or proceeding asserting a claim against the Corporation governed by the internal affairs doctrine."

• • •

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The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 243 of the Delaware General Corporation Law.

Executed on May 3, 2012.

  
\_\_\_\_\_  
Jerry Dyess, Chief Executive Officer

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**Attachment 3 – Names and Addresses of Officers**

**Kerry Cooper, Chief Executive Officer**

330 Townsend St., Ste. 102  
San Francisco, CA 94107  
Phone: (415) 829-3660  
E-Mail: [kcooper@chooseenergy.com](mailto:kcooper@chooseenergy.com)

**Jerry Dyess, Chief Commerce Officer**

6217 Chapel Hill Rd., Ste. 300  
Plano, TX 75093  
Phone: (469) 361-2971  
E-Mail: [jdyess@chooseenergy.com](mailto:jdyess@chooseenergy.com)

**Jay Webster, Chief Product Officer**

330 Townsend St., Ste. 102  
San Francisco, CA 94107  
Phone: (415) 829-3660  
E-Mail: [jwebster@chooseenergy.com](mailto:jwebster@chooseenergy.com)

**John Tough, Director of Business Development**

330 Townsend St., Ste. 102  
San Francisco, CA 94107  
Phone: (415) 829-3660  
E-Mail: [jtough@chooseenergy.com](mailto:jtough@chooseenergy.com)

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**Compliance**

**Attachment 4 – Contact Information for Consumers Service and Complaints**

**John Tough, Director of Business Development**

330 Townsend St., Ste. 102  
San Francisco, CA 94107  
Phone: (415) 829-3660  
E-Mail: [jtough@chooseenergy.com](mailto:jtough@chooseenergy.com)

**Attachment 5 – Standard Forms and Contracts**

Choose Energy does not supply natural gas to consumers and therefore does not enter into a contract with them. The information that is available to those consumers who visit and use our website are our Terms of Use, copied below:

## TERMS OF USE

PLEASE READ THESE TERMS OF USE ("AGREEMENT") CAREFULLY BEFORE USING THE SERVICES OFFERED BY **CHOOSE ENERGY, INC.** ("COMPANY"). BY VISITING THE WEBSITES OR USING THE SERVICES DESCRIBED HEREIN IN ANY MANNER, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY AND A PARTY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS. IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU HAVE NO RIGHT TO USE THE WEBSITE OR SERVICES. USE OF COMPANY'S SERVICES IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, TO THE EXCLUSION OF ALL OTHER TERMS.

- 1. Description of Services.** Company provides the [chooseenergy.com](http://chooseenergy.com) website and domain name and any other linked pages, features, content, or application services (collectively, the "Website"). Subject to the terms and conditions of this Agreement, Company may offer to provide certain services, including, without limitation, use of the Website, any service Company performs for you, and the Content (as defined below) offered by Company on the Website (together with the Website, the "Services"), solely for your own use, and not for the use or benefit of any third party. Through the Services you may have access to information and interactive resources relating to electricity service, including news, statistics and rates and compare different power companies based on price, energy provider, energy type and other factors.
- 2. Access to Services.** Company may change, suspend or discontinue the Services at any time, including the availability of any feature, database, or Content. Company may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability. Company reserves the right, in its sole discretion, to modify this Agreement at any time by posting a notice on the Website, or by sending you a notice. You shall be responsible for reviewing and becoming familiar with any such modifications. Your use of the Services following such notification constitutes your acceptance of the terms and conditions of this Agreement as modified. Company does not knowingly collect or solicit personal information from anyone under the age of 13 or knowingly allow such persons to register for the Services. If you are under 13, please do not attempt to register for the Services or send any information about yourself to us, including your name, address, telephone number, or email address. No one under age 13 may provide any personal information to Company or on the Services. In the event that we learn that we have collected personal information from a child under age 13 without verification of parental consent, we will delete that information as quickly as possible. If you believe that we might have any information from or about a child under 13, please contact us at [support@chooseenergy.com](mailto:support@chooseenergy.com). You represent and warrant to Company that: (i) you are able to form a binding contract and, if applicable, able to form a binding contract on behalf of the company or organization that you are representing, and you are at least 18 years or age or older; (ii) all registration information you submit is accurate and truthful; and (iii) you will maintain the accuracy of such information. You also certify that you are legally permitted to use and access the Services and take full responsibility for the selection and use of and access to the Services. This Agreement is void where prohibited by law, and the right to access the Services is revoked in such jurisdictions.
- 3. Services Content.** The Services and its contents are intended solely for the personal, non-commercial use by users and may only be used in accordance with the terms of this Agreement. All materials displayed or performed on

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SECRETARY'S BUREAU



**the Services (including, but not limited to text, graphics, articles, photographs, images, illustrations (also known as the "Content," and which includes User Submissions (as defined below))) are protected by copyright. You shall abide by all copyright notices, trademark rules, information, and restrictions contained in any Content accessed through the Services, and shall not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purposes whatsoever any Content or third party submissions or other proprietary rights not owned by you: (i) without the express prior written consent of the respective owners, and (ii) in any way that violates any third party right. The Services are protected by copyright as a collective work and/or compilation, pursuant to U.S. copyright laws, international conventions, and other intellectual property laws. You may not modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section 2), create derivative works based on, distribute, perform, display, or in any way exploit, any of the Content, software, materials, or Services in whole or in part. You may download or copy the Content (and other items displayed on the Services for download) for personal non-commercial use only, provided that you maintain all copyright and other notices contained in such Content. You shall not store any significant portion of any Content in any form. Copying or storing of any Content other than personal, noncommercial use is expressly prohibited without prior written permission from Company or from the copyright holder identified in such Content's copyright notice. If you link to the Website, Company may revoke your right to so link at any time, at Company's sole discretion. Company reserves the right to require prior written consent before linking to the Website. In the course of using the Services, you and other users may provide information which may be used by Company in connection with the Services and which may be visible to certain other users. You understand that by posting information or content on the Services or otherwise providing content, materials or information to Company or in connection with the Services (collectively, "User Submissions"), Company hereby is and shall be granted a non exclusive, worldwide, royalty free, perpetual, irrevocable, sublicenseable and transferable right to fully exploit such User Submissions (including all related intellectual property rights) in connection with the Services and Company's (and its successors' and assigns') business, including without limitation for promoting and redistributing part or all of the Services (and derivative works thereof) in any media formats and through any media channels; however, Company will only share your personally identifiable information in accordance with Company's privacy policy in effect from time to time and located at [chooseenergy.com/privacy-policy](http://chooseenergy.com/privacy-policy). You also hereby do and shall grant each user of the Services a non-exclusive license to access your User Submissions through the Services, and to use, modify, reproduce, distribute, prepare derivative works of, display and perform such User Submissions as permitted through the functionality of the Services and under this Agreement. Furthermore, you understand that Company retains the right to reformat, modify, create derivative works of, excerpt, and translate any User Submissions submitted by you. For clarity, the foregoing license grant to Company does not affect your ownership of or right to grant additional non-exclusive licenses to the material in your User Submissions, unless otherwise agreed in writing. You understand that all information publicly posted or privately transmitted through the Services is the sole responsibility of the person from which such content originated and that Company will not be liable for any errors or omissions in any content. You understand that Company cannot guarantee the identity of any other users**

with whom you may interact in the course of using the Services. Additionally, Company cannot guarantee the authenticity of any data which users or energy providers may provide about themselves. You acknowledge that all Content accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to any party resulting therefrom. Under no circumstances will Company be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred in connection with use of or exposure to any Content posted, emailed, accessed, transmitted, or otherwise made available via the Services.

**4. Restrictions.** You warrant, represent and agree that you will not contribute any Content or otherwise use the Services in a manner that (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any law, statute, ordinance or regulation; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable; (iv) involves commercial activities and/or sales without Company's prior written consent such as contests, sweepstakes, barter, advertising, or pyramid schemes; (v) impersonates any person or entity, including without limitation any employee or representative of Company; or (vi) contains a virus, trojan horse, worm, time bomb, or other harmful computer code, file, or program. Company reserves the right to remove any Content from the Services at any time, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if Company is concerned that you may have breached the immediately preceding sentence), or for no reason at all. You, not Company, remain solely responsible for all Content that you upload, post, email, transmit, or otherwise disseminate using, or in connection with, the Services, and you warrant that you possess all rights necessary to provide such content to Company and to grant Company the rights to use such information in connection with the Services and as otherwise provided herein. You are responsible for all of your activity in connection with the Services. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your right to access or use the Services. You may not post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private information from any other user of the Services. Use of the Services to violate the security of any computer network, crack passwords or security encryption codes, transfer or store illegal material (including material that may be considered threatening or obscene), or engage in any kind of illegal activity is expressly prohibited. You will not run Maillist, Listserv, any form of auto-responder, or "spam" on the Services, or any processes that run or are activated while you are not logged on to the Services, or that otherwise interfere with the proper working of or place an unreasonable load on the Services' infrastructure. Further, the use of manual or automated software, devices, or other processes to "crawl," "scrape," or "spider" any portion of the Services is strictly prohibited. You will not decompile, reverse engineer, or otherwise attempt to obtain the source code of the Services. You will be responsible for withholding, filing, and reporting all taxes, duties and other governmental assessments associated with your activity in connection with the Services. You understand and agree that Company shall have the sole right to decide whether you are in violation of any of the restrictions set forth in this Section, and shall have sole discretion regarding the course of action to take in connection therewith.

**5. Warranty Disclaimer.** Company has no special relationship with or fiduciary duty

to you. You acknowledge that Company has no control over, and no duty to take any action regarding: which users gain access to the Services; what Content you access via the Services; what effects the Content may have on you; how you may interpret or use the Content; or what actions you may take as a result of having been exposed to the Content. You release Company from all liability for you having acquired or not acquired Content through the Services. The Services may contain, or direct you to websites containing, information that some people may find offensive or inappropriate. Company makes no representations concerning any content contained in or accessed through the Services, and Company will not be responsible or liable for the accuracy, copyright compliance, legality or decency of material contained in or accessed through the Services. Company makes no representations or warranties regarding the accuracy of descriptions anywhere on the Services, or regarding suggestions or recommendations of services or products offered or purchased through the Services. Products and services purchased (whether or not following such recommendations and suggestions) are provided “AS IS” without any warranty of any kind from Company or others unless, with respect to others (only), otherwise made expressly and unambiguously in writing by a designated third party for a specific product or service. THE SERVICES, CONTENT, WEBSITE, PRODUCTS AND SERVICES OBTAINED THROUGH THE WEBSITE, AND ANY SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

6. **Privacy.** For information regarding Company’s treatment of personally identifiable information, please review Company’s current Privacy Policy at [chooseenergy.com/privacy-policy](http://chooseenergy.com/privacy-policy), which is hereby incorporated by reference; your acceptance of this Agreement constitutes your acceptance and agreement to be bound by Company’s Privacy Policy.
7. **Registration and Security.** As a condition to using some aspects of the Services, you may be required to register with Company and select a password and user name (“Company User ID”). You shall provide Company with accurate, complete, and updated registration information. Failure to do so shall constitute a breach of this Agreement, which may result in immediate termination of your account. You may not (i) select or use as a Company User ID a name of another person with the intent to impersonate that person; or (ii) use as a Company User ID a name subject to any rights of a person other than you without appropriate authorization. Company reserves the right to refuse registration of or cancel a Company User ID in its discretion. You shall be responsible for maintaining the confidentiality of your password.
8. **Indemnity.** You will indemnify and hold Company, its parents, subsidiaries, affiliates, officers, and employees harmless (including, without limitation, from all damages, liabilities, settlements, costs and attorneys’ fees) from any claim or demand made by any third party due to or arising out of your access to the Services, use of the Services, your violation of this Agreement, or the infringement by you or any third party using your account of any intellectual property or other right of any person or entity.
9. **No Endorsement or Affiliation.** Company provides no guarantee as to the quality of any of the energy providers found on the Services, nor does Company

endorse any energy providers. Company does not provide any advice regarding which energy providers you should use. Company is not a representative of or agent for either you or any energy provider and does not act on either's behalf.

10. **Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY OR ITS SUPPLIERS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE WITH RESPECT TO THE WEBSITE OR THE SERVICES OR THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNT IN THE AGGREGATE IN EXCESS OF THE GREATER OF \$100 OR THE FEES PAID BY YOU FOR THE SERVICES AND ANY PRODUCTS OR SERVICES PURCHASED THROUGH THE SERVICES DURING THE 12-MONTH PERIOD PRECEDING THE APPLICABLE CLAIM; (II) FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER; (III) FOR DATA LOSS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; OR (IV) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.**
11. **Fees and Payment. Although our Services are currently free to users, Company reserves the right to require payment of fees for certain or all Services. You shall pay all applicable fees, as described on the Website in connection with such Services selected by you. Company reserves the right to change its price list and to institute new charges at any time, upon notice to you, which may be sent by email or posted on the Website. Your use of the Services following such notification constitutes your acceptance of any new or increased charges. Any fees paid hereunder are non-refundable.**
12. **Interaction with Third Parties. The Services may contain links to third party websites or services ("Third Party Services") that are not owned or controlled by Company. When you access Third Party Services, you do so at your own risk. You hereby represent and warrant that you have read and agree to be bound by all applicable policies of any Third Party Services relating to your use of the Services and that you will act in accordance with those policies, in addition to your obligations under this Agreement. Company has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any Third Party Services. In addition, Company will not and cannot monitor, verify, censor or edit the content of any Third Party Service. By using the Services, you expressly relieve and hold harmless Company from any and all liability arising from your use of any Third Party Service. Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Company shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between participants on this site, or between users and any third party, you understand and agree that Company is under no obligation to become involved. In the event that you have a dispute with one or more other users or third parties, you hereby release Company, its officers, employees, agents, and successors in rights from claims, demands, and damages (actual and consequential) of every kind or nature, known or**

unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes. If you are a California resident, you shall and hereby do waive California Civil Code Section 1542, which says: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor.”

13. **Termination.** This Agreement shall remain in full force and effect while you use the Services. You may terminate your use of the Services at any time. Company may terminate or suspend your access to the Services or your membership at any time, for any reason, and without warning, which may result in the forfeiture and destruction of all information associated with your membership. Company may also terminate or suspend any and all Services and access to the Website immediately, without prior notice or liability, if you breach any of the terms or conditions of this Agreement. Upon termination of your account, your right to use the Services, access the Website, and any Content will immediately cease. All provisions of this Agreement which, by their nature, should survive termination, shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.
14. **Miscellaneous.** The failure of either party to exercise, in any respect, any right provided for herein shall not be deemed a waiver of any further rights hereunder. Company shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Company’s reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including “line-noise” interference). If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by you except with Company’s prior written consent. Company may transfer, assign or delegate this Agreement and its rights and obligations without consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind Company in any respect whatsoever. Headings for each section have been included above for your convenience, but such headings do not have any legal meaning, and may not accurately reflect the content of the provisions they precede. You and Company agree there are no third party beneficiaries intended under this Agreement.
15. **Arbitration; Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions thereof. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in San Francisco County, California, using the English language in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Streamlined Arbitration Rules and Procedures of JAMS. Judgment upon the

award so rendered may be entered in a court having jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California.

16. **Copyright Dispute Policy.** Company has adopted the following general policy toward copyright infringement in accordance with the Digital Millennium Copyright Act or DMCA (posted at [www.lcweb.loc.gov/copyright/legislation/dmca.pdf](http://www.lcweb.loc.gov/copyright/legislation/dmca.pdf)). The address of Company's Designated Agent to Receive Notification of Claimed Infringement ("Designated Agent") is listed at the end of this Section. It is Company's policy to (1) block access to or remove material that it believes in good faith to be copyrighted material that has been illegally copied and distributed by any of our advertisers, affiliates, content providers, members or users; and (2) remove and discontinue service to repeat offenders.

**A. Procedure for Reporting Copyright Infringements:**

If you believe that material or content residing on or accessible through the Services infringes a copyright, please send a notice of copyright infringement containing the following information to the Designated Agent listed below:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed;
2. Identification of works or materials being infringed;
3. Identification of the material that is claimed to be infringing including information regarding the location of the infringing materials that the copyright owner seeks to have removed, with sufficient detail so that Company is capable of finding and verifying its existence;
4. Contact information about the notifier including address, telephone number and, if available, email address;
5. A statement that the notifier has a good faith belief that the material identified in (3) is not authorized by the copyright owner, its agent, or the law; and
6. A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the copyright owner.

**B. Once Proper Bona Fide Infringement Notification is Received by the Designated Agent:**

It is Company's policy:

1. to remove or disable access to the infringing material;
2. to notify the content provider, member or user that it has removed or disabled access to the material; and
3. that repeat offenders will have the infringing material removed from the system and that Company will terminate such content provider's, member's or user's access to the Services.

**C. Procedure to Supply a Counter-Notice to the Designated Agent:**

If the content provider, member or user believes that the material that was removed (or to which access was disabled) is not infringing, or the content provider, member or user believes that it has the right to post and use such material from the copyright owner, the copyright owner's agent, or, pursuant to the law, the content provider, member, or user, must send a counter-notice containing the following information to the Designated Agent listed below:

1. A physical or electronic signature of the content provider, member or user;
2. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or disabled;

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com

3. A statement that the content provider, member or user has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; and
  4. Content provider's, member's or user's name, address, telephone number, and, if available, email address, and a statement that such person or entity consents to the jurisdiction of the Federal Court for the judicial district in which the content provider's, member's or user's address is located, or, if the content provider's, member's or user's address is located outside the United States, for any judicial district in which Company is located, and that such person or entity will accept service of process from the person who provided notification of the alleged infringement.
17. If a counter-notice is received by the Designated Agent, Company may send a copy of the counter-notice to the original complaining party informing that person that Company may replace the removed material or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed material may be replaced or access to it restored in 10 to 14 business days or more after receipt of the counter-notice, at Company's discretion. Please contact Company's Designated Agent to Receive Notification of Claimed Infringement at the following address: support@chooseenergy.com
18. Contact. If you have any questions, complaints, or claims with respect to the Services, you may contact us at support@chooseenergy.com.  
Effective Date: September 17th, 2012

#### **Attachment 6 – Natural Gas Disclosure – Not Applicable**

Given that Choose Energy will not render or take ownership of natural gas and has no plans to become a retail natural gas provider, Choose Energy is not filing a natural gas supply disclosure. This disclosure is not relatable to our business model as Choose Energy is solely a lead generation partner for retail natural gas providers.

#### **Financial Information**

#### **Attachment 7 – Organizational Structure**

See attachments 13 and 15.

Choose Energy, Inc. has no parent, affiliated, or subsidiary companies.

## Attachment 8 – Financial Statement Information

### Choose Energy Financial Summary

	FY 2012	Jan-Aug 2013
<b>Income Statement</b>		
Total Revenue	\$ 851,522	\$ 856,789
Total Operating Expense	\$ 3,146,633	\$ 2,999,453
Net Income / (Loss)	\$ (2,306,082)	\$ (2,170,845)

	Dec-12	Aug-13
<b>Balance Sheet</b>		
Total Assets	\$ 1,592,857	\$ 7,042,226
Total Liabilities	\$ 176,931	\$ 1,286,000
Total Equity	\$ 1,415,926	\$ 5,756,226

	FY 2012	Jan-Aug 2013
<b>Cash flow summary</b>		
Cash provided by (used in) Operating Activities	\$ (2,225,164)	\$ (1,064,010)
Cash provided by Investing Activities	\$ 463,796	\$ 10,533
Cash provided by (used in) Financing Activities	\$ 3,207,157	\$ -

Choose Energy, Inc. is a private company and has no parent company. As a result, we are not required by the SEC to make 10-K/8-K filings, and therefore have no SEC filings available to share with the State of Pennsylvania.

## Attachment 9 – Credit Information

Choose Energy, Inc. has a neutral credit score as the company maintains essentially zero payables. With little outstanding credit, the company's credit history is limited. Additionally, the company is well-capitalized and intends to maintain limited debtor positions into the future.





**Business Credit Advantage<sup>SM</sup> Report**

as of: 09/18/13 13:51 ET

**Choose Energy, LLC**

**Address:** 619 Sword Bridge Dr  
 Lewisville, TX 75058-5534  
 United States

**SIC Code:** 1382-Oil & Gas Exploration  
 Services

**Experian BIN:** 889426936

**Business Type:** Corporation

**Experian File Established:** July 2008

**Experian Years on File:** 5 Years

**Agent:** Jerry C. Dyess Jr

**Years In Business:** More than 5 Years

**Agent Address:** 2707 Queen Elaine Drive  
 Lewisville, TX

**Total Employees:** 3

**Family Linkage:**

**Sales:** \$908,000

**Filing Data Provided by:** Texas

**Ultimate Parent** Choose Energy, LLC  
 619 Sword Bridge Dr  
 Lewisville, TX

**Date of Incorporation:** 06/05/2008

**Branches / Alternative Locations** Choose Energy, LLC  
 3740 N Josey Ln Ste 114  
 Carrollton, TX

Choose Energy, LLC  
 2707 Queen Elaine Dr  
 Lewisville, TX

**UCC Filings (see detail):** 2

This location does not yet have an estimated Days Beyond Terms (DBT), or a Payment Trend Indicator. This is often the result of too few Payment Tradelines.

**X Businesses Scoring Worse:** 27%

✓ Bankruptcies: 0

✓ Liens: 0

✓ Judgments Filed: 0

✓ Collections: 0

**Credit Summary**

**Credit Ranking Score: 27**

High Risk Low Risk

The objective of the Credit Ranking Score is to predict payment behavior. High Risk means that there is a significant probability of delinquent payment. Low Risk means that there is a good probability of on-time payment.

**Key Score Factors:**

- Nbr of active commercial accts within the last 12 mos.
- Number of commercial accounts with net 1-30 days term.
- Number of recently active commercial accounts.

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com

• Number of commercial accounts including commercial leases.

**Recommended Action:** Medium Risk

**UCC Filings**

---

Date: 09/10/2013  
Filing Number: 1300287079  
Jurisdiction: Sec Of State TX  
Secured Party: JPMORGAN CHASE BANK, NA KY LOUISVILLE 40232 COLLATERAL MGMT  
Activity: Terminated

Date: 09/13/2011  
Filing Number: 110026925935  
Jurisdiction: Sec Of State TX  
Secured Party: JPMORGAN CHASE BANK, NA KY LOUISVILLE 40232 COLLATERAL MGMT  
Activity: Filed

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**Attachment 10 – Audited Financial Statements – Not Available**

Choose Energy, Inc. does not have audited financial statements. Those statements provided in this application are certified by the company's officers.

**Attachment 11 – Financial Fitness**

Choose Energy raised \$7.5 million in capital from venture capital investors in November 2013. (Please see: <http://www.kpcb.com/news/1942-choose-energy-raises-7-5-m-and-appoints-kerry-cooper-as-ceo>.)

**Attachment 12 – Proof of Compliance with Bonding/Credit Requirements**

Below please find scanned copies of the bonding letters from each NGDC listed in the application:



# VALLEY ENERGY

523 S. Keystone Avenuc, P.O. Box 340, Sayre, PA 18840  
800/998-4427 • 570/888-9664 • FAX 570/888-6199

October 10, 2013

Mr. John Tough, Director of Business Development  
Choose Energy, Inc.  
330 Townsend St., Suite 102  
San Francisco, CA 94107

Dear Mr. Tough:

We understand that Choose Energy, Inc. has applied with the Pennsylvania Public Utility Commission to supply natural gas services to the public in Pennsylvania including our company's service area.

Because Choose Energy, Inc. intends to only provide natural gas aggregating, brokering and consulting services at this time, we have determined that Choose Energy, Inc. will not be required to post a bond or other form of financial security instrument to provide these services in our service area. However, if the services provided or failure to meet our requirements for credit worthiness changes in the future, we reserve the right to require security from Choose Energy, Inc. as deemed appropriate.

If you have any questions, please contact Mrs. Marjorie Johnston at 570-888-9664.

Sincerely,

A handwritten signature in black ink, appearing to read 'RJC', written over a horizontal line.

Robert J. Crocker  
President & CEO

RJC/ss

cc: M. Johnston, Valley Energy

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com



November 13, 2013

Choose Energy, Inc.  
Ethan Wais  
330 Townsend St. Suite 102  
San Francisco, CA 94107

Dear Mr. Wais:

We are pleased that CHOOSE ENERGY, INC (“CHOOSE ENERGY”) has applied for a license to provide Natural Gas Broker/Marketer Services on the distribution system of Columbia Gas of Pennsylvania, Inc. (“Columbia Gas”).

Under Paragraph 2.4.5 of the Rules Applicable to Distribution Service section of the Tariff of Columbia Gas, CHOOSE ENERGY could be required to provide to Columbia Gas a bond or other financial security instrument in an amount that Columbia Gas determines to be appropriate. CHOOSE ENERGY has indicated only brokering and consulting services will be provided. Therefore, we have determined at this time that CHOOSE ENERGY does not need a bond or other financial security requirement to provide broker natural gas services to Columbia Gas customers.

If the creditworthiness requirement or Columbia Gas' exposure to CHOOSE ENERGY changes in the future, Columbia Gas might deem it appropriate to require CHOOSE ENERGY to provide a bond or other financial security instrument.

Please feel free to contact me at 614-460-6841 should you have any questions regarding a bond or other financial security instrument requirements of Columbia Gas.

Sincerely,

Michele Caddell  
Manager, Supplier Services

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com



**National Fuel**

October 8, 2013

Choose Energy, Inc.  
330 Townsend St. Suite 102  
San Francisco, CA 94107

Re: Security Requirement for Choose Energy, Inc.

Dear Choose Energy, Inc:

National Fuel Gas Distribution Corporation ("NFGDC") is aware that Choose Energy, Inc. ("CEI") has filed an application with the Pennsylvania Public Utility Commission to supply natural gas services to the public in Pennsylvania and specifically within the service territory of NFGDC. As you know, in making such an application, CEI must furnish acceptable security to each utility where CEI will do business. As such, under its tariff, NFGDC could require CEI to provide a bond or other financial security instrument in an amount that NFGDC determines to be appropriate.

However, you have indicated, and it is NFGDC's understanding that CEI intends only to provide natural gas aggregating, brokering and consulting services at this time. You have stated that, in performing these services, CEI will never take title to any delivered natural gas.

Based upon your representations, NFGDC has determined that, at this time, CEI does not need to post a bond or other form of security to operate in its service territory. However, if the services provided by CEI change in the future, NFGDC reserves the right to require security from CEI as it deems appropriate.

If you have any questions concerning the foregoing, please contact me at 716-857-7599.

Yours truly,

A handwritten signature in black ink, appearing to read 'Nathan E. Barnes', written over a white background.

Nathan E. Barnes  
Transportation Services Department



An Exelon Company

October 10th, 2013

Ethan Wais  
Choose Energy, Inc  
330 Townsend St. Ste 102  
San Francisco CA 94107

Re: Bonding Requirements

Dear Ethan Wais:

PECO is aware Choose Energy, Inc has applied for a license to provide brokering and consulting services to commercial and industrial customers on the distribution system of PECO.

In making such an application, Choose Energy, Inc could be required to provide to PECO a bond or other acceptable financial security in an amount that PECO determines to be appropriate. Choose Energy, Inc has indicated that it intends to provide only brokering and consulting services to commercial and industrial customers will not take title to any delivered natural gas; nor will accept any customer payments or deposits. Therefore, PECO has determined at this time that Choose Energy, Inc does not need a bond or other financial security requirement, since they are not directly engaging in business with PECO and only providing brokering or consulting services to PECO customers. However, if the services provided Choose Energy, Inc or the creditworthiness requirement for PECO's exposure to Choose Energy, Inc changes in the future, PECO reserves the right to require Choose Energy, Inc to provide a bond or other financial security instrument.

If you should have any questions regarding this matter, please contact Chris Sauerbaum at 215-841-6422 or myself at 215-841-6452.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carlos P. Thillet".

Carlos P. Thillet  
Manager, Gas Supply and Transportation  
2301 Market St S9-1  
Philadelphia, Pa 19103



205 North Main Street  
Butler, PA 16001

October 11, 2013

John Tough  
Director of Business Development  
Choose Energy, Inc.  
330 Townsend Street  
Suite 102  
San Francisco, CA 9410

Dear Mr. Tough:

This letter serves as notification that Peoples TWP LLC does not require Choose Energy, Inc. to provide a security or credit enhancement at this time. Our decision is based on the fact that your company is not currently operating, and has no immediate plans to operate, a Non-Priority One Pool or a Priority One Pool on the Peoples TWP system. However, if in the future your company desires to establish a Non-Priority One Pool or a Priority One Pool on the Peoples TWP system, it may be required to establish a security or credit enhancement based on the terms set forth under Paragraphs 19 and 20 of the Rules and Regulations of the Peoples TWP Tariff.

If you have any questions feel free to contact me at 724-431-4935 or by email at [Andrew.Wachter@peopletwp.com](mailto:Andrew.Wachter@peopletwp.com).

Sincerely,

Andrew Wachter  
Manager, Rates and Regulatory Affairs  
Peoples TWP LLC

SAFETY + CUSTOMER COMMITMENT + TRUST + COMMUNITY

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com



375 North Shore Drive  
Suite 600  
Pittsburgh, PA 15212

www.peoples-gas.com

October 11, 2013

John Tough  
Director of Business Development  
Choose Energy, Inc.  
330 Townsend Street  
Suite 102  
San Francisco, CA 9410

Dear Mr. Tough:

This letter serves as notification that Peoples Natural Gas Company does not require Choose Energy, Inc. to provide a security or credit enhancement. Our decision is based on the fact that your company is not currently operating, and has no immediate plans to operate, a Non-Priority One Pool or a Priority One Pool on the Peoples Natural Gas system. However, if in the future your company desires to establish a Non-Priority One Pool or a Priority One Pool on the Peoples Natural Gas Company system, it may be required to establish a security or credit enhancement based on the terms set forth under Paragraphs 6 and 7 of the Rules and Regulations of The Peoples Natural Gas Company Supplier Tariff.

If you have any questions feel free to contact me at 412-208-6528 or by email at Lynda.W.Petricevich@peoples-gas.com.

Sincerely,

A handwritten signature in black ink that reads "Lynda W. Petricevich". The signature is written in a cursive style with a large initial "L".

Lynda W. Petricevich  
Manager, Rates and Regulatory Affairs  
Peoples Natural Gas Company LLC

| SAFETY | CUSTOMER COMMITMENT | TRUST | COMMUNITY



Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com

**Philadelphia Gas Works**



Raymond M. Snyder – Vice President, Gas Management  
800 W. Montgomery Avenue, Philadelphia, PA 19122  
Telephone: (215) 684-6405 Fax: (215) 684-6602

October 17, 2013

Mr. Ethan Wais  
Choose Energy, Inc.  
330 Townsend Street, Suite 102  
San Francisco, CA 94107

RE: Security Requirement Bond for Choose Energy, Inc.

Dear Mr. Wais:

Philadelphia Gas Works (PGW) is aware that Choose Energy, Inc. has filed an application with the Pennsylvania Public Utility Commission to supply natural gas services to the public in Pennsylvania and specifically within the services territory of Philadelphia Gas Works.

As you know, in making such an application, Choose Energy, Inc. must furnish acceptable security to each utility where Choose Energy, Inc. will do business. As such, under its tariff Philadelphia Gas Works could require Choose Energy, Inc. to provide a bond or other financial security instrument in an amount that Philadelphia Gas Works determines to be appropriate.

However, you have indicated, and it is Philadelphia Gas Works' understanding, that Choose Energy, Inc. intends only to provide natural gas aggregating, brokering and consulting services at this time. You have stated that, in performing these services, Choose Energy, Inc. will never take title to any delivered natural gas.

Based upon your representations, Philadelphia Gas Works has determined that, at this time, Choose Energy, Inc. does not need to post a bond or other form of security to operate in its services territory. If the services provided by Choose Energy, Inc. should change, Philadelphia Gas Works reserves the right to require security from Choose Energy, Inc. as it deems appropriate.

If you have any questions concerning the foregoing, please contact me at (215) 684-6405.

Sincerely,

A handwritten signature in black ink that reads "Raymond M. Snyder". The signature is written in a cursive, flowing style.

Raymond M. Snyder  
Vice President, Gas Management

RMS:b

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com



UGI Utilities, Inc.  
2525 North 12th Street  
Suite 360  
Post Office Box 12677  
Reading, PA 19612-2677  
(610) 796-3400 Telephone

October 24, 2013

Ethan Wais  
Choose Energy, Inc.  
330 Townsend St.  
Suite 102  
San Francisco, CA 94107

RE: Choose Energy, Inc. application to serve as a broker/marketer

Dear Ms. Wais,

Based on your assertion that Choose Energy, Inc. ("Choose Energy"), is applying with the State of Pennsylvania to operate as a natural gas broker/marketer, UGI Utilities Inc. ("UGIU") has concluded that Choose Energy will not need to post security with UGI-Central Penn Gas ("CPG"), UGI-Penn Natural Gas ("PNG") or UGI Utilities Gas Division ("UGI"). This is based on the declaration that Choose Energy will not be taking title to gas or directly serving end use customers. This conclusion is also contingent on the requirement that Choose Energy will be acting in conjunction with a licensed Natural Gas Supplier who has been approved by the Pennsylvania Public Utility Commission to serve in the applicable UGIU service territories and who has posted the required financial security as specified in the respective UGI tariffs. If Choose Energy wishes to directly serve Choice customers in the service territories of UGI, PNG and/or CPG in the future as a natural gas supplier, it will have to post security as specified in the respective UGI tariffs prior to the commencement of the service.

Please feel free to contact me with any additional questions that you may have.

Sincerely,

A handwritten signature in black ink that reads "David E. Lahoff". The signature is written in a cursive style with a large, prominent "D" and "L".

David E. Lahoff  
Manager, Rates  
UGI Utilities, Inc.

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com



225 North Shore Drive  
Pittsburgh PA 15212-5861  
[www.equitablegas.com](http://www.equitablegas.com)

TEL 412.395.3370

November 5, 2013

Mr. Ethan Wais  
Choose Energy, Inc.  
30 Townsend Street, Suite 102  
San Francisco, CA 94107

Dear Mr. Wais:

We are pleased that Choose Energy, Inc. has applied for a license to provide natural gas broker/marketer services on the distribution system of Equitable Gas Company, LLC ("Equitable").

Choose Energy, Inc. has indicated only brokering and consulting services will be provided. Therefore, we have determined at this time that Choose Energy, Inc. does not need a bond or other financial security requirement to provide these services to Equitable's customers.

If the creditworthiness requirement or Equitable's exposure to Choose Energy, Inc. changes in the future, Equitable may deem it appropriate to require Choose Energy, Inc. to provide a bond or other financial instrument.

Should you have any additional questions or concerns regarding a bond or other financial security instruments of Equitable, please do not hesitate to contact me at (412) 395-3370.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Stanczak", written over a horizontal line.

Matthew D. Stanczak  
Director, Process Improvement

## **Attachment 13 – Leadership and Key Individuals**

### **Individual # 1**

Kerry Cooper, Chief Executive Officer

Kerry comes to Choose Energy with extensive experience in the consumer and retail industry, serving as CMO and COO of ModCloth. Prior to ModCloth she was a leader in Walmart's global e-commerce and multi-channel development efforts. Cooper began her career at McKinsey & Company and earned her undergraduate degree in mechanical engineering from the University of Texas at Austin and an MBA from Harvard University.

Email: kcooper@chooseenergy.com – Number: 415-928-3660

### **Individual # 2**

Jerry Dyess, Chief Commerce Officer

Jerry Dyess has over 15 years experience developing and leading strategies in the information technology and energy procurement industries. As CEO, Jerry oversees the company's business development and marketing campaigns, manages provider relations, and is responsible for driving the company's strategic growth.

Jerry's entrepreneurial career began in 2002 when he cofounded EnergyTX.com in Dallas, Texas at the start of electricity deregulation in Texas. With EnergyTX, Jerry developed partnerships and managed the company's sales and marketing before selling the book of business to Priority Power Management in 2005. Prior to EnergyTX, Jerry held a series of senior business development and management positions in the information technology, Internet and deregulated telecom industries.

Jerry Dyess has been leading ChooseEnergy.com in Texas since 2005, generating tens of thousands of residential and commercial leads for Retail Electricity Providers in the Texas area, cumulatively saving Texas consumers millions of dollars in energy bills.

Email: jdyess@chooseenergy.com – Number: 469-361-2971

### **Individual # 3**

Jay Webster, Chief Product Officer

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com

Jay has over 20 years of experience working in almost every aspect of technology startups. Jay has previously served as Chief Product Officer for Sharethrough & Quova, GM of Lead Generation for Yahoo!, GM of Performance Marketing and CTO for BlueLithium. Jay has a degree in Biology from University of California, Santa Cruz.

#### **Individual # 4**

John Tough, Director of Business Development

Prior to joining Choose Energy, John worked with Kleiner Perkins Caufield & Byers where he focused on platform investments that united the energy and technology industries. John has also spent time at XMS Capital Partners and UBS Investment Bank where he specialized in growth and M&A capital advisory services. John received his B.S. from Duke University in biology and chemistry, and completed his MBA from the University of Chicago Booth School of Business, where he was a recipient of the Class Leadership Award.

#### **Attachment 14 – Accounting Records Contact Information**

##### **Montgomery Coscia Greilich, LLP**

Certified Public Accountants  
2500 Dallas Parkway, Suite 300  
Plano, TX 75093  
O: 972.748.0442 ; F: 972.748.0842

#### **Attachment 15 – Officers Directly Responsible for Operations**

##### **Individual # 1**

Kerry Cooper, Chief Executive Officer

Kerry comes to Choose Energy with extensive experience in the consumer and retail industry, serving as CMO and COO of ModCloth. Prior to ModCloth she was a leader in Walmart's global e-commerce and multi-channel development efforts. Cooper began her career at McKinsey & Company and earned her undergraduate degree in mechanical engineering from the University of Texas at Austin and an MBA from Harvard University.

Email: kcooper@chooseenergy.com – Number: 415-928-3660

##### **Individual # 2**

Jerry Dyess, Chief Commerce Officer

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com

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Jerry's entrepreneurial career began in 2002 when he cofounded EnergyTX.com in Dallas, Texas at the start of electricity deregulation in Texas. With EnergyTX, Jerry developed partnerships and managed the company's sales and marketing before selling the book of business to Priority Power Management in 2005. Prior to EnergyTX, Jerry held a series of senior business development and management positions in the information technology, Internet and deregulated telecom industries.

Jerry Dyess has been leading ChooseEnergy.com in Texas since 2005, generating tens of thousands of residential and commercial leads for Retail Electricity Providers in the Texas area, cumulatively saving Texas consumers millions of dollars in energy bills.

Email: [jdyess@chooseenergy.com](mailto:jdyess@chooseenergy.com) – Number: 469-361-2971

### **Individual # 3**

Jay Webster, Chief Product Officer

Jay has over 20 years of experience working in almost every aspect of technology startups. Jay has previously served as Chief Product Officer for Sharethrough & Quova, GM of Lead Generation for Yahoo!, GM of Performance Marketing and CTO for BlueLithium. Jay has a degree in Biology from University of California, Santa Cruz.

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John Tough, Director of Business Development

Prior to joining Choose Energy, John worked with Kleiner Perkins Caufield & Byers where he focused on platform investments that united the energy and technology industries. John has also spent time at XMS Capital Partners and UBS Investment Bank where he specialized in growth and M&A capital advisory services. John received his B.S. from Duke University in biology and chemistry, and completed his MBA from the University of Chicago Booth School of Business, where he was a recipient of the Class Leadership Award.

### **Attachment 16 – Federal Energy Licences – Not Applicable**

Choose Energy, Inc. has no federal energy licenses.

### **Attachment 17 – Staffing and Employee Training**

The entirety of Choose Energy's staff is dedicated to supporting the website through which consumers can shop for competitive energy rates across eight states. With a full-time staff of software engineers, we create and maintain the best consumer experience for this type of service. Our toll-free number and support email address are available to consumers nationwide, through which they can get in touch with one of our trained staff members. We also have educational materials available on our site to help consumers better understand the deregulated market and their power to choose.

### **Attachment 18 – Business Plans**

#### **Description of the Business**

Founded in 2008, Choose Energy, Inc. is a privately funded company that offers online comparison-shopping for electricity and soon natural gas, to residential and small commercial consumers in states with deregulated energy providers. We make this possible by enabling the power and gas companies to bid on consumers' power and gas needs, for their home or business. We currently serve consumers in eight states across the country.

We do not contract with customers to combine electric or natural gas loads. We do assist in the representation for customers to purchase electricity from retail electricity providers.

Over the past three years, over 4 million people have visited ChooseEnergy.com to search for energy related news, education, and the ability to choose their electricity provider. Of those 4 million customers, over 150,000 individuals have successfully used the ChooseEnergy.com operating platform to securely select their retail electricity provider.

In November 2012 the Choose Energy team dedicated millions of dollars to update the site, thereby improving user experience, enhancing security features and having real-time API communications with the back-end EDI systems of the electricity suppliers. By dedicating over \$2 million to this technical integration, the Choose Energy team worked with the leaders at each of the electricity and natural gas providers to understand the best requirements upon which to build the system to scale into the future. Therefore, as the Choose Energy team looks to launch our natural gas platform, we are very confident that we will be offering the same secure,

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com

trustworthy and objective service that we currently offer for electricity customers.

Finally, our leadership team is the premier combination of energy and technology. Through Jerry Dyess, a technology and energy visionary in the deregulated markets, and the rest of our senior management, including experience at: Stephens Capital Partners Retail Electricity, Kleiner Perkins Caufield and Byers, we respect and are excited about the services that Choose Energy will be bringing to the market. It is our intention to serve over 100,000 residential natural gas customers throughout the United States over the next 24 months.

### **Company History**

Choose Energy, Inc. is a privately funded company with a vision to offer an unbiased shopping experience for electricity and natural gas. The company has expanded its services from Texas to the entire deregulated energy network, including Pennsylvania.

Historically the firm has focused on the Texas market given the state's early competitive supply adoption. In these markets, Jerry Dyess and the rest of his Choose Energy team have built a robust technology platform that utilizes industry API to offer the best, real-time criterion selection for the consumer. Over the past few years the Choose team has perfected these technologies and built a steady network with various utilities and REPs, gaining trust and growing relationships in the northeast and Midwest.

### **Mission**

By helping more people switch to lower cost and more competitive power and gas, we will help lower energy prices through competition and help our customers lower their energy bill. This process also helps consumers save time. Many people simply don't know they have the power to choose when it comes to their electric or natural gas company. We aim to change all of that and help create awareness and competition by allowing consumers of electricity and natural gas to select lower prices, better customer care, and more flexible payment and billing options from an easy to understand comparison chart. Our aim is to empower consumers across the nation's deregulated energy markets.

### **Technology**

Choose Energy has created the most advanced system that allows customers to shop for energy rates based on price, provider, energy type and many other factors. This allows consumers to gain a greater understanding of their energy choices to make it easier to select an energy provider.

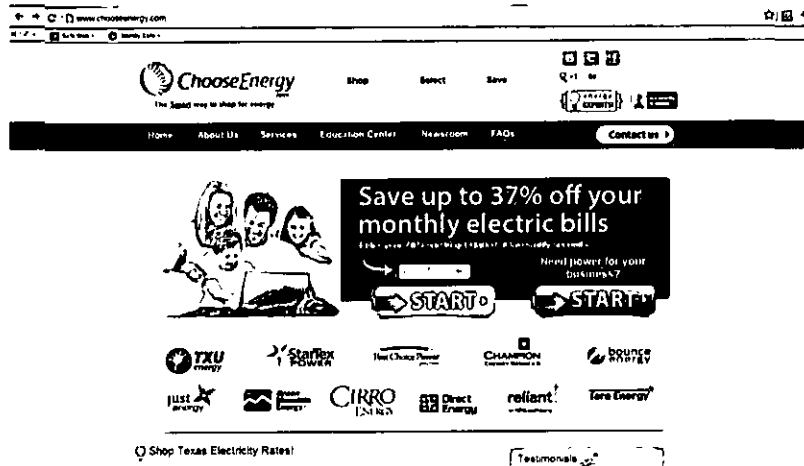


The Company also continues to innovate and provide outstanding power choices for residential and commercial energy customers and now for customers nationwide. It is our mission to provide consumers with the most up to date information available to help them exercise their power to choose. Everything moves fast in today's world. While it is clear business and residential customers want choice - they also want their information quickly. Choose Energy has created solutions for the deregulated energy market that have made it a leader in online customer acquisitions. More and more customers are looking to the Internet to make all of their buying decisions - including energy. Choose Energy has built the technology and partnerships to take advantage of this and make it the market leader in this high growth segment.

Choose Energy also operates a number of additional energy marketing websites including EnergyTX.com, ElectricityTX.com, PowerToChooseGreen.com, TexasPowerCompany.com, PowerIllinois.com and many others that focus on energy savings for consumers and businesses. While our other sites have more focus on customer education and creating awareness for the consumer, all are dedicated to helping lower consumers' power costs. The addition of multiple websites and our recent expansion into additional deregulated energy markets, Choose Energy is poised to become the most used website for energy related transactions in the U.S today.

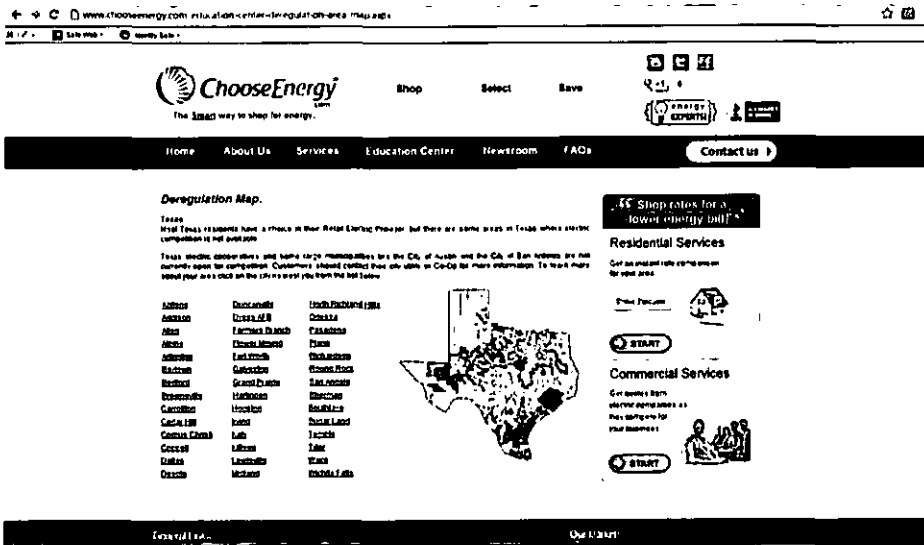
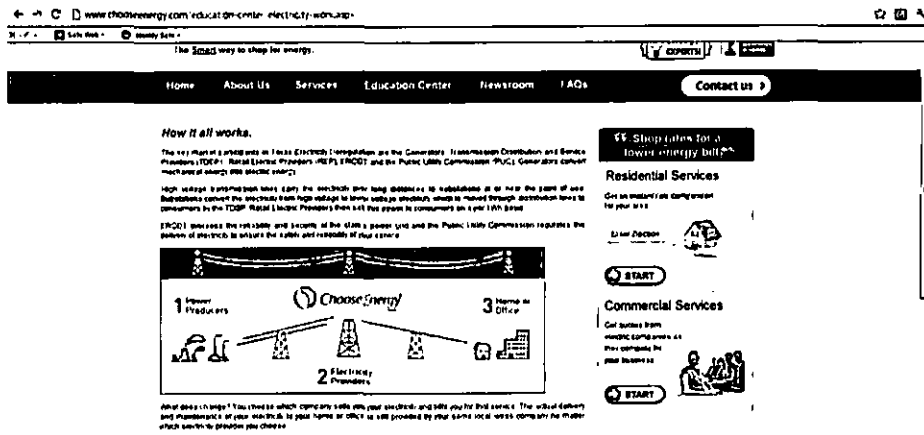
### **About the Site: Marketing and Customer Focus**

Choose Energy aims to make our website easy to navigate for the consumer. We have performed significant testing to maximize site operations and simplify the process of selecting energy for the consumer or commercial entity.



In addition, we have a full section to our website dedicated to educating the consumer about the intricacies, methods, and safety of the competitive retail electricity and natural gas markets. The content we post on our website helps consumers gain a better understanding of the way the deregulated market works and those consumers can then easily reach out to us at Choose Energy through our [support@chooseenergy.com](mailto:support@chooseenergy.com) email address or our toll-free number (1.800.333.1411) to ask any more questions.

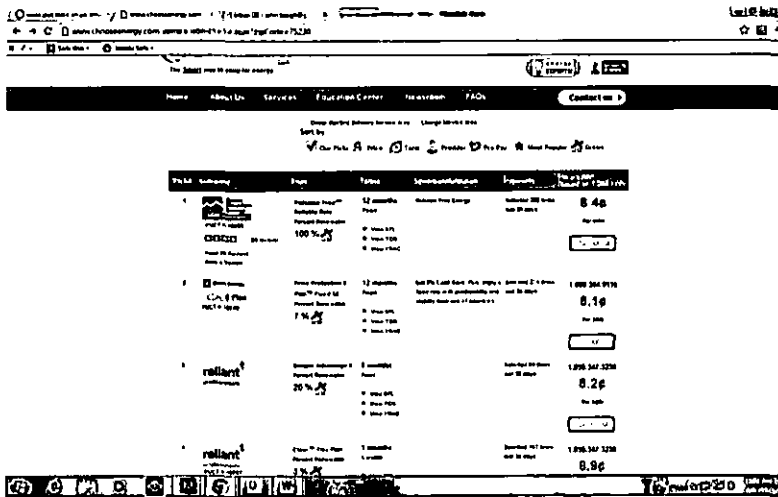
Below are a few screenshots of the education pages on deregulated electricity markets:



### **About the Site: Consumer Sign-Up Process**

Once customers are comfortable with the Choose Energy platform, they are led through a series of steps, inputting the requisite information (such as: zip code, address and estimated energy usage). Choose Energy utilizes the latest in remote desktop server security systems to protect and secure customer information. Choose Energy is compliant with all PII server security requirements.

When browsing, the customer can select which options in their electricity and natural gas plans are most important to them, either: price, term, provider, pre-pay, most popular, or green options. And with those preferences selected, the consumer receives an optimized outcome specified precisely for their interests. Below is a sample screenshot of a selection page:



### **Intended Operations in Pennsylvania**

We at Choose Energy, Inc. have brought our historical expertise in SEO, SEM and other direct and indirect sales channels to the Pennsylvania retail electricity market. We have assisted Pennsylvania's REPs enhance their existing customer acquisition methods by driving better understanding of the consumer's options, data and selection criterion.

We now aim to adapt the lessons that we have learned in Pennsylvania's electric market to the state's natural gas market, and further educate and convert those consumers that are not benefitting from competitive natural gas supply.

Choose Energy, Inc. – Pennsylvania (Natural Gas Broker)  
Filled out by: John Tough, 415-829-3660, jtough@chooseenergy.com

***Appendices from Application***

**Appendix A – Tax Certification Statement**

TO: PUC (PUC)  
Agency: PUC  
Floor:  
External Carrier: UPS

11/25/2013 9:27:53 AM

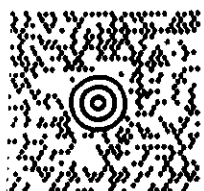


ETHAN DANIEL WAIS  
(203) 809-3848  
THE UPS STORE #4592  
360 4TH ST  
SAN FRANCISCO CA 94107-1618

1 LBS 1 OF 1  
SHP WT: 1 LBS  
DATE: 22 NOV 2013

SHIP KEYSTONE BUILDING  
TO: SECRETARY OF THE COMMISSION  
2ND FLOOR, ROOM N201  
400 NORTH ST

HARRISBURG PA 17120-0200



PA 171 9-20



JPS NEXT DAY AIR SAVER **1P**  
TRACKING #: 1Z 03W V27 13 7114 9577



BILLING: P/P

ISH 13.00N E2844 45.5V 10/2013

SECRETARY OF COMMISSION  
400 NORTH ST

HARRISBURG PA 17120-0200

P: SILVER S: BLUE I: B52

54B - FIDIL

1Z03WV271371149577 1500  
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