

November 4, 2019

677 BROADWAY, SUITE 1101  
ALBANY, NY 12207  
(518) 427-9700

**MICHELLE K. PIASECKI**

DIRECT: (518) 701-2741  
FAX: (518) 427-0235  
MPIASECKI@HARRISBEACH.COM

**VIA ELECTRONIC FILING**

Hon. Rosemary Chiavetta  
Secretary to the Commission  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

**RE: Docket No. A-2019-3012703: SmartestEnergy US LLC Electric Generation  
Supplier License Application**

Dear Secretary Chiavetta:

We represent SmartestEnergy US LLC (“SEUS”) in the above-referenced matter. On October 11, 2019, the Public Utility Commission (the “PUC”) requested certain information from SEUS related to its application for an Electric Generation Supplier license. Below and attached please find responses to each of the PUC’s requests.

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  - A. Please explain if the Marubeni Corporation listed in Section 3.a, Affiliates' Exhibit 1 of the application is the same Marubeni Corporation that was fined by the U.S. Department of Justice for violations of the Foreign Corrupt Practices Act in 2014. If yes, please provide the details of the legal case(s) and the fine(s) imposed.
  - B. Please explain if the applicant is related to the Marubeni America Corporation that was fined by the U.S. Commodity Futures Trading Commission in 2015. If yes, please provide details of the legal case and the fines imposed. If yes, please also provide an updated application page for Section 3.a, Affiliates with the appropriate corrections.

- C. Please provide any other updates, as necessary, to include all cases for itself, its parent company, and all affiliates. Please also update Section 3.a, Affiliates with any additional affiliates listed.

*Response: With respect to questions A and B above, yes, it is the same company. However, please be aware that neither Marubeni Corporation, nor its leadership, has any active role in SEUS's day to day operations. Please see Attachment 4 with further information. With respect to question C, please see Attachment 5 for a complete list of all SEUS's U.S. affiliates. Please note that SEUS has no relationship, involvement, oversight or visibility into the business of any of these affiliates.*

9. Reference Application, Section 7.a, Financial Fitness – Applicant provided a Letter of Credit containing items that must be corrected. The applicant:
  - A. Should use the template supplied as Appendix G in the EGS application as a guide for the language, style, format and required signatures for the Letter of Credit.
  - B. Must use a branch location in the United States (rather than the Tokyo branch location) in the sections for 'Issuing bank', 'Place of Issue', 'Credit Available With', and 'Drawn On'.
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  - D. Must provide an updated financial security with the appropriate corrections.

*Response: An updated letter of credit is being separately filed with the Secretary's office.*

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explanation on how the applicant plans on financing its EGS business, including electricity supply.

Response: *Please see Attachment 8, which includes a written statement from Marubeni Finance America LLC regarding its line of credit to SEUS. As of today, SEUS has not used any of the \$15M credit line with Marubeni Finance Americas.*

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Attached please also find SEUS's attestation consistent with 52 Pa Code § 1.36. An original of the attestation has also been sent separately to the Secretary's office. Please contact me if you have any questions about this filing. Thank you for your attention in this matter.

Respectfully submitted,

/s/ Michelle K. Piasecki

Michelle K. Piasecki

Enclosure

# ATTACHMENT 1

## BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of SmartestEnergy US LLC, d/b/a \_\_\_\_\_, for approval to offer, render, furnish, or supply electricity or electric generation services as a supplier of electricity to the public in the Commonwealth of Pennsylvania (Pennsylvania).

To the Pennsylvania Public Utility Commission:

### 1. IDENTIFICATION AND CONTACT INFORMATION

- a. **IDENTITY OF THE APPLICANT:** Provide name (including any fictitious name or d/b/a), primary address, web address, and telephone number of Applicant:

SmartestEnergy US LLC 333 W. Washington St. Suite 140 Syracuse, NY 13202  
[www.SmartestEnergy.com](http://www.SmartestEnergy.com)  
1-800-448-0995

- b. **PENNSYLVANIA ADDRESS / REGISTERED AGENT:** If the Applicant maintains a primary address outside of Pennsylvania, provide the name, address, telephone number, and fax number of the Applicant's secondary office within Pennsylvania. If the Applicant does not maintain a physical location within Pennsylvania, provide the name, address, telephone number, and fax number of the Applicant's Registered Agent within Pennsylvania.

Corporation Service Company  
2595 Interstate Drive, Suite 103  
Harrisburg, PA 17110  
Phone: 800-927-9801  
Fax: 302-636-5425

- c. **REGULATORY CONTACT:** Provide the name, title, address, telephone number, fax number, and e-mail address of the person to whom questions about this Application should be addressed.

Mallery Jacobs  
Accountant  
333 W. Washington St. Suite 140  
Syracuse, NY 13202  
315-498-1263  
[Regulatory-affairs-US@smartestenergy.com](mailto:Regulatory-affairs-US@smartestenergy.com)  
[Mallery-Jacobs@smartestenergy.com](mailto:Mallery-Jacobs@smartestenergy.com)

- d. **ATTORNEY:** Provide the name, address, telephone number, fax number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so.

**John T. McManus**  
HARRIS BEACH PLLC  
677 Broadway, Suite 1101  
Albany, NY 12207  
518.427.0235 Fax  
518.427.9700 Main  
[jmcmamus@HarrisBeach.com](mailto:jmcmamus@HarrisBeach.com)

- e. **CONTACTS FOR CONSUMER SERVICE AND COMPLAINTS: (Required of ALL Applicants)** Provide the name, title, address, telephone number, FAX number, and e-mail OF THE PERSON AND AN ALTERNATE

**PERSON (2 REQUIRED)** responsible for addressing customer complaints. These persons will ordinarily be the initial point(s) of contact for resolving complaints filed with the Applicant, the Electric Distribution Company, the Pennsylvania Public Utility Commission, or other agencies. The main contact's information will be listed on the Commission website list of licensed EGSs.

Jessica Gilbert  
Partner Account & Customer Care Manager  
333 W. Washington St. Suite 140  
Syracuse, NY 13202  
[Jessica-Gilbert@smartestenergy.com](mailto:Jessica-Gilbert@smartestenergy.com)  
315-498-1251

Jim Cifaratta  
Senior Vice President  
333 W. Washington St. Suite 140  
Syracuse, NY 13202  
[Jim-Cifaratta@smartestenergy.com](mailto:Jim-Cifaratta@smartestenergy.com)  
315-498-1251

## 2. **BUSINESS ENTITY FILINGS AND REGISTRATION**

a. **FICTITIOUS NAME:** *(Select appropriate statement and provide supporting documentation as listed.)*

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

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

**OR**

The Applicant will not be using a fictitious name.

b. **BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:**

*(Select appropriate statement and provide supporting documentation. As well, understand that Domestic means being formed within Pennsylvania and foreign means being formed outside Pennsylvania.)*

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.

- Provide the state in which the business is organized/formed and provide a copy of the Applicant's charter documentation.
- \* 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 (15 Pa. C.S. §1308)
- 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 (Describe):

- Provide proof of compliance with appropriate Department of State filing requirements as indicated above.
- Provide the state in which the business is incorporated/organized/formed and provide a copy of the Applicant's charter documentation.
- Give name and address of officers.
  - Andy Cormie  
Chief Executive Officer  
333 W. Washington St., Suite 140  
Syracuse, New York 13202
  - Ryuichi Noyama  
Chief Operating Officer  
333 W. Washington St., Suite 140  
Syracuse, New York 13202
  - Minako Wakayama  
Secretary  
375 Lexington Ave.  
New York, NY 10017

## 7. FINANCIAL FITNESS

a. **BONDING:** In accordance with 66 Pa. C.S. Section 2809(c)(1)(i), the Applicant is required to file a bond or other instrument to ensure its financial responsibilities and obligations as an EGS. Therefore, the Applicant is...

- Furnishing the **ORIGINAL** of an initial bond, letter of credit or proof of bonding to the Commission in the amount of \$250,000.
- ✓ Furnishing the **ORIGINAL** of another initial security for Commission approval, to ensure financial responsibility, such as a parental guarantee, in the amount of \$250,000.
- For Marketers and Brokers** - Filing for a modification to the \$250,000 requirement and furnishing the **ORIGINAL** of an initial bond, letter of credit or proof of bonding to the Commission in the amount of \$10,000. Applicant is required to provide information supporting an amount less than \$250,000. Such supporting information must include indication that the Applicant will not take title to electricity and will not pay electricity bills on behalf of its customers. Further details for modification may be described as well.

### **CRITICAL BONDING NOTES:**

Applicant is required to maintain a bond or other financial instrument the entire time it maintains an EGS license with the Commonwealth of Pennsylvania. If Applicant's security instrument is not continuous, Applicant **MUST** submit a Rider, Amendment, or Continuation Certificate annually based on the expiration date of its security instrument.

At least sixty days (60) prior to the security instrument's expiration date, Applicant should contact Stephen Jakab at [sjakab@pa.gov](mailto:sjakab@pa.gov) to determine the appropriate bonding amount based on a percentage of Applicant's gross receipts resulting from the sale of generated electricity consumed in Pennsylvania. Once the amount has been determined, Applicant should overnight the updated security instrument(s) at least thirty (30) days prior to the expiration date to ensure adequate time for staff review and approval of the security instrument(s).

Template versions of a continuous bond, fixed-term bond, continuous letter of credit, and parental guarantee are attached at Appendix E, F, G, & H, respectively. Applicant's security must follow language from these examples, and must include the unmodified language outlined in Appendix D. Any deviation from these examples must be identified in the application and may not be acceptable to the Commission.

**b. FINANCIAL RECORDS, STATEMENTS, AND RATINGS:** Applicant must 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. Please see exhibit 1, for affiliates.
- Published Applicant or parent company financial and credit information (i.e. 10Q or 10K). (SEC/EDGAR web addresses are sufficient)
- Applicant's accounting statements, including balance sheet and income statements for the past two years.
- 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, evidence of Moody's, S&P, or Fitch ratings, and/or other independent financial service reports.

Please see Moody's & S&P attached.

- 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. Non applicable, please see financial support.
- Audited financial statements exhibiting accounts over a minimum two year period.
- Bank account statement, tax returns from the previous two years, or any other information that demonstrates Applicant's financial fitness.

**c. SUPPLIER FUNDING METHOD:** If Applicant is operating as anything other than **Broker/Marketer only**, explain how Applicant will fund its operations. Provide all credit agreements, lines of credit, etc., and elaborate on how much is available on each item.

SmartestEnergy US LLC is self-funded.

**d. BROKER PAYMENT STRUCTURE:** If applicant is a broker/marketer, explain how your organization will be collecting your fees.

Not applicable.

**e. ACCOUNTING RECORDS CUSTODIAN:** Provide the name, title, address, telephone number, FAX number, and e-mail address of Applicant's custodian for its accounting records.

Megan Quill  
VP of Finance  
SmartestEnergy US, LLC  
333 W. Washington Ave., Suite 140  
Syracuse, NY 13202  
(315) 498-1264

**f. TAXATION:** Complete the TAX CERTIFICATION STATEMENT attached as Appendix I to this application.

*All sections of the Tax Certification Statement must be completed. Absence (submitting N/A) of any of the TAX identifications numbers (items 7A through 7C) shall be accompanied by supporting documentation or an explanation validating the absence of such information.*

*Items 7A and 7C on the Tax Certification Statement are designated by the Pennsylvania Department of Revenue. Item 7B on the Tax Certification Statement is designated by the Internal Revenue Service.*

# ATTACHMENT 2

# Delaware

Page 1

The First State

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "SMARTESTENERGY US LLC", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF JANUARY, A.D. 2019, AT 6:18 O`CLOCK P.M.*



Jeffrey W. Bullock, Secretary of State

7262896 8100  
SR# 20190650839

Authentication: 202184571  
Date: 02-01-19

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

STATE OF DELAWARE  
LIMITED LIABILITY COMPANY  
CERTIFICATE OF FORMATION  
OF  
SMARTESTENERGY US LLC

The undersigned authorized person hereby adopts the following Certificate of Formation for the purposes of forming a limited liability company pursuant to the Delaware Limited Liability Company Act (6 Del. Code § 18-101 *et seq.*):

FIRST: The name of the limited liability company is SmartestEnergy US LLC (the "*Company*").

SECOND: The address of the registered office and the name of the registered agent of the Company required to be maintained by § 18-104 of the Delaware Limited Liability Company Act are The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation this 31st day of January, 2019.

/s/ Sabrina Rothery  
Sabrina Rothery  
Authorized Person

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**LIMITED LIABILITY COMPANY AGREEMENT**

**of**

**SMARTESTENERGY US LLC,**

a Delaware limited liability company

Dated as of January 31, 2019

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Michelle K. Piasecki

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Corporation Service Company  
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Harrisburg, PA 17110  
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Mallery Jacobs  
Accountant  
333 W. Washington St. Suite 140  
Syracuse, NY 13202  
315-498-1263  
[Regulatory-affairs-US@smartestenergy.com](mailto:Regulatory-affairs-US@smartestenergy.com)  
[Mallery-Jacobs@smartestenergy.com](mailto:Mallery-Jacobs@smartestenergy.com)

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**John T. McManus**  
HARRIS BEACH PLLC  
677 Broadway, Suite 1101  
Albany, NY 12207  
518.427.0235 Fax  
518.427.9700 Main  
[jmcmanus@HarrisBeach.com](mailto:jmcmanus@HarrisBeach.com)

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Jessica Gilbert  
Partner Account & Customer Care Manager  
333 W. Washington St. Suite 140  
Syracuse, NY 13202  
[Jessica-Gilbert@smartestenergy.com](mailto:Jessica-Gilbert@smartestenergy.com)  
315-498-1251

Jim Cifaratta  
Senior Vice President  
333 W. Washington St. Suite 140  
Syracuse, NY 13202  
[Jim-Cifaratta@smartestenergy.com](mailto:Jim-Cifaratta@smartestenergy.com)  
315-498-1251

## 2. **BUSINESS ENTITY FILINGS AND REGISTRATION**

a. **FICTITIOUS NAME:** *(Select appropriate statement and provide supporting documentation as listed.)*

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

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

**or**

The Applicant will not be using a fictitious name.

b. **BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:**

*(Select appropriate statement and provide supporting documentation. As well, understand that Domestic means being formed within Pennsylvania and foreign means being formed outside Pennsylvania.)*

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.

- Provide the state in which the business is organized/formed and provide a copy of the Applicant's charter documentation.
- \* 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 (15 Pa. C.S. §1308)
- 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 (Describe):

- Provide proof of compliance with appropriate Department of State filing requirements as indicated above.
- Provide the state in which the business is incorporated/organized/formed and provide a copy of the Applicant's charter documentation.
- Give name and address of officers.
  - Andy Cormie  
Chief Executive Officer  
333 W. Washington St., Suite 140  
Syracuse, New York 13202
  - Ryuichi Noyama  
Chief Operating Officer  
333 W. Washington St., Suite 140  
Syracuse, New York 13202
  - Minako Wakayama  
Secretary  
375 Lexington Ave.  
New York, NY 10017

## 7. FINANCIAL FITNESS

a. **BONDING:** In accordance with 66 Pa. C.S. Section 2809(c)(1)(i), the Applicant is required to file a bond or other instrument to ensure its financial responsibilities and obligations as an EGS. Therefore, the Applicant is...

- Furnishing the **ORIGINAL** of an initial bond, letter of credit or proof of bonding to the Commission in the amount of \$250,000.
- ✓ Furnishing the **ORIGINAL** of another initial security for Commission approval, to ensure financial responsibility, such as a parental guarantee, in the amount of \$250,000.
- For Marketers and Brokers** - Filing for a modification to the \$250,000 requirement and furnishing the **ORIGINAL** of an initial bond, letter of credit or proof of bonding to the Commission in the amount of \$10,000. Applicant is required to provide information supporting an amount less than \$250,000. Such supporting information must include indication that the Applicant will not take title to electricity and will not pay electricity bills on behalf of its customers. Further details for modification may be described as well.

### **CRITICAL BONDING NOTES:**

Applicant is required to maintain a bond or other financial instrument the entire time it maintains an EGS license with the Commonwealth of Pennsylvania. If Applicant's security instrument is not continuous, Applicant **MUST** submit a Rider, Amendment, or Continuation Certificate annually based on the expiration date of its security instrument.

At least sixty days (60) prior to the security instrument's expiration date, Applicant should contact Stephen Jakab at [sjakab@pa.gov](mailto:sjakab@pa.gov) to determine the appropriate bonding amount based on a percentage of Applicant's gross receipts resulting from the sale of generated electricity consumed in Pennsylvania. Once the amount has been determined, Applicant should overnight the updated security instrument(s) at least thirty (30) days prior to the expiration date to ensure adequate time for staff review and approval of the security instrument(s).

Template versions of a continuous bond, fixed-term bond, continuous letter of credit, and parental guarantee are attached at Appendix E, F, G, & H, respectively. Applicant's security must follow language from these examples, and must include the unmodified language outlined in Appendix D. Any deviation from these examples must be identified in the application and may not be acceptable to the Commission.

**b. FINANCIAL RECORDS, STATEMENTS, AND RATINGS:** Applicant must 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. Please see exhibit 1, for affiliates.
- Published Applicant or parent company financial and credit information (i.e. 10Q or 10K). (SEC/EDGAR web addresses are sufficient)
- Applicant's accounting statements, including balance sheet and income statements for the past two years.
- 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, evidence of Moody's, S&P, or Fitch ratings, and/or other independent financial service reports.

Please see Moody's & S&P attached.

- 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. Non applicable, please see financial support.
- Audited financial statements exhibiting accounts over a minimum two year period.
- Bank account statement, tax returns from the previous two years, or any other information that demonstrates Applicant's financial fitness.

**c. SUPPLIER FUNDING METHOD:** If Applicant is operating as anything other than **Broker/Marketer only**, explain how Applicant will fund its operations. Provide all credit agreements, lines of credit, etc., and elaborate on how much is available on each item.

SmartestEnergy US LLC is self-funded.

**d. BROKER PAYMENT STRUCTURE:** If applicant is a broker/marketer, explain how your organization will be collecting your fees.

Not applicable.

**e. ACCOUNTING RECORDS CUSTODIAN:** Provide the name, title, address, telephone number, FAX number, and e-mail address of Applicant's custodian for its accounting records.

Megan Quill  
VP of Finance  
SmartestEnergy US, LLC  
333 W. Washington Ave., Suite 140  
Syracuse, NY 13202  
(315) 498-1264

**f. TAXATION:** Complete the TAX CERTIFICATION STATEMENT attached as Appendix I to this application.

*All sections of the Tax Certification Statement must be completed. Absence (submitting N/A) of any of the TAX identifications numbers (items 7A through 7C) shall be accompanied by supporting documentation or an explanation validating the absence of such information.*

*Items 7A and 7C on the Tax Certification Statement are designated by the Pennsylvania Department of Revenue. Item 7B on the Tax Certification Statement is designated by the Internal Revenue Service.*

# ATTACHMENT 2

# Delaware

Page 1

The First State

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "SMARTESTENERGY US LLC", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF JANUARY, A.D. 2019, AT 6:18 O`CLOCK P.M.*



Jeffrey W. Bullock, Secretary of State

7262896 8100  
SR# 20190650839

Authentication: 202184571  
Date: 02-01-19

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

STATE OF DELAWARE  
LIMITED LIABILITY COMPANY  
CERTIFICATE OF FORMATION  
OF  
SMARTESTENERGY US LLC

The undersigned authorized person hereby adopts the following Certificate of Formation for the purposes of forming a limited liability company pursuant to the Delaware Limited Liability Company Act (6 Del. Code § 18-101 *et seq.*):

FIRST: The name of the limited liability company is SmartestEnergy US LLC (the "*Company*").

SECOND: The address of the registered office and the name of the registered agent of the Company required to be maintained by § 18-104 of the Delaware Limited Liability Company Act are The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation this 31st day of January, 2019.

/s/ Sabrina Rothery  
Sabrina Rothery  
Authorized Person

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**LIMITED LIABILITY COMPANY AGREEMENT**

**of**

**SMARTESTENERGY US LLC,**

a Delaware limited liability company

Dated as of January 31, 2019

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## LIMITED LIABILITY COMPANY AGREEMENT

OF

### SMARTESTENERGY US LLC

This Limited Liability Company Agreement (the “*Agreement*”) of SmartestEnergy US LLC (the “*Company*”) is dated as of January 31, 2019 pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq. (the “*Act*”), and the undersigned do hereby certify and agree as follows:

1. Name. The name of the Company shall be SmartestEnergy US LLC, or such other name as the Managing Member may from time to time hereafter designate.

2. Definitions.

(a) In addition to the terms otherwise defined herein, the following terms are used herein as defined below:

“*Managing Member*” means SmartestEnergy US Holding Inc. and any other person or entity admitted as a substitute Managing Member pursuant to this Agreement.

“*Members*” means the Managing Member and those other persons or entities who from time to time are designated as Members on Schedule A hereto (as amended from time to time by the Managing Member in connection with the admission or resignation of Members in accordance with this Agreement) and are parties hereto.

(b) Capitalized terms not otherwise defined herein shall have the meanings set forth in Section 18-101 of the Act.

3. Purpose. The primary purposes of the Company is to engage in any other lawful business under the Act and applicable law that the Managing Member determines the Company shall engage in and do all things necessary or incidental thereto.

4. Offices.

(a) The principal place of business and office of the Company shall be located at, and the Company’s business shall be conducted from, 375 Lexington Avenue, 6<sup>th</sup> Floor, New York, New York 10017 or such place or places as the Managing Member may from time to time designate.

(b) The address at the registered office of the Company in the State of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of the registered agent at such address is The

Corporation Trust Company. The Managing Member may from time to time change the registered agent or office by an amendment to the Certificate of Formation of the Company.

5. Members. The names and business or residence addresses of the Members are set forth on Schedule A attached hereto.

6. Term. The term of the Company commenced on the date of filing of the Certificate of Formation of the Company in accordance with the Act and shall continue until the Company is dissolved and its affairs are wound up in accordance with Section 15 hereunder.

7. Management of the Company. The business affairs of the Company shall be managed by the Board of Managers appointed pursuant to Sections 7(a) and (b) below.

(a) *Board of Managers.* The management of the Company shall be vested in a board of managers (the “**Board of Managers**”) elected by the Managing Member. The total number of members on the Board of Managers (the “**Managers**”) shall be three, unless otherwise fixed at a different number by an amendment hereto or a resolution signed by the Managing Member. The Managing Member hereby elects as the initial Managers Satoru Harada, Minako Wakayama and David Martyn Cockshott to serve until their successors are elected and qualified. A Manager shall remain in office until removed by a written instrument signed by the Managing Member or until such Manager resigns in a written instrument delivered to the Managing Member or such Manager dies or is unable to serve. In the event of any such vacancy, the Managing Member may fill the vacancy. Each Manager shall have one (1) vote. Except as otherwise provided in this Agreement, the Board of Managers shall act by the affirmative vote of a majority of the total number of Managers. Each Manager shall perform his or her duties as such in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. To the fullest extent permitted by law, a person who so performs his duties shall not have any liability to the Managing Member of the Company solely by reason of serving or having served as a Manager. Each Manager is hereby designated as a “manager” of the Company within the meaning of Section 18-101(10) of the Act.

(b) *Meetings and Powers of Board of Managers.* The Board of Managers shall establish meeting times, dates and places and requisite notice requirements and adopt rules or procedures consistent with the terms of this Agreement. Any action required to be taken at a meeting of the Board of Managers or any action that may be taken at a meeting of the Board of Managers, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear or otherwise communicate with each other including by typing in responses. Most of the Managers shall constitute a quorum. Notice of meetings may be given by any of the Managers or by the Secretary or any Assistant Secretary by fax, telephone, e mail or in writing. Notice may be waived orally or in writing. Participation in such a meeting shall constitute presence in person at such meeting. Notwithstanding anything to the contrary in this Section 7, the Board of Managers may take any action, without a meeting, and without prior notice that may be taken by the Board of Managers under this Agreement if such action is approved by the written consent of a majority of the Managers.

(c) Except as otherwise provided in this Agreement, all powers to control and manage the business and affairs of the Company shall be exclusively vested in the Board of Managers and the Board of Managers may exercise all powers of the Company and do all such lawful acts as are not by statute, the Certificate of Formation or this Agreement directed or required to be exercised or done by the Managing Member and in so doing shall have the right and authority to take all actions which the Board of Managers deems necessary, useful or appropriate for the management and conduct of the business of the Company; provided, however, that the Managing Member may amend this Agreement at any time and thereby broaden or limit the Board of Manager's power and authority. Each of the Managers, to the extent of their powers set forth in this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of any of the Managers taken in accordance with such powers shall bind the Company.

8. Officers. Subject to the direction of the Board of Managers, the day-to-day administration of the business of the Company may be carried out by persons who may be designated as officers, with titles including but not limited to "chairman," "vice chairman," "managing director," "principal," "chief executive officer," "chief financial officer," "president," "vice president," "treasurer," "assistant treasurer," "secretary," "assistant secretary," "general manager" and "director" (collectively, the "*Officers*"), as and to the extent authorized by the Board of Managers. Any number of offices may be held by the same person. The Board of Managers shall have the authority to fix the compensation, if any, of the Officers and employees of the Company, which compensation shall be an expense of the Company. The Officers of the Company shall have such titles and powers and perform such duties as shall be determined from time to time by the Board of Managers and otherwise as shall customarily pertain to such offices or be determined from time to time by the Board of Managers. The powers and duties of each officer shall include but are not limited to the following:

(a) *Chief Executive Officer*. The Chief Executive Officer shall have, subject to the supervision, direction and control of the Board of Managers, the general powers and duties of supervision, direction and management of the affairs and business of the Company usually vested in the chief executive officer of a corporation organized for profit under the General Corporation Law of the State of Delaware, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the Company and the authority to enter into any contract and execute and deliver any instrument in the name and on behalf of the Company except where required by applicable law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Board of Managers to some other Officer or agent of the Company.

(b) *Vice Presidents*. Each Vice President shall have such powers and perform such duties as may from time to time be assigned to him or her by the Board of Managers or the Chief Executive Officer. Subject to the control and the direction of the Board of Managers or the Chief Executive Officer, each Vice President may enter into any contract and execute and deliver any instrument in the name and on behalf of the Company except where required by applicable law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Board of Managers to some other Officer or agent of the Company.

(c) *Secretary.* The Secretary shall have all such powers and duties as generally are incident to the position of a secretary of a corporation organized for profit under the General Corporation Law of the State of Delaware or as may from time to time be assigned to him or her by the Board of Managers or the Chief Executive Officer.

(d) *Treasurer.* The Treasurer shall have all such powers and duties as generally are incident to the position of a treasurer of a corporation organized for profit under the General Corporation Law of the State of Delaware or as may from time to time be assigned to him or her by the Board of Managers or the Chief Executive Officer.

Effective as of the date hereof, the Board of Managers designates the persons whose names are listed on the Schedule of Officers, attached as Schedule B to this Agreement, as the initial Officers. The Board of Managers may amend and revise Schedule B from time to time to reflect any changes in the Officers.

9. Capital Contributions. Members shall make capital contributions to the Company in such amounts and at such times as they shall mutually agree.

10. Assignments of Company Interest. No Member may sell, assign, pledge or otherwise transfer or encumber (collectively, “*transfer*”) all or any part of its interest in the Company, nor shall any Member have the power to substitute a transferee in its place as a substitute Member, without, in either event, having obtained the prior written consent of the Managing Member, whose consent may be given or withheld in its sole discretion.

11. Resignation. No Member shall have the right to resign from the Company except with the consent of the Managing Member and upon such terms and conditions as may be specifically agreed upon between the Managing Member and the resigning Member. The provisions hereof with respect to distributions upon resignation are exclusive, and no Member shall be entitled to claim any further or different distribution upon resignation under Section 18-604 of the Act or otherwise.

12. Additional Members. The Managing Member shall have the right to admit (a) additional Members upon such terms and conditions, at such time or times, and for such capital contributions as shall be determined by the Managing Member and (b) a substitute Managing Member; and in connection with any such admission, the Managing Member shall have the right to amend Schedule A hereof to reflect the name and address and of the admitted Member or substitute Managing Member, as the case may be.

13. Allocations and Distributions. Distributions of cash or other assets of the Company shall be made at such times and in such amounts as the Managing Member may determine. Distributions shall be made to (and profits and losses of the Company shall be allocated among) Members pro rata in accordance with the amount of their contributions to the Company in respect of the investment or other asset giving rise to such distribution. Notwithstanding anything to the contrary contained in this Agreement, the Company, and the Managing Member on behalf of the Company, shall not be required to make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act or other applicable law.

14. Return of Capital. No Member has the right to receive, and the Managing Member has absolute discretion to make, any distributions to a Member which include a return of all or any part of such Member's capital contribution, provided that upon the dissolution and winding up of the Company, the assets of the Company shall be distributed as provided in Section 18-804 of the Act.

15. Dissolution. The Company shall be dissolved and its affairs wound up and terminated upon the first to occur of the following:

(a) the determination of the Managing Member to dissolve the Company;

(b) any time there are no members of the Company unless the Company is continued in accordance with the Act; or

(c) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

16. Liability; Exculpation; Indemnification and Insurance.

(a) *Liability.* To the fullest extent permitted by law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities of the Company, and no Covered Person (as defined below) shall be obligated personally for the repayment, satisfaction or discharge of any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(b) *Duties and Liabilities of Covered Persons.* No Covered Person shall be liable or accountable in damages or otherwise to the Company or to any Member for any loss or liability arising out of any act or omission on behalf of the Company taken or omitted by such Covered Person, so long as such act or omission did not constitute Disabling Conduct (as defined below). To the fullest extent permitted by law, and except as otherwise expressly provided herein, no Covered Person shall be required to consider the interests of, or have any duty stated or implied by law or equity (including any fiduciary duty) to any other Covered Person by virtue of owning any interest in the Company or being a Managing Member.

(c) *Exculpation.* To the fullest extent permitted by law, and except as otherwise expressly provided herein, no Covered Person shall be liable to the Company or any Member for any Claims and Expenses (as defined below) arising out of any act or omission of such Covered Person on behalf of the Company to the extent that such act or omission did not constitute Disabling Conduct. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

(d) Indemnification.

(i) To the fullest extent permitted by applicable law, the Company shall indemnify and hold harmless each of the Covered Persons from and against any and all liabilities, obligations, losses, damages, fines, taxes and interest and penalties thereon (other than taxes based on fees or other compensation received by such Covered Person from the Company), claims, demands, actions, suits, proceedings (whether civil, criminal, administrative, investigative or otherwise), costs, expenses and disbursements (including reasonable and documented legal and accounting fees and expenses, costs of investigation and sums paid in settlement) of any kind or nature whatsoever (collectively, “**Claims and Expenses**”) that may be imposed on, incurred by or asserted at any time against such Covered Person in any way related to or arising out of this Agreement, the Company or the management or administration of the Company or in connection with the business or affairs of the Company or the activities of such Covered Person on behalf of the Company; provided that a Covered Person shall not be entitled to indemnification hereunder against Claims and Expenses that are finally determined by a court of competent jurisdiction to have resulted from such Covered Person’s Disabling Conduct. The rights of any Covered Person to indemnification hereunder will be in addition to any other rights any such Covered Person may have under any other agreement or instrument in which such Covered Person is or becomes a party or is or otherwise becomes a beneficiary or under law or regulation.

(ii) Subject to the last sentence of this Section 16(d)(ii), the Company acknowledges and agrees that the Company shall, and to the extent applicable shall cause any Controlled Entities to, be fully and primarily responsible for the payment to the Covered Person in respect of Claims and Expenses in connection with any Jointly Indemnifiable Claims (as defined below), pursuant to and in accordance with (as applicable) the terms of (i) the Act, (ii) this Agreement, (iii) any other agreement between the Company or any Controlled Entity and the Covered Person pursuant to which the Covered Person is indemnified, (iv) the laws of the jurisdiction of incorporation or organization of any Controlled Entity and/or (v) the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Controlled Entity ((i) through (v) collectively, the “**Indemnification Sources**”), irrespective of any right of recovery the Covered Person may have from any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any Controlled Entity or the insurer under and pursuant to an insurance policy of the Company or any Controlled Entity) from whom a Covered Person may be entitled to indemnification with respect to which, in whole or in part, the Company or any Controlled Entity may also have an indemnification obligation (collectively, the “**Covered Person-Related Entities**”). Under no circumstance shall the Company or any Controlled Entity be entitled to any right of subrogation or contribution by the Covered Person-Related Entities and no right of advancement or recovery the Covered Person may have from the Covered Person-Related Entities shall reduce or otherwise alter the rights of the Covered Person or the obligations of the Company or any Controlled Entity under the Indemnification Sources. In the event that any of the Covered Person-Related Entities shall make any payment to the Covered Person in respect of indemnification with respect to any Jointly Indemnifiable Claim, (x) the Company shall, and to the extent applicable shall cause any Controlled Entities to, reimburse the Covered Person-Related Entity making such payment to the extent of such payment promptly upon written demand from such Covered Person-Related Entity, (y) to the extent not previously and fully reimbursed by the Company and/or any Controlled Entity pursuant to clause (x), the Covered Person-Related Entity making such payment shall be subrogated to the extent of the outstanding balance of such payment

to all of the rights of recovery of the Covered Person against the Company and/or any Controlled Entity, as applicable, and (z) the Covered Person shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Covered Person-Related Entities effectively to bring suit to enforce such rights. The Company and each Covered Person party hereto agree that each of the Covered Person-Related Entities shall be third-party beneficiaries with respect to this Section 16(d) entitled to enforce this Section 16(d) as though each such Covered Person-Related Entity were a party to this Agreement. The Company shall cause each of the Controlled Entities to perform the terms and obligations of this Section 16(d) as though each such Controlled Entity was a party to this Agreement. For purposes of this Section 16(d), the term “**Jointly Indemnifiable Claims**” shall be broadly construed and shall include, without limitation, any Claims and Expenses for which the Covered Person shall be entitled to indemnification from both (1) the Company and/or any Controlled Entity pursuant to the Indemnification Sources, on the one hand, and (2) any Covered Person-Related Entity pursuant to any other agreement between any Covered Person-Related Entity and the Covered Person pursuant to which the Covered Person is indemnified, the laws of the jurisdiction of incorporation or organization of any Covered Person-Related Entity and/or the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Covered Person-Related Entity, on the other hand. Notwithstanding anything to the contrary in this Agreement, no provision in this Section 16 shall alter, change, amend, modify or subtract from any indemnification or advancement obligation of any or any Portfolio Entity or Controlled Entity to any Covered Person with respect to any Claims or Expenses, including any obligation of such Portfolio Entity or Controlled Entity to be fully and primarily responsible for payments to such Covered Person in connection with such indemnification and advancement obligations.

(e) *Advancement of Expenses.* To the fullest extent permitted by applicable law, the Company shall pay the expenses (including reasonable legal fees and expenses and costs of investigation) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding (other than a claim, demand, action, suit or proceeding brought by the Company against a Member for such Member’s material breach or violation of this Agreement) as such expenses are incurred by such Covered Person and in advance of the final disposition of such matter; provided that such Covered Person undertakes to repay such expenses if it is determined by agreement between such Covered Person and the Company or, in the absence of such an agreement, by a final judgment of a court of competent jurisdiction that such Covered Person is not entitled to be indemnified pursuant to this Section 16.

(f) *Notice of Proceedings.* Promptly after receipt by a Covered Person of notice of the commencement of any proceeding against such Covered Person, such Covered Person shall, if a claim for indemnification in respect thereof is to be made against the Company, give written notice to the Managing Member of the commencement of such proceeding; provided that the failure of a Covered Person to give notice as provided herein shall not relieve the Company of its obligations under Sections 16(d) and 16(e), except to the extent that the Company is materially prejudiced by such failure to give notice. In case any such proceeding is brought against a Covered Person (other than a proceeding by or in the right of the Company), after the Company has acknowledged in writing its obligation to indemnify and hold harmless the Covered Person, the Company will be entitled to assume the defense of such proceeding; provided that (i) the

Covered Person shall be entitled to participate in such proceeding and to retain its own counsel at its own expense and (ii) if the Covered Person shall give notice to the Company that in its good faith judgment, based on the advice of counsel, certain claims made against it in such proceeding could have a material adverse effect on the Covered Person or its Affiliates (other than the Company) other than as a result of monetary damages, the Covered Person shall have the right to control (at the Company's expense with counsel reasonably satisfactory to the Company) the defense of such specific claims with respect to the Covered Person (but not with respect to the Company or any other Member); provided, further, that if a Covered Person elects to control the defense of a specific claim with respect to such Covered Person, such Covered Person shall not consent to the entry of a judgment or enter into a settlement that would require the Company to pay any amounts under this Section 16 without the prior written consent of the Company, such consent not to be unreasonably withheld. After notice from the Company to such Covered Person acknowledging the Company's obligation to indemnify and hold harmless the Covered Person and electing to assume the defense of such proceeding, except to the extent provided in clause (ii) above, the Company will not be liable for expenses subsequently incurred by such Covered Person in connection with the defense thereof. Without the consent of such Covered Person, the Company will not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Covered Person of a release from all liability arising out of the proceeding and claims asserted therein.

17. Insurance. The Company may, or may cause an Affiliate to, purchase and maintain directors and officers insurance, to the extent and in such amounts as the Managing Member may, in its discretion, deem reasonable.

18. Certain Definitions. As used in Section 16 and other Sections of this Agreement:

(a) **"Affiliate"** means, with respect to a first person, any person at the time of determination, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, such first person.

(b) **"Controlled Entity"** means any other limited liability company, partnership, corporation, joint venture, trust, employee benefit plan or other enterprise controlled by the Company.

(c) **"Covered Person"** means (a) each Managing Member, other Member, Manager or Officer, in each case in his, her or its capacity as such, (b) any officer, director, shareholder, partner, member, employee, representative or agent of any Member and (c) any Affiliate (other than the Company, or any Portfolio Entity or Controlled Entity), officer, director, shareholder, partner, member, employee, representative or agent of any of the foregoing, in each case in clauses (a), (b) and (c) whether or not such person continues to have the applicable status referred to in such clauses.

(d) **"Disabling Conduct"** means in respect of any person (including a Manager or an Officer), an act or omission (i) that is a criminal act by such person that such person had no reasonable cause to believe was lawful or (ii) that constitutes fraud, gross negligence or knowing and willful misconduct by such person.

(e) “*Portfolio Entity*” means any other limited liability company, partnership, corporation, joint venture, trust, employee benefit plan or other enterprise in which the Company has directly or indirectly invested.

19. Amendments. This Agreement may only be amended with the written consent of the Managing Member.

20. Interpretation. The word “*person*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

21. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, without regard to its conflict of law rules.

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the undersigned has duly executed this Agreement as of the date first written above.

MANAGING MEMBER:

**SMARTESTENERGY US HOLDING INC.**

By: 

Name: David Martyn Cockshott

Title: Chief Executive Officer

By: \_\_\_\_\_

Name: Minako Wakayama

Title: Secretary

**IN WITNESS WHEREOF**, the undersigned has duly executed this Agreement as of the date first written above.

MANAGING MEMBER:

**SMARTESTENERGY US HOLDING INC.**

By: \_\_\_\_\_

Name: David Martyn Cockshott

Title: Chief Executive Officer

By:  \_\_\_\_\_

Name: Minako Wakayama

Title: Secretary

## **SCHEDULE A**

### Schedule of Members

Member

Address

SmartestEnergy US Holding Inc.

375 Lexington Avenue, 6<sup>th</sup> Floor, New York, NY,  
10017

## **SCHEDULE B**

### Schedule of Officers

Officer

Name

Chief Executive Officer

David Martyn Cockshott

Secretary

Minako Wakayama

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**FIRST AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT**

**of**

**SMARTESTENERGY US LLC,**

a Delaware limited liability company

Effective as of September 3, 2019

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**FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT**  
**OF**  
**SMARTESTENERGY US LLC**

This First Amended and Restated Limited Liability Company Agreement (the “*Agreement*”) of SmartestEnergy US LLC (the “*Company*”) is dated as of September 3, 2019 pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq. (the “*Act*”), and the undersigned do hereby certify and agree as follows:

1. Name. The name of the Company shall be SmartestEnergy US LLC, or such other name as the Managing Member may from time to time hereafter designate.

2. Definitions.

(a) In addition to the terms otherwise defined herein, the following terms are used herein as defined below:

“*Managing Member*” means SmartestEnergy US Holding Inc. and any other person or entity admitted as a substitute Managing Member pursuant to this Agreement.

“*Members*” means the Managing Member and those other persons or entities who from time to time are designated as Members on Schedule A hereto (as amended from time to time by the Managing Member in connection with the admission or resignation of Members in accordance with this Agreement) and are parties hereto.

(b) Capitalized terms not otherwise defined herein shall have the meanings set forth in Section 18-101 of the Act.

3. Purpose. The primary purposes of the Company is to engage in any other lawful business under the Act and applicable law that the Managing Member determines the Company shall engage in and do all things necessary or incidental thereto.

4. Offices.

(a) The principal place of business and office of the Company shall be located at, and the Company’s business shall be conducted from, 333 West Washington Street, Suite 140, Syracuse, NY 13202 or such place or places as the Managing Member may from time to time designate.

(b) The address at the registered office of the Company in the State of Delaware shall be located at 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808. The name of the registered agent at such address is The Corporation Service Company. The

Managing Member may from time to time change the registered agent or office by an amendment to the Certificate of Formation of the Company.

5. Members. The names and business or residence addresses of the Members are set forth on Schedule A attached hereto.

6. Term. The term of the Company commenced on the date of filing of the Certificate of Formation of the Company in accordance with the Act and shall continue until the Company is dissolved and its affairs are wound up in accordance with Section 15 hereunder.

7. Management of the Company. The business affairs of the Company shall be managed by the Board of Managers appointed pursuant to Sections 7(a) and (b) below.

(a) *Board of Managers.* The management of the Company shall be vested in a board of managers (the “**Board of Managers**”) elected by the Managing Member. The total number of members on the Board of Managers (the “**Managers**”) shall be three, unless otherwise fixed at a different number by an amendment hereto or a resolution signed by the Managing Member. A Manager shall remain in office until removed by a written instrument signed by the Managing Member or until such Manager resigns in a written instrument delivered to the Managing Member or such Manager dies or is unable to serve. In the event of any such vacancy, the Managing Member may fill the vacancy. Each Manager shall have one (1) vote. Except as otherwise provided in this Agreement, the Board of Managers shall act by the affirmative vote of a majority of the total number of Managers. Each Manager shall perform his or her duties as such in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. To the fullest extent permitted by law, a person who so performs his duties shall not have any liability to the Managing Member of the Company solely by reason of serving or having served as a Manager. Each Manager is hereby designated as a “manager” of the Company within the meaning of Section 18-101(10) of the Act.

(b) *Meetings and Powers of Board of Managers.* The Board of Managers shall establish meeting times, dates and places and requisite notice requirements and adopt rules or procedures consistent with the terms of this Agreement. Any action required to be taken at a meeting of the Board of Managers or any action that may be taken at a meeting of the Board of Managers, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear or otherwise communicate with each other including by typing in responses. Most of the Managers shall constitute a quorum. Notice of meetings may be given by any of the Managers or by the Secretary or any Assistant Secretary by fax, telephone, e mail or in writing. Notice may be waived orally or in writing. Participation in such a meeting shall constitute presence in person at such meeting. Notwithstanding anything to the contrary in this Section 7, the Board of Managers may take any action, without a meeting, and without prior notice that may be taken by the Board of Managers under this Agreement if such action is approved by the written consent of a majority of the Managers.

(c) Except as otherwise provided in this Agreement, all powers to control and manage the business and affairs of the Company shall be exclusively vested in the

Board of Managers and the Board of Managers may exercise all powers of the Company and do all such lawful acts as are not by statute, the Certificate of Formation or this Agreement directed or required to be exercised or done by the Managing Member and in so doing shall have the right and authority to take all actions which the Board of Managers deems necessary, useful or appropriate for the management and conduct of the business of the Company; provided, however, that the Managing Member may amend this Agreement at any time and thereby broaden or limit the Board of Manager's power and authority. Each of the Managers, to the extent of their powers set forth in this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of any of the Managers taken in accordance with such powers shall bind the Company.

8. Officers. Subject to the direction of the Board of Managers, the day-to-day administration of the business of the Company may be carried out by persons who may be designated as officers, with titles including but not limited to "chairman," "vice chairman," "managing director," "principal," "chief executive officer," "chief operating officer," "chief financial officer," "president," "treasurer," "assistant treasurer," "secretary," "assistant secretary," "general manager" and "director" (collectively, the "**Officers**"), as and to the extent authorized by the Board of Managers. Any number of offices may be held by the same person. The Board of Managers shall have the authority to fix the compensation, if any, of the Officers and employees of the Company, which compensation shall be an expense of the Company. The Officers of the Company shall have such titles and powers and perform such duties as shall be determined from time to time by the Board of Managers and otherwise as shall customarily pertain to such offices or be determined from time to time by the Board of Managers. The powers and duties of each officer shall include but are not limited to the following:

(a) *Chief Executive Officer.* The Chief Executive Officer shall have, subject to the supervision, direction and control of the Board of Managers, the general powers and duties of supervision, direction and management of the affairs and business of the Company usually vested in the chief executive officer of a corporation organized for profit under the General Corporation Law of the State of Delaware, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the Company and the authority to enter into any contract and execute and deliver any instrument in the name and on behalf of the Company except where required by applicable law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Board of Managers to some other Officer or agent of the Company.

(b) *Chief Operating Officer.* The Chief Operating Officer shall have such powers and perform such duties as may from time to time be assigned to him or her by the Board of Managers or the Chief Executive Officer. Subject to the control and the direction of the Board of Managers or the Chief Executive Officer, the Chief Operating Officer may enter into any contract and execute and deliver any instrument in the name and on behalf of the Company except where required by applicable law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Board of Managers to some other Officer or agent of the Company.

(c) *Secretary.* The Secretary shall have all such powers and duties as generally are incident to the position of a secretary of a corporation organized for profit under the

General Corporation Law of the State of Delaware or as may from time to time be assigned to him or her by the Board of Managers or the Chief Executive Officer.

(d) *Treasurer.* The Treasurer shall have all such powers and duties as generally are incident to the position of a treasurer of a corporation organized for profit under the General Corporation Law of the State of Delaware or as may from time to time be assigned to him or her by the Board of Managers or the Chief Executive Officer.

Effective as of the date hereof, the Board of Managers designates the persons whose names are listed on the Schedule of Officers, attached as Schedule B to this Agreement, as the initial Officers. The Board of Managers may amend and revise Schedule B from time to time to reflect any changes in the Officers.

9. Capital Contributions. Members shall make capital contributions to the Company in such amounts and at such times as they shall mutually agree.

10. Assignments of Company Interest. No Member may sell, assign, pledge or otherwise transfer or encumber (collectively, “*transfer*”) all or any part of its interest in the Company, nor shall any Member have the power to substitute a transferee in its place as a substitute Member, without, in either event, having obtained the prior written consent of the Managing Member, whose consent may be given or withheld in its sole discretion.

11. Resignation. No Member shall have the right to resign from the Company except with the consent of the Managing Member and upon such terms and conditions as may be specifically agreed upon between the Managing Member and the resigning Member. The provisions hereof with respect to distributions upon resignation are exclusive, and no Member shall be entitled to claim any further or different distribution upon resignation under Section 18-604 of the Act or otherwise.

12. Additional Members. The Managing Member shall have the right to admit (a) additional Members upon such terms and conditions, at such time or times, and for such capital contributions as shall be determined by the Managing Member and (b) a substitute Managing Member; and in connection with any such admission, the Managing Member shall have the right to amend Schedule A hereof to reflect the name and address and of the admitted Member or substitute Managing Member, as the case may be.

13. Allocations and Distributions. Distributions of cash or other assets of the Company shall be made at such times and in such amounts as the Managing Member may determine. Distributions shall be made to (and profits and losses of the Company shall be allocated among) Members pro rata in accordance with the amount of their contributions to the Company in respect of the investment or other asset giving rise to such distribution. Notwithstanding anything to the contrary contained in this Agreement, the Company, and the Managing Member on behalf of the Company, shall not be required to make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act or other applicable law.

14. Return of Capital. No Member has the right to receive, and the Managing Member has absolute discretion to make, any distributions to a Member which include a return of all or any part of such Member’s capital contribution, provided that upon the dissolution and

winding up of the Company, the assets of the Company shall be distributed as provided in Section 18-804 of the Act.

15. Dissolution. The Company shall be dissolved and its affairs wound up and terminated upon the first to occur of the following:

(a) the determination of the Managing Member to dissolve the Company;

(b) any time there are no members of the Company unless the Company is continued in accordance with the Act; or

(c) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

16. Liability; Exculpation; Indemnification and Insurance.

(a) *Liability.* To the fullest extent permitted by law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities of the Company, and no Covered Person (as defined below) shall be obligated personally for the repayment, satisfaction or discharge of any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(b) *Duties and Liabilities of Covered Persons.* No Covered Person shall be liable or accountable in damages or otherwise to the Company or to any Member for any loss or liability arising out of any act or omission on behalf of the Company taken or omitted by such Covered Person, so long as such act or omission did not constitute Disabling Conduct (as defined below). To the fullest extent permitted by law, and except as otherwise expressly provided herein, no Covered Person shall be required to consider the interests of, or have any duty stated or implied by law or equity (including any fiduciary duty) to any other Covered Person by virtue of owning any interest in the Company or being a Managing Member.

(c) *Exculpation.* To the fullest extent permitted by law, and except as otherwise expressly provided herein, no Covered Person shall be liable to the Company or any Member for any Claims and Expenses (as defined below) arising out of any act or omission of such Covered Person on behalf of the Company to the extent that such act or omission did not constitute Disabling Conduct. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

(d) Indemnification.

(i) To the fullest extent permitted by applicable law, the Company shall indemnify and hold harmless each of the Covered Persons from and against any

and all liabilities, obligations, losses, damages, fines, taxes and interest and penalties thereon (other than taxes based on fees or other compensation received by such Covered Person from the Company), claims, demands, actions, suits, proceedings (whether civil, criminal, administrative, investigative or otherwise), costs, expenses and disbursements (including reasonable and documented legal and accounting fees and expenses, costs of investigation and sums paid in settlement) of any kind or nature whatsoever (collectively, “**Claims and Expenses**”) that may be imposed on, incurred by or asserted at any time against such Covered Person in any way related to or arising out of this Agreement, the Company or the management or administration of the Company or in connection with the business or affairs of the Company or the activities of such Covered Person on behalf of the Company; provided that a Covered Person shall not be entitled to indemnification hereunder against Claims and Expenses that are finally determined by a court of competent jurisdiction to have resulted from such Covered Person’s Disabling Conduct. The rights of any Covered Person to indemnification hereunder will be in addition to any other rights any such Covered Person may have under any other agreement or instrument in which such Covered Person is or becomes a party or is or otherwise becomes a beneficiary or under law or regulation.

(ii) Subject to the last sentence of this Section 16(d)(ii), the Company acknowledges and agrees that the Company shall, and to the extent applicable shall cause any Controlled Entities to, be fully and primarily responsible for the payment to the Covered Person in respect of Claims and Expenses in connection with any Jointly Indemnifiable Claims (as defined below), pursuant to and in accordance with (as applicable) the terms of (i) the Act, (ii) this Agreement, (iii) any other agreement between the Company or any Controlled Entity and the Covered Person pursuant to which the Covered Person is indemnified, (iv) the laws of the jurisdiction of incorporation or organization of any Controlled Entity and/or (v) the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Controlled Entity ((i) through (v) collectively, the “**Indemnification Sources**”), irrespective of any right of recovery the Covered Person may have from any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any Controlled Entity or the insurer under and pursuant to an insurance policy of the Company or any Controlled Entity) from whom a Covered Person may be entitled to indemnification with respect to which, in whole or in part, the Company or any Controlled Entity may also have an indemnification obligation (collectively, the “**Covered Person-Related Entities**”). Under no circumstance shall the Company or any Controlled Entity be entitled to any right of subrogation or contribution by the Covered Person-Related Entities and no right of advancement or recovery the Covered Person may have from the Covered Person-Related Entities shall reduce or otherwise alter the rights of the Covered Person or the obligations of the Company or any Controlled Entity under the Indemnification Sources. In the event that any of the Covered Person-Related Entities shall make any payment to the Covered Person in respect of indemnification with respect to any Jointly Indemnifiable Claim, (x) the Company shall, and to the extent applicable shall cause any Controlled Entities to, reimburse the Covered Person-Related Entity making such payment to the extent of such payment promptly upon written demand from such Covered Person-Related Entity, (y) to the extent not previously and fully reimbursed by the Company and/or any Controlled Entity pursuant to clause (x), the Covered Person-Related Entity making such payment shall be subrogated to the extent of the outstanding balance of such payment to all of the rights of recovery of the Covered Person against the Company and/or any Controlled Entity, as applicable, and (z) the Covered Person shall execute all papers reasonably required and

shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Covered Person-Related Entities effectively to bring suit to enforce such rights. The Company and each Covered Person party hereto agree that each of the Covered Person-Related Entities shall be third-party beneficiaries with respect to this Section 16(d) entitled to enforce this Section 16(d) as though each such Covered Person-Related Entity were a party to this Agreement. The Company shall cause each of the Controlled Entities to perform the terms and obligations of this Section 16(d) as though each such Controlled Entity was a party to this Agreement. For purposes of this Section 16(d), the term “***Jointly Indemnifiable Claims***” shall be broadly construed and shall include, without limitation, any Claims and Expenses for which the Covered Person shall be entitled to indemnification from both (1) the Company and/or any Controlled Entity pursuant to the Indemnification Sources, on the one hand, and (2) any Covered Person-Related Entity pursuant to any other agreement between any Covered Person-Related Entity and the Covered Person pursuant to which the Covered Person is indemnified, the laws of the jurisdiction of incorporation or organization of any Covered Person-Related Entity and/or the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Covered Person-Related Entity, on the other hand. Notwithstanding anything to the contrary in this Agreement, no provision in this Section 16 shall alter, change, amend, modify or subtract from any indemnification or advancement obligation of any or any Portfolio Entity or Controlled Entity to any Covered Person with respect to any Claims or Expenses, including any obligation of such Portfolio Entity or Controlled Entity to be fully and primarily responsible for payments to such Covered Person in connection with such indemnification and advancement obligations.

(e) *Advancement of Expenses.* To the fullest extent permitted by applicable law, the Company shall pay the expenses (including reasonable legal fees and expenses and costs of investigation) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding (other than a claim, demand, action, suit or proceeding brought by the Company against a Member for such Member’s material breach or violation of this Agreement) as such expenses are incurred by such Covered Person and in advance of the final disposition of such matter; provided that such Covered Person undertakes to repay such expenses if it is determined by agreement between such Covered Person and the Company or, in the absence of such an agreement, by a final judgment of a court of competent jurisdiction that such Covered Person is not entitled to be indemnified pursuant to this Section 16.

(f) *Notice of Proceedings.* Promptly after receipt by a Covered Person of notice of the commencement of any proceeding against such Covered Person, such Covered Person shall, if a claim for indemnification in respect thereof is to be made against the Company, give written notice to the Managing Member of the commencement of such proceeding; provided that the failure of a Covered Person to give notice as provided herein shall not relieve the Company of its obligations under Sections 16(d) and 16(e), except to the extent that the Company is materially prejudiced by such failure to give notice. In case any such proceeding is brought against a Covered Person (other than a proceeding by or in the right of the Company), after the Company has acknowledged in writing its obligation to indemnify and hold harmless the Covered Person, the Company will be entitled to assume the defense of such proceeding; provided that (i) the Covered Person shall be entitled to participate in such proceeding and to retain its own counsel at its own expense and (ii) if the Covered Person shall give notice to the Company that in its good

faith judgment, based on the advice of counsel, certain claims made against it in such proceeding could have a material adverse effect on the Covered Person or its Affiliates (other than the Company) other than as a result of monetary damages, the Covered Person shall have the right to control (at the Company's expense with counsel reasonably satisfactory to the Company) the defense of such specific claims with respect to the Covered Person (but not with respect to the Company or any other Member); provided, further, that if a Covered Person elects to control the defense of a specific claim with respect to such Covered Person, such Covered Person shall not consent to the entry of a judgment or enter into a settlement that would require the Company to pay any amounts under this Section 16 without the prior written consent of the Company, such consent not to be unreasonably withheld. After notice from the Company to such Covered Person acknowledging the Company's obligation to indemnify and hold harmless the Covered Person and electing to assume the defense of such proceeding, except to the extent provided in clause (ii) above, the Company will not be liable for expenses subsequently incurred by such Covered Person in connection with the defense thereof. Without the consent of such Covered Person, the Company will not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Covered Person of a release from all liability arising out of the proceeding and claims asserted therein.

17. Insurance. The Company may, or may cause an Affiliate to, purchase and maintain directors and officers insurance, to the extent and in such amounts as the Managing Member may, in its discretion, deem reasonable.

18. Certain Definitions. As used in Section 16 and other Sections of this Agreement:

(a) “*Affiliate*” means, with respect to a first person, any person at the time of determination, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, such first person.

(b) “*Controlled Entity*” means any other limited liability company, partnership, corporation, joint venture, trust, employee benefit plan or other enterprise controlled by the Company.

(c) “*Covered Person*” means (a) each Managing Member, other Member, Manager or Officer, in each case in his, her or its capacity as such, (b) any officer, director, shareholder, partner, member, employee, representative or agent of any Member and (c) any Affiliate (other than the Company, or any Portfolio Entity or Controlled Entity), officer, director, shareholder, partner, member, employee, representative or agent of any of the foregoing, in each case in clauses (a), (b) and (c) whether or not such person continues to have the applicable status referred to in such clauses.

(d) “*Disabling Conduct*” means in respect of any person (including a Manager or an Officer), an act or omission (i) that is a criminal act by such person that such person had no reasonable cause to believe was lawful or (ii) that constitutes fraud, gross negligence or knowing and willful misconduct by such person.

(e) “*Portfolio Entity*” means any other limited liability company, partnership, corporation, joint venture, trust, employee benefit plan or other enterprise in which the Company has directly or indirectly invested.

19. Amendments. This Agreement may only be amended with the written consent of the Managing Member.

20. Interpretation. The word “*person*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

21. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, without regard to its conflict of law rules.

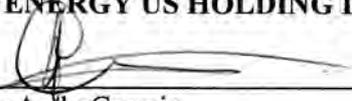
22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the undersigned has duly executed this Agreement as of the date first written above.

**MANAGING MEMBER:**

**SMARTESTENERGY US HOLDING INC.**

By:   
Name: Andy Cormie  
Title: Chief Executive Officer

By: \_\_\_\_\_  
Name: Ryuichi Noyama  
Title: Chief Operating Officer

**IN WITNESS WHEREOF**, the undersigned has duly executed this Agreement as of the date first written above.

MANAGING MEMBER:

**SMARTESTENERGY US HOLDING INC.**

By: \_\_\_\_\_  
Name: Andy Cormie  
Title: Chief Executive Officer

By:  \_\_\_\_\_  
Name: Ryuichi Noyama  
Title: Chief Operating Officer

**SCHEDULE A**

Schedule of Members

Member

Address

SmartestEnergy US Holding Inc.

333 West Washington Street, Suite 140, Syracuse, NY  
13202

## **SCHEDULE B**

### Schedule of Officers

Officer

Name

Chief Executive Officer

Andy Cormie

Chief Operating Officer

Ryuichi Noyama

Secretary

Minako Wakayama

# ATTACHMENT 3

**PENNSYLVANIA DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS**

<b>Document will be returned to the name and address entered below.</b> Megan Quill Name 333 West Washington St, Suite 140 Address Syracuse NY 13021 City State Zip Code	<b>Foreign Registration Statement</b> DSCB: 15-412 (rev. 2/2017)  <b>412</b>
--	---

Read all instructions prior to completing. This form may be submitted online at <https://www.corporations.pa.gov/>.

Fee: \$250.00

I qualify for a veteran/reservist-owned small business fee exemption (see instructions)

In compliance with the requirements of the applicable provisions of 15 Pa.C.S. § 412 (relating to foreign registration statement), the undersigned foreign association hereby states that:

1. The type of association is (check only one):

- Business Corporation       Limited Partnership       Business Trust  
 Nonprofit Corporation       Limited Liability (General) Partnership       Professional Association  
 Limited Liability Company       Limited Liability Limited Partnership

2. The full and proper name of the foreign association as registered in its jurisdiction of formation is:

SmartestEnergy US LLC

2A. If the name in 2 does not contain a required designator *or* if the name in 2 is not available for use in the Commonwealth, the alternate name under which the association is registering in this Commonwealth is:

3. The jurisdiction of formation:

DE

4. The street and mailing address of the association's principal office.

2595 Interstate Drive, Suite 103      Harrisburg      PA      17110

Number and street

City

State

Zip

4A. The street and mailing address of the office, if any, required to be maintained by the law of the association's jurisdiction of formation in that jurisdiction:

Number and street

City

State

Zip



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS  
401 NORTH STREET, ROOM 206  
P.O.BOX 8722  
HARRISBURG, PA 17105-8722  
[WWW.CORPORATIONS.PA.GOV](http://WWW.CORPORATIONS.PA.GOV)

Megan Quill  
333 West Washington St Suite 140  
Syracuse NY 13021

SmartestEnergy US LLC

THE BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS IS HAPPY TO SEND YOUR FILED DOCUMENT. THE BUREAU IS HERE TO SERVE YOU AND WE WOULD LIKE TO THANK YOU FOR DOING BUSINESS IN PENNSYLVANIA.

IF YOU HAVE ANY QUESTIONS PERTAINING TO THE BUREAU, PLEASE VISIT OUR WEBSITE AT [www.dos.pa.gov/BusinessCharities](http://www.dos.pa.gov/BusinessCharities) OR YOU MAY CONTACT US BY TELEPHONE AT (717)787-1057. INFORMATION REGARDING BUSINESS AND UCC FILINGS CAN BE FOUND ON OUR SEARCHABLE DATABASE AT [www.corporations.pa.gov/Search/CorpSearch](http://www.corporations.pa.gov/Search/CorpSearch) .

ENTITY NUMBER : 6894568

# ATTACHMENT 4

## SECTION 5:

### 1. CFTC

In March 2015, Marubeni America Corporation (“MAC”) agreed to pay an \$800,000 civil monetary penalty pursuant to an order filed by and charges settled with the U.S. Commodity Futures Trading Commission (CFTC) for failing to submit accurate monthly CFTC Form 204 Reports with respect to cash grain purchases and sales. MAC was further required to cease and desist committing further violations of the relevant regulation, CFTC Regulation 19.01. Since that time, MAC has effected changes in its trade compliance program intended to strengthen its internal monitoring procedures, particularly with respect to enhancing methodology in fulfilling its reporting obligations.

Further details are in this press release:

<https://www.cftc.gov/PressRoom/PressReleases/pr7140-15>

### 2. OTHER

In addition, please see attached disclosure schedule regarding competition law and anti-bribery.

## **Disclosure on Anti-bribery and Corruption Matters**

### **1. Anti-Bribery and Corruption Matters in Marubeni Corporation ("Marubeni")with in the Last 10 Years**

#### **(1) Nigeria LNG Project Case**

Marubeni is a party to a Deferred Prosecution Agreement (the "DPA") filed in the U.S. District Court for the Southern District of Texas on January 17, 2012, relating to the Nigeria LNG Project in which Marubeni was involved during the last half of 1990s through the early 2000s. The charges described therein consist of two counts relating to violations of the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA"). On February 26, 2014, the DPA was satisfactorily completed and the related charges dismissed.

For details, please refer to Marubeni's press release from January 18, 2012 copied into the attached document.

#### **(2) Indonesian Tarahan Project Case**

On May 15, 2014, Marubeni was sentenced by the U.S. District Court for the District of Connecticut for criminal charges relating to violations of the U.S. Foreign Corrupt Practices Act ("FCPA") with respect to alleged improper payments to Indonesian government officials for a project to expand the coal-fired power plant at Tarahan, Indonesia by adding a steam generator and auxiliaries (in this section, the "Project"). Marubeni was a member of the consortium that was awarded the contract for the Project in 2004. On March 19, 2014, Marubeni pleaded guilty to violating and conspiring to violate the FCPA, which was approved by the court on May 15, 2014.

For details, please refer to Marubeni's press release from March 20, 2014 copied into the attached document.

### **2. Consequential Enforcements of the Cases Above**

#### **(1) Suspension from Participation in ODA Projects**

Due to Marubeni's settlement with the U.S. Department of Justice regarding the Indonesian Tarahan Project, the Ministry of Foreign Affairs of Japan, the Japan International Cooperation Agency ("JICA") and the Japan International Cooperation System ("JICS") have each suspended Marubeni from participation in Official Development Assistance ("ODA") projects, competition for procurement contracts with JICA or procuring Grant Aid / ODA loan projects, and participation in tenders for JICS's overseas projects, respectively, during a nine-month period from March 26, 2014 to December 25, 2014. Disclosure on Anti-bribery and Corruption Matters

(2) Suspension from Participation in Agreement with PT. PLN

Due to Marubeni's settlement with the U.S. Department of Justice regarding the Indonesian Tarahan Project, PT. PLN, an Indonesian government-owned power company, has suspended Marubeni from participation in any agreement with PT. PLN until the end of March, 2015.

Jan. 18. 2012

Marubeni Corporation

Marubeni Corporation (“Marubeni”) hereby announces that, as of January 17, 2012 (EST), Marubeni has entered into a Deferred Prosecution Agreement (the Agreement”) with the U.S. Department of Justice (“DOJ”) regarding the Nigeria LNG Project as described below.

Nigeria LNG Limited, a government-linked company of Nigeria, developed a project to build LNG plants in Nigeria (“the Project”, which includes Train 1 to Train 6). In order to be awarded the construction contracts for the Project, Technip S.A. (a French corporation), Snamprogetti S.p.A. (an Italian corporation), M.W. Kellogg Ltd. (a U. S. corporation. a predecessor company of Kellogg, Brown & Root, Inc.) and JGC Corporation (a Japanese company) formed a consortium (“TSKJ”). Between 1995 and 2004, TSKJ was awarded contracts by Nigeria LNG Limited. Marubeni executed Service Agreements with TSKJ regarding the Project (excluding Train 6) and assisted TSKJ in obtaining the contracts.

The DOJ conducted an investigation into the four companies comprising TSKJ and other relevant parties on suspicion of violation of the U.S. Foreign Corrupt Practices Act (“FCPA”) in respect of the alleged payment of bribes to Nigerian government officials in relation to the TSKJ’s obtaining the contracts for the Project. As part of the investigation, the DOJ conducted an investigation into Marubeni, leading to entry of the Agreement. Under the Agreement, Marubeni will pay US\$54.6 million (approximately 4.2 billion Japanese Yen) to the DOJ.

The effects on the consolidated business forecasts as announced on October 31, 2011 will not be material.

Marubeni Corporation March 20, 2014

## **Settlement with the U.S. Department of Justice Regarding Indonesia Tarahan Project**

Marubeni Corporation (“Marubeni”) hereby announces that, as of March 19, 2014 (EDT), it has reached a resolution with the U.S. Department of Justice (“DOJ”) of criminal charges relating to the Indonesia Tarahan Project as described below.

PT Perusahaan Listrik Negara (“PLN”), the Indonesian state electricity company, developed a project to expand the coal-fired power plant located at Tarahan, near Lampung, on the island of Sumatra by adding a steam generator and auxiliaries (the “Project”). Marubeni was a member of the consortium that was awarded the contract for the Project in 2004. The Project was completed in 2007.

The DOJ has been conducting an investigation into the consortium members and other parties on suspicion of violations of the U.S. Foreign Corrupt Practices Act (“FCPA”) with respect to agents who were allegedly retained by the consortium to make improper payments to Indonesian government officials. As a result of this investigation, Marubeni has agreed to plead guilty to violating and conspiring to violate the FCPA and to pay a fine of US\$ 88 million (approximately 9.1 billion Japanese Yen) in order to resolve these criminal charges. Sentencing has been scheduled for May 15, 2014. This follows the successful completion by Marubeni of its obligations under a January 2012 Deferred Prosecution Agreement entered with the DOJ relating to the liquid natural gas project in Nigeria. That Agreement required Marubeni to retain a corporate compliance consultant for two years to review and enhance its anticorruption compliance program to ensure that it satisfies standards specified by the DOJ, and to report to the DOJ regarding the results of this review. This was completed in January 2014, and at the request of the DOJ the related proceeding was dismissed on February 26, 2014.

The Tarahan conduct pre-dates the execution of Marubeni’s 2012 Deferred Prosecution Agreement with the DOJ. Marubeni has undertaken extensive efforts to enhance its anti-corruption compliance program, and believes that its current program is robust and effective. Although the agreement reached with DOJ today does not require Marubeni to further engage a compliance consultant, Marubeni is taking this matter seriously and commits to continue to thoroughly implement and enhance its anti-corruption compliance program.

The effects on the consolidated business forecasts as announced on February 7, 2014 will not be material.

# ATTACHMENT 5

**Affiliate Name (Includes SmartestEnergy US LLC's corporate parents and all US affiliates)**

Marubeni Corporation

Marubeni Europe plc

SmartestEnergy Ltd

SmartestEnergy US Holding Inc.

MARUBENI TRANSPORT SERVICE CORP.

Helena Agri-Enterprises, LLC

Unipres U.S.A.Inc.

Columbia Grain International, LLC

Marubeni Plant Contractor Inc.

Tekmatex, Inc.

ENERGY U.S.A. INC.

MARUBENI SPECIALTY CHEMICALS INC.

Marubeni Information Systems USA

M.Auto & Construction Machinery Southeast Inc.

MIECO INC.

Marubeni Citizen-Cincom Inc.

Marubeni Auto & Construction Machinery

America,Inc.

MCP Iron Oxide, Inc.

MAC-ROX, INC.

MARUBENI POWER INTERNATIONAL INC.

MARUBENI MS POWER, INC.

Maruti Transmission, Inc.

Maruti Transmission A, Inc.

Maruti Transmission B, Inc.

Maruti Transmission C, Inc.

Maruti Transmission D, Inc.

Maruti Transmission E, Inc.

MMS-HM, Inc.  
Marubeni Auto Investment (USA) Inc.  
MAI HOLDING LLC  
Westlake Services, LLC  
DELZOIL LLC.  
Marubeni Business Machines (America),INC.  
Gallery Automotive Group LLC  
MAC Trailer Leasing, Inc.  
Merlin Petroleum Company  
Helena Service Corporation  
Helena Holding Company  
Valley Fertilizer Company, LLC  
Marubeni Caribbean Power, Inc.  
MC CRICKET VALLEY HOLDINGS, INC.  
Marubeni Shale Investment Partner LLC  
Marubeni Shale Investment LLC  
Marubeni Eagle Ford LP  
Marubeni Shale Investment GP LLC  
Marubeni Finance America LLC  
MC CVEC PROJECT HOLDINGS I, LLC  
Gavilon Fertilizer, LLC  
NPV, LLC  
RS Holdings, LLC  
Highland Light Seafoods, LLC  
Marubeni Aviation Parts Trading LLC  
Marubeni Inventory Management Inc.  
Magellan Aviation Group LLLP  
Gavilon Agriculture Investment, Inc.  
MARUBENI TRNS MISSISSIPPI LLC  
MARUBENI TRNS UTAH LLC  
Long Island Automotive Group,Inc.  
Marubeni SPAR One, LLC  
Marubeni Energy Infrastructure Corporation  
LWP LESSEE, LLC  
MC LAKEFIELD HOLDINGS LLC  
MASI Holding Inc.

Marubeni Oil & Gas Marketing Inc.  
Marubeni Oilfield Services Inc.  
All-State Belting, LLC  
MAC Lifestyle Investment, LLC  
Gavilon Holdings, LLC  
Kalama Holdco, LLC  
The Gavilon Group, LLC  
Kalama Export Company LLC  
CAPITOL AVENUE CLEARING, LLC  
Gavilon International Holdco, LLC  
Gavilon International Holdco 2, LLC  
Gavilon Ingredients, LLC  
Gavilon Grain, LLC  
Gavilon Transportation, LLC  
Gavilon Agriculture, LLC  
Gavilon DeBruce, Inc.  
MAC Shale Investment, LLC  
Gulfstar One, LLC  
MAC Midstream LLC  
PT Grain LLC  
Atlantic Grid A LLC  
Atlantic Grid Holdings LLC  
MAC Construction Machinery Investment, LLC  
DeBruce Futures, Inc.  
Gavilon JV Holdco, LLC  
Dimmit Flaking, GP LLC  
Dimmit Flaking, LP  
Etter Grain GP, LLC  
Etter Grain, LP  
Gavilon Global Ag Holdings, LLC  
Marubeni Natural Gas and LNG America Corp.  
COLUMBIA GRAIN EXPORT INC.  
Top Chance America, Inc.  
Shiloh IV Lessee, LLC  
MC Shiloh IV Holdings LLC  
Marble Gold V, LLC

MC Turbine Investment LLC  
7F-7 Turbine Development JV L.P.  
Eastern Fish Company LLC  
MAI Holding 2,LLC  
Teaneck Seafood Investment Corp.  
Total Finance Investment, Inc.  
Car Outlet Holding Inc  
Total Finance AC LLC  
Car Outlet AC LLC  
Todo Seguro AC LLC  
Todo Seguro Premium Finance AC LLC  
Full ServiceAuto Repair AC LLC  
MARUBENI TRNS NEW JERSEY LLC  
MC St.Charles LLC  
CPV Maryland, LLC  
POSITIVO HOLDING COMPANY, CORP.  
TOH GROUP INC  
MC TURBINE INVESTMENTS2 LLC  
7HA.02 TURBINE DEVELOPMNET JV L.P.  
Flint Hills Grain, LLC  
A2 Operations Inc.  
MARBLE INSURANCE CORPORATION  
microSource, LLC  
IFP HOLDINGS, LLC  
Berthold Farmers LLC  
CGI, LLC  
XL PARTS LLC  
MAIHO III, LLC  
Diversified Applications Inc.  
Chanay Aircraft Service, Inc.  
APP Conversions, LLC  
Taylor Ag Service, Inc.  
Central Ferry Fertilizer Storage, LLC  
Farm Aviation Inc.  
MG HARRISON SHIPPING POOL LLC  
Syracuse Flying Service, Inc.

MC West Deptford Energy Holdings, LLC  
MC West Deptford Energy Investments, LLC  
Magellan Aircraft Services LLLP  
Midwest Custom Ag Aviation, Inc.  
Magellan Aviation Services 4077 LLLP  
Magella Aircraft Services III LLLP  
MC SJ 7B LLLP  
MAS V PW4090 LLLP  
MC PW4090 VIII & IX LLLP  
MC JL B737-700 LLLP  
MC EMB 170-59 LLLP  
B&B Marketing Enterprises LLLP  
PIRLO ENERGY HOLDINGS, LLC  
HORKOS TECHNICAL CENTER OF AMERICA  
MGC ADVANCED POLYMERS, INC  
Joliet Container Terminal, LLC  
TPH Holdings, LLC  
Montana Specialty Mills, LLC  
Creekstone Farms Premium Beef LLC  
Orffa Inc.  
Creekstone Holding Corp  
RETC, LLC  
Renewable Energy Investment, LLC  
MC GT Holdings LLC  
Western Helicopter Services, Inc.  
North Pacific Seafoods, Inc.  
Oxbow Power Service Inc.  
Marubeni Oil & Gas (USA) LLC.  
SoftWare Solutions Integrated, LLC  
Willamette Stevedoring LLC  
GNET DEFTA DEVELOPMENT HOLDING, LLC  
Kodiak Fishmeal Company  
Marubeni Power Services Inc.  
Marubeni Power America, Inc.  
MARUBENI MOTOR HOLDING , INC.  
Marubeni SuMiT Rail Transport Inc.

Pasternak, Baum & Co, Inc.  
Marubeni TRNS Memphis, Inc.  
MaruEnergy JPSCO VI, LLC  
MaruEnergy Trinidad, LLC  
Taweelah A2 Operating (Delaware)LLC  
PERU LNG COMPANY L.L.C.  
PIC Group Inc.  
Gallery North Inc  
Even Keel LLC  
MARIOS,INC.  
PIC Marubeni International Inc.  
NI LLC  
Harrison Grain Investment Inc.  
Columbia Grain Trading Inc.  
Helena Funding Corporation  
Am Tide, LLC  
Helena Industries, LLC  
Helena Crop Insurance Agency  
Gate Front LLC  
Lexington Generating, LLC  
Invenergy Thermal Financing LLC  
NORTH PACIFIC PROTEIN CORPORATION  
MARUBENI AEROSPACE AMERICA  
CORPORATION  
Marubeni America Corporation