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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **February 13, 2017**

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**NRG ENERGY, INC.**

(Exact Name of Registrant as Specified in its Charter)

**DELAWARE**  
(State or Other Jurisdiction  
of Incorporation)

**001-15891**  
(Commission File Number)

**41-1724239**  
(IRS Employer  
Identification No.)

**804 Carnegie Center, Princeton, New Jersey 08540**  
(Address of Principal Executive Offices) (Zip Code)

**(609) 524-4500**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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#### **Item 1.01 Entry into a Material Definitive Agreement.**

On February 13, 2017, NRG Energy, Inc. (the “Company”) entered into a letter agreement (the “Elliott Cooperation Agreement”) with Elliott Associates, L.P., Elliott International, L.P. and Elliott International Capital Advisors Inc. (collectively, “Elliott”), and a letter agreement (the “Bluescape Cooperation Agreement,” and together with the Elliott Cooperation Agreement, the “Cooperation Agreements”) with Bluescape Energy Partners LLC and BEP Special Situations 2 LLC (collectively, “Bluescape”).

Under the terms of the Cooperation Agreements, the Company agreed to appoint C. John Wilder, Jr. and Barry T. Smitherman (each of Mr. Wilder and Mr. Smitherman, or his replacement selected in accordance with the Cooperation Agreements, a “New Director”) to the Company’s board of directors (the “Board”). Immediately prior to the execution of the Cooperation Agreements, Howard E. Cosgrove resigned as chairman of the Board and as a director and Edward R. Muller resigned as vice chairman of the Board and as a director, and immediately following such resignations the Board effected the appointment of the New Directors. The Board elected Lawrence S. Coben, a current Board member, as the new chairman of the Board.

The Company has agreed to nominate the New Directors for election as directors of the Company at the 2017 Annual Meeting, subject to the terms of the Cooperation Agreements.

The Board also agreed to form an *ad hoc* committee of the Board (the “New Committee”) that will conduct a review of, and make recommendations to the Board with respect to, the Company’s (a) operational and cost excellence initiatives, (b) potential portfolio and/or asset de-consolidations, dispositions, and optimization, (c) capital structure and allocation, and (d) broader strategic initiatives. The New Committee will be chaired by Mr. Wilder. The other members of the New Committee are Mr. Smitherman, Mauricio Gutierrez, the chief executive officer of the Company, Anne C. Schaumburg and Paul W. Hobby. Subject to the terms of the Cooperation Agreements, the Company has agreed to publicly disclose any recommendations of the New Committee that have been adopted by the Board promptly upon completion of the New Committee’s review but no later than August 15, 2017. Under the terms of the Cooperation Agreements, the Company has agreed to appoint Mr. Wilder to the Finance and Risk Management Committee of the Board, and appoint at least one New Director to any new committee that may be formed following the execution and delivery of the Cooperation Agreements.

Pursuant to the Cooperation Agreements, and subject to certain conditions, each of Elliott and Bluescape has agreed to certain standstill and voting provisions. Under the terms of the Cooperation Agreements, each of Elliott and Bluescape agreed to vote, or cause to be voted, all shares of the Company’s common stock owned by Elliott or Bluescape, as the case may be, or its controlled or controlling affiliates, in favor of the election of the directors nominated by the Board at the 2017 Meeting and at any subsequent annual meeting of Company stockholders during the applicable standstill period and, subject to certain exceptions relating to extraordinary transactions, in accordance with the Board’s recommendation on any proposals. In addition, under the terms of the Elliott Cooperation Agreement, Elliott agreed to customary standstill restrictions that, subject to earlier termination under certain circumstances, expire upon the earlier of (x) December 31, 2017, and (y) thirty (30) days prior to the first day of the time period established pursuant to the Company’s by-laws for stockholders to deliver notice to the Company of director nominations to be brought before the 2018 Annual Meeting (the “Expiration Date”). Under the terms of the Bluescape Cooperation Agreement, Bluescape agreed to customary standstill restrictions that, subject to earlier termination or automatic extension under certain circumstances, expire upon the earlier of (x) December 31, 2018, and (y) thirty (30) days prior to the first day of the time period established pursuant to the Company’s by-laws for stockholders to deliver notice to the Company of director nominations to be brought before the 2019 Annual Meeting.

The foregoing description of the terms and conditions of the Cooperation Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the Cooperation Agreements, copies of which are attached to this Current Report as Exhibits 10.1 and 10.2 and incorporated herein by reference.

#### **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

Pursuant to the Cooperation Agreements described above in Item 1.01, on February 13, 2017, each of Mr. Wilder and Mr. Smitherman was appointed as a director of the Company, effective as of February 13, 2017. Mr. Wilder was also appointed as the chairman of the New Committee and as a member of the Finance and Risk Management Committee of the Board, effective as of February 13, 2017. Each of Mr. Wilder’s and Mr. Smitherman’s compensation for his services as a non-employee director, and Mr. Wilder’s compensation for his services as the chair of the New Committee and as a member of the Finance and Risk Management Committee of the Board, will be consistent with the Company’s compensation practices for non-employee directors, and committee chairs and

committee members, as the case may be, described in the Company's 2016 Proxy Statement under the caption "Director Compensation."

Immediately prior to the appointments of Mr. Wilder and Mr. Smitherman described above, Mr. Cosgrove resigned as chairman of the Board and as a director and Mr. Muller resigned as vice chairman of the Board and as a director. The Board elected Mr. Coben as chairman of the Board to replace Mr. Cosgrove.

Mr. Wilder is the Executive Chairman and a member of Investment Committees of three investment vehicles: (i) Bluescape Resources Company; (ii) Parallel Resource Partners; (iii) and Bluescape Energy Partners. Mr. Wilder serves as chairman of the board and as a director on several portfolio companies. Mr. Wilder also serves as executive chairman and director of EXCO Resources (NYSE: XCO).

Mr. Smitherman is currently an energy industry consultant and senior advisor, as well as an adjunct professor of Energy Law at The University of Texas School of Law. Mr. Smitherman is a former partner in an international law firm, a former chairman of two Texas energy-related state agencies and a former managing director of an investment bank. He is the only person to ever serve on both the Public Utility Commission of Texas (PUCT) and the Railroad Commission of Texas (RRC) and is a recognized authority on a number of energy topics, including those affecting wholesale power generation, retail electric providers, regulated electric and gas utilities, oil and gas operators, coal mining operators, and pipeline developers.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On February 13, 2017, the Board approved the Company's Fourth Amended and Restated By-laws (the "Fourth Amended and Restated By-laws") to eliminate the position of vice chairman of the Board and incorporate the prior amendment to the Third Amended and Restated By-laws of the Company approved by the Board on January 22, 2017, and disclosed in the Company's Form 8-K dated January 22, 2017. The foregoing description of the Fourth Amended and Restated By-laws is qualified in its entirety by reference to the full text of the Company's Fourth Amended and Restated By-laws, a copy of which is filed as Exhibit 3.1 hereto and incorporated herein by reference.

**Item 8.01 Other Events.**

On February 13, 2017, the Company issued a press release related to the matters described above. A copy thereof is attached as Exhibit 99.1 to this Current Report and is incorporated by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Document Description</u>
3.1	Fourth Amended and Restated By-laws of NRG Energy, Inc.
10.1	Cooperation Agreement, dated as of February 13, 2017, by and among NRG Energy, Inc., Elliott Associates, L.P., Elliott International, L.P. and Elliott International Capital Advisors Inc.
10.2	Cooperation Agreement, dated as of February 13, 2017, by and among NRG Energy, Inc., Bluescape Energy Partners LLC and BEP Special Situations 2 LLC.
99.1	Press Release issued by NRG Energy, Inc. on February 13, 2017.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: February 13, 2017

**NRG ENERGY, INC.**

By: /s/ Brian Curci  
Brian Curci  
Deputy General Counsel &  
Corporate Secretary

**EXHIBIT INDEX**

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**FOURTH AMENDED AND RESTATED  
BY-LAWS  
OF  
NRG ENERGY, INC.  
*A Delaware Corporation***

(Amended and Restated as of February 13, 2017)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of NRG Energy, Inc. (the "Corporation") in the State of Delaware shall be located at 1209 Orange Street, Wilmington, DE 19801. The name of the Corporation's registered agent at such address shall be The Corporation Trust Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors (the "Board").

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Annual Meeting. An annual meeting of the stockholders shall be held at such date and time specified by the Board for the purpose of electing Directors and conducting such other proper business as may come before the annual meeting. At the annual meeting, stockholders shall elect Directors and transact such other business as properly may be brought before the annual meeting pursuant to Section 11 of ARTICLE II hereof.

Section 2. Special Meetings. Special meetings of the stockholders may only be called in the manner provided in the Corporation's certificate of incorporation, as amended and restated from time to time (the "Certificate of Incorporation").

Section 3. Place of Meetings. The Board may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Corporation. If for any reason any annual meeting shall not be held during any year, the business thereof may be transacted at any special meeting of the stockholders.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote on the record date, determined in accordance with the provisions of Section 3 of ARTICLE VI. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the Corporation that the notice required by this Section 4 has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. Whenever the giving of any notice to stockholders is required by applicable law, the Certificate of Incorporation or these By-laws, a waiver thereof, given by the person entitled to said notice, whether before or after the event as to which such notice is required, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any waiver of notice unless so required by applicable law, the Certificate of Incorporation or these By-laws.

Section 5. Stockholders List. The officer having charge of the stock ledger of the Corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in

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alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, the stockholder's agent or attorney, at the stockholder's expense, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting, (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list shall be provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. Except as provided by applicable law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 6. Quorum. The holders of a majority of the outstanding shares of capital stock entitled to vote at the meeting of stockholders, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by the Delaware General Corporation Law or by the Certificate of Incorporation. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a specified item of business requires a vote by the holders of a class or series of shares of capital stock (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class or series, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business, except as otherwise provided by the Delaware General Corporation Law or by the Certificate of Incorporation.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Vote Required. When a quorum is present, the affirmative vote of the majority in voting power of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless (i) by express provisions of an applicable law, the rules and regulations of any stock exchange applicable to the Corporation, or of the Certificate of Incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question, or (ii) the subject matter is the election of Directors, in which case ARTICLES SIX and TEN of the Certificate of Incorporation shall govern and control the approval of such subject matter.

Section 9. Voting Rights. Except as otherwise provided by the Delaware General Corporation Law, the Certificate of Incorporation or these By-laws, every stockholder entitled to vote at any meeting of stockholders shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of capital stock held by such stockholder which has voting power upon the matter in question.

Section 10. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the secretary or a person designated by the secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 11. Business Brought Before a Meeting of the Stockholders.

(A) Annual Meetings.

(1) At an annual meeting of the stockholders, only such nominations of persons for election to the Board shall be considered and such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, nominations and other business must be (a) specified in the notice of meeting (or any

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supplement thereto) given by or at the direction of the Board, (b) brought before the meeting by or at the direction of the Board or (c) otherwise properly brought before the meeting by a stockholder who (x)(i) is a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed or such nomination or nominations are made, only if such beneficial owner is the beneficial owner of shares of the Corporation) both at the time the notice provided for in paragraph (A) of this Section 11 is delivered to the secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the annual meeting of stockholders, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in paragraph (A) of this Section 11 or (y)(i) qualifies as an Eligible Holder (as defined in Section 15(C) of this ARTICLE II) and (ii) complies with the procedures set forth in such Section 15. Stockholders seeking to nominate persons for election to the Board must comply with this Section 11 or Section 15 of this ARTICLE II, as applicable, and this Section 11 shall not be applicable to nominations except as expressly provided in this Section 11. For nominations (other than nominations made pursuant to Section 15 of this ARTICLE II) or other business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing and in proper form to the secretary of the Corporation. To be timely, a stockholder's notice relating to an annual meeting (other than a Nomination Notice, which must be delivered to the Corporation pursuant to Section 15 of this ARTICLE II) must be delivered to or mailed and received at the principal executive offices of the Corporation, not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder (other than a Nomination Notice, which must be delivered to the Corporation pursuant to Section 15 of this ARTICLE II) must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notwithstanding anything in this paragraph to the contrary, (i) solely for purposes of the annual meeting to occur in 2017, a stockholder's notice relating to such annual meeting (other than a Nomination Notice, which must be delivered to the Corporation pursuant to Section 15 of this ARTICLE II) shall be timely if it is delivered to or mailed and received at the principal executive offices of the Corporation no later than the later of (x) the latest date as determined in accordance with the second preceding sentence and (y) February 17, 2017, and (ii) in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by paragraph (A) of this Section 11 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(2) A stockholder's notice providing for the nomination of a person or persons for election as a Director or Directors of the Corporation for purposes of this Section 11 shall set forth (a) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made (and for purposes of clauses (ii) through (ix) below, including any interests described therein held by any affiliates or associates (each within the meaning of Rule 12b-2 under the Securities Exchange Act of 1934 (the "Exchange Act") for purposes of these Bylaws) of such stockholder or beneficial owner or by any member of such stockholder's or beneficial owner's immediate family sharing the same household, in each case as of the date of such stockholder's notice, which information shall be confirmed or updated, if necessary, by such stockholder and beneficial owner (x) not later than ten (10) days after the record date for the notice of the meeting to disclose such ownership as of the record date for the notice of the meeting, and (y) not later than eight (8) business days before the meeting or any adjournment or postponement thereof to disclose such ownership as of the date that is ten (10) business days before the meeting or any adjournment or postponement thereof (or if not practicable to provide such updated information not later than eight (8) business days before any adjournment or postponement, on the first practicable date before any such adjournment or postponement)) (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) (provided that a person shall in all events be deemed to beneficially own any shares of any class or series and number of shares of capital stock of the Corporation as to which such person has a right to acquire beneficial ownership at any time in the future) and owned of record by such stockholder or beneficial owner, (iii) the class or series, if any, and number of options, warrants, puts, calls, convertible securities, stock appreciation rights, or similar rights, obligations or commitments with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares or other securities of the Corporation or with a value derived in whole or in part from the value of any class or series of shares or other securities of the Corporation, whether or not such instrument, right, obligation or commitment shall be subject to in the

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underlying class or series of shares or other securities of the Corporation (each a “Derivative Security”), which are, directly or indirectly, beneficially owned by such stockholder or beneficial owner, (iv) any agreement, arrangement, understanding, or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such stockholder or beneficial owner, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of capital stock or other securities of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such stockholder or beneficial owner with respect to any class or series of capital stock or other securities of the Corporation, or that provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of any class or series of capital stock or other securities of the Corporation, (v) a description of any other direct or indirect opportunity to profit or share in any profit (including any performance-based fees) derived from any increase or decrease in the value of shares or other securities of the Corporation, (vi) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or beneficial owner has a right to vote any shares or other securities of the Corporation, (vii) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder or such beneficial owner that are separated or separable from the underlying shares of the Corporation, (viii) any proportionate interest in shares of the Corporation or Derivative Securities held, directly or indirectly, by a general or limited partnership in which such stockholder or beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, if any, (ix) a description of all agreements, arrangements, and understandings between such stockholder or beneficial owner and any other person(s) (including their name(s)) in connection with or related to the ownership or voting of capital stock of the Corporation or Derivative Securities, (x) any other information relating to such stockholder or beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (xii) a statement as to whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation’s voting shares required under applicable law to elect such stockholder’s nominees and/or otherwise to solicit proxies from the stockholders in support of such nomination and (xiii) a representation that the stockholder is a holder of record of shares of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination, and (b) as to each person whom the stockholder proposes to nominate for election or reelection as a Director, (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to the Exchange Act and the rules and regulations promulgated thereunder (including such person’s written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (ii) a description of all direct and indirect compensation and other material agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder or beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for purposes of such rule and the nominee were a director or executive officer of such registrant, (iii) a completed and signed questionnaire regarding the background and qualifications of such person to serve as a director, a copy of which may be obtained upon request to the secretary of the Corporation, (iv) all information with respect to such person that would be required to be set forth in a stockholder’s notice pursuant to this Section 11 if such person were a stockholder or beneficial owner, on whose behalf the nomination was made, submitting a notice providing for the nomination of a person or persons for election as a Director or Directors of the Corporation in accordance with this Section 11, and (v) such additional information that the Corporation may reasonably request to determine the eligibility or qualifications of such person to serve as a director or an independent director of the Corporation, or that could be material to a reasonable stockholder’s understanding of the qualifications and/or independence, or lack thereof, of such nominee as a director.

(3) A stockholder’s notice regarding business proposed to be brought before a meeting of stockholders other than the nomination of persons for election to the Board shall set forth (a) as to the stockholder giving notice and the beneficial owner, if any, on whose behalf the proposal is made, the information called for by clauses (a)(ii) through (a)(ix) of the immediately preceding paragraph (2) (including any interests described therein held by any affiliates or associates of such stockholder or beneficial owner or by any member of such stockholder’s or beneficial owner’s immediate family sharing the same household, in each case as of the date of such stockholder’s notice, which information shall be confirmed or updated, if necessary, by such stockholder and beneficial owner (x) not later than ten (10) days after the record date for the notice of the meeting to disclose such ownership as of the record date for the notice of the meeting, and (y) not later than eight (8) business days before the meeting or any adjournment or postponement thereof to disclose such ownership as of the date that is ten (10) business before the meeting or any adjournment or postponement thereof (or if not practicable to provide such updated

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information not later than eight (8) business days before any adjournment or postponement, on the first practicable date before any such adjournment or postponement)), (b) a brief description of (i) the business desired to be brought before such meeting, (ii) the reasons for conducting such business at the meeting and (iii) any material interest of such stockholder or beneficial owner in such business, including a description of all agreements, arrangements and understandings between such stockholder or beneficial owner and any other person(s) (including the name(s) of such other person(s) in connection with or related to the proposal of such business by the stockholder, (c) as to the stockholder giving notice and the beneficial owner, if any, on whose behalf the nomination is made, (i) a statement as to whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to approve the proposal and/or otherwise to solicit proxies from stockholders in support of such proposal and (ii) any other information relating to such stockholder or beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (d) if the matter such stockholder proposes to bring before any meeting of stockholders involves an amendment to the Corporation's By-laws, the specific wording of such proposed amendment, (e) a representation that the stockholder is a holder of record of shares of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business and (f) such additional information that the Corporation may reasonably request regarding such stockholder or beneficial owner, if any, and/or the business that such stockholder proposes to bring before the meeting. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(4) Notwithstanding anything in these By-laws to the contrary, only such persons who are nominated in accordance with the procedures set forth in paragraph (A) of this [Section 11](#) or the procedures set forth in [Section 15](#) of this ARTICLE II, as applicable, shall be eligible to be elected at an annual meeting to serve as directors and no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this [Section 11](#) or the procedures set forth in [Section 15](#) of this ARTICLE II, as applicable. The presiding officer of an annual meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not properly made or any business was not properly brought before the meeting, as the case may be, in accordance with the provisions of this [Section 11](#) or [Section 15](#) of this ARTICLE II, as applicable; if he or she should so determine, he or she shall so declare to the meeting and any such nomination not properly made or any business not properly brought before the meeting, as the case may be, shall not be transacted.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board pursuant to this [Section 11](#) may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board or (2) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (a) is a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such nomination or nominations are made, only if such beneficial owner is the beneficial owner of shares of the Corporation) both at the time the notice provided for in paragraph (B) of this [Section 11](#) is delivered to the Corporation's secretary and on the record date for the determination of stockholders entitled to vote at the special meeting, (b) is entitled to vote at the meeting and upon such election, and (c) complies with the notice procedures set forth in the third sentence of paragraph (B) of this [Section 11](#). In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this [Section 11](#) shall be delivered to the Corporation's secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notwithstanding anything to the contrary in these By-laws, nominations made pursuant to [Section 15](#) may not be made in connection with a special meeting of stockholders.

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(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in (a) this Section 11 or Section 15 of this ARTICLE II, as applicable, shall be eligible to be elected at an annual meeting of stockholders of the Corporation and (b) this Section 11 shall be eligible to be elected at a special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 11 or Section 15 of this ARTICLE II, as applicable. Notwithstanding the foregoing provisions of this Section 11 or the provisions of Section 15 of this ARTICLE II, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(2) For purposes of this Section 11, “public announcement” shall mean disclosure in a press release reported by Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 11.

(4) Nothing in this Section 11 of this ARTICLE II shall be deemed to (a) affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act, (b) confer upon any stockholder a right to have a nominee or any proposed business included in the Corporation’s proxy statement (except as and to the extent expressly set forth in this Section 11 and Section 15 of this ARTICLE II), (c) affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation or (d) affect the ability of an Eligible Holder (as defined in Section 15(C) of this ARTICLE II) to request inclusion of a Stockholder Nominee in the Corporation’s proxy statement pursuant to Section 15 of this ARTICLE II.

Section 12. Voting Procedures and Inspectors of Election at Meetings of Stockholders. The Board, in advance of any meeting of stockholders, may, and shall if required by applicable law, appoint one or more inspectors, who may be employees of the Corporation, to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting may, and shall if required by applicable law, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall (a) ascertain the number of shares outstanding and the voting power of each, (b) determine the shares represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. Unless otherwise provided by the Board, the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be determined by the person presiding at the meeting and shall be announced at the meeting. No ballot, proxies or votes, or any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by a stockholder shall determine otherwise. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election.

Section 13. Conduct of Meetings; Organization. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. The chairman of the board shall preside at all meetings of the stockholders. If the chairman of the board is not present at a meeting of the stockholders, the chief executive officer or the president (if the president is a Director and is not also the chairman of the board) shall preside at such meeting, and, if the chief executive officer or the president is not present at such meeting, a majority of the Directors present at such meeting shall elect one of their members to so preside. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on

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attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding officer at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding officer should so determine, such person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary, or in his or her absence, one of the assistant secretaries, shall act as secretary of the meeting. In case none of the officers above designated to act as the person presiding over the meeting or as secretary of the meeting, respectively, shall be present, a person presiding over the meeting or a secretary of the meeting, as the case may be, shall be designated by the Board, and in case the Board has not so acted, in the case of the designation of a person to act as secretary of the meeting, designated by the person presiding over the meeting.

Section 14. Order of Business. The order of business at all meetings of stockholders shall be as determined by the person presiding over the meeting.

Section 15. Proxy Access for Director Nominations.

(A) Inclusion of Nominee in Proxy Statement. Subject to the provisions of this Section 15, whenever the Board solicits proxies with respect to the election of directors at an annual meeting of stockholders, the Corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by the Board or a committee thereof:

(1) the name of any person or persons (the “Stockholder Nominee”), which shall also be included on the Corporation’s form of proxy and ballot, nominated for election by any Eligible Holder (as defined below) or group of up to 20 Eligible Holders that has (individually and collectively, in the case of a group) satisfied all applicable conditions and complied with all applicable procedures set forth in this Section 15 (such Eligible Holder or group of Eligible Holders being a “Nominating Stockholder”);

(2) disclosure about the Stockholder Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement;

(3) a written statement, not to exceed 500 words, that is not contrary to any of the Securities and Exchange Commission’s proxy rules, including Rule 14a-8 of the Exchange Act (a “Supporting Statement”), included by the Nominating Stockholder in the Nomination Notice intended for inclusion in the proxy statement in support of the Stockholder Nominee’s election to the Board (subject, without limitation, to Section 15(E)(2)); and

(4) any other information that the Corporation or the Board determines, in their discretion, to include in the proxy statement relating to the nomination of the Stockholder Nominee, including, without limitation, any statement in opposition to the nomination and any of the information provided pursuant to this Section.

(B) Maximum Number of Stockholder Nominees.

(1) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Stockholder Nominees than that number of directors constituting 20% of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Section 15 (rounded down to the nearest whole number, but not less than two) (the “Maximum Number”). The Maximum Number for a particular annual meeting shall be reduced by: (a) the number of Stockholder Nominees who are subsequently withdrawn or that the Board itself decides to nominate for election at such annual meeting, (b) the number of incumbent directors who had been Stockholder Nominees nominated with respect to any of the preceding two annual meetings of stockholders and whose reelection at the upcoming annual meeting is being recommended by the Board and (c) the number of nominees nominated for election at such annual meeting pursuant to Section 11 of ARTICLE II, provided that in no event shall this clause (c) operate to reduce the Maximum Number to less than one (1). In the event that one or more vacancies for any reason occurs on the Board after the deadline set forth in Section 15(D) below but before the date of the annual meeting, and the Board resolves to reduce the size

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of the board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(2) Any Nominating Stockholder submitting more than one Stockholder Nominee pursuant to this Section 15 for any annual meeting of stockholders shall rank such Stockholder Nominees based on the order that the Nominated Stockholder desires such Stockholder Nominees to be selected for inclusion in the proxy statement in the event that the total number of Stockholder Nominees submitted by Nominating Stockholders exceeds the Maximum Number. In the event that the number of Stockholder Nominees submitted by Nominating Stockholders exceeds the Maximum Number, the highest ranking Stockholder Nominee from each Nominating Stockholder will be included in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder's Nomination Notice, with the process repeated if the Maximum Number is not reached after the highest ranking Stockholder Nominee of each Nominating Stockholder has been selected. This process will be repeated as many times as necessary until the Maximum Number is reached. If, after the deadline for submitting a Nomination Notice as set forth in Section 15(D), a Nominating Stockholder becomes ineligible or withdraws its nomination or a Stockholder Nominee becomes unwilling or unable to serve on the Board, whether before or after the mailing of the definitive proxy statement, then the nomination shall be disregarded, and the Corporation: (a) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Stockholder Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (b) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Stockholder Nominee will not be included as a Stockholder Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(C) Eligibility of Nominating Stockholder.

(1) An "Eligible Holder" is a person who has either (a) been a record holder of the shares of common stock used to satisfy the eligibility requirements in this Section 15(C) continuously for the three-year period specified in Subsection (2) below or (b) provides to the secretary of the Corporation, within the time period set forth in Section 15(D), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that satisfies the requirements as established by the Securities and Exchange Commission for a stockholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule).

(2) An Eligible Holder or group of up to 20 Eligible Holders may submit a nomination in accordance with this Section 15 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number through the date of the annual meeting. Two or more funds that are (a) under common management and investment control, (b) under common management and funded primarily by a single employer or (c) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, (two or more funds referred to under any of clause (a), (b) or (c), collectively a "Qualifying Fund") shall be treated as one Eligible Stockholder. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Section 15, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder withdraw from a group of Eligible Holders at any time prior to the annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

(3) The "Minimum Number" of shares of the Corporation's common stock means 3% of the number of outstanding shares of common stock as of the most recent date for which such amount is given in any filing by the Corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(4) For purposes of this Section 15, an Eligible Holder "owns" only those outstanding shares of the Corporation as to which the Eligible Holder possesses both:

(i) the full voting and investment rights pertaining to the shares; and

(ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares: (a) sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (b) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an

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agreement to resell, or (c) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Holder or any of its affiliates. An Eligible Holder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five business days' notice and has recalled such loaned shares as of the date of the Nomination Notice and holds such shares through the date of the annual meeting. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Each Nominating Stockholder shall furnish any other information that may reasonably be required by the Board to verify such stockholder's continuous ownership of at least the Minimum Number during the three-year period referred to above.

(5) No person shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any person appears as a member of more than one group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

(D) Nomination Notice. To nominate a Stockholder Nominee, the Nominating Stockholder must, no earlier than 150 calendar days and no later than 120 calendar days before the first anniversary of the date of the Corporation's proxy materials released to stockholders in connection with the previous year's annual meeting of stockholders, submit to the secretary of the Corporation at the principal executive office of the Corporation all of the following information and documents (collectively, the "Nomination Notice"); provided, however, that if (and only if) the annual meeting is not scheduled to be held within a period that commences 30 days before the anniversary date of the prior year's annual meeting and ends 30 days after such anniversary date (an annual meeting date outside such period being referred to herein as an "Other Meeting Date"), the Nomination Notice shall be given in the manner provided herein by the later of the close of business on the date that is 150 days prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed:

(1) A Schedule 14N (or any successor form) relating to the Stockholder Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with Securities and Exchange Commission rules;

(2) A written notice of the nomination of such Stockholder Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including each group member):

(i) the information required with respect to the nomination of directors pursuant to Section 11 of ARTICLE II;

(ii) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(iii) a representation and warranty that the Nominating Stockholder did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation;

(iv) a representation and warranty that the Stockholder Nominee's candidacy or, if elected, Board membership would not violate the Certificate of Incorporation, these By-laws or any applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded;

(v) a representation and warranty that the Stockholder Nominee:

(A) does not have any direct or indirect relationship with the Corporation and otherwise qualifies as independent under the rules of the primary stock exchange on which the Corporation's securities are traded;

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(B) meets the audit committee independence requirements under the rules of any stock exchange on which the Corporation's securities are traded;

(C) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule);

(D) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); and

(E) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the Stockholder Nominee;

(vi) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 15(C) and has provided evidence of ownership to the extent required by Section 15(C) (1);

(vii) a (a) representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 15(C) through the date of the annual meeting and (b) a statement as to whether or not the Nominating Stockholder intends to continue to hold the Minimum Number of shares for at least one year following the annual meeting, which statement may also include a description as to why such Nominating Stockholder is unable to make the foregoing statement;

(viii) details of any position of the Stockholder Nominee as an officer or director of any competitor (that is, any entity that, directly or indirectly through any subsidiary, partnership or joint venture, owns, operates or manages any independent power producer, electric utility, electric generation facility or enterprise, or electricity wholesale or retail seller or distributor) of the Corporation, within the three years preceding the submission of the Nomination Notice;

(ix) a representation and warranty that the Nominating Stockholder will not engage in a "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Section 14a-1(2)(iv)) (or any successor rules) with respect to the annual meeting, other than with respect to the Stockholder Nominee or any nominee of the Board;

(x) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a Stockholder Nominee at the annual meeting;

(xi) if desired by the Nominating Stockholder, a Supporting Statement; and

(xii) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(3) An executed agreement pursuant to which the Nominating Stockholder (including each group member) agrees:

(i) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(ii) to file any written solicitation or other communication with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Stockholder Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(iii) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder with the Corporation, its

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stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

(iv) to indemnify and hold harmless (jointly and severally with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses, demands, claims or other costs (including reasonable attorneys' fees and disbursements of counsel) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any legal or regulatory violation arising out of the Nominating Stockholder's communications with the stockholders of the Corporation or out of information the Nominating Stockholder provided to the Corporation;

(v) in the event that (a) any information included in the Nomination Notice, or any other communication by the Nominating Stockholder (including with respect to any group member) with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made therein not misleading), or (b) the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Section 15(C), to promptly (and in any event within 48 hours of discovering such misstatement or omission) notify the Corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission (it being understood that providing any such notification referenced above shall not be deemed to cure any defect or limit the Corporation's rights to omit a Stockholder Nominee from its proxy materials as provided in this Section 15); and

(4) An executed agreement by the Stockholder Nominee:

(i) to provide to the Corporation such other information, including a completed copy of the Corporation's director questionnaire, as it may reasonably request;

(ii) that the Stockholder Nominee has read and agrees, if elected, to serve as a member of the Board, to adhere to the Corporation's Corporate Governance Guidelines and Code of Business Conduct and Ethics and any other Corporation policies and guidelines applicable to directors; and

(iii) that the Stockholder Nominee is not and will not become a party to (a) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (b) any agreement, arrangement or understanding with any person or entity as to how the Stockholder Nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not been disclosed to the Corporation or (c) any Voting Commitment that could limit or interfere with the Stockholder Nominee's ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law.

The information and documents required by this Section 15(D) shall be: (a) provided with respect to and executed by each group member, in the case of information applicable to group members; and (b) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 15(D) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the secretary of the Corporation.

(E) Exceptions.

(1) Notwithstanding anything to the contrary contained in this Section 15, the Corporation may omit from its proxy statement with respect to any annual meeting any Stockholder Nominee and any information concerning such Stockholder Nominee (including a Nominating Stockholder's Supporting Statement) and no vote on such Stockholder Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation) at such annual meeting, and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Stockholder Nominee at such annual meeting, if:

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(i) the Corporation receives a notice pursuant to Section 11 of ARTICLE II that a stockholder intends to nominate for election at such annual meeting a number of nominees greater than or equal to 50% of the total number of directors then in office;

(ii) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of stockholders to present the nomination submitted pursuant to this Section 15 or the Nominating Stockholder withdraws its nomination;

(iii) the Board determines that such Stockholder Nominee's nomination or election to the Board would result in the Corporation violating or failing to be in compliance with these By-laws and the Certificate of Incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of any stock exchange on which the Corporation's securities are traded;

(iv) the Stockholder Nominee was nominated for election to the Board pursuant to this Section 15 at one of the Corporation's two preceding annual meetings of stockholders and (a) its nomination was withdrawn, (b) such Stockholder Nominee became ineligible to serve as a Stockholder Nominee or as a director or (c) such Stockholder Nominee received a vote of less than 25% of the shares of common stock entitled to vote for such Stockholder Nominee;

(v) the Stockholder Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or

(vi) the Corporation is notified, or the Board determines, that a Nominating Stockholder has failed to continue to satisfy the eligibility requirements described in Section 15(C), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made therein not misleading), the Stockholder Nominee becomes unwilling or unable to serve on the Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or the Stockholder Nominee under this Section 15;

(2) Notwithstanding anything to the contrary contained in this Section 15, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement included in the Nomination Notice, if the Board determines that:

(i) such information is not true in all material respects or omits a material statement necessary to make the statements made therein not misleading;

(ii) such information directly or indirectly impugns the character, integrity or personal reputation of, or, without factual foundation, directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or

(iii) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation. Once submitted with a Nomination Notice, a Nominating Stockholder's Supporting Statement may not be amended, supplemented or modified by the Stockholder Nominee or the Nominating Stockholder.

For the avoidance of doubt, the Company may solicit against, and include in the proxy statement its own statement relating to, any Stockholder Nominee.

The interpretation of, and compliance with, any provision of this Section 15, including the representations, warranties and covenants contained herein, shall be determined by the Board or, in the discretion of the Board, one or more of its designees, in each case acting in good faith.

This Section 15 provides the exclusive method for a stockholder to include nominees for election to the Board in the Corporation's proxy materials.

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## ARTICLE III

### DIRECTORS

Section 1. General Powers. Except as provided in the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to such powers as are herein and in the Certificate of Incorporation expressly conferred upon it, the Board shall have and may exercise all the powers of the Corporation, subject to the provisions of the laws of Delaware, the Certificate of Incorporation and these By-laws.

Section 2. Number, Election and Term of Office. The number of Directors which constitute the entire Board of the Corporation shall be determined, and the Directors shall be elected and shall hold office, only in the manner provided in the Certificate of Incorporation.

Section 3. Resignation. Any Director may resign at any time upon written or electronic notice to the Corporation. Such resignation shall take effect at the time therein specified, and, unless otherwise specified in such resignation, the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the total number of Directors may be filled only in the manner provided in the Certificate of Incorporation.

#### Section 5. Nominations.

(A) Subject to the provisions contained in the Certificate of Incorporation, only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible to serve as Directors. Nominations of persons for election to the Board of the Corporation may be made at a meeting of stockholders (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in these By-laws, who is entitled to vote generally in the election of Directors at the meeting and who shall have complied with the notice procedures set forth in Section 11 or Section 15 of ARTICLE II, as applicable.

(B) Subject to the Certificate of Incorporation, no person shall be eligible to serve as a Director of the Corporation unless nominated in accordance with the procedures set forth in Section 11 or Section 15 of ARTICLE II, as applicable. The person presiding over the meeting of the stockholders shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by this section, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded. A stockholder seeking to nominate a person to serve as a Director must also comply with all applicable requirements of the Exchange Act, and the rules and regulations thereunder with respect to the matters set forth in this section.

Section 6. Annual Meetings. The annual meeting of the Board shall be held without other notice than these Bylaws immediately after, and at the same place as, the annual meeting of stockholders.

Section 7. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the Board may be held without notice at such time and at such place as shall from time to time be determined by resolution of the Board. Special meetings of the Board may be called by the chief executive officer of the Corporation, the most senior executive officer of the Corporation (if there is no chief executive officer), the chairman of the board, or a majority of the total number of Directors then in office, on at least 24 hours' notice to each Director, either personally, by telephone, by mail, by telecopy or by other means of electronic transmission (notice by mail shall be deemed delivered three (3) days after deposit in the U.S. mail).

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of Directors then in office shall constitute a quorum for the transaction of business. Unless by express provision of an applicable law, the Certificate of Incorporation or these By-laws a different vote is required, the vote of a majority of Directors present at a meeting at which a quorum is present shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting. At least 24 hours' notice of any adjourned meeting of the Board shall be given to each Director whether or not present at the time of the adjournment, if such notice shall be given by one of the means specified in Section 7 of this ARTICLE III other than by mail, or at least three (3) days' notice if by mail. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

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Section 9. Committees. The Board may, by resolution passed by a majority of the total number of Directors then in office, designate one or more committees, each committee to consist of one or more of the Directors of the Corporation, which to the extent provided in said resolution or resolutions shall have and may exercise the powers and authority of the Board in the management of the business and affairs of the Corporation (including the power and authority to designate other committees of the Board); provided, however, that no such committee shall have power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the General Corporation Law of the State of Delaware to be submitted to stockholders for approval, or (ii) adopting, amending, or repealing any Bylaw of the Corporation. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board upon request. Each committee designated by the Board shall be formed and function in compliance with applicable law and the rules and regulations of any national securities exchange on which any securities of the Corporation are listed.

Section 10. Committee Rules. Subject to applicable law, the rules and regulations of any national securities exchange on which any securities of the Corporation are listed and these By-laws, each committee of the Board may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. Unless otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member.

Section 11. Communications Equipment. Members of the Board or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and speak with each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

Section 12. Waiver of Notice and Presumption of Assent. Any member of the Board or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 13. Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation or these By-laws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of such board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

#### ARTICLE IV

##### OFFICERS

Section 1. Number. The officers of the Corporation shall be elected by the Board and shall consist of a chairman of the board, a chief executive officer, a president, one or more vice-presidents, a secretary, a chief financial officer and such other officers and assistant officers as may be deemed necessary or desirable by the Board. Any number of offices may be held by the same person, except that neither the chief executive officer nor the president shall also hold the office of secretary. In its discretion, the Board may choose not to fill any office for any period as it may deem advisable, except that the offices of president and secretary shall be filled as expeditiously as possible.

Section 2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders or as soon thereafter as convenient. Vacancies may be filled or new offices

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created and filled at any meeting of the Board. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Removal. Any officer or agent elected by the Board may be removed by the Board at its discretion, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board.

Section 5. Compensation. Subject to applicable law and the rules and regulations of any national securities exchange on which any securities of the Corporation are listed, the compensation of all executive officers shall be approved by the Board, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a Director of the Corporation.

Section 6. Chairman of the Board. The Board shall elect, by the affirmative vote of a majority of the total number of Directors then in office, a chairman of the board. The chairman of the board shall preside at all meetings of the stockholders and of the Board and shall have such other powers and perform such other duties as may be prescribed to him or her by the Board or provided in these Bylaws. If the chairman of the board is not present at a meeting of the stockholders or the Board, the chief executive officer or the president (if the president is a Director and is not also the chairman of the board) shall preside at such meeting, and, if the chief executive officer or the president is not present at such meeting, a majority of the Directors present at such meeting shall elect one of their members to so preside.

Section 7. Chief Executive Officer. The chief executive officer shall have the powers and perform the duties incident to that position. Subject to the powers of the Board, the chief executive officer shall be in the general and active charge of the entire business and affairs of the Corporation, and shall be its chief policy making officer. The chief executive officer shall have such other powers and perform such other duties as may be prescribed by the Board or provided in these By-laws. The chief executive officer is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation. Whenever the president is unable to serve, by reason of sickness, absence or otherwise, the chief executive officer shall perform all the duties and responsibilities and exercise all the powers of the president.

Section 8. The President. The president of the Corporation shall, subject to the powers of the Board and the chief executive officer, have general charge of the business, affairs and property of the Corporation, and control over its officers, agents and employees. The president shall see that all orders and resolutions of the Board are carried into effect. The president is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation. The president shall have such other powers and perform such other duties as may be prescribed by the chief executive officer, the Board or as may be provided in these By-laws.

Section 9. Vice Presidents. The vice president, or if there shall be more than one, the vice presidents in the order determined by the Board, shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. The vice presidents shall also perform such other duties and have such other powers as the Board, the chief executive officer, the president or these By-laws may, from time to time, prescribe. The vice presidents may also be designated as executive vice presidents or senior vice presidents, as the Board may from time to time prescribe.

Section 10. The Secretary and Assistant Secretaries. The secretary shall attend all meetings of the Board, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose or shall ensure that his or her designee attends each such meeting to act in such capacity. Under the chairman of the board's supervision, the secretary shall give, or cause to be given, all notices required to be given by these By-laws or by law; shall have such powers and perform such duties as the Board, the chief executive officer, the president or these By-laws may, from time to time, prescribe; and shall have custody of the corporate seal of the Corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The assistant secretary, or if there be more than one, any of the assistant secretaries, shall in the absence or disability of the secretary, perform the duties and exercise the powers

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of the secretary and shall perform such other duties and have such other powers as the Board, the chief executive officer, the president, or the secretary may, from time to time, prescribe.

Section 11. The Chief Financial Officer. The chief financial officer shall have the custody of the corporate funds and securities; shall keep full and accurate all books and accounts of the Corporation as shall be necessary or desirable in accordance with applicable law or generally accepted accounting principles; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the chief executive officer or the Board; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; shall render to the Board, at its regular meeting or when the Board so requires, an account of the Corporation; and shall have such powers and perform such duties as the Board, the chief executive officer, the president or these By-laws may, from time to time, prescribe. If required by the Board, the chief financial officer shall give the Corporation a bond (which shall be rendered every six (6) years) in such sums and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of the office of chief financial officer and for the restoration to the Corporation, in case of death, resignation, retirement or removal from office of all books, papers, vouchers, money and other property of whatever kind in the possession or under the control of the chief financial officer belonging to the Corporation.

Section 12. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these By-laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board.

Section 13. Absence or Disability of Officers. In the case of the absence or disability of any officer of the Corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the Board may by resolution delegate the powers and duties of such officer to any other officer or to any Director, or to any other person selected by it.

## ARTICLE V

### INDEMNIFICATION

Section 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a Director or officer of the Corporation or a wholly owned subsidiary of the Corporation or, while a Director, officer or employee of the Corporation or a wholly owned subsidiary of the Corporation, is or was serving at the request of the Corporation or a wholly owned subsidiary of the Corporation as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other entity or enterprise, including service with respect to an employee benefit plan (an "indemnitee"), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a Director, officer, employee, partner, member, manager, trustee, fiduciary or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section 2 of this ARTICLE V with respect to proceedings to enforce rights to indemnification or advance of expenses, the Corporation shall not indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee except to the extent such proceeding (or part thereof) was authorized in writing by the Board of the Corporation. The right to indemnification conferred in this Section 1 of this ARTICLE V shall be a contract right and shall include the obligation of the Corporation to pay the expenses incurred in defending any such proceeding in advance of its final disposition (an "advance of expenses"); provided, however, that an advance of expenses incurred by an indemnitee in his or her capacity as a Director or officer shall be made only upon delivery to the Corporation of an undertaking (an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 1 of this ARTICLE V or otherwise. For purposes of this ARTICLE V, a wholly owned subsidiary of the Corporation shall be deemed to include any subsidiary for which nominal equity interests have been issued to persons other than the Corporation or any of its subsidiaries pursuant to the laws of such subsidiary's jurisdiction of incorporation or organization.

Section 2. Procedure for Indemnification. Any indemnification of an indemnitee or advance of expenses under Section 1 of this ARTICLE V shall be made promptly, and in any event within thirty days (or, in the case of an advance of expenses, twenty days),

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upon the written request of the indemnitee. If the Corporation denies a written request for indemnification or advance of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty days (or, in the case of an advance of expenses, twenty days), the right to indemnification or advances as granted by this ARTICLE V shall be enforceable by the indemnitee in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification or advance of expenses, in whole or in part, in any such action shall also be indemnified by the Corporation.

Section 3. Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a Director, officer, employee or agent of the Corporation or a wholly owned subsidiary of the Corporation or was serving at the request of the Corporation or a wholly owned subsidiary of the Corporation as a Director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another corporation, partnership, joint venture, limited liability company, trust or other entity or enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the Delaware General Corporation Law.

Section 4. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this ARTICLE V shall not adversely affect any right or protection hereunder of any indemnitee in respect of any act, omission or condition existing or event or circumstance occurring prior to the time of such repeal or modification.

Section 5. Non-Exclusivity of Rights. The rights to indemnification and to the advance of expenses conferred in this ARTICLE V and in the Certificate of Incorporation shall not be exclusive of any other right which any person may have or hereafter acquire hereunder or under any statute, by-law, agreement, vote of stockholders or disinterested Directors or otherwise.

Section 6. Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Director, officer or employee who was or is serving at its request as a director, officer, employee or agent of another entity shall be reduced by any amount such Director, officer or employee may collect as indemnification or advancement of expenses from such other entity.

Section 7. Other Indemnification and Prepayment of Expenses. This ARTICLE V shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Directors or officers (including employees and agents) with the same or lesser scope and effect as provided herein when and as authorized by appropriate corporate action.

Section 8. Merger or Consolidation. For purposes of this ARTICLE V, references to the "Corporation" shall include, in addition to the corporation resulting from or surviving a consolidation or merger with the Corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger with the Corporation which, if its separate existence had continued, would have had power and authority to indemnify its Directors, officers or employees, so that any person who is or was a Director or officer of such constituent corporation or a wholly owned subsidiary of such constituent corporation or, while a Director, officer or employee of such constituent corporation or a wholly owned subsidiary of such constituent corporation is or was serving at the request of such constituent corporation or a wholly owned subsidiary of such constituent corporation as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other entity or enterprise, including service with respect to an employee benefit plan, shall stand in the same position under this ARTICLE V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Severability. If any provision of this ARTICLE V shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof.

## ARTICLE VI

### CERTIFICATES OF STOCK

Section 1. General. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by the president or vice president and the secretary or an assistant secretary of the Corporation, certifying the number of shares owned by such holder in the Corporation, provided that the Board of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that

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the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation). If a certificate is countersigned by a transfer agent or a registrar, the required signatures may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the Corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the Corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the Corporation. Shares of stock of the Corporation shall only be transferred on the books of the Corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. Each such new certificate will be registered in such name as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate. Upon the receipt of proper transfer instructions from the registered owner of uncertificated shares, if any, such uncertificated shares shall be cancelled, issuance of new equivalent uncertificated or certificated shares shall be made to the stockholder entitled thereto and the transaction shall be recorded upon the books and records of the Corporation. The Board may appoint one or more transfer agents or registrars or both in connection with the transfer of any class or series of securities of the Corporation.

Section 2. Lost Certificates. The Corporation may issue (i) a new certificate or certificates of stock or (ii) uncertificated shares in place of any certificate or certificates previously issued by the Corporation, as applicable, in place of any certificate or certificates previously issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Fixing a Record Date for Stockholder Meetings. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is first given. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 4. Fixing a Record Date for Other Purposes. In order that the Corporation may determine: (i) the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights; or (ii) the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days nor less than 10 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 5. Registered Stockholders. Prior to the surrender to the Corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the Corporation may treat the registered owner as the person entitled to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner. The Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

Section 6. Subscriptions for Stock. Unless otherwise provided for in any subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the Board. Any call made by the Board for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In

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case of default in the payment of any installment or call when such payment is due, the Corporation may proceed to collect the amount due in the same manner as any debt due the Corporation.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting, in accordance with applicable law. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or any other purpose and the Directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts or other orders for the payment of money by or to the Corporation and all notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as shall be determined by resolution of the Board or a duly authorized committee thereof.

Section 3. Contracts. In addition to the powers otherwise granted to officers pursuant to ARTICLE IV hereof, the Board may authorize any officer or officers, or any agent or agents, of the Corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer or employee who is a Director of the Corporation or its subsidiaries, whenever, in the judgment of the Directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation and would not violate applicable law. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation, subject to applicable law. Nothing in this Section 4 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board.

Section 6. Corporate Seal. The Board may provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other company held by the Corporation shall be voted by the chief executive officer, the president or a vice president, unless the Board specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 8. Inspection of Books and Records. The Board shall have power from time to time to determine to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of the State of Delaware, unless and until authorized so to do by resolution of the Board or of the stockholders of the Corporation.

Section 9. Section Headings. Section headings in these By-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Inconsistent Provisions. In the event that any provision of these By-laws is or becomes inconsistent with any provision of the Certificate of Incorporation, the Delaware General Corporation Law, the Exchange Act or any regulation thereunder, or any other applicable law or regulation, the provision of these By-laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

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Section 11. Notices. Except as provided in Section 4 of ARTICLE II hereof and Section 7 of ARTICLE III hereof, all notices referred to herein shall be in writing, shall be delivered personally or by first class mail, postage prepaid, and shall be deemed to have been given when so delivered or mailed to the Corporation at its principal executive offices and to any stockholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

Section 12. Certificate of Incorporation. Unless the context requires otherwise, references in these By-laws to the Certificate of Incorporation shall also be deemed to include any duly authorized certificate of designation relating to any series of Preferred Stock of the Corporation that may be outstanding from time to time.

#### ARTICLE VIII

#### AMENDMENTS

In furtherance and not in limitation of the powers conferred by statute, the Board of the Corporation is expressly authorized to make, alter, amend, change, add to or repeal these By-laws by the affirmative vote of a majority of the total number of Directors then in office, subject to further action by stockholders. Any alteration or repeal of these By-laws by the stockholders of the Corporation shall require the affirmative vote of a majority of the combined voting power of the then outstanding shares of the Corporation entitled to vote on such alteration or repeal.

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**NRG Energy, Inc.**  
**804 Carnegie Center**  
**Princeton, New Jersey 08540**

February 13, 2017

Elliott Associates, L.P.  
Elliott International, L.P.  
Elliott International Capital Advisors Inc.  
40 West 57<sup>th</sup> Street  
New York, NY 10019

Ladies and Gentlemen:

This letter (this "Agreement") constitutes the agreement between NRG Energy, Inc., a Delaware corporation (the "Company"), Elliott Associates, L.P., a Delaware limited partnership ("EALP"), Elliott International, L.P., a Cayman Islands limited partnership ("EILP"), and Elliott International Capital Advisors Inc., a Delaware corporation ("EICA," and, together with EALP, and EILP, the "Investors"). Concurrently with the execution and delivery of this Agreement, the Company has entered into a cooperation agreement (the "Bluescape Agreement") with Bluescape Energy Partners LLC, a Delaware limited liability company, and BEP Special Situations 2 LLC, a Delaware limited liability company (collectively, "Bluescape"). Each of the Company and the Investors is individually a "Party" and collectively they are the "Parties." Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in paragraph 11 hereof.

1. New Directors. Effective as of the date hereof, (a) immediately prior to the execution and delivery of this Agreement, Howard E. Cosgrove and Edward R. Muller shall resign from the board of directors of the Company (the "Board") and, (b) upon the execution and delivery of this Agreement and immediately following the effectiveness of such resignations, the Board shall appoint C. John Wilder, Jr. (the "New Investor Director") and Barry T. Smitherman (the "New Independent Director," and together with the New Investor Director, the "New Directors") as new members of the Board to fill the directorship vacancies created by such resignations. Concurrently with the execution of this Agreement, Lawrence S. Coben shall become chair of the Board.

2. The Company shall include the New Directors on its slate for election as directors of the Company at the 2017 Annual Meeting; provided that, if a Bluescape Shortfall Event (as such term is defined in the Bluescape Agreement) has occurred, then the Company shall have no obligation pursuant to this sentence with respect to the New Investor Director. If the New Independent Director resigns, is removed (other than for cause), or is otherwise unable or unwilling to serve as a director at any time during the Restricted Period, then the Company and the Investors shall mutually agree on a replacement who is Independent and who satisfies the Board membership criteria set forth in the Company's Corporate Governance Guidelines. Such replacement for the New Independent Director shall, as promptly as reasonably practicable following the date on which the New Independent Director ceases to be a director of the Company (taking into account the Company's director review process, which the Company shall commence promptly upon such resignation and complete as promptly as practicable), be appointed to the Board and the Committee, in each case, to serve the unexpired term of the departed New Independent Director with respect thereto, and shall be considered the New Independent Director for all purposes of this Agreement. Notwithstanding anything to the contrary in this Agreement, if the aggregate beneficial ownership of the Investors and their controlling and controlled Affiliates decreases to less than 9,463,289 shares of the Company's common stock (as such number may be adjusted to take into account any stock split, reverse stock split, stock dividend, reclassification or similar event with respect to the Company's common stock occurring after the date hereof) (an "Elliott Shortfall Event"), then the Company shall have no obligation pursuant to the immediately preceding two sentences with respect to the New Independent Director. Any other vacancy on the Board (including any vacancy resulting from any removal of any New Director for cause) or, subject to this paragraph 2 and paragraph 6, any vacancy on any committee of the Board, in any case, occurring during the Restricted Period, shall be filled by the Board upon the recommendation of the Governance and Nominating Committee of the Board. Any new committee of the Board

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established after the date hereof during the Restricted Period shall have at least one (1) New Director as a member thereof. During the Restricted Period, the number of directors shall not exceed thirteen (13) without the prior written consent of the Investors. No decrease in the size of the Board during the Restricted Period shall affect the membership of the New Directors.

3. As a condition to the appointment of any replacement for any New Director to the Board and any New Director's nomination for election as a director at any Annual Meeting (including the 2017 Annual Meeting), such replacement or New Director, as applicable, shall provide any information that the Company reasonably requires, including information required to be disclosed in a proxy statement or other filing under applicable law, stock exchange rules or listing standards, information in connection with assessing eligibility, independence and other criteria applicable to directors or satisfying compliance and legal obligations, and shall consent to appropriate background checks, to the extent, in each case, consistent with the information and background checks required by the Company in accordance with past practice with respect to other members of the Board. If, at any time, the Board learns that the New Independent Director has committed, been indicted or charged with, or made a plea of *nolo contendere* to a felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, then (a) the Board may, in its sole discretion, request that the New Independent Director resign from the Board and any committees thereof and, (b) as promptly as practicable following such resignation (taking into account the Company's director review process, which the Company shall commence promptly upon such resignation and complete as promptly as practicable), (i) the Company and the Investors shall mutually agree upon a replacement for the New Independent Director and (ii) such replacement shall be appointed to the Board and the Committee, in each case, to serve the unexpired term of the departed New Independent Director with respect thereto, and shall be considered the New Independent Director for all purposes of this Agreement. Concurrently with the execution of this Agreement, the New Independent Director has executed and delivered to the Company an irrevocable resignation letter, in form and substance reasonably acceptable to the Company, pursuant to which the New Independent Director shall resign from the Board and any committees thereof in accordance with the terms thereof.

4. In connection with the 2017 Annual Meeting (and any adjournments or postponements thereof), the Company shall (a) recommend that the Company's stockholders vote in favor of the election of each of the Company's nominees (including the New Directors), (b) solicit proxies for each of the Company's nominees (including the New Directors), (c) cause all Company common stock represented by proxies granted to it (or any of its officers, directors or representatives) to be voted in favor of each of the Company's nominees (including the New Directors) and (d) otherwise support the New Directors for election in a manner no less rigorous and favorable than the manner in which the Company supports its other nominees; provided that, if a Bluescape Shortfall Event has occurred, then the Company shall have no obligation pursuant to this sentence with respect to the New Investor Director. In connection with any Annual Meeting (and any adjournments or postponements thereof) held during the Restricted Period, the Investors shall cause to be present for quorum purposes and vote or cause to be voted all Company common stock beneficially owned by them or their controlling or controlled Affiliates and which they or such controlling or controlled Affiliates are entitled to vote on the record date for such Annual Meeting in favor of (i) the election of directors nominated by the Board and (ii) otherwise in accordance with the Board's recommendation on any non-Extraordinary Transaction related proposals; provided that, for the avoidance of doubt, for purposes of this paragraph 4, shares of Company common stock underlying physically-settled swap instruments held by the Investors or their controlling or controlled Affiliates shall not be deemed to be "beneficially owned" by such Investors or their controlling or controlled Affiliates, as applicable.

5. The Parties acknowledge that the New Directors, upon election to the Board, (a) shall serve as members of the Board and shall be governed by the same protections and obligations regarding confidentiality, conflicts of interest, related-party transactions, fiduciary duties, codes of conduct, trading and disclosure policies, director resignation policies, and corporate governance policies of the Company (collectively, "Company Policies") as other directors, and (b) shall be required to preserve the confidentiality of, and not disclose to any Person (including any Investor or any other Restricted Person), non-public information of the Company or any of its subsidiaries, including discussions or matters considered in meetings of the Board or Board committees, and shall have the same rights and benefits, including with respect to insurance, indemnification, compensation and fees, as are applicable to all independent directors of the Company; provided that the New Investor Director shall be permitted to disclose confidential information regarding the Company to Bluescape in accordance (and solely in accordance) with the Investor Confidentiality Agreement (as such term is defined in the Bluescape Agreement). The Company represents and warrants that all Company Policies in effect as of the date hereof are publicly available on

the Company's website or described in its proxy statement filed with the SEC on March 16, 2016, or have otherwise been provided to the Investors, and such Company Policies shall not be amended prior to the appointment of the New Directors. For the avoidance of doubt, during the Restricted Period, the Investors and their respective Affiliates may initiate private communications with any Third Party with respect to the Company, its subsidiaries and its and their respective Affiliates so long as such communications comply with the applicable terms of this Agreement. During the Restricted Period, no changes may be made to the Company Policies, and no new Company Policies may be adopted, in each case, that materially interfere with the arrangements contemplated hereby.

6. The Board shall take all action necessary to establish, effective upon the execution and delivery of this Agreement, an *ad hoc* committee of the Board (the "Committee"). The Committee shall be authorized and empowered to consider, investigate, review, evaluate and make recommendations to the Board regarding, the Company's (a) operational and cost excellence initiatives, (b) potential portfolio and/or asset de-consolidations, dispositions and optimization, (c) capital structure and allocation and (d) broader strategic initiatives. Except as otherwise authorized or empowered by the Board, the Committee shall only be authorized and empowered to take the foregoing actions and shall not (i) be entitled to authorize, approve, adopt, ratify, negotiate, or otherwise take any action with respect to any transaction, agreement, offer, proposal, arrangement or otherwise, whether preliminary or definitive, or (ii) have or exercise any authority to approve any action of the Company or its subsidiaries. The Committee shall remain in existence during the Committee Period. At all times during the Committee Period, the Committee shall be comprised of five (5) members, initially consisting of the New Investor Director, the New Independent Director, Mauricio Gutierrez, Anne C. Schaumburg and Paul W. Hobby. At all such times during the Committee Period as the New Investor Director or New Independent Director, as the case may be, is a member of the Board, such New Investor Director or New Independent Director, as applicable, shall also serve as a member of the Committee. A majority of the members of the Committee shall be independent directors. In the event that any vacancy on the Committee during the Committee Period occurs as a result of the resignation or removal of any of Mauricio Gutierrez, Anne C. Schaumburg or Paul W. Hobby, the Board shall promptly appoint one of the individuals listed on Schedule I to fill such vacancy; provided that, if any individual listed on Schedule I ceases to be a member of the Board for any reason, then Schedule I shall be deemed to be automatically amended (A) to remove the name of the individual who has ceased to be a member and (B) to add the name of the individual who has been elected to the Board to fill the vacancy thereon created by the former member's departure. For purposes hereof, an independent director is a director who meets the definition of "independent director" under the listing standards of the New York Stock Exchange and is affirmatively determined to be "independent" by the Board consistent with past practice. During the Committee Period, the chair of the Committee shall be the New Investor Director. The Board shall adopt a charter of the Committee that authorizes the Committee to retain, at the expense of the Company, such outside counsel, experts and other advisors and consultants as the Committee determines is appropriate to assist it in the full performance of its duties. During the Committee Period, the charter of the Committee shall not be amended in any manner inconsistent with the immediately preceding sentence without the prior written consent of the Investors. As promptly as practicable following the conclusion of the Committee's review process, but in any event no later than August 15, 2017, the Company will publicly disclose any recommendations of the Committee that have been agreed to and adopted by the Board at such time; provided that, if an Elliott Shortfall Event has occurred, then the Company shall have no obligation pursuant to this sentence. Effective upon the execution and delivery of this Agreement, the Board shall appoint the New Investor Director to serve as a member of the Finance and Risk Management Committee of the Board during the Committee Period. The Board shall consider in good faith the appointment of the New Independent Director to any other committees of the Board in existence as of the date hereof. The Board shall not establish an executive committee or any other new committee of the Board after the date hereof during the Restricted Period unless at least one New Director is appointed to serve as a member thereof.

7. Promptly following the execution and delivery of this Agreement (but in any event within one (1) business day after the date hereof), the Company shall issue a press release in the form attached hereto as Exhibit A (the "Company Press Release") and each Party shall not, and shall cause its Affiliates and its and their respective principals, directors, members, general partners, officers, employees and agents and representatives acting on their behalf not to, make any statement inconsistent with the Company Press Release in connection with the announcement of this Agreement. Each of the Investors shall not, and shall cause its other Restricted Persons not to, issue any press release in connection with the execution of this Agreement. Additionally, promptly following the execution and delivery of this Agreement (but in any event within one (1) business day after the date hereof), the Company shall file a Current Report on Form 8-K (the "Company 8-K"), which shall report the entry into this

Agreement. The Investors shall promptly, but in no event prior to the issuance by the Company of the Company Press Release and the filing by the Company of the Company 8-K, prepare and file an amendment to the Schedule 13D with respect to the Company originally filed by the Investors with the SEC on January 17, 2017 (such amendment, the "Schedule 13D") disclosing their entry into this Agreement and amending the Schedule 13D, as appropriate. Each of the Schedule 13D and the Form 8-K shall be consistent with the Company Press Release and the terms of this Agreement. The Schedule 13-D shall be in form and substance reasonably acceptable to the Company and the Investors, and the Company 8-K shall be in form and substance reasonably acceptable the Company and the Investors.

8. From the date of this Agreement until the Expiration Date or until such earlier time as the restrictions in this paragraph 8 terminate as provided herein (such period, the "Restricted Period"), each of the Investors shall not, and shall cause its Affiliates and its and their respective principals, directors, general partners, officers, employees, and agents and representatives acting on their behalf (collectively, "Restricted Persons") not to, directly or indirectly, absent prior express written invitation or authorization by the Board:

(a) engage in any "solicitation" (as such term is used in the proxy rules of the SEC) of proxies or consents with respect to the election or removal of directors of the Company or any of its subsidiaries or any other matter or proposal relating to the Company or any of its subsidiaries or become a "participant" (as such term is used in the proxy rules of the SEC) in any such solicitation of proxies or consents;

(b) knowingly encourage or advise any Person or knowingly assist any Person in encouraging or advising any other Person (i) with respect to the giving or withholding of any proxy or consent relating to, or other authority to vote, any Voting Securities, or (ii) in conducting any type of referendum relating to the Company or any of its subsidiaries (other than such encouragement or advice that is consistent with management's recommendation in connection with a particular matter);

(c) form, join or act in concert with any "group" as defined pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with respect to any Voting Securities, other than solely with the other Investors and Affiliates of the Investors with respect to Voting Securities;

(d) acquire, or offer, seek or agree to acquire, by purchase or otherwise, or direct any Third Party in the acquisition of, any Voting Securities of the Company, or engage in any swap or hedging transactions or other derivative agreements of any nature with respect to Voting Securities, in each case, if such acquisition, offer, agreement or transaction would result in the Investors having beneficial ownership of more than 9.9%, or economic exposure to more than 19.9%, of the outstanding common stock of the Company;

(e) sell, offer or agree to sell, all or substantially all, directly or indirectly, through swap or hedging transactions or otherwise, voting rights decoupled from the underlying common stock of the Company held by the Investors to any Third Party;

(f) make or in any way participate, either alone or in concert with others, directly or indirectly, in any tender offer, exchange offer, merger, consolidation, acquisition, business combination, purchase of a division, purchase of substantially all of the assets, recapitalization, restructuring, liquidation, dissolution or similar extraordinary transaction involving the Company or any of its subsidiaries or its or their respective securities or assets (each, an "Extraordinary Transaction") (it being understood that the foregoing shall not restrict the Restricted Persons from tendering shares, receiving payment for shares or otherwise participating in any such transaction initiated by a Third Party on the same basis as other stockholders of the Company or any of its subsidiaries, or from participating in any such transaction that has been approved by the Board or the board of any subsidiary of the Company); or make, directly or indirectly, any proposal, either alone or in concert with others, to the Company or any of its subsidiaries or the Board or the board of any subsidiary of the Company that would reasonably be expected to require a public announcement regarding any of the types of matters set forth above in this clause (f);

(g) enter into a voting trust, arrangement or agreement with respect to any Voting Securities, or subject any Voting Securities to any voting trust, arrangement or agreement other than (i) this Agreement, (ii)

solely with the other Investors or Affiliates of the Investors, or (iii) granting proxies in solicitations approved by the Board or the board of any subsidiary of the Company;

(h) engage in any short sale or any purchase, sale or grant of any option, warrant, convertible security, stock appreciation right, or other similar right (including any put or call option or “swap” transaction with respect to any security (other than a broad-based market basket or index)) that includes, relates to or derives any significant part of its value from a decline in the market price or value of the Voting Securities if such short sale, purchase, sale or grant would result in the Investors, together with their controlled and controlling Affiliates, no longer having an aggregate Net Long Position;

(i) (i) seek, alone or in concert with others, election or appointment to, or representation on, the Board or the board of any subsidiary of the Company or nominate or propose the nomination of, or recommend the nomination of, any candidate to the Board or any such other board, except as set forth herein, (ii) seek, alone or in concert with others, the removal of any member of the Board or any such other board, except as expressly set forth herein, or (iii) conduct a referendum of stockholders of the Company or any of its subsidiaries;

(j) make or be the proponent of any stockholder proposal (pursuant to Rule 14a-8 under the Exchange Act or otherwise) relating to the Company or any of its subsidiaries;

(k) make any request for stock list materials or other books and records of the Company or any of its subsidiaries under Section 220 of the General Corporation Law of the State of Delaware or other statutory or regulatory provisions providing for shareholder access to books and records;

(l) except as set forth herein, make any public proposal with respect to (i) any change in the number or term of directors or the filling of any vacancies on the Board or the board of any subsidiary of the Company, (ii) any material change in the capitalization or dividend policy of the Company or any of its subsidiaries, (iii) any other material change in management, business or corporate structure of the Company or any of its subsidiaries, (iv) any waiver, amendment or modification to the certificate of incorporation or by-laws (“Governing Documents”) of the Company or any of its subsidiaries, or other actions which may impede the acquisition of control of the Company or any of its subsidiaries by any Person, (v) causing a class of securities of the Company or any of its subsidiaries to be delisted from, or to cease to be authorized to be quoted on, any securities exchange or (vi) causing a class of equity securities of the Company or any of its subsidiaries to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;

(m) institute, solicit, assist or join any litigation, arbitration or other proceeding against or involving the Company or any of its subsidiaries or any of its or their respective current or former directors or officers (including derivative actions) in order to effect or take any of the actions expressly prohibited by this paragraph 8; provided, however, that for the avoidance of doubt, the foregoing shall not prevent any Restricted Person from (i) instituting litigation to enforce the provisions of this Agreement; (ii) making counterclaims with respect to any proceeding initiated by, or on behalf of, the Company against a Restricted Person, (iii) bringing bona fide commercial disputes that do not relate to the subject matter of this Agreement or the topics covered in the correspondence between the Company and the Restricted Persons prior to the date hereof, or (iv) exercising statutory appraisal rights; provided, further, that the foregoing shall also not prevent the Restricted Persons from responding to or complying with a validly issued legal process;

(n) enter into any negotiations, agreements or understandings with any Third Party to take any action that the Investors are prohibited from taking pursuant to this paragraph 8;

(o) publicly disclose any intention, plan or arrangement inconsistent with any provision of this paragraph 8; or

(p) make any request or submit any proposal to amend or waive the terms of this Agreement, in each case which would reasonably be expected to result in a public announcement of such request or proposal;

provided that (A) the restrictions in this paragraph 8 shall terminate automatically upon the earliest of: (i) as a non-exclusive remedy for any such breach, five (5) business days after written notice is delivered to the Company by the Investors following a material breach of this Agreement by the Company (including, without limitation, a failure to appoint the New Directors or otherwise constitute the Board in accordance with paragraph 1, a failure to establish the Committee in accordance with paragraph 6, or a failure to issue the Company Press Release in accordance with paragraph 7) if such breach has not been cured within such notice period; provided further, that none of the Investors is in material breach of this Agreement at the time such notice is given; (ii) the announcement by the Company that it has entered into a definitive agreement with respect to any Extraordinary Transaction that would result in the acquisition by any Person of more than 50% of the Voting Securities of the Company; (iii) the commencement of any tender or exchange offer (by any Person other than the Investors or their Affiliates) which, if consummated, would constitute an Extraordinary Transaction that would result in the acquisition by any Person of more than 50% of the Voting Securities, where the Company files with the SEC a Schedule 14D-9 (or any amendment thereto) that does not recommend that its stockholders reject such tender or exchange offer (provided that nothing herein shall prevent the Company from issuing a “stop, look and listen” communication pursuant to Rule 14d-9(f) promulgated under the Exchange Act in response to the commencement of any tender or exchange offer); (iv) such time as the Company files with the SEC or delivers to its stockholders a preliminary proxy statement, definitive proxy statement or other proxy materials in connection with the 2017 Annual Meeting that are inconsistent with the terms of this Agreement; and (v) the adoption by the Board of any amendment to the Company’s Governing Documents, each as in effect on the date hereof, that would reasonably be expected to impair the ability of a stockholder to submit nominations of individuals for election to the Board or stockholder proposals in connection with any Annual Meeting; and (B) nothing in this paragraph 8 or paragraph 9 shall prevent any Investor from making (i) any public or private statement or announcement with respect to any Extraordinary Transaction that is publicly announced by the Company or a Third Party, or (ii) any factual statement made to comply with any subpoena or other legal process or respond to a request for information from any governmental authority with jurisdiction over the Investor from whom information is sought (so long as such process or request did not arise as a result of discretionary acts by any Investor or any of its Affiliates). Notwithstanding anything to the contrary in this Agreement, nothing in this paragraph 8 shall prohibit or restrict any New Director (solely in his or her capacity as a director of the Company) from exercising his or her fiduciary duties as a director of the Company or restrict his or her discussions solely among other members of the Board and/or management, advisors, representatives or agents of the Company.

9. During the Restricted Period, each of the Company and the Investors shall refrain from making, and shall cause their respective Affiliates and its and their respective principals, directors, members, general partners, officers, employees and agents and representatives acting on their behalf not to make or cause to be made any statement or announcement, including in any document or report filed with or furnished to the SEC or through the press, media, analysts or other Persons, that constitutes an *ad hominem* attack on, or otherwise disparages, defames, slanders, impugns or is reasonably likely to damage the reputation of, (a) in the case of statements or announcements by any of the Investors, the Company or any of its Affiliates, subsidiaries or advisors, or any of its or their respective current or former officers, directors or employees, and (b) in the case of statements or announcements by the Company, the Investors and the Investors’ advisors, their respective employees or any individual who has served as an employee of the Investors and the Investors’ advisors. The foregoing shall not (i) restrict the ability of any Person to comply with any subpoena or other legal process or respond to a request for information from any governmental authority with jurisdiction over the Person from whom information is sought or (ii) apply to any private communications between the Investors, their respective Affiliates and its and their respective principals, directors, members, general partners, officers and employees, on the one hand, and the Company or any of its subsidiaries, directors, officers or employees, on the other hand.

10. The Investors hereby acknowledge that they and their Affiliates are aware that United States securities laws may restrict any person who has material, non-public information about a company from purchasing or selling any securities of such company while in possession of such information.

11. As used in this Agreement, the term (a) “Affiliate” shall have the meaning set forth in Rule 12b-2 promulgated under the Exchange Act and shall include Persons who become Affiliates of any Person subsequent to the date of this Agreement; provided that “Affiliates” of a Person shall not include any entity, solely by reason of the fact that one or more of such Person’s employees or principals serves as a member of its board of directors or similar governing body, unless such Person otherwise controls such entity (as the term “control” is defined in Rule 12b-2 promulgated by the SEC under the Exchange Act); (b) “Annual Meeting” shall mean the annual meeting of

stockholders of the Company, and any reference to an Annual Meeting preceded by a calendar year (e.g., “2017”) shall mean the Annual Meeting to occur during such calendar year; (c) “beneficially own”, “beneficially owned” and “beneficial ownership” shall have the meaning set forth in Rules 13d-3 and 13d-5(b)(1) promulgated under the Exchange Act; (d) “business day” shall mean any day other than a Saturday, Sunday or a day on which the Federal Reserve Bank of New York is closed; (e) “Committee Period” shall mean the period from and after the date hereof until the earliest of (i) the 2018 Annual Meeting, (ii) the date that the Board fails to re-nominate the New Investor Director as a director of the Company in connection with an Annual Meeting and (iii) the date that the New Investor Director resigns or is removed for cause as a director of the Company (for the avoidance of doubt, it is understood and agreed that the Board shall have no obligation to re-nominate any New Director as a director of the Company following the 2017 Annual Meeting); (f) “controlled,” “controlling” and “controlled by” shall have the meanings set forth in Rule 12b-2 promulgated under the Exchange Act; (g) “Expiration Date” shall mean the earlier of (i) December 31, 2017, and (ii) thirty (30) days prior to the first day of the time period established pursuant to the Company’s by-laws for stockholders to deliver notice to the Company of director nominations to be brought before the 2018 Annual Meeting; (h) “Independent” shall mean that a Person (x) (i) shall not be an employee, director, general partner, manager or other agent of an Investor or of any Affiliate of an Investor, (ii) shall not be a limited partner, member or other investor in any Investor or any Affiliate of an Investor and (iii) shall not have, and shall not have had, any agreement, arrangement or understanding, written or oral, with any Investor or any Affiliate of an Investor regarding such Person’s service on the Board (except as disclosed in writing to the Company prior to the execution and delivery of this Agreement or, with respect to any replacement director, prior to his or her appointment), and (y) shall be an independent director of the Company under the Company’s independence guidelines, applicable law and the rules and regulations of the SEC and the New York Stock Exchange; (i) “Net Long Position” shall mean, with respect to any Person, such Person’s net long position, as defined in Rule 14e-4 under the Exchange Act, *mutatis mutandis*, in respect of the Company’s common stock; (j) “Person” shall be interpreted broadly to include, among others, any individual, general or limited partnership, corporation, limited liability or unlimited liability company, joint venture, estate, trust, group, association or other entity of any kind or structure; (k) “SEC” means the United States Securities and Exchange Commission; (l) “Third Party” shall mean any Person that is not a Party or an Affiliate thereof, a member of the Board, a director or officer of the Company, or legal counsel to any Party; and (m) “Voting Securities” shall mean the shares of common stock of the Company and any other securities thereof entitled to vote in the election of directors, or securities convertible into, or exercisable or exchangeable for, such shares or other securities, whether or not subject to the passage of time or other contingencies.

12. Each of the Investors, severally and not jointly, represents, warrants and agrees that (a) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of such Investor, enforceable against it in accordance with its terms; (b) except as disclosed in writing to the Company prior to the execution and delivery of this Agreement or, with respect to any replacement director, prior to his or her appointment, neither it nor any of its Affiliates has or will during the Restricted Period have, any agreement, arrangement or understanding, written or oral, with any New Director or any other member of the Board pursuant to which such individual has been or will be compensated for his or her service as a director on, or nominee for election to, the Board; and (c) as of the date of this Agreement, (i) the Investors and their respective Affiliates collectively beneficially own an aggregate of 16,883,606 shares of Voting Securities of the Company and (ii) except as disclosed in the Schedule 13D with respect to the Company originally filed by the Investors with the SEC on January 17, 2017, none of the Investors nor any of their respective Affiliates, is a party to any swap or hedging transactions or other derivative agreements of any nature with respect to the Voting Securities of the Company.

13. The Company represents and warrants that (a) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms; (b) this Agreement does not require the approval of the stockholders of the Company; (c) this Agreement does not violate any law, any order of any court or other agency of government, the Company’s Governing Documents, each as in effect on the date hereof; and (d) the committees listed in Schedule II constitute all of the committees of the Board in existence as of the date hereof.

14. The Company and each of the Investors each acknowledge and agree that money damages would not be a sufficient remedy for any breach (or threatened breach) of this Agreement by it and that, in the event of any breach or threatened breach hereof, (a) the non-breaching Party shall be entitled to seek injunctive and other equitable relief, without proof of actual damages; (b) the breaching Party shall not plead in defense thereto that there



would be an adequate remedy at law; and (c) the breaching Party agrees to waive any applicable right or requirement that a bond be posted by the non-breaching party. Such remedies shall not be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.

15. This Agreement (including its exhibits and schedules) constitutes the only agreement between the Investors and the Company with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign or otherwise transfer either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party. Any purported transfer requiring consent without such consent shall be void. No amendment, modification, supplement or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party affected thereby, and then only in the specific instance and for the specific purpose stated therein. Any waiver by any Party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a Party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

16. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable. The Parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable provision.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Each of the Parties (a) irrevocably and unconditionally consents to the personal jurisdiction and venue of the federal or state courts, in each case, located in Wilmington, Delaware; (b) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (c) agrees that it shall not bring any action relating to this Agreement or otherwise in any court other than such courts; and (d) waives any claim of improper venue or any claim that those courts are an inconvenient forum. The Parties agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in paragraph 19 or in such other manner as may be permitted by applicable law, shall be valid and sufficient service thereof. Each of the Parties, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waives any right that such Party may have to a trial by jury in any litigation based upon or arising out of this Agreement or any related instrument or agreement, or any of the transactions contemplated thereby, or any course of conduct, dealing, statements (whether oral or written), or actions of any of them. No Party shall seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

18. This Agreement is solely for the benefit of the Parties and shall not be enforceable by any other Person.

19. All notices, consents, requests, instructions, approvals and other communications provided for herein, and all legal process in regard hereto, shall be in writing and shall be deemed validly given, made or served when delivered in person, by electronic mail, by overnight courier or two (2) business days after being sent by registered or certified mail (postage prepaid, return receipt requested) as follows:

If to the Company to:

NRG Energy, Inc.  
804 Carnegie Center  
Princeton, New Jersey 08540  
Attn: Brian Curci  
E-mail: [brian.curci@nrg.com](mailto:brian.curci@nrg.com)

with a copy (which shall not constitute notice) to:  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022-4834  
Attn: Thomas W. Christopher  
Stephen B. Amdur  
E-mail: thomas.christopher@lw.com  
stephen.amdur@lw.com

If to the Investors:  
Elliott Associates, L.P.  
Elliott International, L.P.  
Elliott International Capital Advisors Inc.  
40 West 57<sup>th</sup> Street  
New York, NY 10019  
Attn: Jeffrey Rosenbaum  
E-mail: jrosenbaum@elliottmgmt.com

At any time, any Party may, by notice given in accordance with this paragraph 19 to the other Party, provide updated information for notices hereunder.

20. Promptly following the execution of this Agreement (but in any event within five (5) business days after the date hereof), the Company shall reimburse the Investors for up to \$700,000 of the reasonable, documented out-of-pocket fees, costs and expenses (including, without limitation, all fees, costs and expenses of legal counsel, consultants and other third-party advisors engaged by the Investors) incurred by the Investors prior to the date hereof in connection with their investment in the Company, including, without limitation, the negotiation, execution and effectuation of this Agreement and the matters contemplated hereby.

21. Each of the Parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution and delivery of this Agreement, and that it has executed this Agreement with the advice of such counsel. Each Party and its counsel cooperated and participated in the drafting and preparation of this Agreement, and any and all drafts relating thereto exchanged among the Parties shall be deemed the work product of all of the Parties and may not be construed against any Party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted or prepared it is of no application and is hereby expressly waived by each of the Parties, and any controversy over interpretations of this Agreement shall be decided without regard to events of drafting or preparation.

22. This Agreement may be executed by the Parties in separate counterparts (including by fax, jpeg, .gif, .bmp and .pdf), each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument.

*[Signature pages follow.]*

If the terms of this Agreement are in accordance with your understanding, please sign below, whereupon this Agreement shall constitute a binding agreement among us.

Very truly yours,

NRG ENERGY, INC.

By: /s/ David Hill

Name: David Hill

Title: Executive Vice President & General Counsel

[Signature Page to Cooperation Agreement]

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Accepted and agreed to as of the date first written above:

ELLIOTT ASSOCIATES, L.P.

By: Elliott Capital Advisors, L.P.,  
its General Partner

By: Braxton Associates, Inc.,  
its General Partner

By: /s/ Elliot Greenberg  
Name: Elliot Greenberg  
Title: Vice President

ELLIOTT INTERNATIONAL, L.P.

By: Elliott International Capital Advisors Inc., as Attorney-in-Fact

By: /s/ Elliot Greenberg  
Name: Elliot Greenberg  
Title: Vice President

ELLIOTT INTERNATIONAL CAPITAL ADVISORS INC.

By: /s/ Elliot Greenberg  
Name: Elliot Greenberg  
Title: Vice President

[Signature Page to Cooperation Agreement]

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**Schedule I**

**Alternate Appointees to the Committee**

1. Lawrence S. Coben
  2. Evan J. Silverstein
  3. Anne C. Schaumburg
  4. E. Spencer Abraham
  5. Paul W. Hobby
-

**Schedule II**

**Existing Committees of the Board**

1. Governance and Nominating Committee
  2. Audit Committee
  3. Finance and Risk Management Committee
  4. Compensation Committee
  5. Nuclear Oversight Committee
-

**Exhibit A**

**Form of Company Press Release**

(See attached.)

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## PRESS RELEASE

### **NRG Announces Cooperation Agreement with Elliott Management and Bluescape Energy Partners**

*NRG Names Lawrence Coben as Chairman of the Board;  
NRG Forms Business Review Committee; and  
C. John Wilder and Barry T. Smitherman to Join NRG Board*

**PRINCETON, NJ — February 13, 2017** — NRG Energy, Inc. (NYSE: NRG) (“NRG” or “the Company”) today announced that it has entered into cooperation agreements with affiliates of each of Elliott Management Corporation (such affiliates, “Elliott”) and Bluescape Energy Partners LLC (such affiliates, “Bluescape”). Funds affiliated with Elliott have economic exposure to an aggregate of approximately 6.9% of the Company’s common stock and funds affiliated with Bluescape beneficially own an aggregate of 2.5% of the Company’s common stock.

Pursuant to the terms of the cooperation agreements, Howard Cosgrove and Edward R. Muller have announced their retirement from the NRG Board of Directors (the “Board”) and have stepped down from the Board after years of exemplary and dedicated service. Lawrence Coben, a director of the Company, was named Chairman of the Board as Cosgrove’s successor. C. John Wilder, Bluescape Energy Partners’ Executive Chairman, and Barry Smitherman, former Chair of the Public Utility Commission of Texas, have been appointed to the Board.

In addition, NRG has formed a five-person ad hoc committee of the Board — the Business Review Committee (the “Committee”). The Committee will work closely with NRG’s Board, Chief Executive Officer Mauricio Gutierrez and NRG’s management team to comprehensively review and make specific recommendations to the Board in four key areas:

1. Operational and cost excellence initiatives
2. Potential portfolio and/or asset de-consolidations, dispositions and optimization
3. Capital structure and allocation
4. Broader strategic initiatives

The Committee will be chaired by Wilder and will have four other members: Smitherman, Gutierrez, Paul Hobby and Anne Schaumburg. Upon approval by the Board, the charter for the Committee shall authorize the retention of consultants and advisors. The Committee plans to expeditiously conduct its review and make any relevant recommendations to the Board. Subsequently, NRG expects to provide a comprehensive update to the market as promptly as practicable.

“Over the past year, NRG has made strides in streamlining our business, reducing costs, strengthening our balance sheet, selling non-core assets and exiting unprofitable business lines. We remain committed to building on that progress and I look forward to the contributions of our new directors and the new committee as we take further steps to improve performance and build shareholder value,” said Gutierrez. “I personally want to express my deep appreciation to Howard and Ed for their dedicated service to the Company and its stakeholders.”

“John and Barry bring broad experience across all areas of our business and we look forward to benefiting from their expertise and participation in the boardroom. We welcome them to the NRG Board,” said Coben. “I also want to thank Howard and Ed for their stewardship through their time on the Board.”

“We have tremendous confidence in Mauricio and his management team, and I look forward to working together with his team and the Board on a comprehensive high-performance plan for the benefit of all NRG stakeholders,” said Wilder. “I believe the Committee is the ideal way to take a fresh approach and conduct a comprehensive, fact-based performance assessment. I pledge to my fellow shareholders that the Business Review Committee will leave no stone unturned in our review. I believe a focus on a relentless execution of this plan will have the long-term benefit of furthering NRG as the preeminent integrated power company.”

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“I want to thank Mauricio and his team for the collaborative, constructive approach they have taken in reaching today’s agreement,” said Jeff Rosenbaum, Portfolio Manager at Elliott. “We are confident that the new additions to NRG’s Board and the newly formed Business Review Committee, tasked with developing and overseeing the high-performance plan, will lead to tremendous value creation for all NRG stakeholders. As shareholders, we look forward to supporting the Board in its work to enable NRG to thrive in any market environment.”

Pursuant to the cooperation agreements, Elliott and Bluescape have each agreed to customary standstill, voting, and other provisions. The full cooperation agreement between NRG and Elliott and the full cooperation agreement between NRG and Bluescape will be filed on a Form 8-K with the Securities and Exchange Commission.

Morgan Stanley & Co. LLC and Goldman, Sachs and Co. are serving as financial advisors to the Company and Latham & Watkins is serving as legal counsel.

#### **About Lawrence Coben**

Larry Coben has been a director of NRG since December 2003. During his tenure, he has served as the Chair of several of the Board’s committees. Over the last 13 years, he has acted as chairman and chief executive officer for various affiliates of Tremisis Energy Corporation LLC. He has served on the board of directors of SAESA (2008-2010), a Chilean utility, Prisma Energy (2003-2006), the post-bankruptcy filing successor company to Enron, as well as currently serving on the advisory board of Morgan Stanley Infrastructure II L.P. Dr. Coben was formerly Chief Executive Officer of the NYSE-traded Bolivian Power Company, a managing director of Liberty Power Corp and Liberty Power Latin America, and a Senior Vice President of Catalyst Energy. Dr. Coben is also Executive Director of the Sustainable Preservation Initiative and a Consulting Scholar at the University of Pennsylvania Museum of Archaeology and Anthropology.

#### **About C. John Wilder**

C. John Wilder is the Executive Chairman and a member of Investment Committees of three investment vehicles: (i) Bluescape Resources Company; (ii) Parallel Resource Partners; (iii) and Bluescape Energy Partners. Wilder serves as chairman of the board and as a director on several portfolio companies. Wilder also serves as executive chairman and director of EXCO Resources (NYSE: XCO).

#### **About Barry Smitherman**

Barry T. Smitherman is currently an energy industry consultant and senior advisor, as well as an adjunct professor of Energy Law at The University of Texas School of Law. Smitherman is a former partner in an international law firm, a former chairman of two Texas energy-related state agencies and a former managing director of an investment bank. He is the only person to ever serve on both the Public Utility Commission of Texas (PUCT) and the Railroad Commission of Texas (RRC) and is a recognized authority on a number of energy topics, including those affecting wholesale power generation, retail electric providers, regulated electric and gas utilities, oil and gas operators, coal mining operators, and pipeline developers.

#### **About NRG**

NRG is the leading integrated power company in the U.S., built on the strength of the nation’s largest and most diverse competitive electric generation portfolio and leading retail electricity platform. A Fortune 200 company, NRG creates value through best in class operations, reliable and efficient electric generation, and a retail platform serving residential and commercial businesses. Working with electricity customers, large and small, we continually innovate, embrace and implement sustainable solutions for producing and managing energy. We aim to be pioneers in developing smarter energy choices and delivering exceptional service as our retail electricity providers serve almost 3 million residential and commercial customers throughout the country.

#### **About Elliott**

Elliott Management Corporation manages two multi-strategy hedge funds which combined have approximately \$31 billion of assets under management. Its flagship fund, Elliott Associates, L.P., was founded in 1977, making it one of the oldest hedge funds under continuous management. The Elliott funds’ investors include pension plans, sovereign wealth funds, endowments, foundations, funds-of-funds, high net worth individuals and families, and employees of the firm.

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## About Bluescape

Bluescape, founded in 2007, is a private investment firm focused on value-oriented investments in the upstream oil and gas and power industries. Bluescape employs a unique approach and long-term perspective, helping position companies for growth and value creation by providing capital and strategic oversight with its multi-disciplined team of executive-level managers, operators, strategic consultants, and restructuring advisors.

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Contacts:

### Media:

Marijke Shugrue  
609.524.5262

### Investors:

Kevin L. Cole, CFA  
609.524.4526

Lindsey Puchyr  
609.524.4527

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**NRG Energy, Inc.**  
**804 Carnegie Center**  
**Princeton, New Jersey 08540**

February 13, 2017

Bluescape Energy Partners LLC  
BEP Special Situations 2 LLC  
200 Crescent Court, Suite 1900  
Dallas, Texas 75201

Ladies and Gentlemen:

This letter (this "Agreement") constitutes the agreement between NRG Energy, Inc., a Delaware corporation (the "Company"), Bluescape Energy Partners LLC, a Delaware limited liability company ("BEP"), and BEP Special Situations 2 LLC, a Delaware limited liability company ("BEP SS2," and, together with BEP, the "Investors"). Each of the Company and the Investors is individually a "Party" and collectively they are the "Parties." Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in paragraphs 11 or 12 hereof.

1. New Directors. Effective as of the date hereof, (a) immediately prior to the execution and delivery of this Agreement, Howard E. Cosgrove and Edward R. Muller shall resign from the board of directors of the Company (the "Board") and, (b) upon the execution and delivery of this Agreement and immediately following the effectiveness of such resignations, the Board shall appoint C. John Wilder, Jr. (the "New Investor Director") and Barry T. Smitherman (the "New Independent Director," and together with the New Investor Director, the "New Directors") as new members of the Board to fill the directorship vacancies created by such resignations. Concurrently with the execution of this Agreement, Lawrence S. Coben shall become chair of the Board. Notwithstanding anything to the contrary in this Agreement, if the aggregate number of shares of the Company's common stock beneficially owned by the Investors and their controlling and controlled Affiliates decreases to an amount below 6,245,771 shares of the Company's outstanding common stock (as such number may be adjusted to take into account any stock split, reverse stock split, stock dividend, reclassification or similar event with respect to the Company's common stock occurring after the date hereof) (a "Bluescape Shortfall Event"), then (i) the Board may, in its sole discretion, request that the New Investor Director resign from the Board and any committees of the Board of which the New Investor Director is a member at such time, in which case, the Investors shall cause the New Investor Director to promptly deliver his or her written resignation to the Board (which shall provide for immediate resignation), and (ii) upon such resignation, the obligations of each of the Parties under this Agreement shall terminate.

2. The Company shall include the New Directors on its slate for election as directors of the Company at the 2017 Annual Meeting; provided that, if a Bluescape Shortfall Event has occurred, then the Company shall have no obligation pursuant to this sentence with respect to the New Investor Director. If the New Investor Director resigns (other than pursuant to the last sentence of paragraph 1 or the last sentence of paragraph 3), is removed (other than for cause), or is otherwise unable or unwilling to serve as a director at any time during the Restricted Period, then the Investors shall select a replacement New Investor Director who is reasonably acceptable to the Company and who satisfies the Board membership criteria set forth in the Company's Corporate Governance Guidelines. Such replacement for the New Investor Director shall, as promptly as reasonably practicable following the date on which the New Investor Director ceases to be a director of the Company (taking into account the Company's director review process, which the Company shall commence promptly upon such resignation and complete as promptly as practicable), be appointed to the Board and the Committee, in each case, to serve the unexpired term of the departed New Investor Director with respect thereto, and shall be considered the New Investor Director for all purposes of this Agreement. Except as provided in the last sentence of paragraph 3, any other vacancy on the Board (including (a) any vacancy resulting from any removal of any New Director for cause or (b) the resignation of the New Investor Director in accordance with the last sentence of paragraph 1) or, subject to this

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paragraph 2 and paragraph 6, any vacancy on any committee of the Board, in any case, occurring during the Restricted Period, shall be filled by the Board upon the recommendation of the Governance and Nominating Committee of the Board. Any new committee of the Board established after the date hereof during the Restricted Period shall have at least one (1) New Director as a member thereof. During the Restricted Period, the number of directors shall not exceed thirteen (13) without the prior written consent of the Investors. No decrease in the size of the Board during the Restricted Period shall affect the membership of the New Directors.

3. As a condition to the appointment of any replacement for any New Director to the Board and any New Director's nomination for election as a director at any Annual Meeting (including the 2017 Annual Meeting), such replacement or New Director, as applicable, shall provide any information that the Company reasonably requires, including information required to be disclosed in a proxy statement or other filing under applicable law, stock exchange rules or listing standards, information in connection with assessing eligibility, independence and other criteria applicable to directors or satisfying compliance and legal obligations, and shall consent to appropriate background checks, to the extent, in each case, consistent with the information and background checks required by the Company in accordance with past practice with respect to other members of the Board. If, at any time, the Board learns that the New Investor Director has committed, been indicted or charged with, or made a plea of *nolo contendere* to a felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, then (a) the Board may, in its sole discretion, request that the New Investor Director resign from the Board and any committees thereof, in which case, the Investors shall cause the New Investor Director to promptly deliver his written resignation to the Board (which shall provide for immediate resignation) and, (b) as promptly as practicable following such resignation (taking into account the Company's director review process, which the Company shall commence promptly upon such resignation and complete as promptly as practicable), (i) the Company and the Investors shall mutually agree upon a replacement for the New Investor Director and (ii) such replacement shall be appointed to the Board and the Committee, in each case, to serve the unexpired term of the departed New Investor Director with respect thereto, and shall be considered the New Investor Director for all purposes of this Agreement.

4. In connection with the 2017 Annual Meeting (and any adjournments or postponements thereof), the Company shall (a) recommend that the Company's stockholders vote in favor of the election of each of the Company's nominees (including the New Directors), (b) solicit proxies for each of the Company's nominees (including the New Directors), (c) cause all Company common stock represented by proxies granted to it (or any of its officers, directors or representatives) to be voted in favor of each of the Company's nominees (including the New Directors) and (d) otherwise support the New Directors for election in a manner no less rigorous and favorable than the manner in which the Company supports its other nominees; provided that, if a Bluescape Shortfall Event has occurred, then the Company shall have no obligation pursuant to this sentence with respect to the New Investor Director. In connection with any Annual Meeting (and any adjournments or postponements thereof) held during the Restricted Period, the Investors shall cause to be present for quorum purposes and vote or cause to be voted all Company common stock beneficially owned by them or their controlling or controlled Affiliates and which they or such controlling or controlled Affiliates are entitled to vote on the record date for such Annual Meeting in favor of (i) the election of directors nominated by the Board and (ii) otherwise in accordance with the Board's recommendation on any non-Extraordinary Transaction related proposals; provided that, for the avoidance of doubt, for purposes of this paragraph 4, shares of Company common stock underlying physically-settled swap instruments held by the Investors or their controlling or controlled Affiliates shall not be deemed to be "beneficially owned" by such Investors or their controlling or controlled Affiliates, as applicable.

5. The Parties acknowledge that the New Directors, upon election to the Board, (a) shall serve as members of the Board and shall be governed by the same protections and obligations regarding confidentiality, conflicts of interest, related-party transactions, fiduciary duties, codes of conduct, trading and disclosure policies, director resignation policies, and corporate governance policies of the Company (collectively, "Company Policies") as other directors, and (b) shall be required to preserve the confidentiality of, and not disclose to any Person (including any Investor or any other Restricted Person), non-public information of the Company or any of its subsidiaries, including discussions or matters considered in meetings of the Board or Board committees, and shall have the same rights and benefits, including with respect to insurance, indemnification, compensation and fees, as are applicable to all independent directors of the Company; provided that the New Investor Director shall be permitted to disclose confidential information regarding the Company to the Investors in accordance (and solely in accordance) with the Investor Confidentiality Agreement. The Company represents and warrants that all Company Policies in effect as of the date hereof are publicly available on the Company's website or described in its proxy

statement filed with the SEC on March 16, 2016, or have otherwise been provided to the Investors, and such Company Policies shall not be amended prior to the appointment of the New Directors. For the avoidance of doubt, during the Restricted Period, the Investors and their respective Affiliates may initiate private communications with any Third Party with respect to the Company, its subsidiaries and its and their respective Affiliates so long as such communications comply with the applicable terms of this Agreement. During the Restricted Period, no changes may be made to the Company Policies, and no new Company Policies may be adopted, in each case, that materially interfere with the arrangements contemplated hereby.

6. The Board shall take all action necessary to establish, effective upon the execution and delivery of this Agreement, an *ad hoc* committee of the Board (the "Committee"). The Committee shall be authorized and empowered to consider, investigate, review, evaluate and make recommendations to the Board regarding, the Company's (a) operational and cost excellence initiatives, (b) potential portfolio and/or asset de-consolidations, dispositions and optimization, (c) capital structure and allocation and (d) broader strategic initiatives. Except as otherwise authorized or empowered by the Board, the Committee shall only be authorized and empowered to take the foregoing actions and shall not (i) be entitled to authorize, approve, adopt, ratify, negotiate, or otherwise take any action with respect to any transaction, agreement, offer, proposal, arrangement or otherwise, whether preliminary or definitive, or (ii) have or exercise any authority to approve any action of the Company or its subsidiaries. The Committee shall remain in existence during the Committee Period. At all times during the Committee Period, the Committee shall be comprised of five (5) members, initially consisting of the New Investor Director, the New Independent Director, Mauricio Gutierrez, Anne C. Schaumburg and Paul W. Hobby. At all such times during the Committee Period as the New Investor Director or New Independent Director, as the case may be, is a member of the Board, such New Investor Director or New Independent Director, as applicable, shall also serve as a member of the Committee. A majority of the members of the Committee shall be independent directors. In the event that any vacancy on the Committee during the Committee Period occurs as a result of the resignation or removal of any of Mauricio Gutierrez, Anne C. Schaumburg or Paul W. Hobby, the Board shall promptly appoint one of the individuals listed on Schedule I to fill such vacancy; provided that, if any individual listed on Schedule I ceases to be a member of the Board for any reason, then Schedule I shall be deemed to be automatically amended (A) to remove the name of the individual who has ceased to be a member and (B) to add the name of the individual who has been elected to the Board to fill the vacancy thereon created by the former member's departure. For purposes hereof, an independent director is a director who meets the definition of "independent director" under the listing standards of the New York Stock Exchange and is affirmatively determined to be "independent" by the Board consistent with past practice. During the Committee Period, the chair of the Committee shall be the New Investor Director. The Board shall adopt a charter of the Committee that authorizes the Committee to retain, at the expense of the Company, such outside counsel, experts and other advisors and consultants as the Committee determines is appropriate to assist it in the full performance of its duties. During the Committee Period, the charter of the Committee shall not be amended in any manner inconsistent with the immediately preceding sentence without the prior written consent of the Investors. Effective upon the execution and delivery of this Agreement, the Board shall appoint the New Investor Director to serve as a member of the Finance and Risk Management Committee of the Board during the Committee Period. The Board shall consider in good faith the appointment of the New Independent Director to any other committees of the Board in existence as of the date hereof. The Board shall not establish an executive committee or any other new committee of the Board after the date hereof during the Restricted Period unless at least one New Director is appointed to serve as a member thereof.

7. Promptly following the execution and delivery of this Agreement (but in any event within one (1) business day after the date hereof), the Company shall issue a press release in the form attached hereto as Exhibit A (the "Company Press Release") and each Party shall not, and shall cause its Affiliates and its and their respective principals, directors, members, general partners, officers, employees and agents and representatives acting on their behalf not to, make any statement inconsistent with the Company Press Release in connection with the announcement of this Agreement. Each of the Investors shall not, and shall cause its other Restricted Persons not to, issue any press release in connection with the execution of this Agreement. Additionally, promptly following the execution and delivery of this Agreement (but in any event within one (1) business day after the date hereof), the Company shall file a Current Report on Form 8-K (the "Company 8-K"), which shall report the entry into this Agreement. The Investors shall promptly, but in no event prior to the issuance by the Company of the Company Press Release and the filing by the Company of the Company 8-K, prepare and file an amendment to the Schedule 13D with respect to the Company originally filed by the Investors with the SEC on January 17, 2017 (such amendment, the "Schedule 13D") disclosing their entry into this Agreement and amending the Schedule 13D, as

appropriate. Each of the Schedule 13D and the Form 8-K shall be consistent with the Company Press Release and the terms of this Agreement. The Schedule 13-D shall be in form and substance reasonably acceptable to the Company and the Investors, and the Company 8-K shall be in form and substance reasonably acceptable the Company and the Investors.

8. From the date of this Agreement until the Expiration Date or until such earlier time as the restrictions in this paragraph 8 terminate as provided herein (such period, the "Restricted Period"), each of the Investors shall not, and shall cause its Affiliates and its and their respective principals, directors, general partners, officers, employees, and agents and representatives acting on their behalf (collectively, "Restricted Persons") not to, directly or indirectly, absent prior express written invitation or authorization by the Board:

(a) engage in any "solicitation" (as such term is used in the proxy rules of the SEC) of proxies or consents with respect to the election or removal of directors of the Company or any of its subsidiaries or any other matter or proposal relating to the Company or any of its subsidiaries or become a "participant" (as such term is used in the proxy rules of the SEC) in any such solicitation of proxies or consents;

(b) knowingly encourage or advise any Person or knowingly assist any Person in encouraging or advising any other Person (i) with respect to the giving or withholding of any proxy or consent relating to, or other authority to vote, any Voting Securities, or (ii) in conducting any type of referendum relating to the Company or any of its subsidiaries (other than such encouragement or advice that is consistent with management's recommendation in connection with a particular matter);

(c) form, join or act in concert with any "group" as defined pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with respect to any Voting Securities, other than solely with the other Investors and Affiliates of the Investors with respect to Voting Securities;

(d) acquire, or offer, seek or agree to acquire, by purchase or otherwise, or direct any Third Party in the acquisition of, any Voting Securities of the Company, or engage in any swap or hedging transactions or other derivative agreements of any nature with respect to Voting Securities, in each case, if such acquisition, offer, agreement or transaction would result in the Investors having beneficial ownership of more than 4.99%, or economic exposure to more than 9.9%, of the outstanding common stock of the Company;

(e) sell, offer or agree to sell, all or substantially all, directly or indirectly, through swap or hedging transactions or otherwise, voting rights decoupled from the underlying common stock of the Company held by the Investors to any Third Party;

(f) make or in any way participate, either alone or in concert with others, directly or indirectly, in any tender offer, exchange offer, merger, consolidation, acquisition, business combination, purchase of a division, purchase of substantially all of the assets, recapitalization, restructuring, liquidation, dissolution or similar extraordinary transaction involving the Company or any of its subsidiaries or its or their respective securities or assets (each, an "Extraordinary Transaction") (it being understood that the foregoing shall not restrict the Restricted Persons from tendering shares, receiving payment for shares or otherwise participating in any such transaction initiated by a Third Party on the same basis as other stockholders of the Company or any of its subsidiaries, or from participating in any such transaction that has been approved by the Board or the board of any subsidiary of the Company); or make, directly or indirectly, any proposal, either alone or in concert with others, to the Company or any of its subsidiaries or the Board or the board of any subsidiary of the Company that would reasonably be expected to require a public announcement regarding any of the types of matters set forth above in this clause (f);

(g) enter into a voting trust, arrangement or agreement with respect to any Voting Securities, or subject any Voting Securities to any voting trust, arrangement or agreement other than (i) this Agreement, (ii) solely with the other Investors or Affiliates of the Investors, or (iii) granting proxies in solicitations approved by the Board or the board of any subsidiary of the Company;

(h) engage in any short sale or any purchase, sale or grant of any option, warrant, convertible security, stock appreciation right, or other similar right (including any put or call option or “swap” transaction with respect to any security (other than a broad-based market basket or index)) that includes, relates to or derives any significant part of its value from a decline in the market price or value of the Voting Securities;

(i) (i) seek, alone or in concert with others, election or appointment to, or representation on, the Board or the board of any subsidiary of the Company or nominate or propose the nomination of, or recommend the nomination of, any candidate to the Board or any such other board, except as set forth herein, (ii) seek, alone or in concert with others, the removal of any member of the Board or any such other board, except as expressly set forth herein, or (iii) conduct a referendum of stockholders of the Company or any of its subsidiaries;

(j) make or be the proponent of any stockholder proposal (pursuant to Rule 14a-8 under the Exchange Act or otherwise) relating to the Company or any of its subsidiaries;

(k) make any request for stock list materials or other books and records of the Company or any of its subsidiaries under Section 220 of the General Corporation Law of the State of Delaware or other statutory or regulatory provisions providing for shareholder access to books and records;

(l) except as set forth herein, make any public proposal with respect to (i) any change in the number or term of directors or the filling of any vacancies on the Board or the board of any subsidiary of the Company, (ii) any material change in the capitalization or dividend policy of the Company or any of its subsidiaries, (iii) any other material change in management, business or corporate structure of the Company or any of its subsidiaries, (iv) any waiver, amendment or modification to the certificate of incorporation or by-laws (“Governing Documents”) of the Company or any of its subsidiaries, or other actions which may impede the acquisition of control of the Company or any of its subsidiaries by any Person, (v) causing a class of securities of the Company or any of its subsidiaries to be delisted from, or to cease to be authorized to be quoted on, any securities exchange or (vi) causing a class of equity securities of the Company or any of its subsidiaries to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;

(m) institute, solicit, assist or join any litigation, arbitration or other proceeding against or involving the Company or any of its subsidiaries or any of its or their respective current or former directors or officers (including derivative actions) in order to effect or take any of the actions expressly prohibited by this paragraph 8; provided, however, that for the avoidance of doubt, the foregoing shall not prevent any Restricted Person from (i) instituting litigation to enforce the provisions of this Agreement; (ii) making counterclaims with respect to any proceeding initiated by, or on behalf of, the Company against a Restricted Person, (iii) bringing bona fide commercial disputes that do not relate to the subject matter of this Agreement or the topics covered in the correspondence between the Company and the Restricted Persons prior to the date hereof, or (iv) exercising statutory appraisal rights; provided, further, that the foregoing shall also not prevent the Restricted Persons from responding to or complying with a validly issued legal process;

(n) enter into any negotiations, agreements or understandings with any Third Party to take any action that the Investors are prohibited from taking pursuant to this paragraph 8;

(o) publicly disclose any intention, plan or arrangement inconsistent with any provision of this paragraph 8; or

(p) make any request or submit any proposal to amend or waive the terms of this Agreement, in each case which would reasonably be expected to result in a public announcement of such request or proposal;

provided that (A) the restrictions in this paragraph 8 shall terminate automatically upon the earliest of: (i) as a non-exclusive remedy for any such breach, five (5) business days after written notice is delivered to the Company by the Investors following a material breach of this Agreement by the Company (including, without limitation, a failure to appoint the New Directors or otherwise constitute the Board in accordance with paragraph 1, a failure to establish the Committee in accordance with paragraph 6, or a failure to issue the Company Press Release in accordance with paragraph 7) if such breach has not been cured within such notice period; provided further, that none of the Investors

is in material breach of this Agreement at the time such notice is given; (ii) the announcement by the Company that it has entered into a definitive agreement with respect to any Extraordinary Transaction that would result in the acquisition by any Person of more than 50% of the Voting Securities of the Company; (iii) the commencement of any tender or exchange offer (by any Person other than the Investors or their Affiliates) which, if consummated, would constitute an Extraordinary Transaction that would result in the acquisition by any Person of more than 50% of the Voting Securities, where the Company files with the SEC a Schedule 14D-9 (or any amendment thereto) that does not recommend that its stockholders reject such tender or exchange offer (provided that nothing herein shall prevent the Company from issuing a “stop, look and listen” communication pursuant to Rule 14d-9(f) promulgated under the Exchange Act in response to the commencement of any tender or exchange offer); (iv) such time as the Company files with the SEC or delivers to its stockholders a preliminary proxy statement, definitive proxy statement or other proxy materials in connection with the 2017 Annual Meeting that are inconsistent with the terms of this Agreement; and (v) the adoption by the Board of any amendment to the Company’s Governing Documents, each as in effect on the date hereof, that would reasonably be expected to impair the ability of a stockholder to submit nominations of individuals for election to the Board or stockholder proposals in connection with any Annual Meeting; and (B) nothing in this paragraph 8 shall prevent any Investor from making (i) any public or private statement or announcement in compliance with paragraph 9 with respect to any Extraordinary Transaction that is publicly announced by the Company or a Third Party, or (ii) any factual statement made to comply with any subpoena or other legal process or respond to a request for information from any governmental authority with jurisdiction over the Investor from whom information is sought (so long as such process or request did not arise as a result of discretionary acts by any Investor or any of its Affiliates). Notwithstanding anything to the contrary in this Agreement, nothing in this paragraph 8 shall prohibit or restrict any New Director (solely in his or her capacity as a director of the Company) from exercising his or her fiduciary duties as a director of the Company or restrict his or her discussions solely among other members of the Board and/or management, advisors, representatives or agents of the Company.

9. During the Restricted Period, each of the Company and the Investors shall refrain from making, and shall cause their respective Affiliates and its and their respective principals, directors, members, general partners, officers, employees and agents and representatives acting on their behalf not to make or cause to be made any statement or announcement, including in any document or report filed with or furnished to the SEC or through the press, media, analysts or other Persons, that constitutes an *ad hominem* attack on, or otherwise disparages, defames, slanders, impugns or is reasonably likely to damage the reputation of, (a) in the case of statements or announcements by any of the Investors, the Company or any of its Affiliates, subsidiaries or advisors, or any of its or their respective current or former officers, directors or employees, and (b) in the case of statements or announcements by the Company, the Investors and the Investors’ advisors, their respective employees or any individual who has served as an employee of the Investors and the Investors’ advisors. The foregoing shall not (i) restrict the ability of any Person to comply with any subpoena or other legal process or respond to a request for information from any governmental authority with jurisdiction over the Person from whom information is sought or (ii) apply to any private communications between the Investors, their respective Affiliates and its and their respective principals, directors, members, general partners, officers and employees, on the one hand, and the Company or any of its subsidiaries, directors, officers or employees, on the other hand.

10. The Company hereby agrees that the New Investor Director may provide confidential information of the Company to the Investors and their Affiliates subject to, and solely in accordance with the terms of, a confidentiality agreement in the form attached hereto as Exhibit B (the “Investor Confidentiality Agreement”) (which the Investors agree to execute and deliver to the Company simultaneously with the Investors’ execution and delivery of this Agreement). The Investors hereby acknowledge that they and their Affiliates are aware that United States securities laws may restrict any person who has material, non-public information about a company from purchasing or selling any securities of such company while in possession of such information. Accordingly, for so long as C. John Wilder, Jr. continues to serve as a director of the Company, the Investors shall, and shall cause their Affiliates to, purchase and sell securities of the Company only in compliance with applicable law and the Company’s insider trading policy, a copy of which has been provided to the Investors.

11. As used in this Agreement, the term (a) “Affiliate” shall have the meaning set forth in Rule 12b-2 promulgated under the Exchange Act and shall include Persons who become Affiliates of any Person subsequent to the date of this Agreement; provided that “Affiliates” of a Person shall not include any entity, solely by reason of the fact that one or more of such Person’s employees or principals serves as a member of its board of directors or similar



governing body, unless such Person otherwise controls such entity (as the term “control” is defined in Rule 12b-2 promulgated by the SEC under the Exchange Act); provided that, for the avoidance of doubt, C. John Wilder, Jr., shall be deemed an Affiliate of the Investors; (b) “Annual Meeting” shall mean the annual meeting of stockholders of the Company, and any reference to an Annual Meeting preceded by a calendar year (e.g., “2017”) shall mean the Annual Meeting to occur during such calendar year; (c) “beneficially own”, “beneficially owned” and “beneficial ownership” shall have the meaning set forth in Rules 13d-3 and 13d-5(b)(1) promulgated under the Exchange Act; (d) “business day” shall mean any day other than a Saturday, Sunday or a day on which the Federal Reserve Bank of New York is closed; (e) “Committee Period” shall mean the period from and after the date hereof until the earliest of (i) the 2018 Annual Meeting, (ii) the date that the Board fails to re-nominate the New Investor Director as a director of the Company in connection with an Annual Meeting and (iii) the date that the New Investor Director resigns or is removed for cause as a director of the Company (for the avoidance of doubt, it is understood and agreed that the Board shall have no obligation to re-nominate any New Director as a director of the Company following the 2017 Annual Meeting); (f) “controlled,” “controlling” and “controlled by” shall have the meanings set forth in Rule 12b-2 promulgated under the Exchange Act; (g) “Independent” shall mean that a Person (x) (i) shall not be an employee, director, general partner, manager or other agent of an Investor or of any Affiliate of an Investor, (ii) shall not be a limited partner, member or other investor in any Investor or any Affiliate of an Investor and (iii) shall not have, and shall not have had, any agreement, arrangement or understanding, written or oral, with any Investor or any Affiliate of an Investor regarding such Person’s service on the Board (except as disclosed in writing to the Company prior to the execution and delivery of this Agreement or, with respect to any replacement director, prior to his or her appointment), and (y) shall be an independent director of the Company under the Company’s independence guidelines, applicable law and the rules and regulations of the SEC and the New York Stock Exchange; (h) “Person” shall be interpreted broadly to include, among others, any individual, general or limited partnership, corporation, limited liability or unlimited liability company, joint venture, estate, trust, group, association or other entity of any kind or structure; (i) “SEC” means the United States Securities and Exchange Commission; (j) “Third Party” shall mean any Person that is not a Party or an Affiliate thereof, a member of the Board, a director or officer of the Company, or legal counsel to any Party; and (k) “Voting Securities” shall mean the shares of common stock of the Company and any other securities thereof entitled to vote in the election of directors, or securities convertible into, or exercisable or exchangeable for, such shares or other securities, whether or not subject to the passage of time or other contingencies.

12. “Expiration Date” shall mean the earlier of (i) December 31, 2018, and (ii) thirty (30) days prior to the first day of the time period established pursuant to the Company’s by-laws for stockholders to deliver notice to the Company of director nominations to be brought before the 2019 Annual Meeting; provided, however, that if the Company provides written notice to C. John Wilder, Jr. of its intent not to nominate him in connection with the 2018 Annual Meeting, then the “Expiration Date” shall mean the earlier to occur of (x) the subsequent resignation of C. John Wilder, Jr. as a director of the Company and (y) the expiration of his term as a director of the Company at the 2018 Annual Meeting. Notwithstanding the foregoing, if the New Investor Director remains a director of the Company as of the first day following the date that would otherwise constitute the Expiration Date in accordance with the immediately preceding sentence, then the Expiration Date shall automatically be extended until the earlier to occur of (1) the New Investor Director’s resignation or removal as a director of the Company and (2) the expiration of his or her term as a director of the Company at any Annual Meeting following the 2018 Annual Meeting. The Parties agree and acknowledge that the Board shall have no obligation to re-nominate any New Director as a director of the Company at any Annual Meeting following the 2017 Annual Meeting. The Company agrees that (i) it shall deliver written notice of its determination not to nominate the New Investor Director at any Annual Meeting following the 2017 Annual Meeting no later than thirty-five (35) days before the first day of the time period established pursuant to the Company’s by-laws for stockholders to deliver notice to the Company of director nominations to be brought before such Annual Meeting and (ii) absent delivery of such written notice within such period, the Company shall be required to nominate the New Investor Director for election to the Board at such subsequent Annual Meeting.

13. Each of the Investors, severally and not jointly, represents, warrants and agrees that (a) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of such Investor, enforceable against it in accordance with its terms; (b) except as disclosed in writing to the Company prior to the execution and delivery of this Agreement or, with respect to any replacement director, prior to his or her appointment, neither it nor any of its Affiliates has or will during the Restricted Period have, any agreement, arrangement or understanding, written or oral, with any New Director or any other member of the Board pursuant to

which such individual has been or will be compensated for his or her service as a director on, or nominee for election to, the Board; and (c) as of the date of this Agreement, (i) the Investors and their respective Affiliates collectively beneficially own an aggregate of 7,807,214 shares of Voting Securities of the Company and (ii) none of the Investors nor any of their respective Affiliates, is a party to any swap or hedging transactions or other derivative agreements of any nature with respect to the Voting Securities of the Company.

14. The Company represents and warrants that (a) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms; (b) this Agreement does not require the approval of the stockholders of the Company; (c) this Agreement does not violate any law, any order of any court or other agency of government, the Company's Governing Documents, each as in effect on the date hereof; and (d) the committees listed in Schedule II constitute all of the committees of the Board in existence as of the date hereof.

15. The Company and each of the Investors each acknowledge and agree that money damages would not be a sufficient remedy for any breach (or threatened breach) of this Agreement by it and that, in the event of any breach or threatened breach hereof, (a) the non-breaching Party shall be entitled to seek injunctive and other equitable relief, without proof of actual damages; (b) the breaching Party shall not plead in defense thereto that there would be an adequate remedy at law; and (c) the breaching Party agrees to waive any applicable right or requirement that a bond be posted by the non-breaching party. Such remedies shall not be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.

16. This Agreement (including its exhibits and schedules) and the Investor Confidentiality Agreement constitute the only agreement between the Investors and the Company with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign or otherwise transfer either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party. Any purported transfer requiring consent without such consent shall be void. No amendment, modification, supplement or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party affected thereby, and then only in the specific instance and for the specific purpose stated therein. Any waiver by any Party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a Party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

17. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable. The Parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable provision.

18. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Each of the Parties (a) irrevocably and unconditionally consents to the personal jurisdiction and venue of the federal or state courts, in each case, located in Wilmington, Delaware; (b) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (c) agrees that it shall not bring any action relating to this Agreement or otherwise in any court other than such courts; and (d) waives any claim of improper venue or any claim that those courts are an inconvenient forum. The Parties agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in paragraph 20 or in such other manner as may be permitted by applicable law, shall be valid and sufficient service thereof. Each of the Parties, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waives any right that such Party may have to a trial by jury in any litigation based upon or arising out of this Agreement or any related instrument or agreement, or any of the transactions contemplated thereby, or any course of conduct, dealing, statements (whether oral or written), or actions of any of them. No Party shall seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

19. This Agreement is solely for the benefit of the Parties and shall not be enforceable by any other Person.

20. All notices, consents, requests, instructions, approvals and other communications provided for herein, and all legal process in regard hereto, shall be in writing and shall be deemed validly given, made or served when delivered in person, by electronic mail, by overnight courier or two (2) business days after being sent by registered or certified mail (postage prepaid, return receipt requested) as follows:

If to the Company to:

NRG Energy, Inc.  
804 Carnegie Center  
Princeton, New Jersey 08540  
Attn: Brian Curci  
E-mail: brian.curci@nrg.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022-4834  
Attn: Thomas W. Christopher  
Stephen B. Amdur  
E-mail: thomas.christopher@lw.com  
stephen.amdur@lw.com

If to the Investors:

Bluescape Energy Partners LLC  
BEP Special Situations 2 LLC  
200 Crescent Court, Suite 1900  
Dallas, Texas 75201  
Attn: Jonathan Siegler  
E-mail: jsiegler@bluescapepartners.com

At any time, any Party may, by notice given in accordance with this paragraph 20 to the other Party, provide updated information for notices hereunder.

21. Promptly following the execution of this Agreement (but in any event within five (5) business days after the date hereof), the Company shall reimburse the Investors for up to \$1,100,000 of the reasonable, documented out-of-pocket fees, costs and expenses (including, without limitation, all fees, costs and expenses of legal counsel, consultants and other third-party advisors engaged by the Investors) incurred by the Investors prior to the date hereof in connection with their investment in the Company, including, without limitation, the negotiation, execution and effectuation of this Agreement and the matters contemplated hereby.

22. Each of the Parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution and delivery of this Agreement, and that it has executed this Agreement with the advice of such counsel. Each Party and its counsel cooperated and participated in the drafting and preparation of this Agreement, and any and all drafts relating thereto exchanged among the Parties shall be deemed the work product of all of the Parties and may not be construed against any Party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted or prepared it is of no application and is hereby expressly waived by each of the Parties, and any controversy over interpretations of this Agreement shall be decided without regard to events of drafting or preparation.

23. This Agreement may be executed by the Parties in separate counterparts (including by fax, jpeg, .gif, .bmp and .pdf), each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument.

If the terms of this Agreement are in accordance with your understanding, please sign below, whereupon this Agreement shall constitute a binding agreement among us.

Very truly yours,

NRG ENERGY, INC.

By: /s/ David Hill

Name: David Hill

Title: Executive Vice President &  
General Counsel

[Signature Page to Cooperation Agreement]

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Accepted and agreed to as of the date first written above:

BLUESCAPE ENERGY PARTNERS LLC

By: /s/ Jonathan Siegler  
Name: Jonathan Siegler  
Title: Chief Financial Officer

BEP SPECIAL SITUATIONS 2 LLC

By: /s/ Jonathan Siegler  
Name: Jonathan Siegler  
Title: Chief Financial Officer

[Signature Page to Cooperation Agreement]

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**Schedule I**

**Alternate Appointees to the Committee**

1. Lawrence S. Coben
  2. Evan J. Silverstein
  3. Anne C. Schaumburg
  4. E. Spencer Abraham
  5. Paul W. Hobby
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**Schedule II**

**Existing Committees of the Board**

1. Governance and Nominating Committee
  2. Audit Committee
  3. Finance and Risk Management Committee
  4. Compensation Committee
  5. Nuclear Oversight Committee
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**Exhibit A**

**Form of Company Press Release**

(See attached.)

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## PRESS RELEASE

### **NRG Announces Cooperation Agreement with Elliott Management and Bluescape Energy Partners**

*NRG Names Lawrence Coben as Chairman of the Board;  
NRG Forms Business Review Committee; and  
C. John Wilder and Barry T. Smitherman to Join NRG Board*

**PRINCETON, NJ — February 13, 2017** — NRG Energy, Inc. (NYSE: NRG) (“NRG” or “the Company”) today announced that it has entered into cooperation agreements with affiliates of each of Elliott Management Corporation (such affiliates, “Elliott”) and Bluescape Energy Partners LLC (such affiliates, “Bluescape”). Funds affiliated with Elliott have economic exposure to an aggregate of approximately 6.9% of the Company’s common stock and funds affiliated with Bluescape beneficially own an aggregate of 2.5% of the Company’s common stock.

Pursuant to the terms of the cooperation agreements, Howard Cosgrove and Edward R. Muller have announced their retirement from the NRG Board of Directors (the “Board”) and have stepped down from the Board after years of exemplary and dedicated service. Lawrence Coben, a director of the Company, was named Chairman of the Board as Cosgrove’s successor. C. John Wilder, Bluescape Energy Partners’ Executive Chairman, and Barry Smitherman, former Chair of the Public Utility Commission of Texas, have been appointed to the Board.

In addition, NRG has formed a five-person ad hoc committee of the Board — the Business Review Committee (the “Committee”). The Committee will work closely with NRG’s Board, Chief Executive Officer Mauricio Gutierrez and NRG’s management team to comprehensively review and make specific recommendations to the Board in four key areas:

1. Operational and cost excellence initiatives
2. Potential portfolio and/or asset de-consolidations, dispositions and optimization
3. Capital structure and allocation
4. Broader strategic initiatives

The Committee will be chaired by Wilder and will have four other members: Smitherman, Gutierrez, Paul Hobby and Anne Schaumburg. Upon approval by the Board, the charter for the Committee shall authorize the retention of consultants and advisors. The Committee plans to expeditiously conduct its review and make any relevant recommendations to the Board. Subsequently, NRG expects to provide a comprehensive update to the market as promptly as practicable.

“Over the past year, NRG has made strides in streamlining our business, reducing costs, strengthening our balance sheet, selling non-core assets and exiting unprofitable business lines. We remain committed to building on that progress and I look forward to the contributions of our new directors and the new committee as we take further steps to improve performance and build shareholder value,” said Gutierrez. “I personally want to express my deep appreciation to Howard and Ed for their dedicated service to the Company and its stakeholders.”

“John and Barry bring broad experience across all areas of our business and we look forward to benefiting from their expertise and participation in the boardroom. We welcome them to the NRG Board,” said Coben. “I also want to thank Howard and Ed for their stewardship through their time on the Board.”

“We have tremendous confidence in Mauricio and his management team, and I look forward to working together with his team and the Board on a comprehensive high-performance plan for the benefit of all NRG stakeholders,” said Wilder. “I believe the Committee is the ideal way to take a fresh approach and conduct a comprehensive, fact-based performance assessment. I pledge to my fellow

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shareholders that the Business Review Committee will leave no stone unturned in our review. I believe a focus on a relentless execution of this plan will have the long-term benefit of furthering NRG as the preeminent integrated power company.”

“I want to thank Mauricio and his team for the collaborative, constructive approach they have taken in reaching today’s agreement,” said Jeff Rosenbaum, Portfolio Manager at Elliott. “We are confident that the new additions to NRG’s Board and the newly formed Business Review Committee, tasked with developing and overseeing the high-performance plan, will lead to tremendous value creation for all NRG stakeholders. As shareholders, we look forward to supporting the Board in its work to enable NRG to thrive in any market environment.”

Pursuant to the cooperation agreements, Elliott and Bluescape have each agreed to customary standstill, voting, and other provisions. The full cooperation agreement between NRG and Elliott and the full cooperation agreement between NRG and Bluescape will be filed on a Form 8-K with the Securities and Exchange Commission.

Morgan Stanley & Co. LLC and Goldman, Sachs and Co. are serving as financial advisors to the Company and Latham & Watkins is serving as legal counsel.

#### **About Lawrence Coben**

Larry Coben has been a director of NRG since December 2003. During his tenure, he has served as the Chair of several of the Board’s committees. Over the last 13 years, he has acted as chairman and chief executive officer for various affiliates of Tremisis Energy Corporation LLC. He has served on the board of directors of SAESA (2008-2010), a Chilean utility, Prisma Energy (2003-2006), the post-bankruptcy filing successor company to Enron, as well as currently serving on the advisory board of Morgan Stanley Infrastructure II L.P. Dr. Coben was formerly Chief Executive Officer of the NYSE-traded Bolivian Power Company, a managing director of Liberty Power Corp and Liberty Power Latin America, and a Senior Vice President of Catalyst Energy. Dr. Coben is also Executive Director of the Sustainable Preservation Initiative and a Consulting Scholar at the University of Pennsylvania Museum of Archaeology and Anthropology.

#### **About C. John Wilder**

C. John Wilder is the Executive Chairman and a member of Investment Committees of three investment vehicles: (i) Bluescape Resources Company; (ii) Parallel Resource Partners; (iii) and Bluescape Energy Partners. Wilder serves as chairman of the board and as a director on several portfolio companies. Wilder also serves as executive chairman and director of EXCO Resources (NYSE: XCO).

#### **About Barry Smitherman**

Barry T. Smitherman is currently an energy industry consultant and senior advisor, as well as an adjunct professor of Energy Law at The University of Texas School of Law. Smitherman is a former partner in an international law firm, a former chairman of two Texas energy-related state agencies and a former managing director of an investment bank. He is the only person to ever serve on both the Public Utility Commission of Texas (PUCT) and the Railroad Commission of Texas (RRC) and is a recognized authority on a number of energy topics, including those affecting wholesale power generation, retail electric providers, regulated electric and gas utilities, oil and gas operators, coal mining operators, and pipeline developers.

#### **About NRG**

NRG is the leading integrated power company in the U.S., built on the strength of the nation’s largest and most diverse competitive electric generation portfolio and leading retail electricity platform. A Fortune 200 company, NRG creates value through best in class operations, reliable and efficient electric generation, and a retail platform serving residential and commercial businesses. Working with electricity customers, large and small, we continually innovate, embrace and implement sustainable solutions for producing and managing energy. We aim to be pioneers in developing smarter energy choices and delivering exceptional service as our retail electricity providers serve almost 3 million residential and commercial customers throughout the country.

#### **About Elliott**

Elliott Management Corporation manages two multi-strategy hedge funds which combined have approximately \$31 billion of assets under management. Its flagship fund, Elliott Associates, L.P., was founded in 1977, making it one of the oldest hedge funds under

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continuous management. The Elliott funds' investors include pension plans, sovereign wealth funds, endowments, foundations, funds-of-funds, high net worth individuals and families, and employees of the firm.

### **About Bluescape**

Bluescape, founded in 2007, is a private investment firm focused on value-oriented investments in the upstream oil and gas and power industries. Bluescape employs a unique approach and long-term perspective, helping position companies for growth and value creation by providing capital and strategic oversight with its multi-disciplined team of executive-level managers, operators, strategic consultants, and restructuring advisors.

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### **Contacts:**

#### **Media:**

Marijke Shugrue  
609.524.5262

#### **Investors:**

Kevin L. Cole, CFA  
609.524.4526

Lindsey Puchyr  
609.524.4527

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**Exhibit B**

**Form of Investor Confidentiality Agreement**

(See attached.)

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**PERSONAL AND CONFIDENTIAL**

February 13, 2017

Bluescape Energy Partners LLC  
BEP Special Situations 2 LLC  
200 Crescent Court, Suite 1900  
Dallas, Texas 75201

Ladies and Gentlemen:

This letter agreement shall become effective upon the appointment of the New Investor Director to the Board of Directors (the "Board") of NRG Energy, Inc. (the "Company") pursuant to the cooperation agreement, dated as of the date hereof, between the Company and you (the "Cooperation Agreement"). Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Cooperation Agreement. Upon the terms of, and subject to the conditions in, this letter agreement, you and your Representatives, may receive certain information about the Company and its subsidiaries from C. John Wilder, Jr. or his replacement chosen in accordance with the Cooperation Agreement (Mr. Wilder and any such replacement, the "New Investor Director") that is confidential and proprietary, the disclosure of which could harm the Company and its subsidiaries. You understand and agree that the New Investor Director shall be subject to his or her fiduciary duties to the Company and its stockholders. It is understood and agreed that the New Investor Director shall not disclose to you or your Representatives (i) any information of a third party in the possession of the Company or any of its subsidiaries that, based on advice of legal counsel, the Company or any of its subsidiaries is prohibited from disclosing pursuant to any contractual or other legal obligation or duty of confidentiality to such third party of which the New Investor Director has previously been notified; provided that, at the request of the New Investor Director, the Company will use commercially reasonable efforts to obtain a waiver or consent from any such third party to permit the New Investor Director to share such information with you and your Representatives pursuant to the terms of this agreement; or (ii) any legal advice provided by external or internal counsel to the Company or any of its subsidiaries if such disclosure may constitute a waiver of the Company's or any of its subsidiaries' attorney-client privilege or attorney work-product privilege (both with respect to internal and external legal counsel) that is identified as such to the New Investor Director by or on behalf of the Company or any of its subsidiaries.

As a condition to being furnished such information, you agree to treat any information, whether written or oral, concerning the Company or any of its subsidiaries that is furnished to you or your Representatives by or on behalf of the New Investor Director, the Company or its Representatives (herein collectively referred to as the "Confidential Information") on or after the date hereof in accordance with the provisions of this letter agreement, and to take or abstain from taking certain other actions as set forth herein. The term "Confidential Information" includes, without limitation, all data or other documents furnished to you or your Representatives (as defined below) or prepared by you or your Representatives to the extent such materials reflect or are based upon the Confidential Information. The term "Confidential Information" does not include information that (a) is or becomes available to you or your Representatives on a nonconfidential basis from a source other than the Company or its Representatives; provided that such source is not known by you or your Representatives to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation to, the Company or any of its subsidiaries that prohibits such disclosure, (b) is or becomes generally available to the public other than as a result of a disclosure by you or your Representatives in violation of this letter agreement, (c) has been or is independently developed by you or your Representatives without the use of the Confidential Information or (d) was already in your or your Representatives' possession on a nonconfidential basis prior to receiving such information from the Company or any of its Representatives hereunder; provided that the source of such information is not known by you or your Representatives to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation to, the Company or any of its subsidiaries that prohibits such disclosure. For purposes of this letter agreement, the term "Representatives" shall include (i) with respect to you, your affiliated funds (collectively, the "Funds") and your and your Funds' general (but not limited) partners, members, managers, directors, officers, employees, agents, representatives, attorneys, accountants, financial advisors and other professional representatives, in each case, acting on your behalf; provided that the term Representatives shall expressly exclude, to the extent they do not receive Confidential Information from you or on your behalf, (x) your portfolio companies or any other companies in which you have an investment and (y) any of your Funds' portfolio companies and any other companies in which they have an investment; and (ii) with respect to the Company, its subsidiaries, and its and their respective directors, officers, employees, agents, representatives, attorneys, accountants, financial advisors and other professional representatives.

1. You hereby agree that the Confidential Information will be kept confidential and used solely for the purpose of monitoring and evaluating your investment in the Company; provided, however, that the Confidential Information may be disclosed (i) to

any of your Representatives who need to know such information solely for the purpose of a monitoring and evaluating your investment in the Company, (ii) in accordance with paragraph 3 of this letter agreement, or (iii) as the Company may otherwise consent in writing. All such Representatives shall (A) be informed by you of the confidential nature of the Confidential Information, (B) agree to keep the Confidential Information strictly confidential, and (C) be advised of the terms of this letter agreement. You agree to be responsible for any breaches of any of the provisions of this letter agreement by any of your Representatives as if they were party hereto (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Company may have against your Representatives with respect to such breach). For the avoidance of doubt, nothing in this letter agreement shall prevent you or your Affiliates from trading or engaging in any derivative or other transaction involving the Company's securities subject to applicable law, the terms of this agreement and, so long as the New Investor Director is an individual employed by the undersigned or one of its Affiliates, compliance with the Company's insider trading policy and the terms of the Cooperation Agreement.

2. You hereby acknowledge that you and your Representatives are aware that the Confidential Information may contain material, non-public information about the Company, and that the U.S. securities laws may restrict any person who has material, non-public information about a company from purchasing or selling any securities of such company while in possession of such information, and further acknowledge your obligations and those of your Representatives (as applicable) under Section 10 of the Cooperation Agreement.
3. Notwithstanding anything to the contrary provided in this letter agreement, in the event you or any of your Representatives are required by deposition, interrogatory, request for documents, subpoena, court order, similar judicial process, civil investigative demand or similar process or pursuant to a formal request from a regulatory examiner (any such requested or required disclosure, an "External Demand") or are otherwise required pursuant to applicable law, regulation or the rules of any national securities exchange (as determined based on advice of outside legal counsel) to disclose all or any part of the Confidential Information, you agree, and you agree to cause your Representatives, to the extent permitted by applicable law, to (a) promptly notify the Company of the existence, terms and circumstances surrounding such External Demand or other requirement, (b) consult with the Company on the advisability of taking legally available steps to resist or narrow such request or disclosure, and (c) in the case of any External Demand, assist the Company, at the Company's request and expense, in seeking a protective order or other appropriate remedy to the extent available under the circumstances. Notwithstanding the foregoing, no such notice shall be required in the case of a routine audit or regulatory or administrative review not specifically related to the Company or any of its subsidiaries or this letter agreement; provided that you or your Representatives, as the case may be, shall promptly notify the Company in the event that all or any portion of the Confidential Information is reasonably likely to be publicly disclosed as a result of such audit or review, and shall cooperate with the Company as contemplated by the immediately preceding sentence. In the event that such protective order or other remedy is not obtained or not available or that the Company waives compliance with the provisions hereof, (i) you or your Representatives, as the case may be, may disclose only that portion of the Confidential Information which you or your Representatives are advised by outside legal counsel is legally required to be disclosed, and you or your Representatives shall (in the case of any External Demand), at the Company's request and expense, exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, and (ii) you and your Representatives shall not be liable for such disclosure, unless such disclosure was caused by or resulted from a previous disclosure by you or your Representatives in violation of this letter agreement. For the avoidance of doubt, it is understood and agreed that there shall be no "applicable law," "regulation" or "rule" requiring you or your Representatives to disclose any Confidential Information solely by virtue of the fact that, absent such disclosure, you or your Affiliates or Representatives would be prohibited from purchasing, selling or engaging in derivative or other voluntary transactions with respect to the securities of the Company or you or your Affiliates or Representatives would be unable to file any proxy materials or tender or exchange offer materials in compliance with Section 14 of the Exchange Act or the rules promulgated thereunder; provided, however, that following the Restricted Period, in connection with the filing or dissemination of proxy materials in compliance with Section 14(a) of the Exchange Act or the rules promulgated thereunder, you may, solely to the extent you and the Company agree in good faith that such disclosure is required by applicable law, including Section 14 of the Exchange Act or the rules promulgated thereunder, and after consultation with outside counsel, disclose Confidential Information; provided further, that you shall have previously afforded the Company reasonable opportunity to review such disclosure and reflect any changes that may be reasonably necessary to maintain the confidential nature of such Confidential Information in a manner that complies with applicable law.
4. Upon the Company's demand following the termination of this letter agreement in accordance with its terms, you and your Representatives shall either promptly (at your option) (a) destroy the Confidential Information and any copies thereof, or (b) return to the Company all Confidential Information and any copies thereof, and, in either case, confirm in writing to the

Company that all such material has been destroyed or returned, as applicable, in compliance with this letter agreement; provided that you and your Representatives shall be permitted to retain Confidential Information to the extent necessary to comply with applicable law, professional standards or such person's document retention policies of general application, or to the extent disclosed pursuant to an External Demand, and (ii) the foregoing shall not require the deletion of Confidential Information from computer archives maintained in the ordinary course. Notwithstanding the destruction or return of Confidential Information, you and your Representatives shall continue to be bound by the obligations contained herein with respect to any Confidential Information retained by you or your Representatives for such period of time as you and such Affiliates or Representatives retain such Confidential Information until such Confidential Information is returned or destroyed or no longer constitutes Confidential Information pursuant to the terms hereof.

5. You acknowledge and agree that money damages would not be a sufficient remedy for any breach (or threatened breach) of this letter agreement by you or your Representatives and that the Company shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach (or threatened breach), without proof of damages, and each party further agrees to waive, and use its reasonable best efforts to cause its Representatives to waive any requirement for the securing or posting of any bond in connection with any such remedy. Such remedies shall not be the exclusive remedies for a breach of this letter agreement, but will be in addition to all other remedies available at law or in equity.
6. You agree that (a) none of the Company or its Representatives shall have any liability to you or your Representatives resulting from the selection, use or content of the Confidential Information by you or your Representatives and (b) none of the Company or its Representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of any Confidential Information. This letter agreement shall not create any obligation on the part of the Company or its Representatives to provide you or your Representatives with any Confidential Information, nor shall it entitle you or your Representatives (other than the New Investor Director in his capacity as a director of the Company) to participate in any meeting of the Board or any committee thereof. You and your Representatives shall not directly or indirectly initiate contact or communication with any executive or employee of, or advisor to, the Company other than as permitted by the terms of the Cooperation Agreement and as otherwise may be approved in writing by the Company, in each case, concerning Confidential Information; provided, however, the restrictions set forth in this sentence shall not apply to the New Investor Director. All Confidential Information shall remain the property of the Company and its subsidiaries. Neither you nor any of your Representatives shall by virtue of any disclosure of and/or your or their use of any Confidential Information acquire any rights with respect thereto, all of which rights shall remain exclusively with the Company and its subsidiaries.
7. No failure or delay by any party or any of its Representatives in exercising any right, power or privilege under this letter agreement shall operate as a waiver thereof, and no modification hereof shall be effective, unless in writing and signed by the parties.
8. The illegality, invalidity or unenforceability of any provision hereof under the laws of any jurisdiction shall not affect its legality, validity or enforceability under the laws of any other jurisdiction, nor the legality, validity or enforceability of any other provision.
9. This letter agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Each of the parties (a) irrevocably and unconditionally consents to the personal jurisdiction and venue of the federal or state courts, in each case, located in Wilmington, Delaware; (b) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (c) agrees that it shall not bring any action relating to this letter agreement or otherwise in any court other than such courts; and (d) waives any claim of improper venue or any claim that those courts are an inconvenient forum. Each of the parties, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waives any right that such party may have to a trial by jury in any litigation based upon or arising out of this letter agreement or any related instrument or agreement, or any of the transactions contemplated thereby, or any course of conduct, dealing, statements (whether oral or written), or actions of any of them. No party shall seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.
10. This letter agreement and the Cooperation Agreement (including the schedules and exhibits thereto) constitute the only agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. This letter agreement may be amended only by an agreement in writing executed by the parties hereto.

11. This letter agreement may be executed in separate counterparts (including by fax, .jpeg, .gif, .bmp and .pdf), each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument.
12. Except as otherwise set forth herein, this letter agreement shall terminate two (2) years from the date on which the New Investor Director ceases to be a director of the Company; provided that you and your Representatives shall maintain in accordance with the confidentiality obligations set forth herein any Confidential Information constituting trade secrets for such longer time as such information constitutes a trade secret of the Company or any of its subsidiaries under applicable law; and provided further, that any liability for breach of this letter agreement prior to such termination shall survive such termination.
13. Each of the parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this letter agreement, and that it has executed this letter agreement with the advice of such counsel. Each party and its counsel cooperated and participated in the drafting and preparation of this letter agreement and the documents referred to herein, and any and all drafts relating thereto exchanged among the parties shall be deemed the work product of all of the parties and may not be construed against any party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this letter agreement against any party that drafted or prepared it is of no application and is hereby expressly waived by each of the parties hereto, and any controversy over interpretations of this agreement shall be decided without regards to events of drafting or preparation.

*[Signature pages follow.]*



Very truly yours,

NRG ENERGY, INC.

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

Name:

Title:

[Signature Page to Investor Confidentiality Agreement]

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Confirmed and Agreed to:

BLUESCAPE ENERGY PARTNERS LLC

By: \_\_\_\_\_  
Name: Jonathan Siegler  
Title: Chief Financial Officer

BEP SPECIAL SITUATIONS 2 LLC

By: \_\_\_\_\_  
Name: Jonathan Siegler  
Title: Chief Financial Officer

[Signature Page to Investor Confidentiality Agreement]

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PRESS  
RELEASE

**NRG Announces Cooperation Agreement with  
Elliott Management and Bluescape Energy Partners**

*NRG Names Lawrence Coben as Chairman of the Board;  
NRG Forms Business Review Committee; and  
C. John Wilder and Barry T. Smitherman to Join NRG Board*

**PRINCETON, NJ — February 13, 2017** — NRG Energy, Inc. (NYSE: NRG) (“NRG” or “the Company”) today announced that it has entered into cooperation agreements with affiliates of each of Elliott Management Corporation (such affiliates, “Elliott”) and Bluescape Energy Partners LLC (such affiliates, “Bluescape”). Funds affiliated with Elliott have economic exposure to an aggregate of approximately 6.9% of the Company’s common stock and funds affiliated with Bluescape beneficially own an aggregate of 2.5% of the Company’s common stock.

Pursuant to the terms of the cooperation agreements, Howard Cosgrove and Edward R. Muller have announced their retirement from the NRG Board of Directors (the “Board”) and have stepped down from the Board after years of exemplary and dedicated service. Lawrence Coben, a director of the Company, was named Chairman of the Board as Cosgrove’s successor. C. John Wilder, Bluescape Energy Partners’ Executive Chairman, and Barry Smitherman, former Chair of the Public Utility Commission of Texas, have been appointed to the Board.

In addition, NRG has formed a five-person ad hoc committee of the Board — the Business Review Committee (the “Committee”). The Committee will work closely with NRG’s Board, Chief Executive Officer Mauricio Gutierrez and NRG’s management team to comprehensively review and make specific recommendations to the Board in four key areas:

1. Operational and cost excellence initiatives
2. Potential portfolio and/or asset de-consolidations, dispositions and optimization
3. Capital structure and allocation
4. Broader strategic initiatives

The Committee will be chaired by Wilder and will have four other members: Smitherman, Gutierrez, Paul Hobby and Anne Schaumburg. Upon approval by the Board, the charter for the Committee shall authorize the retention of consultants and advisors. The Committee plans to expeditiously conduct its review and make any relevant recommendations to the Board. Subsequently, NRG expects to provide a comprehensive update to the market as promptly as practicable.

“Over the past year, NRG has made strides in streamlining our business, reducing costs, strengthening our balance sheet, selling non-core assets and exiting unprofitable business lines. We remain committed to building on that progress and I look forward to the contributions of our new directors and the new committee as we take further steps to improve performance and build shareholder value,” said Gutierrez. “I personally want to express my deep appreciation to Howard and Ed for their dedicated service to the Company and its stakeholders.”

“John and Barry bring broad experience across all areas of our business and we look forward to benefiting from their expertise and participation in the boardroom. We welcome them to the NRG Board,” said Coben. “I also want to thank Howard and Ed for their stewardship through their time on the Board.”

“We have tremendous confidence in Mauricio and his management team, and I look forward to working together with his team and the Board on a comprehensive high-performance plan for the benefit of all NRG stakeholders,” said Wilder. “I believe the Committee is the ideal way to take a fresh approach and conduct a comprehensive, fact-based performance assessment. I pledge to my fellow

shareholders that the Business Review Committee will leave no stone unturned in our review. I believe a focus on a relentless execution of this plan will have the long-term benefit of furthering NRG as the preeminent integrated power company.”

“I want to thank Mauricio and his team for the collaborative, constructive approach they have taken in reaching today’s agreement,” said Jeff Rosenbaum, Portfolio Manager at Elliott. “We are confident that the new additions to NRG’s Board and the newly formed Business Review Committee, tasked with developing and overseeing the high-performance plan, will lead to tremendous value creation for all NRG stakeholders. As shareholders, we look forward to supporting the Board in its work to enable NRG to thrive in any market environment.”

Pursuant to the cooperation agreements, Elliott and Bluescape have each agreed to customary standstill, voting, and other provisions. The full cooperation agreement between NRG and Elliott and the full cooperation agreement between NRG and Bluescape will be filed on a Form 8-K with the Securities and Exchange Commission.

Morgan Stanley & Co. LLC and Goldman, Sachs and Co. are serving as financial advisors to the Company and Latham & Watkins is serving as legal counsel.

#### **About Lawrence Coben**

Larry Coben has been a director of NRG since December 2003. During his tenure, he has served as the Chair of several of the Board’s committees. Over the last 13 years, he has acted as chairman and chief executive officer for various affiliates of Tremisis Energy Corporation LLC. He has served on the board of directors of SAESA (2008-2010), a Chilean utility, Prisma Energy (2003-2006), the post-bankruptcy filing successor company to Enron, as well as currently serving on the advisory board of Morgan Stanley Infrastructure II L.P. Dr. Coben was formerly Chief Executive Officer of the NYSE-traded Bolivian Power Company, a managing director of Liberty Power Corp and Liberty Power Latin America, and a Senior Vice President of Catalyst Energy. Dr. Coben is also Executive Director of the Sustainable Preservation Initiative and a Consulting Scholar at the University of Pennsylvania Museum of Archaeology and Anthropology.

#### **About C. John Wilder**

C. John Wilder is the Executive Chairman and a member of Investment Committees of three investment vehicles: (i) Bluescape Resources Company; (ii) Parallel Resource Partners; (iii) and Bluescape Energy Partners. Wilder serves as chairman of the board and as a director on several portfolio companies. Wilder also serves as executive chairman and director of EXCO Resources (NYSE: XCO).

#### **About Barry Smitherman**

Barry T. Smitherman is currently an energy industry consultant and senior advisor, as well as an adjunct professor of Energy Law at The University of Texas School of Law. Smitherman is a former partner in an international law firm, a former chairman of two Texas energy-related state agencies and a former managing director of an investment bank. He is the only person to ever serve on both the Public Utility Commission of Texas (PUCT) and the Railroad Commission of Texas (RRC) and is a recognized authority on a number of energy topics, including those affecting wholesale power generation, retail electric providers, regulated electric and gas utilities, oil and gas operators, coal mining operators, and pipeline developers.

#### **About NRG**

NRG is the leading integrated power company in the U.S., built on the strength of the nation’s largest and most diverse competitive electric generation portfolio and leading retail electricity platform. A Fortune 200 company, NRG creates value through best in class operations, reliable and efficient electric generation, and a retail platform serving residential and commercial businesses. Working with electricity customers, large and small, we continually innovate, embrace and implement sustainable solutions for producing and managing energy. We aim to be pioneers in developing smarter energy choices and delivering exceptional service as our retail electricity providers serve almost 3 million residential and commercial customers throughout the country.

#### **About Elliott**

Elliott Management Corporation manages two multi-strategy hedge funds which combined have approximately \$31 billion of assets under management. Its flagship fund, Elliott Associates, L.P., was founded in 1977, making it one of the oldest hedge funds under

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continuous management. The Elliott funds' investors include pension plans, sovereign wealth funds, endowments, foundations, funds-of-funds, high net worth individuals and families, and employees of the firm.

### **About Bluescape**

Bluescape, founded in 2007, is a private investment firm focused on value-oriented investments in the upstream oil and gas and power industries. Bluescape employs a unique approach and long-term perspective, helping position companies for growth and value creation by providing capital and strategic oversight with its multi-disciplined team of executive-level managers, operators, strategic consultants, and restructuring advisors.

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#### **Contacts:**

##### **Media:**

Marijke Shugrue  
609.524.5262

##### **Investors:**

Kevin L. Cole, CFA  
609.524.4526

Lindsey Puchyr  
609.524.4527

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