

OFFICIAL COPY

EXHIBIT A

**AMENDMENT AND RESTATEMENT OF
ARTICLES OF INCORPORATION
OF
NORTH CAROLINA ADVANCED ENERGY CORPORATION
A NONPROFIT CORPORATION**

ARTICLE 1

Name

The name of the corporation is North Carolina Advanced Energy Corporation.

ARTICLE 2

Duration

The period of duration of the corporation shall be perpetual.

ARTICLE 3

Corporate Purposes

The purposes for which the corporation is organized are: To the end of moderating the rate of growth in electric power demand and developing the more efficient uses of energy resources in order to encourage energy efficient economic development in North Carolina, this corporation will promote or fund, or assist in promoting or funding, or engage in, projects, programs, and applied research, development, and demonstration, designed and intended to accomplish, or to assist in accomplishing, any one or more of the following objectives:

- (1) The promotion, support, research, development, demonstration, or commercialization of alternatives to electric power as a source of energy which may be used within the State of North Carolina;
 - (2) The promotion, support, research, demonstration, or development of methods by which electric power can be produced more economically;
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(3) The promotion of load management and conservation in a manner that improves system load factors and the efficient use of energy;

(4) The education and informing of consumers in the use and benefits of alternative energy sources, conservation, and load management, and energy efficiency;

(5) The moderation of the future cost of electric utility service available or to be available to users of electricity within the State of North Carolina; and

(6) The promotion, support, research, demonstration, or development of efficient uses of electric power.

ARTICLE 4

Members

SECTION 1. One Class of Members; Who Shall be Members: The Corporation shall have only one class of members. The members shall be those persons who are the members of the North Carolina Utilities Commission as representatives of the general public interest. Each such Commissioner shall be a member of this Corporation for only so long as he or she holds office as such a Commissioner. Each new Commissioner, upon taking office as such, shall automatically become a member of this Corporation.

SECTION 2. Powers and Voting Rights of Members: The members shall have no property rights in the Corporation or its assets. The members, in their capacity as such, shall have no vote or control with respect to the management of the affairs of the Corporation. Except as set forth herein, the members shall not participate or vote in the election or appointment of the directors or officers of the Corporation.

The right of the members to vote is and shall be limited to the following five matters:

- (A) Each member shall be entitled to vote at an annual or special meeting of the members upon any amendment to these Articles of Incorporation which amendment has been proposed by the Board of Directors in the manner provided by law. No proposed Amendment to these Articles of Incorporation shall be adopted unless and until two-thirds of the members vote in favor of its adoption.
- (B) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors adopting a proposed plan of merger or consolidation. No proposed plan to merge or consolidate this Corporation shall be adopted or implemented unless and until such has been adopted by receiving at least two-thirds of the votes of the members entitled to vote at the meeting of the members where such plan of merger or consolidation is considered.

- (C) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors recommending the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of this Corporation. The right to vote accorded to the members by the foregoing sentence shall not extend to resolutions or actions taken by the Board of Directors in order to fund, in whole or in part, one or more programs which are within the scope of the corporate purposes set forth in these Articles, and the phrase "other disposition," as it is used in this paragraph of this Section of these Articles, shall be construed accordingly. No proposed sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of the Corporation shall be effectuated unless and until such proposal has been approved by at least two-thirds of the votes entitled to be cast by the members at the meeting of the members where such proposal is considered.
- (D) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors of the Corporation recommending that the Corporation be voluntarily dissolved. There shall be no voluntary dissolution of the Corporation unless and until the resolution of the Board of Directors of the Corporation proposing such has received the approving votes of at least two-thirds of the votes of the members entitled to be cast at the meeting of the members where such proposal is considered.
- (E) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors of the Corporation recommending that the period of duration of the Corporation be extended. There shall be no extension of the duration of the Corporation unless and until the resolution of the Board of Directors of the Corporation proposing such has received the approving votes of at least two-thirds of the votes of the members entitled to be cast at the meeting of the members which such proposal is considered.

SECTION 3. Special Meetings of Members: Special meetings of the members of the Corporation may be called by any three members or at the request of the Chairman of the Board of Directors of the Corporation.

ARTICLE 5

Directors

SECTION 1. Number of Directors: The three incorporators of this Corporation shall serve as its initial Board of Directors until the directors provided for hereinafter, or a majority of them, have been appointed in the manner hereinafter provided. The first meeting of the Board of Directors shall be held within 30 days after a majority of the Directors provided for herein have been appointed. There shall be a maximum of fifteen (15) Directors of this Corporation. One Director shall be appointed by the North Carolina Utilities Commission and shall serve until such director's death, resignation, retirement, removal, or until a successor is appointed by the North Carolina Utilities Commission. The North Carolina Utilities Commission may remove this director at any time and in its sole discretion, either with or without cause, and appoint a successor. The remaining fourteen (14) directors shall be appointed in the manner hereinafter specified. The number of Directors and the manner of their appointment shall not be changed except by amendment of these Articles.

SECTION 2. Public Directors: There shall be eight (8) Public Directors of this Corporation each of whom shall be appointed to such office by the Governor of the State of North Carolina. The eight Public Directors shall be appointed to the following initial terms beginning June 1, 1980: three for one year each; three for two years each; and two for three years each and each shall serve until his or her death, resignation, retirement, removal, or until his or her successor is selected. Each of the initial eight Public Directors shall take office immediately upon the Governor of the State of North Carolina certifying his or her appointment. In order to be qualified to be appointed as a Public Director, a person may not be employed by any electric utility company or employed by Electricities of North Carolina or be employed by North Carolina Electric Membership Corporation or by any business concern which in turn is transacting business with any of the foregoing (other than transactions associated with the purchase or sale of energy) or is doing business with the North Carolina Advanced Energy Corporation. Business transactions by North Carolina Advanced Energy Corporation with any educational institution or with any State or local governmental unit or agency shall not disqualify a Public Director who is an employee of such institution, unit or agency; provided, however, that in any such transactions, the Public Director so employed shall disclose any adverse interest that he may have in the proposed transaction and shall not participate in the action taken by the Board in approving such business actions.

SECTION 3. Recommendations Regarding Appointment of Public Directors: At any time there shall be one or more vacancies in the Public Directors seats on the Board of Directors of the Corporation, the Public Staff - North Carolina Utilities Commission shall, and any North Carolinian desiring to do so, may, timely submit its, his, or her recommendation to the Governor of North Carolina for his consideration in filling any such vacancy or vacancies.

SECTION 4. Mechanics of Appointment and Removal of Public Directors: Each Public Director shall be appointed by means of the Governor of the State of North Carolina certifying in

writing his or her appointment to the Secretary of the Corporation. Any Public Director may be removed for cause by the Governor of the State of North Carolina, by the Governor certifying in writing to the Secretary of the Corporation that such Public Director has been removed by the Governor.

The appointment or removal of any Public Director which occurs after the first meeting of the Board of Directors shall become effective immediately upon the Governor of the State of North Carolina certifying in writing such appointment or removal to the Secretary or Chairman of the Board of the Corporation.

SECTION 5. Directors Representing Regulated Electric Suppliers Serving in North Carolina: Each of the electric utility companies generating and selling electricity in North Carolina and subject to regulation by the North Carolina Utilities Commission, to wit, Duke Power Company, Virginia Electric and Power Company and Carolina Power and Light shall be entitled to appoint one member to the Board of Directors of this Corporation but only for so long as such electric utility company is making contributions to the Corporation in the following manner:

The required contribution for each of said regulated electric utilities shall be quarterly payments by that utility to the Corporation in an amount which shall be equal to .003567 cents per kilowatt-hour (.003567¢/Kwh) times the number of kilowatt-hours of electricity sold by it at retail to North Carolina customers during that quarterly period. Each such quarterly payment shall be made no later than sixty (60) days after the end of each quarterly period.

SECTION 6. Director Representing ElectriCities of North Carolina: The ElectriCities of North Carolina shall be entitled to appoint one director to serve on the Board of Directors of this Corporation only in the event that it is contributing to the funding of this Corporation in the manner and to the extent as follows:

The required total contribution for ElectriCities of North Carolina shall be reached by a two-stage process through which ElectriCities constituting Power Agency 3 shall remit quarterly contributions beginning with the quarter starting on July 1, 1982 and ElectriCities constituting Power Agency 1 shall begin quarterly payments effective January 1, 1983. In both instances the required contributions shall be paid to the Corporation in the amount which shall be no less than sixty percent (60%) of the amount derived by multiplying 0.003567 cents per kilowatt-hour times the number of kilowatt-hours of electricity sold by all of the cities constituting the membership of the respective Power Agencies during that quarterly period. Each such quarterly payment shall be made no later than sixty (60) days after the end of each quarterly period.

In the event that ElectriCities of North Carolina chooses not to contribute to the funding of the Corporation, any city distributing electricity in North Carolina may apply for membership and shall be entitled to appoint a director to serve on the Board of Directors. In the event that more than one city chooses such participation, the director shall be jointly selected by the member cities to represent them for a one-year term after which he or she may be reappointed, or replaced by a representative from another city.

The required contribution to the Corporation of an individual city whose application is accepted shall be the amount derived by multiplying .003567 cents per kilowatt-hour times the number of kilowatt-hours sold by that city during each quarterly period. Each such quarterly payment shall be made no later than sixty (60) days after the end of each quarterly period.

SECTION 7. Director Representing North Carolina Electric Membership Corporation: Until July 1, 1981, North Carolina Electric Membership shall be entitled to appoint one director to serve on the Board of Directors of this Corporation. After July 1, 1981, North Carolina Electric Membership Corporation shall be entitled to have a director continue to serve on the Board or to appoint a director to serve on the Board only in the event that it is contributing to the funding of this Corporation in the manner and to the extent as follows: The required contribution of the North Carolina Electric Membership Corporation shall be quarterly payments by it to the Corporation in an amount which shall be no less than sixty percent (60%) of the amount which is derived by multiplying .003567 cents per kilowatt-hour (.003567¢/Kwh) times the number of kilowatt-hours of electricity sold in North Carolina during that quarterly period by all of the cooperatives which are members of the North Carolina Electric Membership Corporation. Each such quarterly payment shall be made no later than sixty (60) days after the end of each quarterly period.

SECTION 8. Term of Office and Mechanics of the Appointment and Removal of the Directors Representing Electric Suppliers Serving in North Carolina: Each regulated electric utility described in SECTION 5 and the entities described in SECTIONS 6 and 7 shall appoint its initial director to the Board by the written certification of its President or Chief Executive Officer to the initial three directors and incorporators of the Corporation, specifying the name of the person thus appointed. The term of each director initially appointed by any electric supplier shall end upon the date which is the first anniversary of the first meeting of the Board of Directors. Each shall hold office for a term of one year or until his or her death, resignation, retirement, removal, or until his or her successor is selected; provided, however, no person thus appointed shall continue to serve as a director if the entity appointing him or her has not or is not making the contribution to the funding of the Corporation required and specified by the applicable provisions of these Articles setting forth the contribution required to be made by that particular entity. Appointments of each of the directors representing the electric suppliers which are made at any time after the first meeting of the Board of Directors of the Corporation shall be made by the President or Chief Executive Officer of such electric supplier certifying such appointment in writing to the Secretary or Chairman of the Board of this Corporation.

Any director appointed by an electric supplier entitled to appoint such may be removed at any time with or without cause by means of the President or Chief Executive Officer of the entity which appointed him certifying such removal in writing to the Secretary or Chairman of the Board of this Corporation.

SECTION 9. Legislative Director: One Director shall be appointed by a majority vote of the Board of Directors of the Corporation. Such director will be appointed for an initial term of three years and will serve until his or her death, resignation, retirement, removal, or until his or her successor is selected by the Board of Directors of the Corporation. The Board of Directors of

the Corporation, by a vote of the majority of the directors then serving, may remove this director at any time and in its sole discretion, either with or without cause, and appoint a successor, or in the discretion of the Board, leave the seat vacant. The director appointed by the Board will be first nominated to the Board by the Corporation's Executive Committee, if the committee is then serving.

SECTION 10. Powers of the Board: Except to the extent as may be specifically limited herein the management of the business and affairs of the Corporation shall be vested solely in the Board of Directors.

The Board of Directors shall not employ, nor cause or permit any officer or agent of this Corporation to employ, any person who is to be a paid employee of this Corporation if such person is employed or financially interested in any electric utility serving in this State or who is employed by ElectricCities of North Carolina or who is employed by North Carolina Electric Membership Corporation. Moreover, without approval of the Board of Directors of the Corporation, no employee of the Corporation shall hold any other full-time employment of any type nor shall any such employee have any part-time employment or financial interest in any concern or venture which is engaged in doing business with any electric utility supplier, this Corporation, or any party or entity contracting with this Corporation. Nothing in the foregoing two sentences shall be construed to limit the power of the Board to employ such permanent staff of this Corporation as may be determined by the Board to be desirable and necessary in order to conduct the business of the Corporation nor shall the foregoing three sentences be construed as prohibiting the Corporation from employing or contracting with any business concern or entity, including any electric supplier, for a purpose consistent with the corporate purposes of this Corporation.

The Board of Directors may invest funds of the Corporation in investment media including, but not limited to: interest bearing federally insured bank accounts or certificates of deposit, direct obligations of the United States government or obligations guaranteed by either the government of the United States or any of its agencies or by the State of North Carolina or any of its agencies or subdivisions and other investments as directed by the Board of Directors. This provision relates solely to the investment of the funds of the Corporation which are not then to be expended in carrying out the purposes of the Corporation as stated in these Articles and nothing herein shall be construed to limit or preclude any expenditure, grant, or gift which is made in order to carry out such purposes of this Corporation.

SECTION 11. Quorum and Voting: A majority of the number of directors who then hold office as such shall constitute a quorum for the transaction of business.

Each director shall be entitled to cast one vote on any matter which shall come before the Board. Voting by a director shall be as prescribed by the Bylaws.

The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except when the act of a greater number is required by law or by the provisions of these Articles.

SECTION 12. Meetings: The Board of Directors shall meet at least once every three months and shall meet at such additional times as may be provided for in the Bylaws.

In addition to any provision relating to such which may appear in the Bylaws of the Corporation, the Chairman of the Board may call special meetings of the Board by giving at least seven days' advance written notice of the time, date, and place thereof to each member of the Board. The Chairman of the Board, if present, shall preside over meetings of the Board of Directors.

ARTICLE 6

Initial Registered Office and Agent

The address of the initial registered office of the Corporation is P.O. Box 991, Room 501, Dobbs Building, City of Raleigh, County of Wake, North Carolina 27602.

The name of the initial registered agent of the Corporation at the above address is Mr. Robert P. Gruber.

ARTICLE 7

Initial Board of Directors

The number of directors constituting the initial Board of Directors shall be three (3), and the names and addresses (including street and number, if any) of the persons who are to serve as directors until the first meeting of the Corporation or until their successors are appointed in the manner provided in ARTICLE 5 hereof, are:

| NAME | STREET ADDRESS | CITY OR TOWN |
|--------------------------|-------------------|-------------------|
| Mr. James E. Gibson, Jr. | 6006 Sentinel Dr. | Raleigh, NC 27609 |
| Mr. Robert P. Gruber | 2730 Riddick Dr. | Raleigh, NC 27608 |
| Mr. G. Clark Crampton | 708 Coventry Ct. | Raleigh, NC 27609 |

ARTICLE 8

Incorporators

The names and addresses (including street and number, if any) of all the incorporators are:

| NAME | STREET ADDRESS | CITY OR TOWN |
|--------------------------|-------------------|-------------------|
| Mr. James E. Gibson, Jr. | 6006 Sentinel Dr. | Raleigh, NC 27609 |
| Mr. Robert P. Gruber | 2730 Riddick Dr. | Raleigh, NC 27608 |
| Mr. G. Clark Crampton | 708 Coventry Ct. | Raleigh, NC 27609 |

ARTICLE 9

Powers

In addition to the powers granted corporations under the laws of the State of North Carolina, the Corporation shall have full power and authority by action of its Board of Directors, as it deems necessary or desirable from time to time, to appoint such persons (who are not Board members) as it may choose to various Technical Committees and accord to such Technical Committees the power to make such investigations, studies, or analyses as the Board may specify and to make such reports back to the Board as the Board might request.

ARTICLE 10

Restrictions and Requirements

SECTION 1. Participation in Annual Review by Utilities Commission: The members of the Board of Directors of the Corporation, beginning in 1981, shall appear at least once annually before the North Carolina Utilities Commission, if invited by that Commission to do so, and shall participate as witnesses in any proceeding which is scheduled by that Commission for the purpose, in whole or in part, of reviewing the activities and progress of the Corporation.

SECTION 2. Annual Audit: The Board of Directors shall cause an annual audit of the Corporation's financial affairs and dealings to be made by a certified public accounting firm and shall annually file copies of the resulting audit report with the Governor of the State of North Carolina, the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission.

SECTION 3. Annual Report: The Board of Directors shall also cause to be prepared each year an annual report of its activities and projects and programs funded and undertaken during the year and shall annually file copies of the same with the Governor of the State of North Carolina, the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission.

SECTION 4. Chairman of the Board: The Board of Directors shall elect a Chairman from their number. The Chairman shall be one of the Public Directors who has been appointed to the Board by the Governor of the State of North Carolina. The Chairman of the Board shall if present preside over all meetings of the Board of Directors.

ARTICLE 11

Restrictions Upon Distributions and Dissolution or Liquidation Dispositions Required to Ensure the Tax Exempt Status of the Corporation

No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its directors, officers, or other private persons, including electric supplier corporations and associations, except that the Corporation shall be authorized and empowered to make such payments, grants, gifts and distributions as shall be necessary and appropriate to promote and carry out the corporate purposes as set forth in these Articles of Incorporation. Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Upon the dissolution or final liquidation of the Corporation, in the manner provided in these Articles and applicable provisions of the North Carolina Nonprofit Corporation Act, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for scientific or educational purposes and exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States tax laws), as the Board of Directors shall have recommended to the members of the Corporation and which recommendation shall have received the requisite approval of the members of the Corporation as required by the provisions of these Articles and applicable provisions of the North Carolina Nonprofit Corporation Act.