



Republic of the Philippines

## Securities and Exchange Commission

EDSA, Greenhills, Mandaluyong  
Metro-Manila

S.E.C. Reg. No. ASO95-012611

EXPRESS LANE

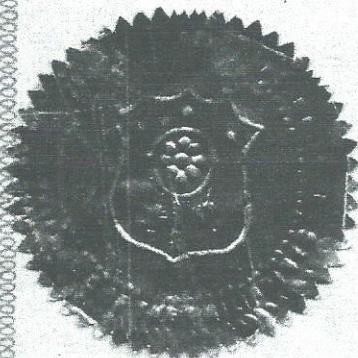
TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS.

WHEREAS, Articles of Incorporation and By-Laws duly signed and acknowledged for the organization of the

### STATE POWER DEVELOPMENT CORPORATION

under and in accordance with the provisions of the Corporation Code of the Philippines, Batas Pambansa Blg. 68, approved on May 1, 1980, were presented for filing in this Commission on December 18, 1995, and a copy of said Articles and By-Laws are hereto attached;

NOW, THEREFORE, by virtue of the powers and duties vested in me by law, I do hereby certify that the said Articles of Incorporation and By-Laws were, after due examination to determine whether they are in accordance with law, duly registered in this Commission on the 19th day of December, Anno Domini, Nineteen Hundred and Ninety-five.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of this Commission to be affixed at Mandaluyong, Metro-Manila, Philippines, this 19th day of December, in the year of our Lord nineteen hundred and ninety-five.



*Elnora E. Adviento*  
ELNORA E. ADVIENTO

Director  
Corporate and Legal Department





REPUBLIC OF THE PHILIPPINES  
**SECURITIES AND EXCHANGE COMMISSION**

SEC Building, EDSA, Greenhills  
City of Mandaluyong, Metro Manila

COMPANY REG. NO. ASO95-012611

**CERTIFICATE OF FILING  
OF  
AMENDED ARTICLES OF INCORPORATION**

KNOW ALL MEN BY THESE PRESENTS:

THIS IS TO CERTIFY that the amended articles of incorporation of the

**STEAG STATE POWER INC.  
(Amending Article VII thereof.)**

copy annexed, adopted on January 29, 2004, by a majority vote of the Board of Directors and by the vote of the stockholders owning or representing at least two-thirds of the outstanding capital stock, and certified under oath by the Secretary and a majority of the Board of Directors of the corporation was approved by the Commission on this date pursuant to the provision of Section 16 of the Corporation Code of the Philippines, Batas Pambansa Blg. 68, approved on May 1, 1980, and copies thereof are filed with the Commission.

Unless this corporation obtains or already has obtained the appropriate Secondary License from this Commission, this Certificate does not authorize it to undertake business activities requiring a Secondary License from this Commission such as, but not limited to acting as: broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing company, pre-need plan issuer, general agent in pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this Commission to be affixed at Mandaluyong City, Metro Manila, Philippines, this 26<sup>th</sup> day of March, Two Thousand Four.



  
**BENITO A. CATARAN**

Director

Company Registration and Monitoring Department



# COVER SHEET

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S. E. C. Registration Number

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(Company's Full Name)

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(Business Address : No. of Street City / Town / Province)

Atty. Jules E. Riego
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Contact Person

(632) 891-0307
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Company Telephone Number

1	2	3	1
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Month Day  
Fiscal Year

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FORM TYPE

0	3		
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Month Day  
Annual Meeting

- N.A.
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Secondary License Type, If Applicable

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Dept. Requiring this Doc.

Article Seven
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Amended Articles Number/Section

11
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Total No. of Stockholders

Total Amount of Borrowings
Domestic
Foreign

To be accomplished by SEC Personnel concerned

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File Number

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Document I.D.

Cashier

STAMPS
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Remarks = pls. use black ink for scanning purposes

AMENDED\*  
ARTICLES OF INCORPORATION  
OF

**STEAG STATE POWER INC.**  
Name of Corporation

KNOW ALL MEN BY THESE PRESENTS:

That we, all of legal age, citizens and residents of the Republic of the Philippines, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the Philippines.

AND WE HEREBY CERTIFY:

**FIRST:** That the name of the said corporation shall be:

STEAG STATE POWER INC.

**SECOND:** That the purposes for which the said corporation is formed are:

PRIMARY PURPOSE

To invest in and/or undertake or participate in the development, design, establishment, financing, except financial leasing, construction, building, operation, maintenance and/or transfer or in the rehabilitation, operation, lease and transfer of diesel, gas turbine, coal and/or steam power plants, and other power generating plants of any type and any related facilities, including substations, high voltage lines and interconnection facilities and apparatus and port facilities together with facilities for the loading, unloading, preparation and storage of fuel, the extraction and transportation of fuel, the sale (on a wholesale basis) of the energy generated thereby, and the use of waste and other by-products thereof, all as provided by and/or under contract with the government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporation, or other entity, public or private, engaged in relation to any of the following of the foregoing including in the development, supply, distribution, or utilization of energy.

No. \_\_\_\_\_ Note: (There should only be one Primary Purpose)

SECONDARY PURPOSES

1. To purchase, acquire, own, lease, sell and convey real properties such as buildings, factories and warehouses, plants and other facilities and machineries, equipment and other personal properties as may be necessary or incidental to the conduct of the corporate business, and to pay in cash, shares of its capital stock, debentures and other evidence of indebtedness, or other securities, as may be deemed expedient, for any business or property acquired by the corporation;

\* As amended by the Board of Directors in a Special Meeting held on January 29, 2004 at 6:00 PM and by the



2. To borrow or raise money necessary to meet the financial requirements of its business by, inter alia, the issuance of bonds, promissory notes and other evidence of indebtedness, and to secure the repayment thereof by mortgage, pledge, deed of trust or lien upon the properties of the corporation or to issue pursuant to law shares of its capital stock, debentures and other evidence of indebtedness in payment for properties acquired by the corporation or for money borrowed in the prosecution of its lawful business;
3. To invest and deal with the money and properties of the corporation in such manner as may from time to time be considered wise or expedient for the advancement of its interests and to sell, dispose of or transfer the business, properties and goodwill of the corporation or any part thereof for such consideration and under such terms as it shall see fit to accept;
4. To aid, in any manner, any corporation, association, or trust estate, domestic or foreign, or any firm or individual, any shares of stock in which, or any bonds, debentures, notes, securities, evidence of indebtedness, contracts, or obligations of which are held by or for this corporation, directly or indirectly or through other corporations or otherwise.
5. To enter into any lawful arrangement for sharing profits, union of interest, unitization or farmout agreement, reciprocal concession, or cooperation, with any corporation, association, partnership, syndicate, entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any business or transaction deemed necessary, convenient or incidental to carrying out any of the purposes of this corporation;
6. To acquire or obtain from any government or authority, national, provincial, municipal or otherwise, or any corporation, company or partnership or person, such charter, contracts, franchise, privileges, exemption, licenses and concessions as may be conducive to any of the objects of the corporation;
7. To establish and operate one or more branch offices or agencies and to carry on any or all of its operations and business without any restrictions as to place or amount including the right to hold, purchase or otherwise acquire, lease, mortgage, pledge and convey or otherwise deal in and with real and personal property anywhere within the Philippines, subject to legal restrictions;
8. To conduct and transact any and all lawful business, and to do or cause to be done any one or more of the acts and things herein set forth as its purposes, within or outside the Philippines, and in any and all foreign countries, and to do everything necessary, desirable or incidental to the accomplishment of the purposes or the exercise of any one or more of the powers herein enumerated, or which shall at any time appear conducive to or expedient for the protection or benefit of this corporation.

**THIRD:** That the place where the principal office of the corporation is to be established or located is at Metro Manila, Philippines.

**FOURTH:** That the term for which said corporation is to exist is fifty (50) years from and after the date of incorporation.

**FIFTH:** That the names, nationalities and residences of the incorporators of said corporation are as follows:

Name

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VICENTE T. PATERNO

ALLEN C. ROXAS

FLORANTE A. CASTILLO

SUSANA C. MONZON

FRANCISCO K. CHUA

**SIXTH:** That the number of directors of said corporation shall be Nine (9) and that the names, nationalities and residences of the directors who are to serve until their successors are elected and qualified as provided by the By-Laws are as follows:

Name

VICENTE T. PATERNO

ALLEN C. ROXAS

FLORANTE A. CASTILLO

SUSANA C. MONZON

FRANCISCO K. CHUA

**SEVENTH:** That the authorized capital stock of said corporation is FIVE BILLION PESOS (P5,000,000,000.00) Philippine Currency, and said capital stock is divided into:

A. Three Hundred Thirty Five Million (335,000,000) Common Shares with a par value of Ten Pesos (P10.00) per share; and

B. One Hundred Sixty Five Million (165,000,000) Redeemable Shares with a par value of Ten Pesos (P10.00) per share.

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The redeemable shares shall have the following features, which shall also appear at the back of every stock certificate issued for such shares:

Redemption Period: The said shares may be redeemed at the option of the corporation at any time after the second year of its commercial operations until on or before the end of the Cooperation Period;

Redemption Price: The said shares may be redeemed at a price to be determined by the Board of Directors at a special meeting duly called for such purpose;

Voting: The redeemable shares shall have the right to vote.\*

- (A) No Pre-emptive Right – Stockholders shall have no pre-emptive right to subscribe to any issue, disposition or transfer of shares of the corporation.
- (B) General Prohibition against Pledges, Options, etc. - No stockholder can do, or agree to do, any of the following without the prior written consent of the other stockholders (such consent, in the case of any pledge in favor of any bank or financial institution, shall not be unreasonably withheld or delayed):
  - (1) pledge, mortgage, charge or otherwise encumber any of its shares or any interest in any of its shares (other than a Permitted Security Interest);
  - (2) grant any option over any of its shares or any interest in its shares (other than any options expressly granted pursuant to the provisions of the share subscription and commercial agreement entered into by the Corporation with STEAG Aktiengesellschaft ("STEAG") and State Investment Trust, Inc. ("SITI")); or
  - (3) enter into any agreement in respect of the votes attached to any of its shares (other than pursuant to the shareholders' agreement entered into by the Corporation with STEAG and SITI).
- (C) Certain Transfer Restrictions – No stockholder shall transfer any shares which would result in (1) a breach of the provisions of the PPA, (2) a violation of any laws in the Philippines, and (3) the PPA being cancelled, annulled or terminated or the corporation being disqualified from undertaking the transactions contemplated thereunder.
- (D) Certain Defined Terms- For purposes of this Seventh Article:
  - (1) "Permitted Security Interest" means any pledge, mortgage, charge or other encumbrance or security interest created pursuant to the terms of the agreements to be entered into between the corporation and the providers of debt finance for the development of a 200MW coal-fired power plant in Mindanao.

\*As amended by the Board of Directors in a Special Meeting held on January 29, 2004 at 6:00 PM and by the Stockholders in a Special Meeting held on January 29, 2004 at 7:30 PM.

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- (2) "PPA" means the Power Purchase Agreement between National Power Corporation and, inter alia, SITI dated June 27, 1998 as amended from time to time.

(E) Additional Restrictions on the Transfer of Shares under the Sponsor Support Agreement

With immediate effect until the Final Maturity Date the following additional Transfer Restrictions shall apply:

1. Share Transfer Restrictions prior to Commercial Completion

1.1 Prior to the Commercial Completion Date, no Sponsor and no Shareholder shall sell, assign, give, hypothecate, pledge, encumber or otherwise transfer (in each case, a "transfer") any Shares other than subject to herein Clause (E) 3 and other than: in the case of a transfer of shares by that Sponsor or Shareholder to a person approved by the Intercreditor Agent (approval not to be unreasonably withheld or delayed in the case of a proposed transfer by SITI); or

1.2 as otherwise expressly contemplated pursuant to any of the Finance Agreements or approved by the Intercreditor Agent in its absolute discretion.

2. Share Transfer Restrictions after Commercial Completion

Following the Commercial Completion Date each Sponsor and each Shareholder shall be free to transfer shares subject to herein Clause (E) 3 and provided that following such transfer STEAG and directors of the Corporation appointed by STEAG must together continue to own no less than fifty-one per cent of the issued share capital of the Corporation and must retain control of the Corporation.

3. Other Restrictions

3.1 In addition to the restrictions set out in hereto Clauses (E) 1 and (E) 2 any proposed transfer of Shares by any Sponsor or Shareholder shall be subject to the following restrictions:

(a) the proposed transfer of Shares must be permitted under Applicable Law;

(b) the transferred Shares remain or otherwise have been charged in favour of the Offshore Trustee as first priority security for the Secured Indebtedness;

(c) all remaining Shares owned by the Sponsors and their Affiliates shall remain subject to the Security Interest created by the Multiple Share Charge;

(d) no Default is continuing (provided that this condition shall not apply in the case of a transfer of Shares from an outgoing director of the Corporation to a replacement director of the Corporation);

(e) (in the case of a proposed transfer of Shares by STEAG after the Commercial Completion Date that would result in STEAG and directors of the Corporation appointed by STEAG together holding less than 66.67 per cent. of the issued Shares), the transfer and the identity of the transferee have been approved by the Intercreditor Agent, such approval not to be unreasonably withheld or delayed; and

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(f) the Corporation and the requesting Sponsor or Shareholder have delivered certificates to the Offshore Trustee and the Intercreditor Agent certifying that each of the foregoing conditions has been satisfied.

3.2 In addition to the restrictions set out in hereto Clause (E) 3.1, where a Sponsor wishes to transfer Shares to a person who wishes to accede to this Agreement as a "Sponsor", the following additional restrictions shall apply:

(a) on or prior to the date of such transfer, the Sponsor must have delivered to the Intercreditor Agent a Sponsor Accession Deed, executed by (i) the original Sponsor, (ii) the new Sponsor and (iii) the Corporation (and all other parties hereto hereby give their authority to the Intercreditor Agent to sign the Sponsor Accession Deed on their behalf);

(b) on or prior to the date of such transfer, the new Sponsor has delivered to the Intercreditor Agent all the items set out in Annex A to Schedule 3 of the Sponsor Support Agreement, each in a form and substance satisfactory to the Intercreditor Agent; and

(c) all obligations of the new Sponsor under Clauses 2, 3.1, 3.2, 3.3 and 3.4 of the Sponsor Support Agreement shall be supported by Sponsor LCs, unless such new Sponsor enjoys a credit rating of no less than BBB- (S&P) or Baa3 (Moody's), or the Intercreditor Agent otherwise agrees.

and the Commitment Percentage of the old Sponsor and the New Sponsor shall thereupon be as set out in the relevant Sponsor Accession Deed and if the Commitment Percentage of the old Sponsor as so specified is zero that old Sponsor shall thereupon cease to have obligations under this Agreement as a Sponsor.

3.3 In addition to the restrictions set out in hereto Clause (E) 3.1 (but in substitution for the additional restrictions set out in Clause (E) 3.2) where a Sponsor or Shareholder wishes to transfer Shares to a person who wishes to accede to this Agreement as a "Shareholder" (but not as a Sponsor), the following additional restrictions shall apply:

(a) on or prior to the date of each transfer, the transferring Sponsor or Shareholder must have delivered to the Intercreditor Agent a Shareholder Accession Deed executed by (i) the transferring Sponsor or Shareholder, (ii) the new Shareholder and (iii) the Corporation (and all other parties hereto hereby give their authority to the Intercreditor Agent to sign the Shareholder Accession Deed on their behalf); and

(b) on or prior to the date of such transfer, the new Shareholder has delivered to the Intercreditor Agent all the items set out in Annex A to Schedule 4 of the Sponsor Support Agreement, each in a form and substance satisfactory to the Intercreditor Agent.

and, for the avoidance of doubt, upon such a transfer the Commitment Percentage, Available Equity Commitment and Available Standby Commitment of the transferring Sponsor shall not be adjusted.

For the avoidance of doubt, the restrictions set out in hereto Clauses (E) 3.2 and (E) 3.3 shall not apply in the case of a transfer by an outgoing director of the Corporation to a replacement director or the Corporation.

#### 4 Notation Requirements

The restrictions on Transfer of Shares under Clause (E) hereof shall be noted at the back of each Share Certificate.

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5. Certain Defined Terms – For purposes of these Articles of Incorporation

"Final Maturity Date", "Commercial Completion Date", "Sponsor", "Shareholder", "Intercreditor Agent", "Applicable Law", "Offshore Trustee", "Secured Indebtness", "Affiliates", "Security Interest", "Multiple Share Charge", "Default", "Shares", "Sponsor Accession Deed", "Commitment Percentage", "Available Equity Commitment", "Available Standby Commitment" and "Borrower" shall have the meaning as give to it in either the Common Terms Agreement or the Sponsor Support Agreement.

"Transfer" has the meaning given to it in Article Seventh, Clause (E) 1 of these Articles of Incorporation .\*

**EIGHTH:** That the amount of said capital stock which has been actually subscribed is TWENTY MILLION Pesos (P20,000,000.00), and the following persons have subscribed for the number of shares and the amount of capital stock indicated o pposite their respective names:

Name	No. of shares	Amount subscribed
STATE INVESTMENT TRUST, INC.	1,999,995	P19,999,950.00
VICENTE T. PATERNO	1	10.00
ALLEN C. ROXAS	1	10.00
FLORANTE A. CASTILLO	1	10.00
SUSANA C. MONZON	1	10.00
FRANCISCO K. CHUA	1	10.00

**NINTH:** That the following persons have paid on the shares of capital stock which they have subscribed for in the amount set out after their respective names:

Name	Amount subscribed
STATE INVESTMENT TRUST, INC.	P4,999,950.00
VICENTE T. PATERNO	10.00
ALLEN C. ROXAS	10.00
FLORANTE A. CASTILLO	10.00
SUSANA C. MONZON	10.00
FRANCISCO K. CHUA	10.00

**TENTH:** That no issuance or transfer of shares of stock of the corporation which would reduce the stock ownership of Filipino citizens to less than the percentage of the outstanding capital stock required by law to be owned by Filipino citizens, shall be allowed or permitted to be recorded in the books of the corporation. This restriction shall be printed or indicated in all the certificates of stock to be issued by the corporation.

**ELEVENTH:** That FRANCISCO K. CHUA has been elected by the subscribers as Treasurer of the corporation to act as such until his/her successor is duly elected and shall have qualified in accordance with the By-Laws; and that, as such Treasurer, he/she has been authorized to receive for the corporation, and to issue in its name receipts for all subscriptions paid in by the subscribers.

\*As amended by the Board of Directors in a Special Meeting held on January 29, 2004 at 6:00 PM and by the Stockholders in a Special Meeting held on January 29, 2004 at 7:30 PM.



IN WITNESS WHEREOF, we have hereunto set our hands, this DECEMBER 11, 1995 at  
City of Manila, Philippines.

(SGD.)  
VICENTE T. PATERNO

(SGD.)  
ALLEN C. ROXAS

(SGD.)  
FLORANTE A. CASTILLO

(SGD.)  
FRANCISCO K. CHUA

(SGD.)  
SUSANA C. MONZON

Signed in the presence of:

(SGD.)

(SGD.)

ACKNOWLEDGEMENT

Republic of the )  
Philippines )  
Makati City )  
SS

BEFORE ME, a Notary Public in and for Manila, Philippines, this 11<sup>th</sup> day of December 1995  
personally appeared:

Name

VICENTE T. PATERNO  
ALLEN C. ROXAS  
FLORANTE A. CASTILLO  
SUSANA C. MONZON  
FRANCISCO K. CHUA

all known to me and to me known to be the same person who executed the foregoing  
Articles of Incorporation and they acknowledged to me that the same is their free and  
voluntary act and deed.

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IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and at the place first above-written.

(SGD.)  
RAUL ABIGANIA ALON  
NOTARY PUBLIC  
Until December 31, 1995  
PTR # 2738711 1-4-95 Q.C.  
IBP # 881543 1-4-95 PASIG  
TIN # 122-123-438

Doc. No. 56;  
Page No. 13;  
Book No. VIII;  
Series of 1995.

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# DIRECTORS' CERTIFICATE



RECEIVED  
MAR 24 2004

MAR 24 AM 10 16

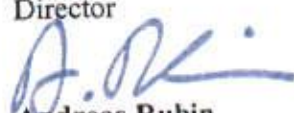
KNOWN ALL MEN BY THESE PRESENTS:

We, the majority of the Board of Directors and Corporate Secretary of **STEAG STATE POWER INC.** (the "Corporation"), a corporation duly organized and existing under the laws of the Philippines, do hereby certify that the attached amended Articles of Incorporation embodying amendments to the Seventh Article are true and correct and the aforesaid amendments were duly approved by at least a majority of the members of the Board of Directors and by the Stockholders owning and/or representing at least two thirds (2/3) of the outstanding capital stock of the Corporation at their respective Special Meetings held on January 29, 2004 at the SGV Lounge 15th Floor SGV I Bldg. 6750 Ayala Avenue, Makati City.

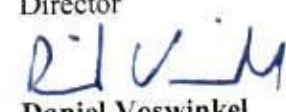
IN WITNESS WHEREOF, we have signed this Certificate on this MAR 18 2004 at \_\_\_\_\_.

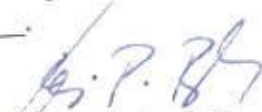
**Washington SyCip**  
Chairman

  
**Allen Roxas**  
Director

  
**Andreas Rubin**  
Director

  
**Harald Geissler**  
Director

  
**Daniel Voswinkel**  
Director

  
**Claus-Peter Bell**  
Director

  
**Augusto Lopez-Dee**  
Director

  
**Arnold Gehlen**  
Director

  
**Joachim Rumstadt**  
Director

  
**Joy Baltazar-Pamintuan**  
Corporate Secretary


**SUBSCRIBED AND SWORN** to before me this \_\_\_\_ day of MAR 18 2004 at Makati City affiants exhibiting to me their respective passports with numbers, place and dates of issue as follows:

Name	CTC/Passport No.	Date/Place of Issue
Washington SyCip		
Claus-Peter Bell		



Allen Roxas		
Andreas Rubin		
Augusto Lopez-Dee		
Arnold Gehlen		
Joachim Rumstadt		
Daniel Voswinkel		
Harald Geissler		
Joy Baltazar-Pamintuan		

Doc. No. 45 ;  
Page No. 7 ;  
Book No. II ;  
Series of 2004.

  
**DIVINA GRACIA U. CABILDO**  
**NOTARY PUBLIC**  
Until December 2004  
PTR No. 7054849 Makati 1/17/04  
IBP No. 605778 Makati 1/09/04



REPUBLIC OF THE PHILIPPINES  
**SECURITIES AND EXCHANGE COMMISSION**

SEC Building, EDSA, Greenhills  
City of Mandaluyong, Metro Manila

COMPANY REG. NO. ASO95-012611

**CERTIFICATE OF FILING OF AMENDED BY-LAWS**

KNOW ALL MEN BY THESE PRESENTS:

THIS IS TO CERTIFY that the Amended By-Laws of

**STEAG STATE POWER INC.**

copy annexed, adopted on January 29, 2004, by a majority vote of the Board of Directors and by the vote of the stockholders owning or representing at least majority of the outstanding capital stock, and certified under oath by the Corporate Secretary and majority of the said Board was approved by the Commission on this date pursuant to the provisions of Section 48 of the Corporation Code of the Philippines, Batas Pambansa Blg. 68, approved on May 1, 1980, as amended, and copies thereof are filed with the Commission.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this Commission to be affixed at Mandaluyong City, Metro Manila, Philippines, this 26<sup>th</sup> day of March, Two Thousand Four.



  
BENITO A. CATARAN

Director

Company Registration and Monitoring Department



AMENDED\*

BY-LAWS

OF

**STEAG STATE POWER INC.**

Name of Corporation

**ARTICLE I**

**SUBSCRIPTION, ISSUANCE AND TRANSFER OF SHARES**

**Section 1. Subscriptions** - Subscribers to the capital stock of the corporation shall pay to the corporation the subscription value or price of the stock, subject to any set-off agreed by the board of directors of the corporation (the "Board of Directors"), in accordance with the terms and conditions prescribed by the Board of Directors. Unpaid subscriptions shall not earn interest unless determined by the Board of Directors.

**Section 2. Certificates** - Each stockholder shall be entitled to one or more certificates for such fully paid stock subscription in his name in the books of the corporation. The certificates shall contain the matters required by law and the Articles of Incorporation. They shall be in such form and design as may be determined by the Board of Directors and numbered consecutively. The certificates, which must be issued in consecutive order, shall bear the signature of the President, manually counter-signed by the Secretary or Assistant Secretary, and sealed with the corporate seal.

**Section 3. Transfer of Shares** - Subject to the restrictions, terms and conditions contained in the Articles of Incorporation and in other provisions of this Article I, Section 3, shares may be transferred, sold, ceded, assigned, or pledged by delivery of the certificates duly indorsed by the stockholder, his attorney-in-fact, or other legally authorized person.

(A) **General Prohibition against Pledges, Options, etc.** - No stockholder can do, or agree to do, any of the following without the prior written consent of the other stockholders (such consent, in the case of any pledge in favor of any bank or financial institution, shall not be unreasonably withheld or delayed):

- (1) pledge, mortgage, charge or otherwise encumber any of its shares or any interest in any of its shares (other than a Permitted Security Interest);
- (2) grant any option over any of its shares or any interest in its shares (other than any options expressly granted pursuant to the provisions of the share subscription and commercial agreement (the "Share Subscription Agreement") entered into by the corporation with STEAG Aktiengesellschaft ("STEAG") and State Investment Trust, Inc. ("SITI")); or

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\*As amended by the Board of Directors in a Special Meeting held on January 29, 2004 at 6:00 PM and by the Stockholders in a Special Meeting held on January 29, 2004 at 7:30 PM.

- (3) enter into any agreement in respect of the votes attached to any of its shares (other than pursuant to the shareholders' agreement (the "Shareholders' Agreement") entered into by the corporation with STEAG and SIT1.
- (B) Certain Transfer Restrictions – No stockholder shall transfer any shares which would result in (1) a breach of the provisions of the PPA, (2) a violation of any laws in the Philippines, and (3) the PPA being cancelled, annulled or terminated or the corporation being disqualified from undertaking the transactions contemplated thereunder.
- (C) Effect of Transfer - The transfer shall be valid and binding on the corporation only upon compliance with the restrictions set out in the Seventh Article of the Articles of Incorporation and herein, record thereof in the books of the corporation, cancellation of the certificates surrendered to the Secretary, and issuance of a new certificate to the transferee. No shares of stock against which the corporation holds unpaid claims shall be transferable in the books of the corporation. All certificates surrendered for transfer shall be stamped "Cancelled" on the face thereof, together with the date of cancellation, and attached to the corresponding stub with the certificate book.
- Any transfer of shares in violation of the terms of the Seventh Article of the Articles of Incorporation and Section 3 of Article 1 of these By-Laws shall have no effect and shall be void and the corporation shall not give effect in the stock transfer registry or otherwise to such purported transfer.
- (D) Certain Defined Terms- For purposes of these By-Laws:
- (1) "Associated Company" means, in relation to a stockholder, any holding company or subsidiary of such stockholder or any subsidiary of such stockholder's holding company or a company in which a director or any of his nominees or family members holds an interest (and for the purposes, hereof: "holding company" in relation to any corporation means any other corporation of which the first company is a subsidiary, and "subsidiary" in relation to any corporation means any corporation in which that corporation has direct or indirect Control).
  - (2) "Completion Date" has the meaning given in the PPA.
  - (3) "Control" means in relation to a corporation, direct or indirect control (1) of the affairs of the corporation, or (2) over more than fifty percent (50%) of the total voting rights conferred by all the outstanding shares in the capital of that corporation which are ordinarily exercisable in a general meeting, or (3) of the composition of the board of directors of that corporation.
  - (4) "Effective Date" means the date of completion of the subscription of shares by STEAG under the Share Subscription Agreement.
  - (5) "Finance Documents" means the agreements to be entered into between the corporation and the providers of debt finance for the Project.
  - (6) "Permitted Security Interest" means any pledge, mortgage, charge or other encumbrance or security interest created pursuant to the terms of the Finance Documents.



- (7) "PPA" means the Power Purchase Agreement between National Power Corporation and, inter alia, SITI dated June 27, 1998 as amended from time to time.
- (8) "Project" means the development of the 200MW Mindanao coal-fired power plant in the Philippines together with related facilities, as more particularly described in the PPA.

(E) Additional Restrictions on the Transfer of Shares under the Sponsor Support Agreement

With immediate effect until the Final Maturity Date the following additional Transfer Restrictions shall apply:

1. Share Transfer Restrictions prior to Commercial Completion

1.1. Prior to the Commercial Completion Date, no Sponsor and no Shareholder shall sell, assign, give, hypothecate, pledge, encumber or otherwise transfer (in each case, a "transfer") any Shares other than subject to herein Clause (E) 3 and other than: in the case of a transfer of shares by that Sponsor or Shareholder to a person approved by the Intercreditor Agent (approval not to be unreasonably withheld or delayed in the case of a proposed transfer by SITI); or

1.2 as otherwise expressly contemplated pursuant to any of the Finance Agreements or approved by the Intercreditor Agent in its absolute discretion.

2. Share Transfer Restrictions after Commercial Completion

Following the Commercial Completion Date each Sponsor and each Shareholder shall be free to transfer shares subject to herein Clause (E) 3 and provided that following such transfer STEAG and directors of the Corporation appointed by STEAG must together continue to own no less than fifty-one per cent of the issued share capital of the Corporation and must retain control of the Corporation.

3. Other Restrictions

3.1 In addition to the restrictions set out in hereto Clauses (E) 1 and (E) 2 any proposed transfer of Shares by any Sponsor or Shareholder shall be subject to the following restrictions:

(a) the proposed transfer of Shares must be permitted under Applicable Law;

(b) the transferred Shares remain or otherwise have been charged in favour of the Offshore Trustee as first priority security for the Secured Indebtedness;

(c) all remaining Shares owned by the Sponsors and their Affiliates shall remain subject to the Security Interest created by the Multiple Share Charge;

(d) no Default is continuing (provided that this condition shall not apply in the case of a transfer of Shares from an outgoing director of the Corporation to a replacement director of the Corporation);

(e) (in the case of a proposed transfer of Shares by STEAG after the Commercial Completion Date that would result in STEAG and directors of the Corporation appointed by STEAG together holding less than 66.67 per cent. of the issued Shares), the transfer



and the identity of the transferee have been approved by the Intercreditor Agent, such approval not to be unreasonably withheld or delayed; and

(f) the Corporation and the requesting Sponsor or Shareholder have delivered certificates to the Offshore Trustee and the Intercreditor Agent certifying that each of the foregoing conditions has been satisfied.

3.2 In addition to the restrictions set out in hereto Clause (E) 3.1, where a Sponsor wishes to transfer Shares to a person who wishes to accede to this Agreement as a "Sponsor", the following additional restrictions shall apply:

(a) on or prior to the date of such transfer, the Sponsor must have delivered to the Intercreditor Agent a Sponsor Accession Deed, executed by (i) the original Sponsor, (ii) the new Sponsor and (iii) the Corporation (and all other parties hereto hereby give their authority to the Intercreditor Agent to sign the Sponsor Accession Deed on their behalf);

(b) on or prior to the date of such transfer, the new Sponsor has delivered to the Intercreditor Agent all the items set out in Annex A to Schedule 3 of the Sponsor Support Agreement, each in a form and substance satisfactory to the Intercreditor Agent; and

(c) all obligations of the new Sponsor under Clauses 2, 3.1, 3.2, 3.3 and 3.4 of the Sponsor Support Agreement shall be supported by Sponsor LCs, unless such new Sponsor enjoys a credit rating of no less than BBB- (S&P) or Baa3 (Moody's), or the Intercreditor Agent otherwise agrees,

and the Commitment Percentage of the old Sponsor and the New Sponsor shall thereupon be as set out in the relevant Sponsor Accession Deed and if the Commitment Percentage of the old Sponsor as so specified is zero that old Sponsor shall thereupon cease to have obligations under this Agreement as a Sponsor.

3.3 In addition to the restrictions set out in hereto Clause (E) 3.1 (but in substitution for the additional restrictions set out in Clause (E) 3.2) where a Sponsor or Shareholder wishes to transfer Shares to a person who wishes to accede to this Agreement as a "Shareholder" (but not as a Sponsor), the following additional restrictions shall apply:

(a) on or prior to the date of each transfer, the transferring Sponsor or Shareholder must have delivered to the Intercreditor Agent a Shareholder Accession Deed executed by (i) the transferring Sponsor or Shareholder, (ii) the new Shareholder and (iii) the Corporation (and all other parties hereto hereby give their authority to the Intercreditor Agent to sign the Shareholder Accession Deed on their behalf); and

(b) on or prior to the date of such transfer, the new Shareholder has delivered to the Intercreditor Agent all the items set out in Annex A to Schedule 4 of the Sponsor Support Agreement, each in a form and substance satisfactory to the Intercreditor Agent,

and, for the avoidance of doubt, upon such a transfer the Commitment Percentage, Available Equity Commitment and Available Standby Commitment of the transferring Sponsor shall not be adjusted.

3.4 For the avoidance of doubt, the restrictions set out in hereto Clauses (E) 3.2 and (E) 3.3 shall not apply in the case of a transfer by an outgoing director of the Corporation to a replacement director or the Corporation.

#### 4 Notation Requirements



The restrictions on Transfer of Shares under Clause (E) hereof shall be noted at the back of each Share Certificate.

5. Certain Defined Terms – For purposes of these By-Laws

"Final Maturity Date", "Commercial Completion Date", "Sponsor", "Shareholder", "Intercreditor Agent", "Applicable Law", "Offshore Trustee", "Secured Indebtness", "Affiliates", "Security Interest", "Multiple Share Charge", "Default", "Shares", "Sponsor Accession Deed", "Commitment Percentage", "Available Equity Commitment", "Available Standby Commitment" and "Borrower" shall have the meaning as give to it in either the Common Terms Agreement or the Sponsor Support Agreement.

"Transfer" has the meaning given to it in Article Seventh, Clause (E) 1 of the Articles of Incorporation and these By-Laws.\*

**Section 4. Lost Certificates** - In case any certificate of the capital stock of the corporation is lost, stolen, or destroyed, a new certificate may be issued in lieu thereof in accordance with the procedure prescribed under Section 73 of the Corporation Code.

## **ARTICLE II MEETINGS OF STOCKHOLDERS**

**Section 1. Regular Meetings** - The regular meetings of stockholders, for the purpose of electing directors and for the transaction of such business as may properly come before the meeting, shall be held on any day in February or March of each year, and if a legal holiday, then on the day following.

**Section 2. Special Meeting** - The special meetings of stockholders, for any purpose or purposes, may at any time be called by any of the following: (a) Board of Directors, at its own instance or at the written request of stockholders representing a majority of the outstanding capital stock, or (b) the President.

**Section 3. Place of Meeting** – Stockholders' meetings, whether regular or special, shall be held at the principal office of the corporation or at any place designated by the Board of Directors in the city or municipality where the principal office of the corporation is located.

**Section 4. Notice of Meeting** - Notice of regular or special meetings of stockholders may be sent by the Secretary by personal delivery, by email or by mail at least seven (7) days prior to the date of the meeting to each stockholder of record at his last known post office address or by publication in a newspaper of general circulation. The notice shall state the place, date and hour of the meeting, and the purpose or purposes for which the meeting is called. In case of special meetings, only matters stated in the notice can be the subject of motions or deliberations at such meeting unless all shareholders of the corporation waive this requirement.

When the meeting of stockholders is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken.

\*As amended by the Board of Directors in a Special Meeting held on January 29, 2004 at 6:00 PM and by the Stockholders in a Special Meeting held on January 29, 2004 at 7:30 PM.

At the reconvened meeting, any business may be transacted that might have been transacted on the original date of the meeting.

**Section 5. Quorum and Voting Requirements** - Unless otherwise provided by law and subject to the other provisions of this Section 5, in all regular or special meetings of stockholders, stockholder holding a majority of the outstanding capital stock must be present or represented in order to constitute a quorum. If no quorum is constituted, the meeting shall be adjourned until stockholders holding the requisite amount of stock shall be present.

- (A) Notwithstanding the foregoing, the prior written approval of stockholders in the corporation owning at least sixty-six and two thirds percent (66 2/3%) of the outstanding capital stock shall be necessary before any action shall be taken by the corporation with respect to the following matters (provided that if any proposed action would fall under two or more of the provisions set out below, approval in respect of that action will only be required under one of those provisions):
- (a) any change to the corporation's Articles of Incorporation and By-Laws (including a change in the corporate name, reclassification of shares and a change in the principal place of business of the corporation);
  - (b) the appointment and removal of the auditors;
  - (c) any change to the accounting reference date or accounting policies;
  - (d) any increase in the capital stock or the grant of any option or rights to subscribe for or convert debt into shares of the corporation;
  - (e) any reduction of the capital stock or variation of the rights attaching to any class of shares or any redemption, purchase or other acquisition by the corporation of any shares;
  - (f) any consolidation, merger or amalgamation with any other corporation;
  - (g) unless pursuant to the Finance Documents, the borrowing of amounts or the entry into any deferred purchase or finance-leasing arrangements which would involve borrowing an amount in excess of US\$4,000,000 (or its equivalent value) or would be secured by security over the assets of the corporation or by guarantees from all the stockholders;
  - (h) the making of any loan or advance to any person which is not in the ordinary course of business or not on an arm's length basis;
  - (i) the granting of any security interest over the shares or assets of the corporation unless pursuant to the Finance Documents;
  - (j) the giving of any guarantee in favor of a third party;



- (k) the entry into of any transaction between the corporation and any Associated Company which is not on an arm's length basis;
- (l) the incurring of any expenses which amount to US\$4,000,000 (or its equivalent value) in excess of the total amount of the budget;
- (m) extending or shortening the term for which the corporation was established (pursuant to the laws of the Philippines);
- (n) the acquisition or sale or other disposition of assets of the corporation exceeding US\$4,000,000 in value (or its equivalent value);
- (o) the investment of the corporation's funds in another corporation or business or for any purpose other than that for which the corporation was established;
- (p) the approval and entry into of any contract or the incurring of any liability by the corporation throughout the implementation of the Project, as more particularly described in the PPA, which exceeds US\$4,000,000 (or its equivalent in value);
- (q) the removal of directors;
- (r) the declaration in accordance with the laws of the Philippines of any dividends; and
- (s) the winding-up of the corporation (other than a winding-up which is pursuant to a stockholder committing an event of default, as specified in the Shareholders' Agreement, in which event a resolution for such winding-up shall comply with the minimum requirements under the laws of the Philippines).

The limits specified in U.S. Dollars in items (g), (l), (n) and (p) above shall be adjusted each year by increasing or decreasing such limits by the percentage increase or decrease (as the case may be) of the United States Consumer Price Index, as taken from the International Financial Statistics published by the International Monetary Fund and prevailing at the relevant time, as from the Effective Date to commencement of each year.

A series of related transactions shall be construed as a single transaction, and any amounts involved in the related transactions shall be aggregated, to determine whether a matter is an action falling under the matters set out above in items (a) to (s) inclusive.

- (B) **Certain Defined Terms** – For purposes of this Article II, Section 5, "arm's length" in relation to any transaction means a contract or transaction which has been concluded by the parties through a competitive tendering process or, if not through such process, represents reasonable commercial terms having regard to the circumstances and requirements of all or any of such parties, market practice,

the nature of the particular transaction and the relative bargaining strengths of such parties.

**Section 6. Conduct of Meeting** - Meetings of the stockholders shall be presided over by the Chairman of the Board of Directors, or in his absence, the Vice-Chairman, or if none of the foregoing is in office and present and acting, by a chairman to be chosen by the stockholders. The Secretary shall act as secretary of every meeting, but if not present, the chairman of the meeting shall appoint a secretary of the meeting.

**Section 7. Manner of Voting** - At all meetings of stockholders, a stockholder may vote in person or by proxy executed in writing by the stockholder or his duly authorized attorney-in-fact. Unless otherwise provided in the proxy, it shall be valid only for the meeting at which it has been presented to the Secretary.

All proxies must be in the hands of the Secretary before the time set for the meeting. Such proxies filed with the Secretary may be revoked by the stockholders either in an instrument in writing duly presented and recorded with the Secretary prior to a scheduled meeting or by their personal presence at the meeting.

**Section 8. Closing of Transfer Books for Fixing of Record Date** - For the purpose of determining the stockholders entitled to notice of, or to vote at, any meeting of stockholders or any adjournment thereof or to receive payment of any dividend, or of making a determination of stockholders for any other proper purpose, the Board of Directors may provide that the stock and transfer books be closed for a stated period, but not to exceed, in any case, twenty (20) days. If the stock and transfer books be closed for the purpose of determining stockholders entitled to notice of, or to vote at, a meeting of stockholders, such books shall be closed for at least ten (10) working days immediately preceding such meeting. In lieu of closing the stock and transfer books, the Board of Directors may fix in advance a date as the record date, which shall in no case be more than twenty (20) days prior to the date on which the particular action requiring such determination of stockholders is to be taken, except in instances where applicable rules and regulations provide otherwise.

### **ARTICLE III BOARD OF DIRECTORS**

**Section 1. Powers of the Board of Directors** - Unless otherwise provided by law and except in respect of the matters reserved for stockholder approval under Article II, Section 5 of these By-Laws, the corporate powers of the corporation shall be exercised, all business conducted and all property of the corporation controlled and held by the Board of Directors to be elected by and from among the stockholders. Without prejudice to such general powers and such other powers as may be granted by law, the Board of Directors shall have the following express powers, in each case subject to such stockholder approval as may be required by law and by these By-Laws:

- (a) From time to time, to make and change rules and regulations not inconsistent with these By-Laws for the management of the corporation's business and affairs;
- (b) Save as otherwise provided in Article IV, Section 4 of these By-Laws, to purchase, receive, take or otherwise acquire in any lawful manner, for and in the name of the corporation, any and all properties, rights, interest or privileges, including



securities and bonds of other corporations, as the transaction of the business of the corporation may reasonably or necessarily require, for such consideration and upon such terms and conditions as the Board of Directors may deem proper or convenient;

- (c) To invest the funds of the corporation in another corporation or business or for any other purpose other than those for which the corporation was organized, whenever in the judgment of the Board of Directors the interest of the corporation would thereby be promoted;
- (d) To incur such indebtedness as the Board of Directors may deem necessary and, for such purpose, to make and issue evidence of such indebtedness including, without limitation, notes, deeds of trust, instruments, bonds, debentures, or securities, and/or pledge, mortgage, or otherwise encumber all or part of the properties and rights of the corporation;
- (e) Save as otherwise provided in Article IV, Section 4 of these By-Laws, to guarantee, for and in behalf of the corporation, obligations of other corporations or entities in which it has lawful interest;
- (f) Save as otherwise provided in Article IV, Section 4 of these By-Laws, to make provision for the discharge of the obligations of the corporation as they mature, including by way of transfer of any property or in stocks, bonds, debentures, or other securities of the corporation, lawfully issued for the purpose;
- (g) Save as otherwise provided in Article IV, Section 4 of these By-Laws, to sell, lease, exchange, assign, transfer or otherwise dispose of any property, real or personal, belonging to the corporation whenever in the Board of Directors' judgment, the corporation's interest would thereby be promoted;
- (h) To establish pension, retirement, bonus, profit-sharing or other types of incentives or compensation plans for the employees, including officers and directors of the corporation, and to determine the persons to participate in any such plans and the amount of their respective participations;
- (i) Save as otherwise provided in Article IV, Section 4 of these By-Laws, to prosecute, maintain, defend, compromise or abandon any lawsuit in which the corporation or its officers are either plaintiffs or defendants in connection with the business of the corporation, and likewise, to grant installments for the payment or settlement of whatsoever debts or payments to the corporation;
- (j) To delegate from time to time, any of the powers of the Board of Directors which may lawfully be delegated in the course of the current business or businesses of the corporation to such officers or committees of the corporation as the Board of Directors may determine; provided, however, that the Board of Directors shall not take any decisions or delegate any authority in relation to any of the matters specified in Article II, Section 5 of these By-Laws;
- k) To implement these By-Laws and to act on any matter not covered by these By-Laws, provided such matter does not require the approval or consent of the stockholders under any existing law, rules or regulation and these By-Laws.

**Section 2. Election/Nomination and Term** – The Board of Directors shall be elected during each regular meeting of stockholders and shall hold office for one (1) year and until their successors are elected and qualified.



**Section 3. Vacancies and Removal of members of the Board of Directors** – Any vacancy occurring in the Board of Directors, other than by removal by the stockholders or by expiration of the term, may be filled by a person nominated by the stockholder that nominated the director whose position has been vacated or, if such stockholder is no longer entitled to nominate such director under the Shareholders' Agreement, by such stockholder as is then entitled to so nominate, and elected by the vote of at least a majority of the remaining directors, if still constituting a quorum, otherwise, the vacancy must be filled by a person so nominated and elected by the stockholders at a regular or at any special meeting of stockholders called for that purpose. A director so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office.

Any directorship to be filled by reason of an increase in the number of directors shall be filled by a person nominated according to the provisions of the Shareholders' Agreement, and only by an election at a regular or at a special meeting of stockholders duly called for that purpose, or in the same meeting authorizing the increase of directors if so stated in the notice of the meeting.

The vacancy resulting from the removal of a director by the stockholders in the manner provided by law may be filled by a person nominated according to the provisions of the Shareholders' Agreement, and by election at the same meeting of stockholders without further notice, or at any regular or at any special meeting of stockholders called for that purpose, after giving notice as prescribed in these By-Laws.

**Section 4. Meetings** – The Board of Directors shall meet (a) for the period from the Effective Date until the Completion Date, not less than once every quarter, and (b) after the Completion Date, not less than twice a year, and in each case, on such dates, at such times and in such manner (including by way of teleconference or other permitted means of electronic communications) as the President or a majority of the directors shall decide, after giving notice as prescribed in these By-Laws.

**Section 5. Notice** – Notice of the regular or special meetings of the Board of Directors, specifying the date, time and place of the meeting, shall be communicated by the Secretary to each director at least seven (7) days prior to such meeting by courier, email or facsimile transmission, unless such notice requirement is waived by all directors in writing.

**Section 6. Quorum** – A majority of the number of directors as fixed in the Articles of Incorporation including at least one (1) director nominated by SIT1 and one (1) director nominated by STEAG shall constitute a quorum for the transaction of corporate business. If a quorum is not present within one hour of the time appointed for the meeting or ceases to be present, the directors present shall adjourn the meeting to a specified place, and time seven (7) business days after the original date. Notice of the adjourned meeting

shall be communicated by the Secretary to each director by courier or facsimile transmission. Any five directors present at the adjourned meeting (whether nominated by either or both of SIT1 and/or STEAG) shall constitute a quorum. Every decision of at least a majority of the directors present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the Board of Directors. The Chairman and the Controller (to the extent the Controller is a director) shall each be entitled to one vote in their capacity



as directors, but they shall not be entitled to any additional votes by virtue of holding the office of Chairman and Controller.

**Section 7. Conduct of the Meetings** – Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, or in his absence, the President or if none of the foregoing is in office and present and acting, by any other director chosen by the Board of Directors. The Secretary shall act as secretary of every meeting and, if not present, the chairman of the meeting shall appoint a secretary of the meeting.

**Section 8. Compensation** – By resolution of the Board of Directors, each director, shall receive a reasonable per diem allowance for his attendance at each meeting of the Board of Directors. As compensation, the Board of Directors shall receive and allocate an amount of not more than ten percent (10%) of the net income before income tax of the corporation during the preceding year. Such compensation shall be determined and apportioned among the directors in such manner as the Board of Directors may deem proper, subject to the approval of stockholders representing at least a majority of the outstanding capital stock at a regular or special meeting of the stockholders or subject to the provisions of Article II, Section 5 (l) of these By-Laws.

#### **ARTICLE IV OFFICERS**

**Section 1. Election/Appointment** – Immediately after their election, the Board of Directors shall formally organize the officers of the corporation by electing the Chairman, the Vice-Chairman, the President, one or more Vice-Presidents, the Treasurer, the Controller and the Secretary, at a meeting of the Board of Directors.

The Board of Directors may, from time to time, appoint such other officers as it may determine to be necessary or proper. No director may hold more than one position of office.

**Section 2. Chairman of the Board of Directors** – The Chairman of the Board of Directors shall preside at the meetings of the directors and the stockholders. He shall also exercise such powers and perform such duties as the Board of Directors may assign to him. For so long as SITl holds at least six percent (6%) of the outstanding capital stock, SITl may nominate a director for election as Chairman.

**Section 3. Vice-Chairman of the Board of Directors** - The Vice-Chairman of the Board of Directors shall fulfill all the functions of the Chairman in the absence of the latter, as well as exercise all such powers and perform such duties as may from time to time, be assigned to him by the Board of Directors.

**Section 4. President** – The President, who shall be a director, shall be the Chief Executive Officer of the corporation and shall also have administration and direction of the day-to-day business affairs of the corporation. He shall exercise the following functions:

- (a) preside at the meetings of the Board of Directors and of the stockholders in the absence of the Chairman of the Board of Directors;

- (b) initiate and develop corporate objectives and policies and formulate long range projects, plans and programs for the approval of the Board of Directors, including those for executive training, development and compensation;
- (c) have general supervision and management of the business affairs and property of the corporation;
- (d) ensure that the administrative and operational policies of the corporation are carried out under his supervision and control;
- (e) on behalf of the corporation, enter into and conclude all transactions before all governmental agencies and institutions as the business of the corporation may require; and sign and execute all documents, instruments, filings and registrations with, and to make all payments (including payments in respect of taxes, duties, levies, imposts and similar charges) to, such governmental agencies and institutions;
- (f) on behalf of the corporation, sell, purchase, receive, take or otherwise acquire, and to mortgage, pledge or otherwise encumber, any real estate with a value equal to or less than US\$100,000 (or its equivalent in other currencies) in the aggregate in any calendar year;
- (g) on behalf of the corporation, guarantee obligations of other corporations or entities in which it has a lawful interest in an amount equal to or less than US\$50,000 (or its equivalent in other currencies) in the aggregate in any calendar year;
- (h) on behalf of the corporation, make provision for the discharge of obligations of the corporation in amounts equal to or less than US\$100,000 (or its equivalent in other currencies) in the aggregate in any calendar year as they mature, including by way of transfer of any property or in stock, bonds, debentures, or other securities of the corporation, lawfully issued for the purpose;
- (i) subject to the provisions of Article IV, Section 4(f) above, on behalf of the corporation, sell, lease, exchange, assign, transfer or otherwise dispose of any property, real or personal, belonging to the corporation having a value equal to or less than US\$100,000 (or its equivalent in other currency) in the aggregate in any calendar year;
- (j) on behalf of the corporation, prosecute, maintain, defend, compromise or abandon any lawsuit in which the corporation or its officers are either plaintiffs or

defendants in connection with the business of the corporation and involving an amount equal to or less than US\$20,000 (or its equivalent in other currency);

- (k) on behalf of the corporation, enter into contracts for construction in an amount equal to or less than US\$200,000 (or its equivalent in other currency) in the aggregate in any calendar year, provided that the President may enter into contracts for construction in an amount greater than US\$200,000 if these are



provided for in the then-current budget or financial plan approved by the Board of Directors;

- (l) without prejudice to any other provision of this Article IV, Section 4, on behalf of the corporation, enter into any other agreement or contract having a value equal to or greater than US\$200,000 (or its equivalent in other currency) in the aggregate in any calendar year or a term longer than five years, provided that the President may enter into agreements or contracts in amounts greater than US\$200,000 if these are provided for in the then-current budget or financial plan approved by the Board of Directors;
- (m) on behalf of the corporation, give donations in an amount equal to or less than US\$5,000 (or its equivalent in other currency) in the aggregate in any calendar year;
- (n) subject to guidelines prescribed by law, appoint, remove, suspend or discipline employees of the corporation, prescribe their duties, and determine their salaries, provided that the President may not appoint or employ personnel whose positions are not provided for in the then-current budget or financial plan approved by the Board of Directors;
- (o) oversee the preparation of the budgets and the statements of accounts of the corporation;
- (p) prepare such statements and reports of the corporation as may be required of him by law;
- (q) represent the corporation at all functions and proceedings;
- (r) on behalf of the corporation, execute all contracts, agreements and other instruments affecting the interests of the corporation which require the approval of the Board of Directors, except as otherwise directed by the Board of Directors;
- (s) make reports to the Board of Directors and stockholders;
- (t) sign certificates of stock;
- (u) perform such other duties as are incident to his office or are entrusted to him by the Board of Directors.

The President may assign the exercise or performance of any of the foregoing powers, duties and functions to any other officer(s), subject always to his supervision and control.

**Section 5. The Vice-President(s)** – If one or more Vice-Presidents are appointed, he/they shall have such powers and shall perform such duties as may from time to time, be assigned to him/them by the Board of Directors or by the President.

**Section 6. The Secretary** – The Secretary must be a resident and a citizen of the Philippines. He shall be the custodian of and shall maintain the corporate books and records and shall be the recorder of the corporation's formal actions and transactions. He shall have the following specific powers and duties:

- (a) To record or see to the proper recording of the minutes and transactions of all meetings of the directors and the stockholders and to maintain minute books of such meetings in the form and manner required by law;
- (b) To keep or cause to be kept record books showing the details required by law with respect to the stock certificates of the corporation, including ledgers and transfer books showing all shares of the corporation subscribed, issued and transferred;
- (c) To keep the corporate seal and affix it to all papers and documents requiring a seal, and to attest by his signature all corporate documents requiring the same;
- (d) To attend to the giving and serving of all notices of the corporation required by law or these By-Laws to be given;
- (e) To certify to such corporate acts, countersign corporate documents or certificates, and make reports or statements as may be required of him by law or by government rules and regulations;
- (f) To act as the inspector at the election of directors and, as such, to determine the number of shares of stock outstanding and entitled to vote, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and to receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote. The Secretary may assign the exercise or performance of any or all of the foregoing duties, powers and functions to any other person or persons subject always to his supervision and control;
- (g) To perform such other duties as are incident to his office or as may be assigned to him by the Board of Directors or the President.

**Section 7. The Treasurer and Controller** – The Treasurer of the corporation shall be its chief fiscal officer and the custodian of its funds, securities and property. The Treasurer shall have the following duties:

- (a) To keep full and accurate accounts of receipts, and disbursements in the books of the corporation;
- (b) To have custody of, and be responsible for, all the funds, securities and bonds of the corporation;
- (c) To deposit in the name and to the credit of the corporation, in such bank as may be designated from time to time by the Board of Directors, all the moneys, funds, securities, bonds and similar valuable effects belonging to the corporation which may come under his control;



- (d) To render annual statements showing the financial condition of the corporation and such other financial reports as the Board of Directors, the Chairman, or the President may, from time to time, require;
- (e) To prepare such financial reports, statements, certifications and other documents which may, from time to time, be required by government rules and regulations and to submit the same to the proper government agencies;
- (f) To exercise such powers and perform such duties and functions as may be assigned to him by the President.

The Controller, who need not be a director, shall take charge of financial, accounting and operational functions and report to, the Treasurer. SITI may nominate an individual for election as Controller so long as such individual is a resident of the Philippines.

**Section 8. Term of Office** – The term of office of all officers shall be for a period of one (1) year and until their successors are duly elected and qualified. Such officers may however be sooner removed for cause.

**Section 9. Vacancies** – If any position of the officers becomes vacant by reason of death, resignation, disqualification or for any other cause, the Board of Directors, by majority vote may elect a successor who shall hold office for the unexpired term, subject to the provisions of this Article with respect to the right to nominate persons to the positions of Chairman or Controller.

**Section 10. Compensation** – The Chairman, the President, the Vice-Chairman, any Vice-President, the Secretary, the Treasurer and the Controller shall receive such remuneration as the Board of Directors, may determine. All other officers shall receive such remuneration as the Board of Directors may determine upon recommendation of the President. Subject to Article IV, Section 1 hereof, a director shall not be precluded from serving the corporation in any other capacity as an officer, agent or otherwise and receiving compensation therefor.

## **ARTICLE V OFFICES**

**Section 1.** The principal office of the corporation shall be located at the place stated in Article III of the Articles of Incorporation. The corporation may have such other branch offices, either within or outside the Philippines as the Board of Directors may designate or as the business of the corporation may, from time to time, require.

## **ARTICLE VI AUDIT OF BOOKS, FISCAL YEAR AND DIVIDENDS**

**Section 1. External Auditors** – At the stockholders' meeting, the external auditor or auditors of the corporation for the ensuing year shall be appointed. The external auditor or auditors shall examine, verify and report on the earnings and expenses of the corporation and shall certify the remuneration of the external auditor or auditors as determined by the Board of Directors.

**Section 2. Fiscal Year** – The fiscal year of the corporation shall begin on the first day of January and end on the last day of December of each year.

**Section 3. Dividends** –The corporation shall maximize the net present value of distributions to the stockholders and shall accordingly distribute to the stockholders the maximum available percentage of its profits available for distribution in each financial year subject to the relevant laws of the Philippines and the provisions of the Finance Documents, such distribution to be by way of cash, redeemable preference shares or otherwise. Dividends shall be payable in cash, property, or stock to all stockholders on the basis of outstanding stock held by them.

#### **ARTICLE VIII AMENDMENTS**

**Section 1.** These By-Laws may be amended or repealed by the affirmative vote of at least a majority of the Board of Directors and the vote of the stockholders required under Article II, Section 5 of these By-Laws. However, the power to amend, modify, repeal or adopt new by-laws may be delegated to the Board of Directors by the stockholders subject to the provisions of Article II, Section 5 of these By-Laws; provided, however, that any such delegation of powers to the Board of Directors to amend, repeal or adopt new by-laws may be revoked only by the vote of the stockholders representing a majority of the outstanding capital stock at a regular or special meeting.

#### **ARTICLE IX SEAL**

**Section 1. Form and Inscription** – The corporate seal shall be determined by the Board of Directors.

#### **ARTICLE X ADOPTION CLAUSE**

The foregoing By-Laws were adopted by all the stockholders of the corporation on December 11, 1995 at the principal office of the corporation.

IN WITNESS WHEREOF, we, the undersigned stockholders present at said meeting and voting thereat in favor of the adoption of said By-Laws, have hereunto subscribed our names this 11<sup>th</sup> day of December 1995 at Manila, Philippines.

- (Note 1. If filed with Articles of Incorporation, should be signed by all Incorporators:  
2. If filed after incorporation, should be signed by majority of the subscribers and should submit director's certificate for the adoption of the by-laws.)

(SGD.)  
VICENTE T. PATERNO

(SGD.)  
ALLEN C. ROXAS

(SGD.)  
FLORANTE A. CASTILLO

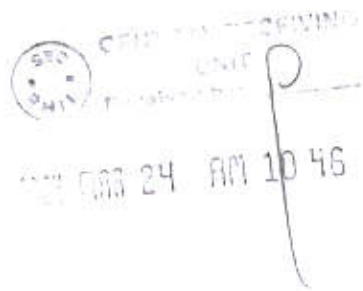
(SGD.)  
FRANCISCO K. CHUA

(SGD.)



SUSANA C. MONZON

Republic of the Philippines )  
Makati City ) S.S.



### DIRECTORS' CERTIFICATE

#### KNOW ALL MEN BY THESE PRESENTS:

We, the undersigned, constituting a majority of the members of the Board of Directors and the Corporate Secretary of **STEAG STATE POWER INC.** (the "Corporation"), do hereby certify that the attached Amended By-Laws embodying the amendments to Section 3 Article I is true and correct and the aforesaid amendment was duly approved by at least a majority of the members of the Board of Directors and by the Stockholders owning and/or representing at least two thirds (2/3) of the outstanding capital stock of the Corporation at their respective Special Meetings held on January 29, 2004 at SGV Lounge 15th Floor SGV I Bldg. 6750 Ayala Avenue, Makati City.

IN WITNESS WHEREOF, we have hereunto set our hands this 24  
day of MAR, 2004 at \_\_\_\_\_.

Washington SyCip  
Chairman

Allen Roxas  
Director

Andreas Rubin  
Director

Harald Geissler  
Director

Daniel Voswinkel  
Director

Claus-Peter Bell  
Director

Augusto Lopez-Dee  
Director

Arnold Gehlen  
Director

Joachim Rumstadt  
Director


Jose Baltazar-Pamintuan  
Corporate Secretary

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_ at  
MAR 18 2004 affiants exhibiting to me their respective passports with  
numbers, place and dates of issue as follows:



Name	CTC/Passport No.	Date/Place of Issue
Washington SyCip		
Claus-Peter Bell		
Allen Roxas		
Andreas Rubin		
Augusto Lopez-Dee		
Arnold Gehlen		
Joachim Rumstadt		
Daniel Voswinkel		
Harald Geissler		
Joy Baltazar-Pamintuan		

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Book No. II ;  
Series of 2004.

  
**DIVINA GRACIA U. CABILDO**  
NOTARY PUBLIC  
Until December 2004  
PTR No. 7054849 Makati 1/17/04  
IBP No. 605778 Makati 1/09/04

### SECRETARY'S CERTIFICATE

I, **JOY BALTAZAR-PAMINTUAN**, Filipino, of legal age, with office address at 7<sup>th</sup> Floor, Oakwood Premiere, Ayala Center, Makati City, after having been sworn in accordance with law, hereby depose and state that:

1. I am the duly appointed Corporate Secretary of STEAG State Power, Inc. (the "Corporation") a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 7<sup>th</sup> Floor, Oakwood Premiere, Ayala Avenue, Makati City;
2. As Corporate Secretary, I have in my custody the books and records and other papers of the Corporation, including but not limited to the minutes of the meetings of the Board of Directors and of the stockholders of the Corporation;
3. At the Special Meeting of the Board of Directors and the Stockholders held on January 29, 2004 at 6:00 PM and 7:30 PM respectively, the following resolutions were approved by at least a majority of the Directors and by the Stockholders representing at least 2/3 of the outstanding capital stock of the Corporation:

*On the creation of redeemable shares*

**"RESOLVED**, as it is hereby resolved, that the first paragraph of the Seventh Article of the Corporation's Articles of Incorporation be amended to read as follows:

'Seventh. That the authorized capital stock of said corporation is FIVE BILLION Pesos (P5,000,000,000.00) Philippine currency, and said capital stock is divided into:

- (i) Three Hundred Thirty Five Million (335,000,000.00) Common Shares with a par value of Ten Pesos (P10.00) per share; and
- (ii) One Hundred Sixty Five Million (165,000,000.00) Redeemable Shares with a par value of Ten Pesos (P10.00) per share.

The redeemable shares shall have the following features, which shall also appear at the back of every stock certificate issued for such shares:

**Redemption Period:** The said shares may be redeemed at the option of the corporation at any time after the second year of its commercial operations until on or before the end of the Cooperation Period;

**Redemption Price:** The said shares may be redeemed at a price to be determined by the Board of Directors at a special meeting duly called for such purpose;



*On the additional restrictions on the transfer of shares*

**"RESOLVED, FURTHER,** That the Seventh Article of the Articles of Incorporation be further amended by adding a new clause (E) to read as follows:

(E) Additional Restrictions on the Transfer of Shares under the Sponsor Support Agreement

With immediate effect until the Final Maturity Date the following additional Transfer Restrictions shall apply:

1. Share Transfer Restrictions prior to Commercial Completion

1.1 Prior to the Commercial Completion Date, no Sponsor and no Shareholder shall sell, assign, give, hypothecate, pledge, encumber or otherwise transfer (in each case, a "transfer") any Shares other than subject to herein Clause (E) 3 and other than: in the case of a transfer of shares by that Sponsor or Shareholder to a person approved by the Intercreditor Agent (approval not to be unreasonably withheld or delayed in the case of a proposed transfer by SITI); or

1.2 as otherwise expressly contemplated pursuant to any of the Finance Agreements or approved by the Intercreditor Agent in its absolute discretion.

2. Share Transfer Restrictions after Commercial Completion

Following the Commercial Completion Date each Sponsor and each Shareholder shall be free to transfer shares subject to herein Clause (E) 3 and provided that following such transfer STEAG and directors of the Corporation appointed by STEAG must together continue to own no less than fifty-one per cent of the issued share capital of the Corporation and must retain control of the Corporation.

3. Other Restrictions

3.1 In addition to the restrictions set out in hereto Clauses (E) 1 and (E) 2 any proposed transfer of Shares by any Sponsor or Shareholder shall be subject to the following restrictions:

(a) the proposed transfer of Shares must be permitted under Applicable Law;

(b) the transferred Shares remain or otherwise have been charged in favour of the Offshore Trustee as first priority security for the Secured Indebtedness;

(c) all remaining Shares owned by the Sponsors and their Affiliates shall remain subject to the Security Interest created by the Multiple Share Charge;