
AMENDED AND RESTATED BY-LAWS
OF
EMPIRE STATE ENERGY ASSOCIATION, INC.

TABLE OF CONTENTS

| | |
|---|---|
| ARTICLE I: MEMBERS | 3 |
| Section 1.2 Classifications..... | 3 |
| Section 1.3 Regular Membership | 3 |
| Section 1.4 Associate Membership..... | 3 |
| Section 1.5 Sustaining Membership | 3 |
| Section 1.6 Regular Meetings..... | 3 |
| Section 1.7 Special Meetings..... | 4 |
| Section 1.8 Annual Meeting | 4 |
| Section 1.9 Quorum and Voting | 4 |
| ARTICLE II: BOARD OF DIRECTORS | 4 |
| Section 2.1 Number | 4 |
| Section 2.2 Term of Office | 4 |
| Section 2.3 Removal..... | 4 |
| Section 2.4 Resignation | 4 |
| Section 2.5 Vacancies..... | 4 |
| Section 2.6 Meetings | 5 |
| Section 2.7 Place of Meetings | 5 |
| Section 2.8 Notice of Meeting..... | 5 |
| Section 2.9 Waiver of Notice..... | 5 |
| Section 2.10 Quorum..... | 5 |
| Section 2.11 Action by the Board..... | 5 |
| Section 2.12 Compensation | 6 |
| Section 2.13 Advisory Directors..... | 6 |
| ARTICLE III: COMMITTEES | 6 |
| Section 3.1 Committees of the Board | 6 |
| Section 3.2 Standing Committees..... | 7 |
| Section 3.3 Committees of the Association..... | 8 |
| Section 3.4 Committee Rules | 8 |
| ARTICLE IV: OFFICERS | 8 |
| Section 4.1 Election of Officers..... | 8 |
| Section 4.2 Removal | 8 |

| | | |
|----------------------|--|-----------|
| Section 4.3 | Resignation | 8 |
| Section 4.4 | Chair | 8 |
| Section 4.5 | President | 8 |
| Section 4.6 | Regional Vice Presidents..... | 9 |
| Section 4.7 | Secretary | 9 |
| Section 4.8 | Treasurer | 9 |
| ARTICLE V: | EXECUTIVE DIRECTOR | 9 |
| Section 5.1 | Duties | 9 |
| Section 5.2 | Status..... | 10 |
| ARTICLE VI: | FINANCES..... | 10 |
| Section 6.1 | Bills, Notes, Etc. | 10 |
| Section 6.2 | Dividends, Etc..... | 10 |
| Section 6.3 | Fiscal Year | 10 |
| ARTICLE VII: | PROPERTY AND INVESTMENTS | 10 |
| Section 7.1 | Property..... | 10 |
| Section 7.2 | Investments | 10 |
| Section 7.3 | Investment Advisor or Agent..... | 10 |
| ARTICLE VIII: | INDEMNIFICATION | 11 |
| Section 8.1 | Indemnification..... | 11 |
| Section 8.2 | Advancement of Expenses..... | 11 |
| Section 8.3 | Indemnification of Employees and Agents of the Association | 11 |
| Section 8.4 | Insurance..... | 11 |
| ARTICLE IX: | AMENDMENTS | 11 |

AMENDED AND RESTATED BY-LAWS
OF
EMPIRE STATE ENERGY ASSOCIATION, INC.

ARTICLE I: MEMBERS

Section 1.1 Applicants. Every applicant for membership shall file an application with the Association. Each application shall be subject to the approval of the Board of Directors.

Section 1.2 Classifications. There shall be three (3) types of membership which shall be classified as: (1) Regular; (2) Associate; and (3) Sustaining.

Section 1.3 Regular Membership. A Regular Membership shall be available to any individual, firm, partnership, or Association exclusively engaged in distributing, jobbing or marketing petroleum products or heating fuels in the State of New York. The rights and privileges afforded an Regular Membership shall be all inclusive, including the right to vote and hold office, as provided in these by-laws and any amendments thereto.

Section 1.4 Associate Membership. There shall be two designations of Associate Membership: "A" and "B." An Associate Membership "A" shall be available to any individual, firm, partnership, or Association engaged in marketing, manufacturing, or any activity related to the petroleum and heating fuel industry except as provided in Section 1.3 of this Article I:

An Associate Membership "B," otherwise designated as "Sponsor Supplier or Wholesale Distributor," is a producer-refiner, wholesale distributor of petroleum and heating fuel products, or any other position or status that the Board of Directors may from time to time make with respect to this category of membership. If an applicant is eligible for more than one class of membership, it shall be accepted in that type of membership which reflects the higher rate of dues.

The rights and privileges of Associate Membership shall be those of Regular Membership except the right to vote. Associate Members "A" shall be eligible to be elected to the Board of Directors. However, Associate Members "A" shall be limited to no more than one third of the seats on the Board, and they shall not be eligible to serve as officers.

Section 1.5 Sustaining Membership. A Sustaining Membership shall be available to any individual who is retired or is no longer in the employ of a distributor, jobber, or marketer of petroleum products or heating fuels or supplying company. The rights and privileges of Sustaining Membership shall be those of Regular Membership except the right to vote or hold office.

Section 1.6 Regular Meetings. Regular meetings of the Members of the Association shall be held at a date and time to be fixed by the Board of Directors. Notice of the time and place of regular meetings shall be given to Members either personally or by first class mail, facsimile or email at least ten (10) days, but no more than fifty (50) days, prior thereto.

Section 1.7 Special Meetings. Special meetings of the Members may be called at any time by the Board of Directors or the President with the approval of the Executive Committee, and may be called by the Chair or Secretary upon the written request of at least ten percent (10%) of the Regular Members. Notice of the time and place of special meetings shall be given to Members either personally or by first class mail, facsimile or email at least ten (10) days, but no more than fifty (50) days, prior thereto, and shall state the purpose of the meeting.

Section 1.8 Annual Meeting. An annual meeting of the Members shall be held at a date and time to be fixed by the Board of Directors for the election of Directors and the transaction of such other business as prescribed by the Board of Directors (the “Annual Meeting”).

Section 1.9 Quorum and Voting. At all meetings of the Members of the Association, twenty percent (20%) of the Regular Membership shall constitute a quorum. Action shall be taken by a majority vote of those present and entitled to vote at a meeting. A Regular Member may vote either in person or by written proxy signed by such Regular Member or his/ her attorney-in-fact and delivered to the secretary of the meeting. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives, unless it is entitled “irrevocable proxy” in which event its revocability shall be determined by the law of the State of New York in effect at the time.

ARTICLE II: BOARD OF DIRECTORS

Section 2.1 Number. The number of Directors constituting the entire Board of Directors (the “Board”) shall be such number as shall be fixed by vote of a majority of the entire Board from time to time, but not less than ten (10). The Board of Directors shall consist only of members in good standing of the Association, however, Associate Members “A” cannot fill more than one third of the seats on the Board of Directors.

Section 2.2 Term of Office. Each Director shall be elected to a full term of three (3) years, and shall serve until his or her successor has been elected and qualified except as provided herein. The Directors shall take office the January 1st after his or her election, except when elected to fill an unexpired term.

Section 2.3 Removal. At any duly called meeting of the Board at which there is a majority of the Directors then in office, any Director may be removed from office with cause by vote of a majority of the Directors present at the meeting and another may be elected by the Directors in the place of the person so removed to serve until the next Annual Meeting at which election of Directors is in the regular order of business.

Section 2.4 Resignation. A Director may resign at any time by written notice delivered to the President or Secretary of the Association. A resignation is effective when the notice is delivered unless the notice specifies a date later than the date of delivery. The resignation of a Director need not be accepted in order to be effective.

Section 2.5 Vacancies. Vacancies and other openings in the Board, created for any reason, may be filled by the Board or by a majority of the Directors then in office if less than a quorum is in office.

Section 2.6 Meetings. An Annual Meeting of the Board shall be held at such time as may be fixed by the Board for the election of Officers and the transaction of such other business as prescribed by the Board of Directors. Regular Meetings of the Board shall be held at such times as the Directors may from time to time determine, but in no event shall the Directors hold fewer than 2 regular meetings each year. Special Meetings of the Board shall be held at any time, upon call from the President, the Chair, or upon written demand of not less than one-third (1/3) of the entire Board.

Section 2.7 Place of Meetings. Meetings of the Board shall be held at the principal office of the Association, or at such other place, within or without the State of New York as may from time to time be determined by the Board or the person or persons authorized to call the meeting.

Section 2.8 Notice of Meeting. Notice of the place, date and hour of every Regular Meeting of the Board shall be given to each Director by delivering the same to him or her personally or sending the same to him or her by electronic mail or facsimile transmission at least three (3) days before the meeting, or shall be mailed to each Director, postage prepaid and addressed to him or her at his or her last known address according to the records of the Association, at least five (5) days before the meeting. No notice need be given of a regular meeting of the Board if the Association has distributed a set schedule of regular meetings. Notice of the place, day and hour of every Special Meeting shall be given to each Director by delivering the same to him or her personally or sending the same to him or her by electronic mail or facsimile transmission at least one (1) day before the meeting, or shall be mailed to each Director, postage prepaid and addressed to him or her at his or her last known address according to the records of the Association, at least three (3) days before the meeting. No notice of any adjourned meeting of the Board need be given other than by announcement at the meeting.

Section 2.9 Waiver of Notice. Notice of a meeting need not be given to any Director who submits a signed written or electronic waiver thereof whether before, during or after the meeting nor to any Director who attends the meetings without protesting, prior thereto or at its commencement, the lack of notice to him or her.

Section 2.10 Quorum. A majority of the entire Board shall be necessary to constitute a quorum for the transaction of business at each meeting of the Board. However, if at any meeting there be less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than by announcement at the meeting, until a quorum shall attend.

Section 2.11 Action by the Board.

(a) Each Director shall be entitled to one (1) vote on each matter properly submitted to the Board for action at all meetings of the Board. Unless otherwise required by the New York Not-for-Profit Association Law, as amended (the "NPCL") or these By-laws, the vote of a majority of Directors present at a meeting at which a quorum is present shall be the act of the Board.

(b) Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the

committee thereof consent in writing or by electronic mail to the adoption of a resolution authorizing the action. The resolution and consent thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

(c) Any one (1) or more members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of a conference telephone, video conference or similar equipment that allows all persons participating in the meeting to hear each other at the same time and such that each person can participate in all matters before the Board or committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken to the Board or committee. Participation by such means shall constitute presence in person at such a meeting.

Section 2.12 Compensation. Directors as such shall not receive any compensation for their services. Nothing in this section shall prevent compensation to a person for services rendered to the Association as an employee or as otherwise engaged by the Association.

Section 2.13 Advisory Directors. The past Chairs of the Association shall serve as Advisory Directors of the Association. Advisory Directors shall serve at the pleasure of the Board of Directors and shall not be entitled to vote on any matters, but shall have the right to receive any written notices of meetings of the Board of Directors and to attend all such meetings; provided, however, that Advisory Directors shall not be entitled to propose any issues or topics for discussion at any Board of Directors meeting, unless agreed to by the Directors. In addition, Advisory Directors may serve on Committees of the Board, but only in an advisory capacity with no vote. Nothing herein would prevent a past Chair from running for election for a new term on the Board of Directors.

ARTICLE III: COMMITTEES

Section 3.1 Committees of the Board. The Board may, in its discretion, by a majority vote of the Board, if a quorum is present, appoint committees of the Board to consist of any three (3) or more Directors as the Board may from time to time determine. In addition, Advisory Directors shall be eligible to serve on committees in an advisory capacity with no vote. In the case of any Executive Committee or similar committee however denominated, the appointment must be made by a majority of the entire Board. Committee Chairs shall serve a term of three years, or until they are removed, and may be re-elected for successive terms. Committees of the Board shall have and may exercise between meetings of the Board all the powers of the Board in the management of the business and affairs of the Association, except that no committee shall have the power to:

- (a) fill vacancies in the Board or in any committee thereof;
- (b) fix compensation of Directors for service on the Board of any committee thereof;
- (c) repeal, amend or adopt by-laws;

- (d) amend or repeal any Board resolution which does not, by its terms, make it amendable or repealable by such committee;
- (e) remove or fix the compensation of Officers who are elected by the Board;
- (f) elect or remove Officers and Directors;
- (g) approve a merger or plan of dissolution;
- (h) adopt a resolution authorizing the sale, lease, exchange or other disposition of all or substantially all the assets of the Association; or
- (i) approve amendments to the Certificate of Incorporation.

In the absence of any member of any committee of the Board, the members thereof present at any meeting may appoint a member of the Board previously designated by the Board as a committee alternate to act in place of such absent member.

Section 3.2 Standing Committees. The following shall be standing committees of the Board with the composition and responsibilities set forth below:

- (a) **Executive Committee.** The Executive Committee shall consist of at least the Chair of the Board, the President, the three Regional Vice Presidents, the Treasurer, the Immediate Past Chair, the Chair of the Nominating Committee, the Chair of the Motor Fuels/Convenience Store Committee, the Chair of the Heating Fuels Committee, and any other additional members as elected by the Board, provided that such additional members must also be Board members. Subject to the restrictions upon the power of committees in general set forth in Section 3.1 of this Article, the Executive Committee shall have and may exercise all of the power and authority of the Board of Directors between meetings of the Board of Directors. The Executive Committee shall evaluate and report to the Board of Directors the performance of the Executive Director, review and recommend staff and personnel policies, and recommend staff salaries. The Executive Committee shall also provide advice to the Board of Directors and have such other powers as may be granted to it by the Board of Directors, subject to the limitations specifically enumerated in Section 3.1.
- (b) **Nominating Committee.** The Nominating Committee shall prepare a slate of candidates for election to the Board of Directors at each Annual Meeting. The names of the candidates selected shall be filed with the Secretary of the Association prior to the Annual Meeting. At the Annual Meeting, the Chair of the Nominating Committee shall present the candidates nominated by the Nominating Committee.
- (c) **Legislative Committee.** The Legislative Committee shall monitor, review, supervise, analyze, inaugurate bill language, develop positions, and advise with respect to any and all matters relating to legislation and regulations.

(d) **Motor Fuels/Convenience Store Committee.** The Motor Fuels/Convenience Store Committee shall monitor, supervise, inaugurate programs and legislation, and advise with respect to any and all matters relating to motor fuels and convenience stores.

(e) **Heating Fuels Committee.** The Heating Fuels Committee shall monitor, supervise, inaugurate programs and legislation, and advise with respect to any and all matters relating to heating fuels.

Section 3.3 Committees of the Association. The Board may designate committees of the Association, each of which shall consist of such persons, including non-Board members, and shall have such authority as is provided in the resolution designating the committee, except that no committee of the Association shall have authority to bind the Association.

Section 3.4 Committee Rules. The Board shall have the power at any time to change the membership of any committee, to fill vacancies in it, or dissolve it; provided, however, that the dissolution of any standing committee of the Board shall also require an amendment of these By-laws reflecting the removal of such committee. Any committee may make rules for the conduct of its business, and may appoint such committees and assistants as may from time to time be necessary, unless the Board shall provide otherwise. A majority of the members of any committee shall constitute a quorum.

ARTICLE IV: OFFICERS

Section 4.1 Election of Officers. The Officers of the Association shall be a Chair of the Board of Directors, a President, three (3) Regional Vice Presidents, a Treasurer, a Secretary, and such other officers as the Board of Directors may deem necessary. Officers must be Directors, and thus, members in good standing. Officers (other than the Chair) shall be elected at a duly held meeting of the Board of Directors annually and may be reelected for successive terms. However, the position of Chair shall be filled by the individual who last served as President, but who is not running for re-election to that office. Each such Officer shall serve at the pleasure of the Board or until his or her successor shall have been duly elected or appointed and qualified, or until he or she shall have resigned, died, or been removed in the manner provided in this Article. Any two (2) offices may be held by the same person, except that no person shall hold the office of President and Secretary concurrently. Any vacancies in the above offices shall be filled in the same manner as set forth in Article II: above. Officers shall fill their positions the January 1st following immediately after their election unless filling an unexpired term. In addition, no Associate Member shall be eligible to serve as an Officer.

Section 4.2 Removal. Any Officer of the Association may be removed with or without cause by a vote of a majority of the entire Board at any duly held meeting of the Board.

Section 4.3 Resignation. An Officer may resign at any time by written notice delivered to the President or Secretary of the Association. A resignation is effective when the notice is delivered unless the notice specifies a date later than the date of delivery. The resignation of an Officer need not be accepted in order to be effective.

Section 4.4 Chair of the Board. The Chair of the Board shall be a member of the Association, and shall preside at all meetings of the Board of Directors and its Executive Committee, and shall perform such other duties as shall be designated from time to time by the Board of Directors.

Section 4.5 President. The President shall be a member of the Association, and shall perform such other duties and exercise such other functions as may be designated by the Board. In the event of an absence or temporary disability of the Chair of the Board of Directors, the President shall exercise all the powers and perform all the duties of the Chair of the Board during such absence or disability.

Section 4.6 Regional Vice Presidents. The Regional Vice Presidents shall be the representatives for the following three (3) geographical regions of New York State: Eastern/Northern Region, Central/Western Region, and Southern Region. Their duties shall include to serve the membership in their respective areas and to assist the President in the execution of such duties as he or she may assign from time to time. In the event of the absence, temporary disability, resignation or removal of the President, a Regional Vice President as designated by the Board of Directors shall exercise all powers and perform all the duties of the President during such absence or disability.

Section 4.7 Secretary. The Secretary shall keep full minutes of all meetings of the Board, the Executive Committee, and the Members in books provided for this purpose. The Secretary shall see that all notices are duly given in accordance with the provisions of the By-laws or as required by the NPCL and shall be the custodian of the records of the Association. The Secretary shall have such other powers and duties as may be properly designated by the Board and the President.

Section 4.8 Treasurer. The Treasurer shall keep correct and complete books and records of account for the Association. The Treasurer shall maintain banking arrangements approved by the Board of Directors to receive, have custody of and disburse the Association's moneys and securities. The Treasurer shall invest the Association's funds in accordance with the policies established by the Board and provide insurance coverage as directed by the Board. The Treasurer shall disburse the funds of the Association only on proper vouchers and shall account therefore to the Board of Director whenever required to do so. The Treasurer shall prepare and submit to each regular meeting of the Board of Directors or the Executive Committee on request a written statement showing the financial condition of the Association. The Treasurer shall cause an annual audit made by a certified public accountant which is to be submitted to the Board of Directors. The Treasurer shall have such other powers and duties as may be properly designated by the Board and the President.

ARTICLE V: EXECUTIVE DIRECTOR

Section 5.1 Duties. The Board of Directors may in its discretion hire an Executive Director to perform the management, programming, marketing, administrative, and other day-to-day services and functions ordinarily required of and associated with the position of executive director of a not-for-profit organization, to carry out the programs and directives of the Association, to pursue and advance the business and affairs of the Association, and to perform

such other duties and responsibilities as may be requested of said person by the Board of Directors from time to time. The Executive Director shall prepare and submit annually to the Board of Directors a written statement of progress on programs and activities previously adopted by the Board. The Executive Director may present recommendations to the Board members from time to time

Section 5.2 Status. The Executive Director shall not be an Officer of the Association but shall be a paid employee of the Association and hired upon such terms and conditions as the Board of Directors may set by contract or otherwise and serve at the pleasure of the Board of Directors. The Executive Director shall not serve as Chair of the Board of Directors or hold any other title with similar responsibilities. The Executive Director may serve as an ex-officio member of standing committees and committees established by the Board of Directors with no vote.

ARTICLE VI: FINANCES

Section 6.1 Bills, Notes, Etc. All checks or demands for money and notes or other instruments evidencing indebtedness or obligations of the Association shall be made in the name of the Association and shall be signed by such Officer or Officers or such other person as the Board may from time to time designate. No loans shall be contracted on behalf of the Association unless specifically authorized by the Board.

Section 6.2 Dividends, Etc. No part of the assets or net earnings of the Association shall be distributed to or inure to the benefit of any Director or Officer by means of dividends or otherwise except that reasonable compensation may be paid for services rendered to the Association.

Section 6.3 Fiscal Year. The fiscal year of the Association shall be the calendar year.

ARTICLE VII: PROPERTY AND INVESTMENTS

Section 7.1 Property. All real or personal property received by the Association by bequest, devise, gift, grant or otherwise, unless otherwise specified within the terms of such bequest, devise, gift, grant, or other instrument, shall be held or disposed of by the Association according to such terms and conditions, not inconsistent with the objects and purposes of the Association, as the Board shall determine. Unless otherwise designated by the Board, the President of the Association is hereby designated as the Officer of the Association authorized to vote any and all shares of stock held by the Association; he or she shall have the power and authority to vote such shares in person or by proxy, or by written consents in lieu of formal meetings.

Section 7.2 Investments. Unless otherwise specified by the terms of a particular bequest, devise, gift, grant or other instrument, the funds of the Association may be invested from time to time in such manner as the Board may determine, and in accordance the New York Prudent Management of Institutional Funds Act, whether or not the investments are of the character which would be required by law for similar funds if held by trustees.

Section 7.3 Investment Advisor or Agent. The Board may contract with any independent investment advisor, investment counsel or manager or other financial agent or agents as the Board shall deem advisable to represent and to advise it in the investment or reinvestment

of funds of the Association or to provide security custodial services. The Board is further authorized to pay reasonable compensation for such services. Each contract shall provide that it may be terminated by the Board at any time without penalty upon not more than sixty (60) days' notice. The Board shall be relieved of all liability for the investment and reinvestment of corporate funds by, and for the other acts or omissions of, persons to whom authority is so delegated or with whom contracts are so made.

ARTICLE VIII: INDEMNIFICATION

Section 8.1 Indemnification. The Association shall indemnify and hold harmless any person made or threatened to be made a party to any action or proceeding by reason of the fact that he or she or his or her testator or intestate (a) is or was a Director or Officer of the Association or (b) is or was a Director or Officer of the Association who serves or served, in any capacity, any other entity at the request of the Association (hereinafter an "Indemnitee"), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by the Indemnitee in connection therewith. Notwithstanding the foregoing, no indemnification may be made to or on behalf of any Director or Officer if a judgment or other final adjudication adverse to the Director or Officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 8.2 Advancement of Expenses. All expenses reasonably incurred by an Indemnitee in connection with an actual or threatened action or proceeding with respect to which such Indemnitee is or may be entitled to indemnification under Section 7.1 of this Article shall be advanced to him or her or promptly reimbursed by the Association in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by him or her or on his or her behalf to repay the amount of such advances, if any, as to which he or she is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent such advances exceed the indemnification to which he or she is entitled.

Section 8.3 Indemnification of Employees and Agents of the Association. The Association may, to the extent authorized from time to time by the Board, grant rights to indemnification and advancement of expenses to any employee or agent of the Association with the same scope and effect as provided in this Article to Directors and Officers of the Association.

Section 8.4 Insurance. The Association is authorized, to the extent permitted by law, to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Association against any liability asserted against him or her in such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability pursuant to law.

ARTICLE IX: AMENDMENTS

The Directors shall have the power to adopt, amend or repeal the By-laws of the Association by a two-thirds (2/3) vote at any meeting of the Directors.

