

**KGEN POWER CORPORATION**  
Four Oaks Place  
1330 Post Oak Boulevard, Suite 1500  
Houston, Texas 77056

November 12, 2008

**To the Stockholders of KGen Power Corporation:**

On behalf of the Board of Directors, we cordially invite you to attend the 2008 Annual Meeting of Stockholders of KGen Power Corporation. The Annual Meeting will be held on December 10, 2008, at 10:00 a.m., local time, at the offices of Fried, Frank, Harris, Shriver & Jacobson LLP, 375 Park Avenue, 36<sup>th</sup> Floor, New York, New York 10152.

A description of business to be conducted at the Annual Meeting is set forth in the attached Notice of Annual Meeting and Proxy Statement. Also enclosed is a copy of our fiscal year 2008 Annual Report to Stockholders.

It is important that your views be represented whether or not you are able to be present at the Annual Meeting. We urge you to vote on the Internet or by telephone using the number shown on your proxy card, or to complete, sign, date, and return the enclosed proxy card promptly in the accompanying postage-paid envelope.

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**To Vote by Internet and to Receive Materials Electronically**  
Read the Proxy Statement

Go to the website ([www.proxyvote.com](http://www.proxyvote.com)) that appears on your Proxy Card.  
Enter the control number found in the shaded box on the front of your  
Proxy Card and follow the simple instructions.

Choose to receive an e-mail notice when proxy statements and annual reports are  
available for viewing over the Internet. You will cut down on bulky paper  
mailings, help the environment, and lower expenses paid by your company.

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The deadline for Internet and telephone voting is 11:59 p.m., Eastern Standard Time, on December 9, 2008. We encourage you to vote via the Internet using the control number that appears on the front of your Proxy Card and to choose to view future mailings electronically rather than receiving them on paper.

Sincerely,



Daniel Hudson  
*Chairman*



Richard McLean  
*Chief Executive Officer and Chief Financial Officer*



**KGEN POWER CORPORATION**

**NOTICE OF THE 2008 ANNUAL MEETING OF STOCKHOLDERS**

To Be Held on December 10, 2008

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of KGen Power Corporation will be held on December 10, 2008, at 10:00 a.m., local time, at the offices of Fried, Frank, Harris, Shriver & Jacobson LLP, 375 Park Avenue, 36<sup>th</sup> Floor, New York, New York 10152, for the following purposes:

1. To elect five directors to the Board of Directors, each to hold office until the 2009 Annual Meeting of Stockholders and until such director's respective successor shall have been duly elected and qualified;
2. To ratify the appointment by the Board of Directors of Ernst & Young LLP as the independent registered public accountants for the Company for the fiscal year ending June 30, 2009;
3. To vote on a proposal to amend the Certificate of Incorporation of the Company;
4. To vote on a proposal to amend the Bylaws of the Company; and
5. To transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

This Notice is accompanied by a form of proxy, a Proxy Statement and the Company's Annual Report to Stockholders for the fiscal year ended June 30, 2008 (the "Annual Report"). The foregoing items of business are more fully described in the Proxy Statement.

In accordance with the Company's Bylaws, the close of business on October 29, 2008 has been fixed as the Record Date for the determination of the stockholders entitled to notice of and to vote at the Annual Meeting and any adjournment thereof. A list of stockholders entitled to notice of and to vote at the Annual Meeting will be available for examination by any stockholder, for any purpose germane to the meeting, at the offices of Fried, Frank, Harris, Shriver & Jacobson LLP, Attention: Eric Hamburg, Esq., One New York Plaza, New York, New York 10004, during ordinary business hours for the ten days immediately prior to the Annual Meeting. The stockholder list will also be available for inspection at the Annual Meeting by any stockholder present at the meeting.

By Order of the Board of Directors,



William R. Marlow  
*Secretary*

Houston, Texas  
November 12, 2008

**IMPORTANT**

**Most stockholders have a choice of voting on the internet, by telephone, or by mail using a traditional proxy card. Please refer to the proxy card or other voting instructions included with these proxy materials for information on the voting methods available to you. If you vote by telephone or on the internet, you do not need to return your proxy card.**



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**PROXY STATEMENT FOR THE 2008 ANNUAL MEETING OF STOCKHOLDERS**

**General**

The enclosed proxy is solicited on behalf of the Board of Directors of KGen Power Corporation (the “Company” or “KGen”) for use at the Annual Meeting of Stockholders to be held on December 10, 2008, at 10:00 a.m., local time, or at any adjournment thereof (the “Annual Meeting”). The Annual Meeting will be held at the offices of Fried, Frank, Harris, Shriver & Jacobson LLP, 375 Park Avenue, 36<sup>th</sup> Floor, New York, New York 10152. The purposes of the Annual Meeting are set forth in the attached Notice of Annual Meeting of Stockholders.

This Proxy Statement, the Notice of Annual Meeting of Stockholders, the form of proxy and the Annual Report are being mailed to stockholders on or about November 12, 2008.

**Record Date and Share Ownership**

Stockholders of record on the Company’s books at the close of business on October 29, 2008 (the “Record Date”) are entitled to vote at the Annual Meeting. At the Record Date, 55,967,477 shares of the Company’s Common Stock (the “Common Stock”) were issued and outstanding. For information concerning stock ownership by our directors and officers, see the section on “Security Ownership of Directors and Management” that follows.

**Revocability of Proxies**

Any proxy given pursuant to this solicitation may be revoked by the person who gave the proxy at any time before its use by: (1) delivering to the Company a written notice of revocation prior to the voting of the proxy, (2) submitting a subsequent proxy by Internet or telephone or delivering to the Company a duly executed proxy bearing a later date, or (3) if you are a stockholder of record, attending the Annual Meeting and voting in person. Attendance at the Annual Meeting will not, by itself, revoke a proxy.

**Voting and Solicitation**

Each stockholder of record is entitled to one vote for each share of Common Stock held in his or her name on the Record Date on each matter submitted to a vote at the Annual Meeting. Cumulative voting is not permitted with respect to any proposal to be acted upon at the Annual Meeting.

If properly completed and received by the Company (whether by mail, telephone or Internet) before the Annual Meeting, any proxy representing shares of Common Stock entitled to be voted at the Annual Meeting and specifying how it is to be voted will be voted accordingly. Any such proxy, however, which fails to specify how it is to be voted on a proposal for which a specification may be made, will be voted on such proposal in accordance with the recommendation of the Board of Directors.

A quorum of stockholders is necessary to hold a valid Annual Meeting. The presence, in person or by proxy, of the holders of a majority of the outstanding shares of Common Stock entitled to vote at the Annual Meeting is necessary to constitute a quorum. The approval of the proposals presented at the Annual Meeting, other than the election of directors and the proposed amendment to the Company’s certificate of incorporation, will require the affirmative vote of a majority of the total votes cast by holders of the outstanding shares of Common Stock entitled to vote and present in person or represented by proxy at the Annual Meeting.

The proposed amendment to the certificate of incorporation will require the affirmative vote of a majority of the outstanding shares. A director nominee will be elected if he receives affirmative votes representing a majority of the votes cast at the meeting with respect to his election. Because each of the Board's nominees is a current director of the Company, any nominee who fails to be elected at the Annual Meeting will remain in office as a "holdover" director until the earlier of his resignation, removal or death or the election by the stockholders of a successor director. Votes will be counted by the inspector of election appointed for the meeting, who will separately count "For" and "Against" votes, abstentions and broker non-votes. A "broker non-vote" occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to the proposal and has not received instructions with respect to that proposal from the beneficial owner (despite voting on at least one other proposal for which it does have discretionary authority or for which it has received instructions). Abstentions and broker non-votes will be counted in determining whether a quorum is present. Abstentions and broker non-votes with respect to the proposal to amend the Certificate of Incorporation will have the same effect as a vote against the proposal. With respect to each of the other proposals, abstentions and broker non-votes will not be counted in determining the number of votes necessary for approving the proposal.

When a stockholder signs or otherwise electronically or telephonically submits the proxy card, he or she appoints Richard McLean and Daniel East, or each of them, as his or her representatives at the Annual Meeting. Richard McLean or Daniel East will vote the shares, as instructed on the proxy card (whether by mail, telephone or Internet), at the Annual Meeting. In this manner, the shares will be voted whether or not the stockholder attends the Annual Meeting. Even if the stockholder plans to attend the Annual Meeting, he or she should complete, sign and return or otherwise electronically or telephonically submit the proxy card in advance of the Annual Meeting in the event of a change in plans.

The cost of soliciting proxies will be borne by the Company. In addition, the Company expects to reimburse brokerage firms and other persons representing beneficial owners of Common Stock for their expenses in forwarding solicitation material to such beneficial owners. Proxies may be solicited by mail and may be supplemented by telephone or personal solicitation by certain of the directors, officers and regular employees of the Company or, at the Company's request, by a professional proxy solicitor. No additional compensation will be paid to directors, officers or regular employees for such services, but if professional proxy solicitors are used, such solicitors will be paid their customary fees by the Company.

Pursuant to Delaware law, the Board of Directors shall appoint an inspector to act at the Annual Meeting. The inspector shall carry out the duties imposed pursuant to Section 231 of the Delaware General Corporation Law, including the counting of votes.

#### **Voting via the Internet or by Telephone**

Most beneficial owners whose stock is held in street name receive voting instruction forms from their banks, brokers, or other agents.

A number of brokers and banks participate in a program provided through Broadridge Financial Solutions, Inc. that offers telephone and internet votes of proxies. If your shares are held in an account with a broker or bank participating in the Broadridge Financial Solutions, Inc. program, you may vote your proxy for those shares telephonically by calling the telephone number shown on the form received from your broker or bank, or via the Internet at Broadridge Financial Solutions, Inc.'s web site at <http://www.proxyvote.com>.

#### **Dissenters' Right of Appraisal**

Under Delaware law, there are no statutory or contractual rights of appraisal or similar remedies available to stockholders who dissent from any matter to be acted upon at the Annual Meeting.

**PROPOSAL NO. 1:  
ELECTION OF DIRECTORS**

Five directors are to be elected to the Board of Directors at the Annual Meeting. Unless otherwise instructed, the proxy holders will vote the proxies received by them for the five nominees of the Board of Directors named below, all of whom are presently directors of the Company and have served continuously since the month and year indicated opposite each such director's name in the following table, each to hold office for a term expiring at the next Annual Meeting of Stockholders of the Company and until such director's successor shall have been duly elected and qualified. In the event that any nominee of the Company is unable or declines to serve as a director at the time of the Annual Meeting, the proxies voted for that nominee will be voted for any nominee who shall be designated by the present Board of Directors to fill the vacancy. It is not expected that any nominee will be unable or will decline to serve as a director.

**Nominees for the Board of Directors**

The names of the nominees for director, their ages and certain other information about them are set forth below:

<u>Name of Nominees</u>	<u>Age</u>	<u>Principal Occupation</u>	<u>Director Since</u>
Daniel T. Hudson . . . . .	42	Chairman of the Board; principal owner of Navasota Energy Partners LP and Montgomery Energy Partners LP; Managing Member and Chief Financial Officer of Navasota Holdings Texas Partners LP	February 2008
James P. Jenkins . . . . .	60	Managing Director, Transaction Development, King Street Capital Management, L.L.C.	May 2008
Gerald J. Stalun . . . . .	50	Managing Director and the global head of power at The TCW Group, Inc.'s Energy & Infrastructure Group	May 2008
Jeffrey S. Stein . . . . .	39	Founder and Principal of Durham Asset Management L.L.C.	May 2008
Thomas B. White . . . . .	52	Director, Stark Investments	April 2008

There is no family relationship between any director, executive officer or person nominated or chosen by the Company to become a director or executive officer of the Company.

The following information, which has been provided by the Company's director nominees, sets forth each such person's principal occupation, employment and business experience during the past five years, and the period during which such person served as a director of the Company.

*Daniel T. Hudson*

Mr. Hudson became a director in February of 2008 and was elected Chairman of the Board on May 5, 2008. Mr. Hudson is a principal owner of Navasota Energy Partners LP and Montgomery Energy Partners LP, as well as Managing Member and CFO of Navasota Holdings Texas Partners LP, a 1,650 MW ERCOT portfolio. He is responsible for M&A, capital formation/management from private equity, third party debt and equity-raising. During 20 years of industry experience, Mr. Hudson has focused on wholesale electric and gas markets. His background includes asset acquisition and divestiture strategies, implementation and financing at Navigant Consulting, Duke Energy North America and NRG Energy. Prior to joining Navigant, Mr. Hudson served as Managing Director of Acquisitions and Divestitures for Duke where he led the company's acquisition and divestiture program. Mr. Hudson received a BS in

Mechanical Engineering from the University of Minnesota and an MBA from the University of St. Thomas.

*James P. Jenkins*

Mr. Jenkins became a director on May 2, 2008. Mr. Jenkins is a Managing Director, Transaction Development at King Street Capital Management, L.L.C. In this capacity, Mr. Jenkins utilizes his senior restructuring and investment banking skills in assisting the investing team particularly in special situations, distressed and event-driven investments and investment opportunities being considered. Mr. Jenkins joined King Street in April 2007 after five years at Mellon HBV Alternative Strategies, where he was a Portfolio Manager and head of the distressed investing group. At Mellon HBV, Mr. Jenkins served on several official and unofficial creditor or equity committees, including Adelphia, Advanced Lighting, Delta Air Lines, Impath, Ormet, Outsourcing Services Group, Peregrine Systems and Solutia. Prior to Mellon HBV, Mr. Jenkins spent his entire career in investment banking. He ran the Investment Banking and Capital Markets group at Advest for two years. Prior to that, Mr. Jenkins spent 12 years at CS First Boston where he was a Managing Director in the Reorganization Group and the Leveraged Finance Group, and where he advised numerous debtors and creditor groups, both in and out of bankruptcy, including AK Steel, CalFed, Charter Companies creditors, Cleveland-Cliffs, GlenFed, Harvard Industries, Imo Industries, LTV creditors, Mcorp, Midway Airlines, Presidio Oil, Spreckels Industries and Terex. Previously, Mr. Jenkins spent 12 years at Lehman Brothers in general corporate finance, sovereign debt restructuring and corporate reorganization. Mr. Jenkins was formerly a director of several companies, including Frederick's of Hollywood, Interboro Insurance Company (Chairman), Outsourcing Services Group, Peregrine Systems (Chairman), The Robbins Company (Chairman) and Telespectrum Worldwide. Mr. Jenkins received both a BA in English in 1970 and an MBA in 1972 from Stanford University.

*Gerald J. Stalun*

Mr. Stalun became a director on May 5, 2008. Mr. Stalun is a Managing Director and the global head of power at The TCW Group, Inc.'s Energy & Infrastructure Group (TCW EIG). TCW EIG currently has approximately \$7 billion of energy and infrastructure investments under management. Mr. Stalun has more than 20 years experience in the global power business, most recently as Head of Asset Based Investments for Arcapita, a leading private equity firm active in the sector. Previous positions in the industry include SVP of GE Financial Services, Managing Director and Executive Vice President of Duke Capital Partners and Managing Director and Co-Head of Power Project Finance for Bank of America. He has an MBA from the University of Chicago, is a Certified Public Accountant and attended the University of Illinois as an undergraduate. Previous board memberships include Bosque Power and Falcon Gas Storage.

*Jeffrey S. Stein*

Mr. Stein became a director on May 2, 2008. Mr. Stein is a Founder and Principal of Durham Asset Management L.L.C., an asset management firm with approximately \$1.5 billion in assets under management. Since 2003, Mr. Stein has served as the Co-Director of Research at Durham responsible for the identification, evaluation and management of investments for the various Durham portfolios. In addition, Mr. Stein is responsible for managing Durham's substantial investments in the energy, merchant power and utility industries. From 1997 to 2003, Mr. Stein was a Director at The Delaware Bay Company, Inc., a boutique research and investment banking firm focused on the distressed debt and special situations asset classes, where he was responsible for identifying and evaluating distressed investment opportunities in the energy, financial services, merchant power, retail, real estate and utility industries. Mr. Stein began his career in 1991 at Shearson Lehman Brothers in the Capital Preservation & Restructuring Group where he was responsible for providing fundamental research and investment recommendations for public and private real estate limited partnerships. Mr. Stein received a B.A. in



Economics from Brandeis University and an M.B.A. in Finance and Accounting from New York University. Mr. Stein also serves as a director on the board of Granite Ridge Energy, LLC.

*Thomas B. White*

Mr. White became a director on April 18, 2008. Since 2006, Mr. White has been employed as a director by Stark Investments, a multi-strategy asset management firm with over \$14 billion in assets under management. At Stark, Mr. White has been responsible for the identification, evaluation, and closing on private equity type investments in physical energy assets and businesses, as well as supporting continuing asset management activities for investments made by Stark through the energy asset team and investment employed through other asset strategies including risk arbitrage and commodity hedging structures. From 2002 to 2006, Mr. White was employed by Marathon Capital, LLC, a boutique investment banking firm focusing on the power generation and renewable energy markets, where he was an officer and Managing Director from 2003 to 2006. At Marathon, Mr. White was the principal executive responsible for banking, origination and marketing activities which included the sourcing, evaluation, and closing of non-recourse financing structures for renewable and conventional energy assets and for managing financial consulting efforts with corporate clients in the acquisition and divestiture of energy assets and portfolios in these markets. From 1996 to 2002, Mr. White was employed by Duke Energy, where he was senior director, Development, for Duke Energy North America from 2001 to 2002 and Vice President, Industrial Services, for DukeSolutions, Inc. from 1997 to 2001. Mr. White received his Bachelor of Sciences in Mechanical Engineering from the University of Illinois and is a Registered Professional Engineer in the State of Illinois. From 2004 to 2007, Mr. White was a Registered Representative and held Series 7 and Series 63 Licenses.

**The Company's Board of Directors recommends a vote FOR each named nominee for director.**

**PROPOSAL NO. 2:  
RATIFICATION OF APPOINTMENT OF  
INDEPENDENT REGISTERED PUBLIC ACCOUNTANTS**

The Board of Directors selected Ernst & Young LLP, independent registered public accountants, as the independent registered public accountants to audit the financial statements of the Company for the fiscal year ending June 30, 2009 and recommends that the stockholders ratify such selection. Ernst & Young LLP audited the Company's annual financial statements for the period from December 4, 2006 (Inception) to June 30, 2007 and for the fiscal year ended June 30, 2008. Ernst & Young LLP also audited the financial statements of KGen Partners LLC, the company that operated our assets prior to our acquisition of them for the fiscal years ended June 30, 2005 and 2006.

Stockholder ratification of the selection of Ernst & Young LLP as the Company's independent registered public accountants is not required by the Company's Bylaws or otherwise. However, the Board of Directors is submitting the selection of Ernst & Young LLP to audit the Company's financial statements for the year ending June 30, 2009 to the stockholders for ratification as a matter of good corporate practice. If the stockholders fail to ratify the selection, the Board of Directors will reconsider whether or not to retain the firm. Even if the selection is ratified, the Board of Directors, in its discretion, may direct the appointment of different independent registered public accountants at any time if the Board of Directors determines that such a change would be in the best interests of the Company and its stockholders.

**The Board of Directors recommends a vote FOR approval of this proposal. If not otherwise specified, proxies will be voted FOR approval.**

**PROPOSAL NO. 3:  
PROPOSAL TO AMEND THE CERTIFICATE OF INCORPORATION**

The Board of Directors is proposing the adoption of an amendment to our Certificate of Incorporation to limit the business opportunities directors are required to present to the Company.

One of the well-recognized common-law principles is the corporate opportunity doctrine under which a corporate officer or director may not pursue a business opportunity belonging to the corporation unless the opportunity is first presented to the corporation, and the corporation decides that it does not wish to pursue the opportunity. There are, however, no absolute guidelines for determining whether an opportunity rightfully belongs to the corporation. Rather, whether an opportunity rightfully belongs to the corporation requires a fact-intensive inquiry of a number of factors, including whether: (1) the corporation is financially able to exploit the opportunity; (2) the opportunity is within the corporation's line of business; (3) the corporation has an interest or expectancy in the opportunity; and (4) by taking the opportunity for his own, the corporate fiduciary will be placed in a position inimicable to his duties to the corporation.

However, under Delaware law, the Company may renounce in its certificate of incorporation its interest or expectancy in specified business opportunities of specified classes or categories of business opportunities, thereby eliminating any requirement a director may otherwise have to present the opportunity to the Company.

Our current directors are principals, directors and senior officers of firms that are active participants in the energy and power industries. Accordingly, our directors and their firms are presented with a variety of opportunities in these industries, some of which could, depending on the facts and circumstances, be deemed to be opportunities belonging to both the director's firm and the Company. In these situations, because of the director's duty to his firm, it may not be feasible for the director to present the opportunity to the Company, potentially creating conflicts between the director's obligations to his firm and to the director's duties to the Company and exposing the director to litigation. The Board of Directors believes these potential conflicts, with the resulting litigation risk, may make it difficult to retain, and, if necessary, recruit, directors who are active and experienced in the energy and power industries.

In order to minimize potential conflicts and litigation exposure for its directors and to help the Company retain and recruit qualified directors with appropriate industry experience, the Board of Directors is proposing an amendment to our Certificate of Incorporation under which:

- the Company would renounce its interest in any investment or business opportunity or prospective economic or competitive advantage in which the Company or any of its subsidiaries could have an interest or expectancy that may be presented to any of the Company's directors (other than any director who is also an officer of the Company) or any entity of which any such director of the Company is a director, officer, principal, partner, manager, employee, agent or representative or any affiliate of any such entity, other than an opportunity or prospective advantage that is expressly offered to a director of the Company in writing solely in his capacity as a director of the Company, and
- any such director and his firm will not be liable for breach of any fiduciary duty to the Company or the stockholders for not presenting any such opportunity or prospective advantage to the Company, unless the opportunity or prospective advantage was expressly offered to the director in writing solely in his capacity as a director of the Company.

The text of the proposed amendment, which, if adopted by stockholders, would constitute Article XIII of our Certificate of Incorporation, is attached hereto as Appendix A.

In determining how to vote on this proposal, stockholders should consider that, because of their involvement in the energy and power industries, some or all of the directors may have a conflict of interest with respect to the proposed amendment.

**The Board of Directors recommends a vote FOR approval of this proposal. If not otherwise specified, proxies will be voted FOR approval.**

**PROPOSAL NO. 4:  
PROPOSAL TO AMEND THE BYLAWS OF THE CORPORATION**

The Board of Directors is proposing the adoption of an amendment to our Bylaws to modify the procedures for stockholder action by written consent.

Under Delaware law, the Company's stockholders may act by written consent, without a meeting of stockholders, if consents in writing setting out the action or actions to be taken are signed by holders of a majority of the Company's shares. Section 2.8 of the Company's Bylaws, however, contains procedures for the taking of action by consent.

Under these procedures, any stockholder seeking to have the Company's stockholders act by written consent must notify the Board of the proposed action and request that the Board fix a record date. The Bylaws provide that, within five business days of receiving the notice, the Board would fix a record date, and within 15 business days of establishing the record date would notify the stockholders of the proposed action.

The Bylaws further provide that a stockholder action by written consent may not become effective earlier than 20 days after the Board notifies the stockholders of the proposed action and that if a proposed stockholder action by written consent is not effective within 120 days after the record date, a new record date must be requested. The Company has been advised by its outside counsel that these requirements may be invalid under Delaware law. Accordingly, the Board of Directors is proposing to amend Section 2.8 of the Bylaws to eliminate these requirements.

A copy of the Section 2.8 as proposed to be amended is attached hereto as Appendix B.

**The Board of Directors recommends a vote FOR approval of this proposal. If not otherwise specified, proxies will be voted FOR approval.**

## SECURITY OWNERSHIP OF DIRECTORS AND MANAGEMENT

The table below reflects the number of shares beneficially owned by (a) each director of the Company, (b) each executive officer of the Company named in the Summary Compensation Table, and (c) all directors and officers as a group (including officers of the Company not reflected below). Unless otherwise noted, the information is stated as of October 24, 2008. There were 55,967,477 shares of Common Stock outstanding as of October 24, 2008.

Officers/Directors	Shares Beneficially Owned(1)
Daniel T. Hudson .....	1,321
James P. Jenkins .....	0(2)
Gerald J. Stalun .....	0(3)
Jeffrey S. Stein .....	0(4)
Thomas B. White .....	0(5)
Richard A. McLean .....	64,696
William R. Marlow .....	56,320
K. Daniel East .....	46,039
James H. Sweeney .....	102,157
All officers/directors combined .....	270,533

Notes:

- (1) Shares beneficially owned includes shares subject to options exercisable within 60 days of October 24, 2008. Each of the share numbers listed represented less than 1% of the outstanding shares of common stock.
- (2) Mr. Jenkins is a Managing Director of King Street Capital Management, L.L.C. (KCM). Funds for which KCM provides investment advisory services or is an investment manager, together, own 5,574,000 shares of common stock (9.96% of the outstanding shares of common stock). These funds hold an economic interest, but no voting rights, in an additional 589,900 shares of common stock (1.05% of the outstanding shares of common stock). Mr. Jenkins disclaims beneficial ownership of these shares.
- (3) Mr. Stalun is a Managing Director of Trust Company of the West (TCW). Funds and an investor for which TCW Asset Management Company, an affiliate of TCW, is the general partner or investment manager, together, own 5,714,286 shares of common stock (10.21% of the outstanding shares of common stock). Mr. Stalun disclaims beneficial ownership of these shares.
- (4) Mr. Stein is a Founder and Principal of Durham Asset Management L.L.C. (DAM). Funds for which DAM is the investment manager, together, own 1,603,150 shares of common stock (2.96% of the outstanding shares of common stock). Mr. Stein disclaims beneficial ownership of these shares.
- (5) Mr. White is a Director of Stark Investments. Funds for which Stark Investments is the investment manager, together, own 5,536,629 shares of common stock (9.89% of the outstanding shares of common stock). Mr. White disclaims beneficial ownership of these shares.

## CORPORATE GOVERNANCE

### *Corporate Code of Conduct*

We have adopted a code of conduct for each of our employees to follow. Our board of directors and management insist on integrity, honesty and ethical behavior in the workplace.

### *Independence of the Board of Directors*

The Company has affirmatively determined that no member of the Board of Directors has a relationship which, in the opinion of the Company, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director of the Company. Based on this determination, the Board of Directors considers all of its members to be independent.

In making this determination, the Company was aware that in 2006, Navasota Energy, of which Mr. Hudson is a Managing Member and Chief Financial Officer, purchased turbines for an aggregate of \$59.0 million from a subsidiary of KGen Partners LLC, which was acquired by the Company in February, 2007. This transaction occurred prior to the existence of the Company and its acquisition of KGen Partners LLC, and the relevant subsidiary was no longer a KGen Partners LLC subsidiary at the time of the Company's acquisition of KGen Partners LLC. Accordingly, the Board does not believe that this transaction would interfere with Mr. Hudson's exercise of independent judgment in carrying out his responsibilities as a director of the Company.

## NAMED EXECUTIVE OFFICERS

The names, ages, and certain other information pertaining to the Named Executive Officers of the Company listed in the Summary Compensation Table, and who were appointed by and serve at the discretion of the Board of Directors, are set forth below. Each of the Named Executive Officers has been an officer of the Company since its formation in 2006.

<u>Name</u>	<u>Age</u>	<u>Company Position</u>
Richard A. McLean . . . . .	47	Chief Executive Officer and Chief Financial Officer
James H. Sweeney . . . . .	49	Senior Vice President, Energy Management
William R. Marlow . . . . .	41	General Counsel and Secretary
K. Daniel East . . . . .	35	Senior Vice President, Mergers & Acquisitions and Treasurer

### *Richard A. McLean*

Mr. McLean is our Chief Executive Officer and Chief Financial Officer. Mr. McLean joined our predecessor as Treasurer in September 2004 and was promoted to Chief Financial Officer in November 2006. In this role, he was responsible for an extensive road show for the private sale of equity through a 144a issue, refinancing of our debt, an S-1 filing and managing financial reporting. In May 2008, he was appointed Chief Executive Officer. Prior to joining, he was a Managing Director in ABN AMRO's Energy and Power group from 2001 to 2004. His responsibilities included M&A and project finance advisory assignments. From 1996 to 2001, Mr. McLean worked in Bank of America's Energy and Power group advising and arranging project financings and M&A transactions. Prior to 1996, Mr. McLean held a number of financial positions within Conoco. Mr. McLean received a BBA and a MBA from Sam Houston State.

### *James H. Sweeney*

Mr. Sweeney has been our Senior Vice President, Energy Management since our formation and held that position with our predecessor from June 2004. Prior to joining KGen, Mr. Sweeney was employed by American Electric Power as Vice President—M&A and Divestitures from 2002 to 2004, and as Vice President—Latin America from 1998 to 2002. From 1987 to 1998, Mr. Sweeney held various senior positions at LG&E Energy (formerly Hadson & Ultrasystems) including Vice President—Latin American Development. Mr. Sweeney has a BS in electrical engineering from Worcester Polytechnic Institute and an ME in power systems from Rensselaer Polytechnic Institute.

### *William R. Marlow*

Mr. Marlow has been our General Counsel and Secretary since our formation and held that position with our predecessor from March 2005. Mr. Marlow was an attorney at Bracewell & Patterson LLP from 1992 to 2005 where he left as a partner in the Real Estate, Energy, and Finance practice group. Mr. Marlow holds a BBA from the University of Houston and a JD from The University of Texas School of Law.

### *K. Daniel East*

Mr. East is our Senior Vice President Mergers and Acquisitions and Treasurer. Mr. East joined our predecessor as Vice President Strategic Planning and Development in November 2004. Prior to that, Mr. East was employed by Dynegy from 1998 to 2004. During that time, Mr. East worked in a number of roles in the Strategy & Planning group including Senior Director, Strategic Market Analysis and Senior Director, Strategy & Planning—Europe. His responsibilities during that period included managing the

analysis of M&A transactions, originated structured transactions and the energy commodity markets. Mr. East received a BBA from the University of Houston and an MBA from Rice University.

### COMPENSATION OF NAMED EXECUTIVE OFFICERS

The following table sets forth information regarding compensation paid to our Chief Executive Officer and Chief Financial Officer, and the next three most highly compensated executive officers for the fiscal year 2008. The Summary Compensation Table and the Outstanding Equity Awards Table should be viewed together to best understand the short- and long-term incentive components of our compensation.

For each Named Executive Officer, the amounts shown in each column represent compensation earned or accrued in or in respect of fiscal years 2007 and 2008. Please note that, except as otherwise noted, all amounts reflected below are the total compensation paid to such individuals during the fiscal years 2007 and 2008, including compensation earned prior to KGen's acquisition of KGen Partners LLC in February 2007. The table below does not reflect (1) payments made in connection with the sale of KGen Partners LLC by its prior owners to certain officers pursuant to a profit sharing plan that was put in place by KGen Partners LLC's previous owners or (2) certain bonus compensation paid to a senior executive bonus plan that was discontinued prior to the Company's acquisition of KGen Partners LLC and (3) certain bonus compensation that was paid prior to the Company's Acquisition of KGen Partners LLC in connection with the sale of certain assets not acquired by the Company.

#### SUMMARY COMPENSATION TABLE

<u>Named Executive Officer and Principal Position</u>	<u>Year</u>	<u>Salary(1) (\$)</u>	<u>Bonus(2) (\$)</u>	<u>Option Awards(3) (\$)</u>	<u>All Other Compensation(4) (\$)</u>	<u>Total (\$)</u>
Richard A. McLean, . . . . .	2008	335,696	335,328	0	70,373	741,398
Chief Executive Officer & Chief Financial Officer	2007	250,833	340,000	956,944	72,480	1,620,258
James H. Sweeney, . . . . .	2008	336,745	340,588	0	67,698	745,030
Senior Vice President	2007	292,000	300,000	1,224,637	112,786	1,929,423
William R. Marlow, . . . . .	2008	300,000	321,735	0	62,423	684,158
General Counsel & Secretary	2007	240,000	340,000	835,529	52,498	1,468,027
K. Daniel East, . . . . .	2008	280,000	300,000	0	67,901	647,901
Senior Vice President & Treasurer(5)						

- (1) As of October 24, 2008, the annual base salaries for Messrs. McLean, Sweeney, Marlow and East were \$450,000, \$318,000, \$300,000 and \$280,000, respectively.
- (2) For each Named Executive Officer, the bonus amount shown reflects (a) a \$300,000 year-end bonus for fiscal year 2008, plus (b) in the case of Messrs. McLean, Sweeney and Marlow, of \$35,328, \$40,588 and \$21,735 respectively, pursuant to a compensation program that has been terminated.
- (3) The assumptions underlying these valuations are discussed in the Company's Annual Report for the year ended June 30, 2008 in "Number 11.—Exhibits and Financial Statement Schedules."
- (4) See table below for further detail.
- (5) Mr. East was not a Named Executive Officer for fiscal year 2007.



**ALL OTHER COMPENSATION FOR FISCAL YEAR 2008**

<u>Named Executive Officer</u>	<u>Term Life and Disability Premiums Paid by Company (\$)</u>	<u>Medical and Dental Premiums and Health Savings Plan Contributions Paid by Company (\$)</u>	<u>401(k) Matching (\$)</u>	<u>Total (\$)</u>
Richard A. McLean . . . . .	1,513	28,285	40,575	70,373
James H. Sweeney . . . . .	1,861	21,003	44,833	67,698
William R. Marlow . . . . .	1,513	21,534	39,375	62,423
K. Daniel East . . . . .	1,741	28,285	37,875	67,901

The following table shows the number and value of stock options (exercisable and not), unvested restricted shares, and as-yet unearned or unvested performance shares held on June 30, 2008 by the Named Executive Officers. All of these options were issued in connection with the Company's acquisition of KGen Partners LLC in February 2007. No new options were granted to employees of the Company in fiscal year 2008.

**Outstanding Equity Awards as of June 30, 2008**

<u>Name</u>	<u>Number of Securities Underlying Unexercised Options Exercisable</u>	<u>Number of Securities Underlying Unexercised Options Unexercisable</u>	<u>Option Exercise Price (\$)</u>	<u>Option Expiration Date</u>
Richard A. McLean . . . . .	19,724	39,445	14.00	2/7/2017
	12,989	25,976	15.40	2/7/2017
	12,989	25,976	16.80	2/7/2017
	6,494	12,987	18.20	2/7/2017
James H. Sweeney . . . . .	32,657	65,314	14.00	2/7/2017
	13,800	27,600	15.40	2/7/2017
	13,800	27,600	16.80	2/7/2017
	6,900	13,799	18.20	2/7/2017
William R. Marlow . . . . .	17,157	34,312	14.00	2/7/2017
	11,365	22,729	15.40	2/7/2017
	11,365	22,729	16.80	2/7/2017
	5,683	11,364	18.20	2/7/2017
K. Daniel East . . . . .	13,997	27,991	14.00	2/7/2017
	9,417	18,833	15.40	2/7/2017
	9,417	18,833	16.80	2/7/2017
	4,708	9,415	18.20	2/7/2017

**OPTION EXERCISES AND STOCK VESTED AS OF JUNE 30, 2008**

No stock options were exercised during fiscal year 2008.

**EMPLOYEE RETENTION PLAN AND AWARDS**

On April 11, 2008, the Board of Directors announced that it had retained Credit Suisse to evaluate all of the Company's offers for enhancing shareholder value going forward, including the sale of the Company, sale of individual assets, potential business combinations and continuing to enhance the value of our existing assets. On May 6, 2008, the Board announced that it was committed to exploring any and all strategic alternatives to maximize the value of the Company.

Thereafter, the Board of Directors adopted the KGen Power Management Inc. Employee Retention Plan (the “Retention Plan”) to help retain the services of the Company’s employees through, and during a transition period following, a “change in control” (as defined in the Retention Plan), if one occurs. Each of the Named Executive Officers received an award under the Retention Plan. With respect to Messrs. McLean, Sweeney, Marlow and East, as well as certain other Company senior executives, the retention awards under the Retention Plan are structured so that the amount of each executive’s retention award equals a multiple of the executive’s base salary. The multiples range from 1.5 to 7, depending on both the executive’s position and the price per share in the change in control transaction. The retention bonus is payable to these executives in a lump sum on the six month anniversary of the consummation of the change in control, so long as the executive remains employed by the Company until that time. The executive may also be eligible for the retention bonus if the executive’s employment is involuntarily terminated between the time a definitive change in control agreement is entered into by the Company and the six month anniversary of the consummation of the change in control.

### **EMPLOYMENT AND SEVERANCE AGREEMENTS**

Each named executive officer is a party to an employment agreement that generally provides for the terms of his employment with the Company and, among other things, entitles the executive officer to certain termination benefits in the event of his involuntary termination. These severance benefits vary, depending on the circumstances of the termination (i.e. whether by reason of the executive officer’s death or disability, termination by the Company without “cause” or by the executive officer for “good reason,” and whether such termination occurred within the period beginning six months prior to the announcement of an anticipated “change in control” and ending six months following a “change in control” (the “CIC Window Period”). The terms “cause,” “good reason” and “change in control” are defined in the executive officer’s employment agreement and summarized below). In the event of the executive officer’s death or disability, only payments of amounts due to, or accrued by, the executive officer at the time of the event will be made, including generally, base salary up to the date of death or termination for disability, the amount of any awarded but unpaid bonus, unused vacation days and any deferred compensation.

In addition to the payments of accrued amounts as of the date of termination described above, in the event of an executive officer’s termination by us without cause (as defined below) or his resignation for good reason (as defined below), the executive officer is entitled to the following severance benefits:

- a lump sum cash payment equal to one times the executive’s annual base salary;
- all medical, dental and vision benefits maintained for such executive as of the termination date for 12 months from termination; and
- the immediate vesting of all unvested options.

However, if the executive officer’s termination by us without cause (as defined below) or his resignation for good reason (as defined below) occurs within the CIC Window Period, severance benefits under the change in control provisions of the employment agreement are triggered, which include:

- a lump sum cash payment equal to:
  - for Richard McLean, Chief Executive Officer and Chief Financial Officer, two and one-half times his annual base salary; and
  - for each other Named Executive Officer, one times his annual base salary.
- a lump sum cash payment equal to the aggregate target annual bonus for the fiscal year during which such termination of employment occurs (determined as if all applicable goals and targets had been satisfied in full), prorated to the date of such executive’s termination;

- all medical, dental and vision benefits maintained for such executive as of the termination date for 24 months from termination; and
- any outstanding stock options, restricted stock awards, phantom stock and other equity-based awards previously granted to such employee shall immediately vest upon a “change in control,” subject to the Board of Director’s discretion to require the cancellation of such stock options in exchange for a cash payment.

The definition of “cause” generally means the executive:

- is indicted or charged with a felony or other crime involving fraud or dishonesty (if acquitted or indictment dismissed, termination would be retroactively reinstated);
- commits an act of dishonesty that causes or reasonably is expected to cause material harm to the Company or its subsidiaries;
- materially breaches his employment agreement, which is not cured within 30 days of notice;
- breaches any written policies or procedures of the Company or its subsidiaries, that causes or is expected to cause material harm to the Company or its subsidiaries; or
- engages in intentional misconduct that causes material harm to the Company or its subsidiaries.

The definition of “good reason” generally means the occurrence, without the executive’s prior written consent, of any of the following (subject to notice being given by the executive and the failure by the Company to remedy the event within 30 days):

- a material reduction in the nature or scope of the executive’s duties from those contained in his employment agreement;
- a reduction in his base salary; or
- the relocation of his primary office to a location more than sixty (60) miles away from the current Company offices.

The definition of a “change in control” generally includes:

- the acquisition by any individual, entity or group of beneficial ownership of 50% or more of the Company’s then outstanding voting stock or of the ability to elect 50% or more of our directors, except in several instances;
- individuals who currently constitute the Board of Directors cease for any reason to constitute at least a majority of the Board of Directors, with several exceptions;
- the consummation of a merger, consolidation or reorganization, unless, in each case, the persons who beneficially own the common stock immediately before that transaction beneficially own, directly or indirectly, immediately after the transaction, at least 50% of the Company’s common stock or the common stock of any other corporation or other entity resulting from or surviving the transaction in substantially the same proportion as their respective ownership of the Company’s common stock immediately before that transaction;
- the stockholders approve a complete liquidation or dissolution of the Company; or
- a sale or other disposition of all or substantially all of the Company’s assets.

#### **SEVERANCE PAYMENTS MADE TO FORMER EXECUTIVE OFFICERS**

The employment of Gerald Lindner, our former Chairman and Chief Executive Officer, and Donald Boyd, our former Chief Operating Officer and Executive Vice President, with the Company was terminated on May 6, 2008 and May 23, 2008, respectively. Each was a party to an employment and

severance agreement that provided for termination payments similar to those described above under the section entitled “Employment and Severance Agreements.” In settlement in full of the Company’s obligations under these agreements with Messrs. Lindner and Boyd, the Company agreed to make a cash payment of \$2,699,885 to Mr. Lindner and a cash payment of \$959,773 to Mr. Boyd. Mr. Boyd will also receive health benefits for 18 months. Under the terms of Messrs. Lindner and Boyd’s agreements, all unvested options held by them vested upon their respective termination. Under the settlement agreement terms, these options will remain exercisable until November 2009.

#### **DIRECTOR COMPENSATION**

None of the current directors, with the exception of Mr. Hudson, as described below, receive compensation for their services as directors of the Company. The directors of the Company are, however, reimbursed for out-of-pocket travel expenses incurred in connection with their attendance at Board meetings and other activities on behalf of the Company. Due to his level of responsibility and time committed to Company matters, Mr. Hudson, as the Chairman of the Board, receives \$200,000 annually in director fees as compensation for his services as Chairman. In addition, on May 28, 2008 the Board granted Mr. Hudson stock options to purchase 100,000 shares of common stock of the Company at a price of \$19.50 per share. These options vest one year from the date of grant, or, if sooner, in the event of death, disability, or the occurrence of a “change in control” of the Company. The Company valued these options at \$678,210 on June 30, 2008 and will amortize the value over a one-year period that commenced on the date of the grant. Consistent with prior Company practice, Mr. Hudson was granted 1,321 shares of stock for his service as director prior to May 2008, for which the Company recognized \$20,820 of compensation expense in fiscal year 2008.

#### **AUDIT FEES AND ALL OTHER FEES**

The aggregate fees billed for professional services rendered by the Company’s independent registered public accountants, Ernst & Young LLP, for fiscal year 2008 were \$886,362 (such amounts also include fees with respect to work provided for KGen Partners LLC prior to its acquisition by the Company):

*Audit Fees.* The aggregate fees paid to Ernst & Young LLP for its audit of the Company’s annual consolidated financial statements and internal controls over financial reporting, reviews of the quarterly consolidated financial statements included in quarterly reports, annual reports and the offering memorandum, and consultation concerning financial accounting and reporting standards were \$798,332 for fiscal year 2008.

*Tax Fees.* The aggregate fees related to professional services rendered for tax compliance were \$88,030 for the fiscal year 2008.

*All Other Fees.* No fees were billed by Ernst & Young LLP during fiscal year 2008 other than fees for professional services reported above as audit fees and tax fees.

#### **FORWARD LOOKING STATEMENTS**

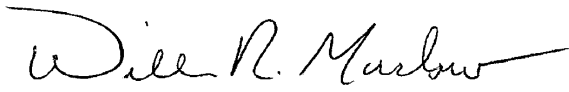
These Proxy Materials contain certain forward-looking statements, made pursuant to applicable securities laws, which involve risks and uncertainties as detailed from time to time in KGen’s disclosure documents, including its Annual Report.

These statements are based on certain assumptions made by KGen based on its experience and perception of historical trends, current conditions, expected future developments and other factors it believes are appropriate under the circumstances. Actual results may differ materially from those expressed or implied by such forward-looking statements as a result of various factors, including, but not limited to, the timing and extent of changes in commodity prices, particularly natural gas, the liquidity and competitiveness of wholesale markets for electricity, economic slowdowns that can adversely affect

consumption of electricity by businesses and consumers, uncertainties that actual costs may be higher than estimated, uncertainties that actual sources may be lower and actual uses may be higher than estimated, refusal by or inability of our current or potential counterparties or vendors to enter into transactions with us or fulfill their obligations to us, effectiveness of our risk management policies and procedures, our ability to obtain credit or capital in desired amounts and/or on favorable terms, our ability to operate our power plants efficiently, manage capital expenditures and costs tightly, and generate earnings and cash flow from our asset based businesses, present and possible future claims, litigation and enforcement actions, effects of the application of regulations, including changes in regulations or the interpretation thereof, disruptions in the transmission and distribution of power, availability of fuel and fuel transportation, catastrophic events such as fires, hurricanes, explosions, floods, lightning strikes, terrorist attacks or other similar occurrences to our facilities or to facilities upon which we depend. Although KGen believes that its expectations are based on reasonable assumptions, it can give no assurance that the anticipated results will occur. For such statements, KGen claims the protection of applicable laws. Forward-looking statements represent the judgment of KGen's management as of the date of this proxy statement and KGen disclaims any intent and does not assume any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, unless required under applicable law.

#### **OTHER STOCKHOLDER MATTERS**

The Board of Directors knows of no other matters to be submitted at the Annual Meeting. If, however, any other business should properly come before the Annual Meeting, the persons named in the accompanying proxy will vote proxies as in their discretion they may deem appropriate, unless they are directed by proxy to do otherwise.

  
*Secretary*

November 12, 2008

**APPENDIX A**  
**ARTICLE XIII OF CERTIFICATE OF INCORPORATION**  
**OF**  
**KGEN POWER CORPORATION**  
**AS PROPOSED TO BE AMENDED**  
**ARTICLE XIII**

To the fullest extent permitted by Section 122(17) of the General Corporation Law, the Corporation renounces any interest in or expectancy of, or in being offered an opportunity to participate in, an investment or business opportunity or prospective economic or competitive advantage in which the Corporation or any of its subsidiaries could have an interest or expectancy (a “Business Opportunity”) that may from time to time be presented to any of its directors (other than a director who is also an officer of the Corporation) or any entity of which any such director of the Corporation is a director, officer, partner, principal, manager, employee, agent or representative or any affiliate of any such entity (collectively, “Covered Parties”), even if such opportunities are ones that the Corporation might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, other than a Business Opportunity that is expressly offered to such director in writing solely in his or her capacity as a director of the Corporation. No director who is not also an officer of the Corporation and no other Covered Party shall be liable to the Corporation for breach of any fiduciary or other duty, as a director or otherwise, by reason of the fact that such party pursues or acquires a Business Opportunity, directs a Business Opportunity to another person or fails to present a Business Opportunity, or information regarding a Business Opportunity, to the Corporation, unless the Business Opportunity is expressly offered to a director in writing solely in his or her capacity as a director of the Corporation. Any person purchasing or otherwise acquiring any interest in any shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XIII. Neither the alteration, amendment or repeal of this Article XIII nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article XIII shall eliminate or reduce the effect of this Article XIII in respect of any Business Opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article XIII, would accrue or arise, prior to such alteration, amendment, repeal or adoption.

**APPENDIX B**  
**SECTION 2.8 OF BYLAWS**  
**OF**  
**KGEN POWER CORPORATION**  
**AS PROPOSED TO BE AMENDED**

*Section 2.8 Written Consent of Stockholders in Lieu of Special Meeting.* (a) Any action to be taken or which may be taken under the Delaware General Corporation Law (“GCL”) at any special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice (except to the extent required by this Section 2.8) and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes as of the record date established for such action in accordance with this Section 2.8 that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. ~~Such action shall become effective no earlier than the day that is twenty (20) days after the date notice is provided in accordance with this Section 2.8, and if such action shall not have become effective by the day that is one hundred twenty (120) days after the record date established for such action in accordance with this Section 2.8, action other than by unanimous written consent may only be taken after a new request is made in accordance with this Section 2.8.~~

(b) No written notice prior to any corporate action to be taken without a meeting by unanimous written consent shall be required. Any holder of shares of Common Stock of the Corporation seeking to have the stockholders authorize or take corporate action by written consent that does not require prior action by the Board of Directors shall, by written notice delivered to the Secretary, request that the Board of Directors fix a record date for such action. Any such written notice: (1) may be delivered to the Secretary of the Corporation at the executive offices of the Corporation where the books and records of the Corporation are kept pursuant to Section 1.3 hereof by hand, by overnight mail or courier, or by certified or registered mail, return receipt requested; (2) shall include, if applicable, for each person who is proposed to be elected or reelected as a director pursuant to such action by written consent all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, including such person’s written consent to being named in the written consent as a prospective director and to serving as a director if elected; and (3) shall include as to any other action that is proposed to be taken by written consent, a brief description of such action, the reasons for effecting such action by written consent and any material interest in such action of the holder delivering such written notice and any other holder of shares that, at the time of the submission of the notice, is acting together with such holder in connection with the solicitation of written consents.

(c) Within five (5) business days of any such notice, the Board of Directors will establish a record date for stockholders to participate in any such action by written consent, which date shall be no earlier than the date of such notice and no later than five (5) business days after the date of such notice. If the Board of Directors fails to set a record date within such five (5) business day period, the record date shall be the first date on which a signed written consent setting forth the action proposed to be taken is delivered to the Corporation in accordance with Section 228 of the GCL. The Board of Directors shall cause notice of such proposed action, including the information provided in the notice set forth in Section 2.8(b), to be sent to all stockholders of record on such record date within fifteen (15) business days of the establishment of a record date.

(d) Any written consent, which for this purpose may be included in the notice provided pursuant to Section 2.8(b), may be delivered at any time prior to the date that the action by written consent shall become effective and may be withdrawn by delivery of a subsequent writing from any stockholder, in person or by attorney or proxy duly appointed in writing, and filed with the Secretary of the Corporation on or prior to the day prior to the written consent becoming effective in accordance with this Section 2.8.

