

# Delaware

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*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OR A MERGER WITH A RESTATED CERTIFICATE ATTACHED OF "KGEN POWER CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

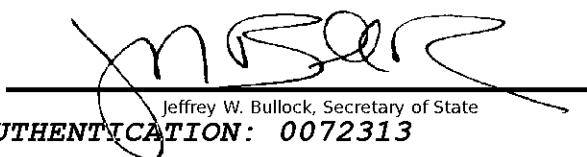
RESTATED CERTIFICATE, FILED THE TWENTY-SIXTH DAY OF JANUARY, A.D. 2009, AT 6:07 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE SEVENTH DAY OF JULY, A.D. 2009, AT 1:17 O'CLOCK P.M.

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121346772



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0072313

DATE: 12-17-12

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**KGEN POWER CORPORATION**

**KGen Power Corporation**, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

FIRST: The name of the corporation is KGen Power Corporation.

SECOND: The original Certificate of Incorporation of the corporation was filed with the Secretary of State of Delaware on December 4, 2006.

THIRD: Pursuant to Section 245 of the General Corporation Law of the State of Delaware, the provisions of the Certificate of Incorporation of the corporation as heretofore amended are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled "Restated Certificate of Incorporation of KGen Power Corporation," without further amendment and without any discrepancy between the provisions of the Certificate of Incorporation as heretofore amended and supplemented and the provisions of such single instrument as hereinafter set forth.

FOURTH: The Board of Directors of the corporation has duly adopted this Restated Certificate of Incorporation pursuant to the provisions of Section 245 of the General Corporation Law of the State of Delaware in the form set forth as follows:

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**KGEN POWER CORPORATION**

**ARTICLE I**

The name of the corporation is KGen Power Corporation (the "Corporation").

**ARTICLE II**

The purpose for which the Corporation is organized is any or all lawful acts and activities for which corporations may be incorporated under the General Corporation Law.

**ARTICLE III**

The street address of the initial registered office of the Corporation is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801, and the name of its initial registered agent at such address is the Corporation Trust Company.

#### ARTICLE IV

The total number of shares of capital stock that the Corporation is authorized to issue is 155,000,000 shares, consisting of 150,000,000 shares of Common Stock, par value \$0.01 per share (the "Common Stock"), and 5,000,000 shares of Preferred Stock, par value \$0.01 per share (the "Preferred Stock").

The shares of Preferred Stock may be issued from time to time in one or more series. Apart from any other provisions in this Certificate of Incorporation authorizing the issuance of shares of Preferred Stock, the Board of Directors of the Corporation is authorized to establish from time to time, by resolution or resolutions, the number of shares to be included in each series and to fix and alter the powers, preferences, and relative, participating, optional or other special rights, including voting rights, and qualifications, limitations or restrictions granted to and imposed upon any series thereof, and to fix the designation of any such series of Preferred Stock.

The Board of Directors of the Corporation, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors of the Corporation originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the original issue of shares of that series.

Subject to the provisions of applicable law or of the Bylaws with respect to the closing of the transfer books or the fixing of a record date for the determination of stockholders entitled to vote, and except as otherwise provided by applicable law or by the resolution or resolutions providing for the issue of any series of Preferred Stock, the holders of outstanding shares of Common Stock shall exclusively possess the voting power for the election of directors and for all other purposes, with each holder of record of shares of Common Stock being entitled to one vote for each share of Common Stock standing in the name of such holder on the books of the Corporation.

#### ARTICLE V

[Intentionally omitted]

#### ARTICLE VI

The Corporation will have perpetual existence.

#### ARTICLE VII

Cumulative voting by the stockholders of the Corporation at any election of directors of the Corporation is hereby prohibited.

## ARTICLE VIII

The preemptive right of any stockholder of the Corporation to acquire additional or unissued or treasury shares of the Corporation, or securities of the Corporation convertible into or carrying a right to subscribe to or acquire shares of the Corporation is hereby denied; provided, however, that nothing herein precludes the Corporation from granting preemptive rights by contract or agreement to any person, corporation, or other entity.

## ARTICLE IX

No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the General Corporation Law or (d) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law is amended after the effective date of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors or the person or persons exercising or performing any of the powers or duties otherwise conferred or imposed upon directors of the Corporation then the liability of the director of the Corporation or the person exercising or performing any of the powers or duties otherwise conferred or imposed upon directors of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment or repeal of this Article IX by either (i) the stockholders of the Corporation or (ii) amendment to the General Corporation Law shall not adversely affect any right or protection existing at the time of such amendment or repeal with respect to any acts or omissions occurring before such amendment or repeal of a director.

## ARTICLE X

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or testifies or otherwise participates in, any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding (whether or not by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trust, nonprofit entity, employee benefit plan, or other enterprise, against all judgments, penalties (including excise and similar taxes), fines, settlements, and expenses (including attorneys' fees and court costs) actually and reasonably incurred by such person in connection with such action, suit, or proceeding to the fullest extent permitted by the General Corporation Law, and such indemnity will inure to the benefit of the heirs, executors, and administrators of any such person so indemnified pursuant to this Article X; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation

shall not be obligated to indemnify any person pursuant to this Article X in connection with an action, suit, or proceeding (or part thereof) initiated by such person unless such action, suit, or proceeding (or part thereof) was authorized or consented to by the Corporation's Board of Directors. The right to indemnification under this Article X will also include, with respect to directors and officers, the right to be paid by the Corporation the expenses incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its disposition to the fullest extent permitted by applicable law; provided, however, that, if the General Corporation Law requires, the payment of such expenses incurred by a director or officer in advance of the final disposition of a proceeding will be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it is ultimately determined that such director or officer is not entitled to be indemnified under this Article X or otherwise. The Corporation may, by action of its Board of Directors, to the fullest extent permitted by applicable law, pay the expenses of defending such proceeding incurred by employees and agents of the Corporation in advance of its disposition upon such terms as the Board of Directors deems appropriate. The right to indemnification and advancement of expenses under this Article X is a contract right and should not be deemed exclusive of any other right to which those seeking indemnification may be entitled under any law, bylaw, agreement, vote of stockholders, or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and will continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators. Any repeal or amendment of this Article X by the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Article X, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not adversely affect the indemnification of any person who may be indemnified at the time of such repeal or amendment or adoption of such inconsistent provision.

#### ARTICLE XI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt the original Bylaws of the Corporation, to amend or repeal the Bylaws or to adopt new Bylaws, subject to any limitations that may be contained in such Bylaws, but any Bylaws adopted by the Board of Directors may be amended or repealed by the stockholders entitled to vote thereon.

#### ARTICLE XII

Election of directors need not be by written ballot.

#### 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.

#### ARTICLE XIV

Within five days after the occurrence of a Redemption Event (the “Notice Date”), the Corporation shall give notice to holders of the outstanding shares of Common Stock issued and sold in the 2006 Private Placement (the “Subject Stock”) that it will redeem such shares on a date specified in such notice selected by the Board (the “Redemption Date”), which date will be no later than ten days after the Notice Date, at a cash price per share equal to (i) the price per share at which the Subject Stock was sold to the public in the 2006 Private Placement (without reduction for placement agent fees or any other discounts or commissions) plus (ii) (x) the amount of interest accruing on the proceeds of the 2006 Private Placement pursuant to the Escrow Agreement executed in connection with the 2006 Private Placement between the Corporation and the escrow agent, from the date of the closing of the 2006 Private Placement through the date immediately prior to the Redemption Date, divided by (y) the number of shares of Subject Stock outstanding on the Redemption Date.

Holders of record of the Subject Stock at the close of business on the date of the Redemption Event shall be given notice of the Redemption Date by first class mail, postage paid, addressed to each such holder at its last address as shown upon the stock transfer books of the Corporation.

Each notice of redemption delivered to a holder of shares of Subject Stock in accordance herewith shall specify (i) the Redemption Date, (ii) that the shares of Subject Stock

held by such holder shall be redeemed by the Corporation on the Redemption Date, (iii) the per share redemption price and (iv) the method of payment for such shares of Subject Stock to be redeemed. Any notice provided shall be conclusively presumed to have been duly given, whether or not a holder of record of Subject Stock received such notice, and failure to give such notice, or any defect in such notice, to such holder shall not affect the validity of the proceedings for the redemption of any other shares of Subject Stock.

From and after the Redemption Date, any and all rights of the former holders of shares of Subject Stock in respect of such shares (including without limitation any rights to vote or participate in dividends), shall cease and terminate, and from and after such date the former holders of the Subject Stock that were holders of record of the Subject Stock on the Redemption Date shall be entitled only to receive the cash redemption price payable therefor on the Redemption Date.

From and after the closing of the 2006 Private Placement, no provision of this Article XIV shall be amended or repealed unless such action is approved by the affirmative vote of the holders of record of at least two-thirds of the Subject Stock.

For the purpose of Article XIV, the capitalized terms below used in this Article XIV shall have the following meanings:

(a) The “2006 Private Placement” means the offer and sale by the Corporation of shares of its Common Stock in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended, as contemplated by the Preliminary Offering Memorandum dated November 27, 2006, as such Preliminary Offering Memorandum shall be amended, revised or restated until the closing of such private offer and sale (the “Preliminary Offering Memorandum”).

(b) “Redemption Event” means that as of February 28, 2007 (or such later date within 30 days thereafter consented to by the holders of record of at least two-thirds of the Subject Stock), any of the following has not occurred: (i) approval by the Federal Energy Regulatory Commission of the transfer of all of the outstanding equity interests in KGen Partners LLC to the Corporation; (ii) consent by the Georgia Power Company to the transfer of all of the outstanding equity interests in KGen Partners LLC to the Corporation pursuant to the provisions of the Contract for the Purchase of Firm Capacity and Energy between Georgia Power Company and KGen Murray I and II LLC; (iii) the closing of the Senior Credit Facilities (as defined in the Engagement Letter dated November 26, 2006 between KGen Partners LLC and Morgan Stanley & Co. Incorporated) and the funding of the term loan facility thereunder as contemplated by the Preliminary Offering Memorandum; and (iv) the acquisition all of the outstanding equity interests in KGen Partners LLC by the Corporation.

\* \* \*

IN WITNESS WHEREOF, the corporation has caused the foregoing certificate to be executed and acknowledged by its duly authorized officer as of January 23, 2009.

KGEN POWER CORPORATION

By: /s/ William R. Marlow  
Name: William R. Marlow  
Title: General Counsel & Secretary



**CERTIFICATE OF DESIGNATIONS, RIGHTS AND  
PREFERENCES OF THE SERIES OF THE PREFERRED STOCK**

**OF**

**KGEN POWER CORPORATION**

**TO BE DESIGNATED  
SERIES A PREFERRED STOCK**

KGen Power Corporation, a Delaware corporation (the "Corporation"), pursuant to the authority conferred on the Board of Directors of the Corporation by its Restated Certificate of Incorporation, and in accordance with the provisions of Section 151 of the Delaware General Corporation Law ("DGCL"), certifies that the Board of Directors of the Corporation, at a meeting duly called and held on June 30, 2009, duly adopted the following resolution providing for the establishment and issuance of a series of Preferred Stock, par value \$0.01 per share, to be designated "Series A Preferred Stock" and to consist of 300,000 shares as follows:

RESOLVED, that, pursuant to the authority expressly granted and vested in the Board of Directors of this Corporation in accordance with the provisions of its Restated Certificate of Incorporation, a series of Preferred Stock of the Corporation be and hereby is established, consisting of 300,000 shares, to be designated "Series A Preferred Stock" (the "Series A Preferred Stock"); the Board of Directors be and hereby is authorized to issue such shares of Series A Preferred Stock from time to time and for such consideration and on such terms as the Board of Directors shall determine; and subject to the limitations provided by law and by the Restated Certificate of Incorporation, the powers, designations, preferences and relative, participating, option or other special rights of, and the qualifications, limitations or restrictions upon, the Series A Preferred Stock shall be as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Preferred Stock" and the number of shares constituting such series shall be 300,000. Each share of Series A Preferred Stock shall consist of 1,000 fractional units (each, a "Unit").

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any other series of Preferred Stock ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for that purpose, quarterly dividends payable in cash on the first day of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock (the "First Issuance Time"), in an amount per Unit (rounded to the nearest cent) equal to the greater of (a) \$0.01 or (b) subject to the provision for adjustment hereinafter set forth, the aggregate per share amount of all cash dividends, and the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions,

other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$0.01 per share, of the Corporation (the “Common Stock”) since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time on or after the First Issuance Time: (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) On or after the First Issuance Time, the Board of Directors shall declare a dividend or distribution on the Series A Preferred Stock as provided in Paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided, however, that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$0.01 per Unit shall nevertheless be declared by the Board of Directors and be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall accrue and be deemed to accrue from day to day whether or not earned or declared and shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

### Section 3. Voting Rights.

(A) Subject to the provision for adjustment hereinafter set forth, each Unit shall entitle the holder thereof to one (1) vote on all matters submitted to a vote of the stockholders of the

Corporation. In the event the Corporation shall at any time after the First Issuance Time: (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as expressly set forth herein, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(D) Notwithstanding the provisions of Sections 3(A), 3(B) and 3(C), after the issuance of any Unit, the holder thereof shall not be entitled to vote such Unit on any matters submitted to a vote of the stockholders of the Corporation unless, and until such time as, the Board of Directors shall announce that such Unit shall thereafter be a voting Unit. Notwithstanding any such announcement, a holder of any Unit shall not be entitled to vote such Unit on any matters submitted to a vote of the stockholders of the Corporation if and for so long as (i) in the sole judgment of the Board of Directors allowing such Unit and/or any other Units held by such holder to be voting Units could adversely affect or constitute a default or violation of, or result in the revocation or termination of, any consent, license, permit, waiver, clearance, order, authorization or other approval (each, a “Permit”) from the Federal Energy Regulatory Commission (the “FERC”) or any other governmental or regulatory agency or authority issued to, or held by, the Company or any of its subsidiaries or require the Company or any of its subsidiaries to obtain a Permit from the FERC or any other governmental or regulatory agency or authority that has not been obtained, or (ii) in the sole judgment of the beneficial owner of such Unit (which judgment shall have been communicated to the Company) allowing such Unit to be a voting Unit could adversely affect or constitute a default or violation of, or result in the revocation or termination of, any material Permit issued to, or held by, such holder or any of its Affiliates (as defined in the Rights Agreement) or require such holder or any of its Affiliates to obtain a Permit from the FERC or any other governmental or regulatory agency or authority that has not been obtained.

#### Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not earned or declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock ;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up.

(A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of Units shall have received \$0.01 per Unit, plus an amount

equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Unit Liquidation Preference"). Following the payment of the full amount of the Unit Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the Unit Liquidation Preference (as appropriately adjusted as set forth in subparagraph C below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Unit Liquidation Preference and the Common Adjustment in respect of all outstanding Units and Common Stock, respectively, holders of Units and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Units and Common Stock, on a per Unit or share basis, respectively.

(B) In the event that there are not sufficient assets available to permit payment in full of the Unit Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series A Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) In the event the Corporation shall at any time after the First Issuance Time (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case, the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(D) Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation shall be deemed a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination, share exchange or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the Units shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the First Issuance Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller

number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of Units shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

Section 9. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

Section 10. Ranking. The Series A Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, unless the terms of any such series shall provide otherwise.

Section 11. Amendment. At any time any shares of Series A Preferred Stock are outstanding, the Restated Certificate of Incorporation of the Corporation shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Preferred Stock, voting separately as a class.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, we have executed and subscribed this Certificate of Designations and do affirm the foregoing as true under the penalties of perjury this 6<sup>th</sup> day of July, 2009.

KGEN POWER CORPORATION

By: /s/ Thomas B. White  
Name: Thomas B. White  
Title: Chief Executive Officer