

Allen & Overy LLP

Stichting Nuon Energy Public Assurances
Foundation

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Execution copy unofficial translation

AGREED FORM DOCUMENT

This document is an English translation of a document prepared in Dutch. In preparing this document, an attempt has been made to translate as literally as possible without jeopardising the overall continuity of the text. Inevitably, however, differences may occur in translation and if they do, the Dutch text will govern by law.

In this translation, Dutch legal concepts are expressed in English terms and not in their original Dutch terms. The concepts concerned may not be identical to concepts described by the English terms as such terms may be understood under the laws of other jurisdictions.

DEED OF INCORPORATION

(Stichting Nuon Energy Public Assurances Foundation)

This first day of June two thousand and nine, there appeared before me, Gerbrand Willem Christiaan Visser, civil law notary in Amsterdam:

1. Oystein Løseth, with office address at Spaklerweg 20, 1096 BA Amsterdam, the Netherlands, born in Ringebu, Norway, on the seventeenth day of August nineteen hundred fifty-eight, identified by his passport with number 20096984, in this respect acting as solely authorised managing director of:

N.V. Nuon Energy, a public limited liability company incorporated under the laws of the Netherlands (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, its office address at Spaklerweg 20, 1096 BA Amsterdam, the Netherlands, and registered in the Commercial Register under number 33292246 (**Nuon**); and

2. Lars-Göran Josefsson, with office address at Sturegatan 10, 162 87 Stockholm, Sweden, born in Ulricehamn, Sweden, on the twenty-ninth day of October nineteen hundred fifty, identified by his passport with number 56003778, in this respect acting as solely authorised managing director of:

Vattenfall AB, a public company incorporated under the laws of Sweden, having its statutory seat in Stockholm, Sweden, and its principal offices at Sturegatan 10, 162 87 Stockholm, Sweden, registered in the Swedish Companies Register under number 556036-2138 (the **Partner**),

(Nuon and the Partner jointly the **Incorporators**).

The persons appearing declared the following:

The Incorporators hereby incorporate a foundation under Dutch law (*stichting*) with the following articles of association.

ARTICLES OF ASSOCIATION:

CHAPTER 1.

Article 1. Definitions and Construction.

1.1 In these articles of association, the following terms shall have the following meanings:

A-Shareholders means the holders of class A shares in the capital of Nuon and **A-Shareholder** shall be construed accordingly.

Agreement means the agreement containing the Nuon Public Assurances as such agreement is laid down in the Shareholders' Agreement.

Articles of Association means these articles of association by which the internal organisation of the Foundation is governed.

B-Shareholders means the holders of class B shares in the capital of Nuon and **B-Shareholder** shall be construed accordingly.

Board means the board of the Foundation.

Dependent Company means a dependent company within the meaning of Section 2:152 of the Dutch Civil Code, irrespective of the applicability of that Section to the relevant of Nuon or the Partner.

Director means a member of the Board. Unless the contrary is apparent, this shall include the A Director, B Director and C Director.

Foundation means the foundation the internal organisation of which is governed by the Articles of Association.

Meeting of holders of class A shares means the meeting of holders of class A shares.

Meeting of holders of class B shares means the meeting of holders of class B shares.

Nuon means N.V. Nuon Energy, a public company under the laws of the Netherlands, having its official seat in Amsterdam, the Netherlands, its office address at Spaklerweg 20, 1096 BA Amsterdam, the Netherlands, and registered in the Commercial Register under number 33292246.

Nuon Public Assurances means the assurances given by the Partner to Nuon aiming at preserving the long-term interest of the Partner and Nuon, as set out in the Agreement.

Partner means Vattenfall AB, a public company incorporated under the laws of Sweden, having its statutory seat in Stockholm, Sweden, and its principal offices at Sturegatan 10, 162 87 Stockholm, Sweden, registered in the Swedish Companies Register under number 556036-2138.

Shareholders' Agreement means that certain shareholders' agreement relating to Nuon, as it will read from time to time, made and entered into by and between the Foundation, A-Shareholders, the Partner and Nuon.

1.2 A message **in writing** means a message transmitted by letter, by telecopier, by e-mail or by any other means of electronic communication provided the relevant message or document is legible and reproducible, and the term **written** shall be construed accordingly.

1.3 References to **Articles** refer to articles which are part of the Articles of Association, except where expressly indicated otherwise.

CHAPTER 2. NAME, OFFICIAL SEAT AND OBJECTS.

Article 2. Name and Official Seat.

2.1 The Foundation's name is:

Stichting Nuon Energy Public Assurances Foundation.

2.2 The official seat of the Foundation is in the municipality of Amsterdam, the Netherlands.

Article 3. Objects.

The objects of the Foundation are to safeguard the Nuon Public Assurances as envisaged by the Agreement and to render binding advices on the interpretation of the Nuon Public Assurances as required pursuant to the Shareholders' Agreement.

CHAPTER 3. THE BOARD.

Article 4. Directors.

4.1 The Board shall consist of one A Director, one B Director and one C Director. If at any time the Board is not constituted as provided for in the preceding sentence, the Board shall, with due observance of the provisions of Articles 4.2, 4.3 and 4.4, promptly take steps to fill the vacancy/vacancies and the Board shall postpone any decision-making until it is properly constituted.

4.2 None of the following individuals can serve as A Director or B Director:

- (a) current managing directors of Nuon or of a Dependent Company of Nuon;
- (b) current supervisory directors of Nuon or of a Dependent Company of Nuon;
- (c) current employees or advisers, including but not limited to, consultants, service providers, accountants or lawyers, of Nuon or of a Dependent Company of Nuon;
- (d) any individual who maintains economic or financial relations with Nuon other than as a private client.

4.3 None of the following individuals can serve as C Director:

- (a) current or former managing directors of Nuon, the Partner or of a Dependent Company of Nuon or the Partner;
- (b) current or former supervisory directors of Nuon, the Partner or of a Dependent Company of Nuon or the Partner;

- (c) current or former employees or advisers, including but not limited to, consultants, service providers, accountants or lawyers, of Nuon, an A-Shareholder, the Partner or of a Dependent Company of Nuon or the Partner;
 - (d) any individual who maintains economic or financial relations with Nuon other than as a private client, an A Shareholder, or the Partner.
- 4.4 Only individuals may be Directors.
- 4.5 The A Director shall be appointed and his position terminated by the Meeting of holders of class A shares. The B Director shall be appointed and his position terminated by the Meeting of holders of class B Shares. The C Director shall be appointed and his position terminated by a decision of the A Director and B Director acting jointly.
- 4.6 Any vacancy in the Board that is not fulfilled in one month, will be filled by the Board, with due observance of Articles 4.2, 4.3 and 4.4. If the Board cannot agree or if there are no Directors in office, the vacancy will be filled by the President of the District Court in Amsterdam, the Netherlands, with due observance of the provisions of Articles 4.2, 4.3 and 4.4, pursuant to a request made thereto by either the Board or Nuon. A Director appointed in accordance with the preceding sentence can at any time be dismissed by the corporate body/person(s) originally entitled to fill the relevant vacancy, provided that the relevant person(s) fill the relevant vacancy per the moment of the dismissal.
- 4.7 The Board may establish a rotation list providing for the Directors to retire periodically and shall be authorised to change such rotation list. Establishing or changing such rotation list cannot result in a Director's retiring against his will before the term for which he was appointed has expired.
- 4.8 A Director ceases to hold office:
- (a) upon expiry of the period for which he was appointed or by his retiring in accordance with a rotation list as referred to in Article 4.7;
 - (b) upon his voluntary resignation;
 - (c) upon his removal from office by the court in cases provided for by the laws of the Netherlands;
 - (d) with respect to an A Director or a B Director, upon his removal from office, by the corporate body/person(s) who appointed the Director in question. In the event of a C Director, upon his removal from office, by a decision of the A Director and B Director acting jointly;

- (e) upon the appointment of a custodian to administer his affairs or upon a court decision pursuant to which one or more of his assets are placed under curatorship as a result of his physical or mental condition;
- (f) upon his death;
- (g) upon his being declared bankrupt, applying for a suspension of payments or petitioning for application of the debt restructuring provision referred to in the Dutch Bankruptcy Act;
- (h) if the relevant Director no longer meets the relevant requirements set forth in Articles 4.2, 4.3 and 4.4.

Article 5. Duties and Powers.

- 5.1 The Board shall be entrusted with the management of the Foundation.
- 5.2 The Board shall neither be authorised to enter into agreements to purchase, sell or encumber registered property nor to enter into agreements whereby the Foundation binds itself as surety or joint and several co debtor or guarantees or secures the debts of a third party, nor to represent the Foundation in such transactions.
- 5.3 The Board may establish rules regarding its decision-making process and its working methods, in addition to the relevant provisions of the Articles of Association.

Article 6. Chairperson and Secretary.

- 6.1 The C Director is the chairperson of the Board. The Board may also, from among the Directors, appoint a deputy chairperson, who shall take over the duties and powers of the chairperson the latter's absence.
- 6.2 The Board shall also appoint a secretary of the Board, either or not from among its midst, and make arrangements for his substitution in case of absence.

Article 7. Representation.

The Foundation shall be represented by the Board. The C Director acting solely, as well as the A Director and the B Director acting jointly, shall also be authorised to represent the Foundation.

Article 8. Board Meetings.

- 8.1 Board meetings shall be held whenever the chairperson of the Board or two Directors deem such necessary, or whenever a request for advice has been filed to the Board as set out in the Shareholders' Agreement.
- 8.2 A Board meeting shall be held within seven days after a request for advice as set out in the Shareholders' Agreement has been received by the Foundation.

- 8.3 Board meetings shall be called by the secretary, in consultation with the chairperson of the Board. Board meetings may also be called by the chairperson or two Directors.
- 8.4 Notice of a Board meeting shall be given in writing, no later than on the seventh day prior to the day of the meeting.
- 8.5 The notice of the meeting shall specify the subjects to be discussed. Subjects which were not specified in such notice may be announced at a later date, with due observance of the provisions of this Article 8.
- 8.6 Board meetings are held at a place to be determined by the chairperson of the Board. However, if a meeting is called by two Directors, the place of the meeting shall be determined by them.
- 8.7 A Director may be represented at a meeting by another Director authorised in writing. A Director may not represent more than one other Director at a meeting. The Directors present at the meeting may decide on admittance of other persons to the meeting, by a decision taken with a simple majority of votes, whereby each Director may cast one vote.
- 8.8 The Board meetings shall be presided over by the chairperson of the Board or his deputy. In their absence, the chairperson of the meeting shall be the remaining Director present at the meeting. The chairperson of the meeting shall appoint a secretary for the meeting.
- 8.9 The secretary of the meeting shall take minutes of the proceedings at the meeting. The minutes shall be adopted by the Board, at the same meeting or at the next. Evidencing the adoption, the minutes shall be signed by the chairperson and the secretary of the meeting at which they are adopted.

Article 9. Decision-making Process.

- 9.1 When making Board resolutions, each Director may cast one vote.
- 9.2 The Board can only adopt valid resolutions in a meeting, if at such meeting all Directors then in office are present or represented. If at a meeting not all the Directors then in office are present or represented, a second meeting shall be called to be held no earlier than seven days after the first meeting. At such second meeting, irrespective of the number of Directors present or represented, a valid resolution with respect to the proposal presented for discussion at the first meeting may be passed by a simple majority of the votes cast.
- 9.3 To the extent that the laws of the Netherlands or the Articles of Association do not require a qualified majority, all resolutions of the Board shall be adopted by a simple majority of the votes cast.
- 9.4 If there is a tie in voting, the proposal is thus rejected, without prejudice to the provisions of Article 10.3.

- 9.5 If the formalities for convening and holding of Board meetings, as prescribed by the laws of the Netherlands or the Articles of Association, have not been complied with, valid resolutions of the Board may only be adopted in a meeting, if at such meeting all Directors then in office are present or represented and none of the Directors then opposes to adopting resolutions.
- 9.6 Board resolutions may also be adopted in a manner other than at a meeting, in writing or otherwise, provided the proposal concerned is submitted to all Directors then in office and none of them objects to the relevant manner of adopting resolutions. A report shall be prepared by the secretary of the Board on a resolution adopted other than at a meeting which is not adopted in writing, and such report shall be signed by the chairperson and the secretary of the Board. Adoption of resolutions in writing shall be effected by written statements from all Directors then in office.

Article 10. Voting.

- 10.1 All votes shall be taken orally. However, the chairperson of the meeting shall be entitled to decide that a vote is to be taken by secret ballot. In cases of voting on persons, each Director present at the meeting shall be entitled to demand a vote by secret ballot. Voting by secret ballot shall take place by means of unsigned ballot papers.
- 10.2 Abstentions and spoiled votes shall not be counted as votes.
- 10.3 If in an election of persons a simple majority is not obtained, a second free vote shall be taken. If again a simple majority is not obtained, further votes shall be taken until either one person obtains a simple majority or the election is between two persons only, both of whom receive an equal number of votes. In the event of such further elections (not including the second free vote), each election shall be between the persons who participated in the preceding election, with the exclusion of the person who received the smallest number of votes in such preceding election. If in the preceding election more than one person have received the smallest number of votes, it shall be decided which of these persons should not participate in the new election by randomly choosing a name. If votes are equal in an election between two persons, it shall be decided by lot who is elected.
- 10.4 Voting by acclamation is possible if none of the Directors present at the meeting objects to it.
- 10.5 The chairperson's decision at the meeting on the result of a vote shall be final and conclusive. The same shall apply to the contents of an adopted resolution if a vote is taken about an unwritten proposal. However, if the correctness of such decision is challenged immediately after it is pronounced, a new vote shall be taken if either the majority of the Directors

present at the meeting or, if the original vote was not taken by roll call or in writing, any Director present at the meeting so demands. The original vote shall have no legal consequences as a result of the new vote.

CHAPTER 4. FINANCIAL YEARS AND KEEPING OF RECORDS.

Article 11. Financial Year.

The Foundation's financial year shall be the calendar year.

Article 12. Keeping of Records.

- 12.1 The Board shall keep records pertaining to the financial position and the activities of the Foundation, in conformity with the requirements ensuing from the activities of the Foundation. The Board shall keep these records, as well as the books, documents and other data carriers belonging thereto, in such a way that the Foundation's rights and obligations can be ascertained therefrom at all times.
- 12.2 The Board is obliged to keep the records put on paper as well as the books, documents and other data carriers referred to above in this Article 12 for a period of seven years, without prejudice to the provisions in Article 12.3.
- 12.3 The data kept on data carriers, with the exception of the records put on paper, can be transferred for safe-keeping to other data carriers, provided that the transfer involves an exact and complete reproduction of the relevant data and provided that the data are available at all times during the entire term in which the data must be preserved and that the data can be made legible within a reasonable period of time.

CHAPTER 5. AMENDMENT OF THE ARTICLES OF ASSOCIATION; DISSOLUTION AND LIQUIDATION.

Article 13. Amendment of the Articles of Association.

- 13.1 The Articles of Association may be amended pursuant to a resolution to that effect by the Board. A resolution by the Board to amend the Articles of Association cannot be adopted as long as the Shareholders' Agreement is in full force and effect.
- 13.2 A copy of the proposal, containing the verbatim text of the proposed amendment, shall be attached to the notice of the meeting in which an amendment of the Articles of Association is to be discussed.
- 13.3 An amendment of the Articles of Association shall be laid down in a notarial deed. Each individual Director shall be authorised to execute such deed.

Article 14. Dissolution and Liquidation.

- 14.1 The Foundation may be dissolved pursuant to a resolution to that effect by the Board. A resolution by the Board to dissolve the Foundation cannot be adopted as long as the Shareholders' Agreement is in full force and effect.

- 14.2 The resolution to dissolve the Foundation shall determine how the balance of the remaining funds is to be used.
- 14.3 If the Foundation is dissolved pursuant to a resolution of the Board, the Directors shall become liquidators of the dissolved Foundation's property.
- 14.4 During liquidation, the provisions of the Articles of Association shall remain in force to the extent possible.
- 14.5 After completion of the liquidation, the books and records of the dissolved Foundation shall remain in the custody of the person to be designated for the purpose by the liquidators, for the period prescribed by the laws of the Netherlands.
- 14.6 In addition, the liquidation shall be subject to the relevant provisions of Book 2, Title 1, of the Dutch civil Code.

Article 15. Final Provision.

- 15.1 The first financial year of the Foundation shall end on the thirty-first day of December two thousand and nine.
- 15.2 This Article 15, including its heading, expires at the end of the first financial year.

Finally, the person appearing has declared:

First Directors.

For the first time as A Director (as defined in the articles of association of the foundation) is hereby appointed:

Jan Ploeg, born in De Bilt, the Netherlands, on the twenty-sixth day of December nineteen hundred forty-eight.

For the first time a B Director (as defined in the articles of association of the foundation) is hereby appointed:

Lars Ingvar Gejrot, born in Hel Trefald, Sweden on the thirteenth day of August nineteen hundred fifty-four.

Close.

I, civil law notary, provided the persons appearing timely with a literal translation in English of this deed of incorporation, which translation has been annexed to this deed (Annex). The concise summary of the contents of this deed and explanation thereof was with the consent of the persons given in English. The persons appearing are known to me, civil law notary.

This deed was executed in Amsterdam on the date first above written. Before reading out, a concise summary and an explanation of the contents of this deed were given to the persons appearing. The persons appearing then declared that they had taken note of and agreed to the contents thereof and did not want the complete deed to be read to them. Thereupon, after limited reading, this deed was signed by the persons appearing and by me, civil law notary.