



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 18, 2025

Mehrnaz Jalali
Cozen O'Connor

Re: NRG Energy, Inc. (the "Company")
Incoming letter dated December 20, 2024

Dear Mehrnaz Jalali:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board take each step necessary so that each voting requirement in the Company's charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company has already substantially implemented the Proposal. We note your representation that the Company will provide shareholders at its 2025 annual meeting with an opportunity to approve relevant amendments to its certificate of incorporation. If approved, those amendments will eliminate the supermajority voting provision in the Company's governing documents. In our view, this and similarly worded proposals, taken as a whole, focus on the elimination of supermajority voting provisions. In addition, in analyzing this and similar requests, the staff generally will not consider voting standards implicit in state law unless the Proposal identifies the specific state law provisions at issue. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(10).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

December 20, 2024

Via Online Submission Form

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: NRG Energy, Inc. – Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

This letter is being submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, on behalf of NRG Energy, Inc. (the “Company”). The Company received a stockholder proposal on September 23, 2024 (together with the supporting statement, the “Proposal”) from John Chevedden (the “Proponent”), for inclusion in the Company’s proxy materials (the “2025 Proxy Materials”) for the 2025 annual meeting of stockholders (the “2025 Annual Meeting”). A copy of the Proposal, together with other relevant correspondence relating to the Proposal, is attached hereto as Exhibit A.

On behalf of the Company, we are hereby requesting confirmation from the staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) that the Staff will not recommend enforcement action if the Company excludes the Proposal pursuant to Rule 14a-8(i)(10), on the basis that the Proposal will be substantially implemented.

Pursuant to Rule 14a-8(j), on behalf of the Company, we are submitting electronically to the Commission: (i) this letter, which sets forth the Company’s reasons for excluding the Proposal and (ii) a copy of the Proposal and other relevant correspondence with the Proponent related to the Proposal, including the Company’s request to clarify the intent of the Proposal.

In addition, by copy on this letter, we are advising the Proponent of the Company’s intention to omit the Proposal from the 2025 Proxy Materials. Pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008), the Proponent is required to send to the Company a copy of any correspondence that the Proponent elects to submit to the Commission or Staff. Accordingly, the Company is taking this opportunity to inform the Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to Christine A. Zoino, Senior Vice President, Deputy General Counsel and Corporate Secretary of the Company, on behalf of the Company.

Pursuant to Rule 14a-8(j), we are submitting this letter on the Company's behalf not less than 80 days before the Company intends to file its definitive proxy statement, and the Company is sending a copy of this letter concurrently to the Proponent.

THE PROPOSAL

On September 23, 2024, the Company received a letter from the Proponent, submitting the Proposal for inclusion in the 2025 Proxy Materials. The Proposal, in pertinent part, states:

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes making the necessary changes in plain English.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

BASIS FOR EXCLUSION

On behalf of the Company, we hereby request that the Staff concur in our conclusion that the Proposal will be substantially implemented and thus may be excluded from the 2025 Proxy Materials, pursuant to Rule 14a-8(i)(10).

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because the Proposal Will Be Substantially Implemented.

1. Rule 14a-8(i)(10) Background

Pursuant to Rule 14a-8(i)(10), a company is permitted to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal, so as "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." See *Release No. 34-12598* (July 7, 1976). The Staff initially allowed the exclusion of stockholder proposals under Rule 14a-8(i)(10) only when such stockholder proposals were "'fully' effected" by the company; however, the Staff later determined that this "formalistic application of [the rule] defeated its purpose." See *Release Nos. 34-40018* (May 21, 1998), *34-20091* (Aug. 16, 1983) and *34-19135* (Oct. 14, 1982). Since then, the Staff has

maintained that a company is not required to implement every detail for a proposal to be excluded under Rule 14a-8(i)(10). The Staff has allowed the exclusion of stockholder proposals under Rule 14a-8(i)(10) when the company has taken actions to satisfactorily address the “essential objectives” and underlying concerns of the stockholder proposal, even if the proposal is not implemented in full or precisely as proposed.¹ The Staff has noted that “a determination that a company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.”² A company’s action may be deemed to “compare favorably” with the requested actions of the proposal, even if it does not go as far as those requested by the stockholder proposal.³

The Staff has consistently concurred with the exclusion of proposals similar to the Proposal where the company’s board of directors lacked authority to unilaterally amend the company’s organizational documents but took actions to address the essential objectives of the proposal by adopting resolutions (i) approving amendments to the company’s organizational documents, (ii) directing that such amendments be submitted to stockholders for approval at the company’s next annual meeting, and (iii) recommending that stockholders vote to adopt such amendments.⁴

Here, the essential objective of the Proposal is to eliminate any supermajority voting requirements in the Company’s organizational documents applicable to the Company’s common stock and replace them with majority voting requirements. The Company’s Board of Directors (“Board”) lacks unilateral authority to amend the Company’s Amended and Restated Certificate of Incorporation effective May 1, 2012, as amended by that Certificate of Amendment dated December 14, 2012 (as amended, the “Certificate of Incorporation”); therefore, the Board has agreed in principle to adopt certain resolutions, further described below, approving amendments to the Certificate of Incorporation to replace all supermajority voting requirements applicable to the Company’s common stock and to recommend that the stockholders approve these amendments at the 2025 Annual Meeting. Accordingly, following the adoption of such resolutions, the Company will have substantially implemented the Proposal, and it is excludable under Rule 14a-8(i)(10).

¹ See e.g., *PulteGroup* (Mar. 19, 2024), *Eli Lilly & Co.* (Mar. 14, 2024); and *West Pharmaceutical Services, Inc.* (Mar. 13, 2024).

² *Texaco, Inc.* (Mar. 28, 1991).

³ See, e.g., *Advance Auto Parts, Inc.* (Apr. 9, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company issue a sustainability report “in consideration of the SASB Multiline and Specialty Retailers & Distributors standard,” on the basis that the company’s “public disclosures compare favorably with the guidelines of the [p]roposal and that the [c]ompany has, therefore, substantially implemented the Proposal,” where the company argued that its existing disclosures sufficiently addressed the core purpose of the proposal while acknowledging that the disclosures deviated in certain respects from the SASB standard); and *Applied Materials, Inc.* (Jan. 17, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company “improve the method to disclose the [c]ompany’s executive compensation information with their actual compensation,” on the basis that the company’s “public disclosures compare favorably with the guidelines of the [p]roposal and that the [c]ompany has, therefore, substantially implemented the [p]roposal,” where the company argued that its existing disclosures follow requirements under applicable securities laws for disclosing executive compensation).

⁴ See, e.g., *PulteGroup, Inc.* (Mar. 19, 2024); *Eli Lilly & Co.* (Mar. 14, 2024); *West Pharmaceutical Services Inc.* (Mar. 13, 2024); *General Mills Inc.* (Aug. 6, 2021); *Flowserve Corporation* (Mar. 30, 2021); *Fortive Corporation* (Feb. 12, 2020); and *Eli Lilly & Co.* (Jan. 31, 2020).

2. *Relevant Provisions in the Company’s Organizational Documents and Anticipated Amendments to the Company’s Certificate of Incorporation*

The Proposal purports to address the potential harmful effects of “supermajority voting requirements” by requesting that the Board take “each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.” The relevant voting requirements included in the Company’s Certificate of Incorporation and the Company’s Sixth Amended and Restated By-laws effective December 1, 2022 (the “By-laws”) applicable to its common stock are excerpted and summarized below:

Provision	Current Voting Requirement
<i>Certificate of Incorporation, Article Thirteen (Amendments to Certificate of Incorporation)</i>	Affirmative vote of the holders of at least two-thirds (2/3) of the combined voting power of all of the then outstanding shares of the Company eligible to be cast in the election of directors are required to alter, amend or repeal Articles Nine, Ten or Twelve, or Article Thirteen of the Certificate of Incorporation. <ul style="list-style-type: none"> • Article Nine relates to the indemnification of directors and officers. • Article Ten relates to de-classification of the Board. • Article Twelve relates to prohibition on action by written consent of stockholders. • Article Thirteen contains the supermajority voting requirement.
<i>Certificate of Incorporation, Article Ten, Section 2 (Removal of Directors)</i>	Until the cessation of the classified Board of Directors, no director may be removed from office except for cause and the affirmative vote of the holders of a majority of the shares of common stock then outstanding.
<i>By-laws, Article II, Section 8 (Vote Required)</i>	Affirmative vote of the majority in voting power of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless (i) by express provisions of an applicable law, the rules and regulations of any stock exchange applicable to the Company, or of the Certificate of Incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question, or (ii) the subject matter is the election of directors.* <p>*Voting requirement for uncontested director elections under Article Six of the Certificate of Incorporation is the majority of votes cast.</p>
<i>By-laws, Article VIII (Amendments)</i>	Any alteration or repeal of the By-laws by the stockholders of the Company requires the affirmative vote of a majority of the combined voting power of the then outstanding shares of the Company entitled to vote to alter or repeal the By-laws.

The Staff has considered these specific types of voting thresholds in its review of requests for no action relief from companies.

Article Thirteen of the Certificate of Incorporation is the only provision in the Company’s organizational documents relating to its common stock that includes a supermajority voting requirement. The provisions of Article Thirteen relate to the ability to amend four distinct articles

contained in the Certificate of Incorporation: Article Nine, which provides for the indemnification of the Company's directors and officers; Article Ten relating to de-classification of the Board; Article Twelve, which restricts the ability of the Company's stockholders to act by written consent; and Article Thirteen, which contains the supermajority voting requirement. The Board intends to amend Article Thirteen of the Certificate of Incorporation to remove the supermajority voting requirement and to replace it with a majority of the outstanding stock. Under Section 242(b)(1) of the Delaware General Corporation Law (the "DGCL")⁵, a majority of the outstanding stock is the minimum voting requirement permitted under the law and, is the "closest standard to a majority of the votes cast for and against such proposals consistent with applicable law," as requested by the Proposal. Despite a shift in approach in 2022⁶, the Staff has otherwise repeatedly concurred with the exclusion of stockholder proposals for a "simple majority vote" where the proposals sought the elimination of provisions requiring "a greater than simple majority vote" and the company replaced a supermajority voting requirement with, or retained an existing voting requirement of a majority of shares outstanding.⁷ The Staff has also previously concurred with the exclusion of stockholder proposals where the company proposed amendments to its certificate of incorporation which would result in a majority of the outstanding shares voting requirement as specifically required by the DGCL.⁸

With respect to Article Ten, Section 2 of the Certificate of Incorporation, the Board intends to remove references to a classified Board and to provide that a director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. This majority voting requirement is the minimum voting standard permitted under Section 141(k) of the DGCL⁹ for removing directors, and it is the "closest standard to a majority of the votes cast for and against such proposals consistent with applicable law," as requested by the Proposal.¹⁰

With respect to the By-laws, the Board intends to retain the majority of shares present and entitled to vote requirement in Article II, Section 8 of the By-laws, which is the default voting

⁵ Section 242(b)(1) of the DGCL provides, in relevant part, that with respect to amendments to a certificate of incorporation, "[i]f no vote of stockholders is required to effect such amendment, or if a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title."

⁶ See, e.g., *Rite-Aid Corporation* (May 3, 2022); *Fortive Corporation* (Apr. 11, 2022).

⁷ See, e.g., *PulteGroup Inc.* (Mar. 19, 2024); *Eli Lilly & Co.* (Mar. 14, 2024); *General Mills Inc.* (Aug. 6, 2021); *CDW Corporation* (Mar. 22, 2021); *AbbVie Inc.* (Mar. 2, 2021); *Stanley Black & Decker, Inc.* (Jan. 15, 2021); *Fortive Corporation* (Feb. 12, 2020); *Eli Lilly & Co.* (Jan. 31, 2020); *The Southern Company* (Mar. 13, 2019); *Fortive Corporation* (Mar. 13, 2019); *United Technologies Corporation* (Mar. 1, 2019); *Cadence Design Systems Inc.* (Feb. 27, 2019), *AbbVie Inc.* (Feb. 27, 2019), and *State Street Corporation* (Mar. 5, 2018).

⁸ See, e.g., *AbbVie Inc.* (Mar. 2, 2021); *AbbVie Inc.* (Feb. 27, 2019); *Dover Corporation* (Feb. 6, 2019); and *QUALCOMM Incorporated* (Dec. 8, 2017).

⁹ Section 141(k) of the DGCL provides, in relevant part, that "[a]ny director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors[.]"

¹⁰ See, e.g., *IQVIA Holdings Inc.* (Dec. 23, 2020) and *QUALCOMM Incorporated* (Dec. 8, 2017) (permitting exclusion of a proposal substantially similar to the Proposal in which the company approved amendments to its certificate of incorporation or bylaws to replace the supermajority vote required in order for stockholders to remove a director from office, with or without cause, as applicable, with the affirmative vote of the holders of a majority of the shares of the company then entitled to vote in an election of directors which is the standard under Section 141(k) of the DGCL.)

standard permitted under Section 216(2) of the DGCL¹¹ for all matters other than the election of directors. This standard is a “simple majority in compliance with applicable laws,” as requested by the Proposal.¹²

The Board also intends to retain the majority of outstanding shares voting requirement in Article VIII of the By-laws for stockholders to amend the By-laws. This voting requirement is higher than the voting requirement requested by the Proposal, however, the essential objective of the Proposal has been achieved without the implementation of a change to Article VIII of the By-laws. As previously noted, the Company is not required to implement every detail of the Proposal to exclude the Proposal under Rule 14a-8(i)(10). The Staff has consistently allowed the exclusion of proposals substantially similar to the Proposal on the basis of substantial implementation, (i) where a company retained an existing voting requirement of a majority of outstanding shares¹³ and (ii) where a company lowered the voting standard required to amend bylaws from a supermajority to a majority of outstanding shares.¹⁴ For instance, in *Cadence Design Systems*, the Staff agreed with the exclusion of a proposal similar to the Proposal where the company chose to “retain its existing Charter and Bylaw provisions that require a majority of the outstanding shares with respect to stockholder-approved Bylaw amendments,” which is consistent with approach the Company is taking here.¹⁵

3. *The Anticipated Board Actions and Amendments Substantially Implement the Proposal*

Based upon discussions at Board and Board committee meetings held from December 4th through 5th, 2024, the Governance and Nominating Committee of the Board reviewed the Proposal and relevant provisions of the Certificate of Incorporation and By-laws and recommended that the Board, at its next regularly scheduled meeting and in response to the Proposal, consider resolutions (A) approving amendments to the Certificate of Incorporation to (i) replace the supermajority voting requirement in Article Thirteen with a majority of the outstanding shares, and (ii) remove references to a classified Board and provide in Article Ten, Section 2 for removal of directors, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors (collectively, the “Charter Amendments”); (B) directing that the Charter Amendments be submitted to stockholders for adoption at the 2025 Annual Meeting; and (C) recommending that the stockholders vote to adopt such Charter Amendments at the 2025 Annual Meeting. The

¹¹ Section 216(2) of the DGCL provides, in relevant part that “[i]n the absence of such specification in the certificate of incorporation or bylaws of the corporation....(2) [i]n all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders.”

¹² See, e.g., *AECOM* (Jan. 4, 2024) (the Staff concurred with the exclusion of a proposal substantially similar to the Proposal pursuant to Rule 14a-8(i)(10) where the company had no supermajority voting requirements in the company’s bylaws because “like most public companies, without supermajority voting, the [c]ompany, has a majority of the votes cast standard for uncontested director elections, a plurality of the votes cast standard for contested director elections and a majority of the shares present in person or by proxy standard for all other matters, except where the DGCL requires a majority of the outstanding shares standard” and the company had no supermajority voting requirements in the company’s certificate of incorporation) and *Best Buy Co.* (Mar. 27, 2020).

¹³ See, e.g., *CDW Corporation* (Mar. 22, 2021); *Fortive Corporation* (Mar. 13, 2019); and *State Street Corporation* (Mar. 5, 2018).

¹⁴ See, e.g., *Booz Allen Hamilton Holding Corporation* (Apr. 7, 2021), *McKesson Corporation* (Apr. 8, 2011), *American Tower Corporation* (Apr. 5, 2011), *Celgene Corporation* (Apr. 5, 2010) and *Express Scripts, Inc.* (Jan. 28, 2010),

¹⁵ See, *Cadence Design Systems Inc.* (Feb. 27, 2019).

Board agreed, in principle, with this recommendation, and is expected to formally adopt such resolutions as described above (the “Resolutions”) no later than February 20, 2025, which is the anticipated date of its next regularly scheduled meeting.

As noted above, the essential objective of the Proposal is to eliminate any supermajority voting requirements in the Certificate of Incorporation and By-laws applicable to the Company’s common stock and replace them with majority voting requirements. If the Board adopts the Resolutions, the Company’s stockholders will be asked at the 2025 Annual Meeting to vote to adopt the Charter Amendments that would, if approved, eliminate the only supermajority voting requirement in the Company’s organizational documents relating to its common stock. As a result, upon the Board’s adoption of the Resolutions, the Company will have addressed the essential objective of the Proposal and the Company’s actions will compare favorably with the requested actions of the Proposal. As a result, the Proposal should be excluded from the 2025 Proxy Materials in accordance with Rule 14a-8(i)(10), on the basis that it has been substantially implemented.

Due to the timing requirements of Rule 14a-8(j), we are submitting this letter, on behalf of the Company, before the Board has approved the Charter Amendments and related Resolutions. The Staff has consistently permitted exclusion of stockholder proposals under Rule 14a-8(i)(10) where a company notifies the Staff that its board of directors is expected to take action that will substantially implement the proposal, and the company follows its initial submission with a supplemental letter notifying the Staff that such board action has been taken, including in the context of requests to eliminate supermajority voting requirements.¹⁶ The Company will notify the Staff in a supplemental letter once formal action has been taken by the Board to adopt the Charter Amendments and related Resolutions. The text of the Charter Amendments, marked to show the proposed revisions, will be included in the supplemental letter, notifying the Staff of the Board’s action on this matter.

CONCLUSION

On behalf of the Company, we request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the 2025 Proxy Materials for the reasons described in this letter.

¹⁶ See, e.g., *PulteGroup Inc.* (Mar. 19, 2024); *General Mills* (Aug. 6, 2021); *Best Buy Co., Inc.* (Mar. 27, 2020); *Fortive Corporation* (Feb. 12, 2020); *AbbVie Inc.* (Feb. 27, 2019); and *The Southern Company* (Feb. 24, 2017).

Securities and Exchange Commission

December 20, 2024

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If the Staff has any questions, or if for any reason the Staff does not agree that the Company may omit the Proposal from its 2025 Proxy Materials, please contact Mehrnaz Jalali at 212-453-3949 or mjalali@cozen.com.

Sincerely,



Mehrnaz Jalali

Enclosure: Exhibit

Cc: Christine Zoino
John Chevedden

Exhibit A

Proposal

See attached.

Ms. Christine A. Zoino
Corporate Secretary
NRG Energy, Inc. (NRG)
910 Louisiana Street
Houston, TX 77002
PH: 713 537 3000

Dear Ms. Zoino,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting.

I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy including the table of contents, like Board of Directors proposals, and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message to [REDACTED] it may very well save you from formally requesting a broker letter from me.

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals. Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." I so request.

Sincerely,


John Chevedden


Date

[NRG: Rule 14a-8 Proposal, September 23, 2024]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Simple Majority Vote

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes making the necessary changes in plain English.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy and Macy’s. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. This proposal topic also received overwhelming 98%-support at the 2023 annual meetings of American Airlines (AAL) and The Carlyle Group (CG).

The overwhelming shareholder support for this proposal topic at hundreds of major companies raises the question of why NRG Energy has not initiated this proposal topic on its own.

It is a good time to adopt this corporate governance improvement proposal when NRG Energy shareholders express dissatisfaction with NRG executive pay and the performance of 2 NRG directors. 20% of NRG Energy shareholders rejected executive pay in 2024 and 10% of NRG Energy shareholders rejected 2 NRG directors in 2024. A 5% rejection is often the norm at well performing companies for these 2 types of election results.

Please vote yes:

Simple Majority Vote – Proposal 4

[The above line – *Is* for publication.]

Notes:

“Proposal 4” stands in for the final proposal number that management will assign.

The proposal number and title at the top of proposal is the number and title intended for publication in the proxy and on the ballot – word for word with no added words or mixture of shareholder words with management words.

It is critically important that the proponent have control of the ballot title with no words added or subtracted from the title because the title of the proposal may be the only words a voting shareholder sees. If management disagrees then it has the option of negotiating now or asking for no action relief.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting if needed.

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the top of the proposal and be center justified with the title.



From: John Chevedden [REDACTED]
Sent: Monday, September 23, 2024 9:50 PM
To: Zoino, Christine
Subject: Rule 14a-8 Proposal (NRG)
Attachments: Scan2024-09-23_184754.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Rule 14a-8 Proposal (NRG)

Dear Ms. Zoino,

Please see the attached rule 14a-8 proposal.

Please confirm that this is the correct email address for rule 14a-8 proposals.

Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

I so request.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after

10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting if needed.

John Chevedden



FOR

Shareholder Rights

Ms. Christine A. Zoino
Corporate Secretary
NRG Energy, Inc. (NRG)
910 Louisiana Street
Houston, TX 77002
PH: 713 537 3000

Dear Ms. Zoino,

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I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy including the table of contents, like Board of Directors proposals, and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message to [REDACTED] it may very well save you from formally requesting a broker letter from me.

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Sincerely,


John Chevedden


Date

[NRG: Rule 14a-8 Proposal, September 23, 2024]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Simple Majority Vote

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes making the necessary changes in plain English.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy and Macy’s. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. This proposal topic also received overwhelming 98%-support at the 2023 annual meetings of American Airlines (AAL) and The Carlyle Group (CG).

The overwhelming shareholder support for this proposal topic at hundreds of major companies raises the question of why NRG Energy has not initiated this proposal topic on its own.

It is a good time to adopt this corporate governance improvement proposal when NRG Energy shareholders express dissatisfaction with NRG executive pay and the performance of 2 NRG directors. 20% of NRG Energy shareholders rejected executive pay in 2024 and 10% of NRG Energy shareholders rejected 2 NRG directors in 2024. A 5% rejection is often the norm at well performing companies for these 2 types of election results.

Please vote yes:

Simple Majority Vote – Proposal 4

[The above line – *Is* for publication.]

Notes:

“Proposal 4” stands in for the final proposal number that management will assign.

The proposal number and title at the top of proposal is the number and title intended for publication in the proxy and on the ballot – word for word with no added words or mixture of shareholder words with management words.

It is critically important that the proponent have control of the ballot title with no words added or subtracted from the title because the title of the proposal may be the only words a voting shareholder sees. If management disagrees then it has the option of negotiating now or asking for no action relief.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting if needed.

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the top of the proposal and be center justified with the title.



From: Zoino, Christine [REDACTED]
Sent: Monday, September 30, 2024 12:29 PM
To: John Chevedden
Cc: Zoino, Christine
Subject: RE: Rule 14a-8 Proposal (NRG)

Dear Mr. Chevedden,

I'm writing to acknowledge receipt of your letter dated September 23, 2024. Please send a copy of your broker letter at your earliest convenience. We are reviewing the contents of your letter and will be back in touch to schedule a meeting.

Best,
Christine

From: John Chevedden [REDACTED]
Sent: Monday, September 23, 2024 9:50 PM
To: Zoino, Christine [REDACTED]
Subject: Rule 14a-8 Proposal (NRG)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Rule 14a-8 Proposal (NRG)

Dear Ms. Zoino,

Please see the attached rule 14a-8 proposal.

Please confirm that this is the correct email address for rule 14a-8 proposals.

Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

I so request.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting if needed.

John Chevedden



From: John Chevedden [REDACTED]
Sent: Thursday, October 3, 2024 11:43 AM
To: Zoino, Christine
Subject: Broker Letter (NRG)
Attachments: Scan2024-10-03_083913(3).pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Broker Letter (NRG)

From: Zoino, Christine [REDACTED]
Sent: Wednesday, No
To: John Chevedden
Subject: RE: (NRG)

Dear Mr. Chevedden,

I hope all is well. Thank you for sending the broker letter. As we continue to evaluate your proposal, I wanted to reach out to request a clarification. Your letter states that the “board take each step necessary so that each voting requirement in [NRG’s] charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.” It is unclear to us from this language which provisions you are referring to. Therefore, we are request that you please specify the changes that you are requesting by section. We look forward to your prompt response. Thank you in advance for your time.

Best,
Christine

From: John Chevedden [REDACTED]
Sent: Tuesday, October 1, 2024 10:42 AM
To: Zoino, Christine [REDACTED]
Subject: (NRG)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Zoino,
Thank you for the proposal acknowledgment.
I hope to email the broker letter this week.
John Chevedden

January 22, 2025

Via Online Submission Form

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street N.E.
Washington, DC 20549

Re: NRG Energy, Inc. - Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

On December 20, 2024, we submitted a letter (the “No-Action Request”), on behalf of NRG Energy, Inc. (the “Company”), pursuant to which we requested that the staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that the stockholder proposal received on September 23, 2024 (together with the supporting statement, the “Proposal”) from John Chevedden (the “Proponent”), may be excluded from the proxy materials (the “2025 Proxy Materials”) for the Company’s 2025 annual meeting of stockholders (the “2025 Annual Meeting”). The Company expects to file the 2025 Proxy Materials in definitive form with the Commission on or about March 19, 2025.

In accordance with Rule 14a-8(j), a copy of this supplemental letter is also being sent concurrently to the Proponent.

BASIS FOR SUPPLEMENTAL LETTER

The No-Action Request indicated the Company’s view that the Proposal may be excluded from the 2025 Proxy Materials because the Board of Directors of the Company (the “Board”) was expected, no later than February 20, 2025, to formally adopt resolutions approving amendments to the Company’s Amended and Restated Certificate of Incorporation effective May 1, 2012, as amended by that Certificate of Amendment dated December 14, 2012 (as amended, the “Current Certificate of Incorporation”) that would substantially implement the Proposal under Rule 14a-8(i)(10).

We are submitting this supplemental letter to notify the Staff that, on January 21, 2025, the Board adopted resolutions (A) approving an amendment and restatement to the Current Certificate of Incorporation (the “Amended Certificate of Incorporation”) to (i) eliminate the supermajority voting requirement in the Current Certificate of Incorporation which is applicable to the Company’s common stock, (ii) remove obsolete references to a classified Board and specify the standard for removal of directors, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of such directors, in accordance with Section 141(k) of the General Corporation Law of the State of Delaware (the “DGCL”) and (iii) make other technical

and administrative updates; (B) directing that the Amended Certificate of Incorporation be submitted to stockholders for approval and adoption at the 2025 Annual Meeting; and (C) recommending that stockholders vote to approve and adopt such Amended Certificate of Incorporation at the 2025 Annual Meeting (collectively, the “Resolutions”). In the event that the stockholders approve the Amended Certificate of Incorporation at the 2025 Annual Meeting, the Company will have removed the only supermajority voting requirement in the Company’s organizational documents applicable to its common stock and any voting requirement for further amendments to the Amended Certificate of Incorporation will effectively be the minimum voting requirement governed by the DGCL, which is generally a majority of outstanding shares.

The text of the Amended Certificate of Incorporation, marked to show the proposed revisions, is attached hereto as Exhibit A. As the Company will be amending and restating its Current Certificate of Incorporation, the Company is taking this opportunity to reference the terms of its outstanding designated preferred stock and make other technical and administrative updates. The revisions to Article Seven reflect the Certificate of Amendment filed by the Company with the Secretary of State of the State of Delaware in December 2012 and do not reflect new changes.

SUMMARY ANALYSIS

As discussed in the No-Action Request, a company is permitted to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal, so as “to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management.” *See Release No. 34-12598* (July 7, 1976). As described in the No-Action Request, the Staff has consistently allowed the exclusion of a proposal under Rule 14a-8(i)(10) when a company demonstrates that it has already taken actions to address the underlying concerns and “essential objectives” outlined in a proposal, even if the proposal is not implemented in full or precisely as proposed.¹

In addition, as discussed in the No-Action Request, the Staff has repeatedly concurred with exclusion of stockholder proposals for a “simple majority vote” under Rule 14a-8(i)(10) where the proposal sought the elimination of provisions in a company’s organizational documents requiring “a greater than simple majority vote” and the company replaced such supermajority voting requirement with, or retained an existing voting requirement of, a majority of shares outstanding in the company’s organizational documents.² The Staff has also previously concurred with the exclusion of stockholder proposals where the company proposed amendments to its certificate of incorporation which would result in a majority of the outstanding shares voting requirement as specifically required by the DGCL.³

¹ *See, e.g., PulteGroup* (Mar. 19, 2024), *Eli Lilly & Co.* (Mar. 14, 2024); and *West Pharmaceutical Services, Inc.* (Mar. 13, 2024).

² *See, e.g., PulteGroup Inc.* (Mar. 19, 2024); *Eli Lilly & Co.* (Mar. 14, 2024); *General Mills Inc.* (Aug. 6, 2021); *CDW Corporation* (Mar. 22, 2021); *AbbVie Inc.* (Mar. 2, 2021); *Stanley Black & Decker, Inc.* (Jan. 15, 2021); *Fortive Corporation* (Feb. 12, 2020); *Eli Lilly & Co.* (Jan. 31, 2020); *The Southern Company* (Mar. 13, 2019); *Fortive Corporation* (Mar. 13, 2019); *United Technologies Corporation* (Mar. 1, 2019); *Cadence Design Systems Inc.* (Feb. 27, 2019), *AbbVie Inc.* (Feb. 27, 2019), and *State Street Corporation* (Mar. 5, 2018).

³ *See, e.g., AbbVie Inc.* (Mar. 2, 2021); *AbbVie Inc.* (Feb. 27, 2019); *Dover Corporation* (Feb. 6, 2019); and *QUALCOMM Incorporated* (Dec. 8, 2017).


Consistent with the principles in the letters referenced herein and as described in greater detail in the No-Action Request, the Amended Certificate of Incorporation and corresponding Resolutions substantially implement the Proposal. Specifically, now that the Board has adopted the Resolutions, the Company's stockholders will be asked at the 2025 Annual Meeting to vote to approve and adopt the Amended Certificate of Incorporation that would, if approved, eliminate the only supermajority voting requirement in the Company's organizational documents applicable to its common stock. As a result, the Company has addressed the "essential objective" of the Proposal to eliminate any supermajority voting requirements and believes that the Proposal has been substantially implemented and may be excluded under Rule 14a-8(i)(10).

CONCLUSION

For the foregoing reasons and those described in the No-Action Request, on behalf of the Company, we respectfully request confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the 2025 Proxy Materials.

If the Staff has any questions, or if for any reason the Staff does not agree that the Company may omit the Proposal from its 2025 Proxy Materials, please contact Mehrnaz Jalali at 212-509-9400 or mjalali@cozen.com.

Sincerely,



Mehrnaz Jalali

Enclosure: Exhibit

Cc: Christine Zoino
John Chevedden

Exhibit A

Amended Certificate of Incorporation

See attached.

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

NRG ENERGY, INC.

Pursuant to Sections 242 and 245 of the Delaware General Corporation Law, NRG Energy, Inc., ~~a Corporation~~ (the “Corporation”), a corporation organized and existing under the laws of the State of Delaware, the date of the filing of its original Certificate of Incorporation with the Secretary of State of Delaware (the “Secretary of State”) being May 29, 1992, as such Certificate of Incorporation was amended and restated by that Amended and Restated Certificate of Incorporation filed with the Secretary of State on May 1, 2012 and further amended by that Certificate of Amendment of Amended and Restated Certificate of Incorporation filed with the Secretary of State on December 14, 2012, and as further amended by that Certificate of Designation filed with the Secretary of State on March 9, 2023 hereby certifies as follows:

ARTICLE ONE

The name of the Corporation is NRG Energy, Inc.

ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE THREE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE FOUR

Section 1. Authorized Shares. The total number of shares of capital stock which the Corporation has authority to issue is 510,000,000 shares, consisting of:

- (a) 10,000,000 shares of Preferred Stock, par value \$.01 per share (“Preferred Stock”); ~~and~~, of which 650,000 has been designated as “10.25% Series A Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock” pursuant to that Certificate of Designation filed with the Secretary of State of Delaware on March 9, 2023, as the same may be amended or restated from time to time and the terms of which are hereby incorporated herein by reference; and

- (b) 500,000,000 shares of Common Stock, par value \$.01 per share (“Common Stock”).

The Preferred Stock and the Common Stock shall have the rights, preferences and limitations set forth below.

Section 2. Preferred Stock. The Preferred Stock may be issued from time to time and in one or more series. By resolution adopted by the affirmative vote of at least a majority of the total number of Directors then in office, the Board of Directors of the Corporation is authorized to determine or alter the powers, preferences and rights, and the qualifications, limitations and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and within the limitations or restrictions stated in any resolution or resolutions of the Board of Directors adopted by the affirmative vote of at least a majority of the total number of Directors then in office, originally fixing the number of shares constituting any series of Preferred Stock to increase or decrease (but not below the number of shares of any such series of Preferred Stock, then outstanding) the number of shares of any such series of Preferred Stock and to fix the number of shares of any series of Preferred Stock. In the event that the number of shares of any series of Preferred Stock shall be so decreased, the shares constituting such decrease shall resume the status which such shares had prior to the adoption of the resolution originally fixing the number of shares of such series of Preferred Stock subject to the requirements of applicable law. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations and restrictions granted to or imposed upon, any such series of Preferred Stock may be made dependent upon facts ascertainable outside the resolutions or resolutions providing for the issue of such Preferred Stock, adopted by the affirmative vote of at least a majority of the total number of Directors then in office, provided that the manner in which such facts shall operate upon the powers, preferences and rights of, and the qualifications, limitations and restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. Any of the powers, preferences and rights of, and the qualifications, limitations and restrictions granted to or imposed upon, such series of Preferred Stock is clearly and expressly set forth in the resolution or resolutions providing for the issue of such series of Preferred Stock adopted by the affirmative vote of at least a majority of the total number of Directors then in office.

Section 3. Common Stock.

(a) Dividends and Other Distributions. Except as otherwise provided by the Delaware General Corporation Law or this Certificate of Incorporation (this “Certificate”), the holders of Common Stock, subject to the rights of holders of any series of Preferred Stock, shall share ratably in all dividends as may from time to time be declared by the Board of Directors of the Corporation in respect of the Common Stock out of funds legally available for the payment thereof and payable in cash, stock or otherwise, and in all other distributions (including, without limitation, the dissolution, liquidation and winding up of the Corporation), whether in respect of liquidation or dissolution (voluntary or involuntary) or otherwise, after payment of liabilities and liquidation preference on any outstanding Preferred Stock.

(b) Preemptive Rights. No holder of Common Stock shall have any preemptive rights with respect to the Common Stock or any other securities of the Corporation, or to any

obligations convertible (directly or indirectly) into securities of the Corporation, whether now or hereafter authorized.

(c) Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or this Certificate and subject to the rights of holders of any series of Preferred Stock, all of the voting power of the stockholders of the Corporation shall be vested in the holders of the Common Stock, and each holder of Common Stock shall have one vote for each share held by such holder on all matters voted upon by the stockholders of the Corporation.

ARTICLE FIVE

The Corporation is to have perpetual existence.

ARTICLE SIX

Except as provided by the Certificate of Incorporation (including any duly authorized certificate of designation of any series of Preferred Stock), each Director shall be elected by the vote of the majority of the votes cast with respect to that Director's election at any meeting for the election of Directors at which a quorum is present, provided that if the number of nominees at any such meeting exceeds the number of Directors to be elected at the meeting, the Directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of Directors. For purposes of this Article, a majority of the votes cast means that the number of shares voted "for" a Director must exceed the number of votes cast "against" that Director.

ARTICLE SEVEN

Subject to any rights of the holders of any series of Preferred Stock to elect additional Directors under specified circumstances, the ~~number of Directors which shall constitute the~~ Board of Directors shall ~~initially be established at eleven and, thereafter, may be enlarged up to fifteen by the affirmative vote of a majority of the total number of directors then in office or may otherwise be enlarged with the approval of the holders of at least a majority of the shares of Common Stock then outstanding, and may be reduced by resolution adopted~~ have no more than sixteen (16) nor less than three (3) members, with the exact number of Directors constituting the full board to be determined from time to time by the affirmative vote of a majority of the total number of Directors then in office. Newly created directorships resulting from an increase in the size of the Board of Directors may be filled by the affirmative vote of a majority of the total number of Directors then in office or by vote of the stockholders.

ARTICLE EIGHT

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the By-laws of the Corporation.

ARTICLE NINE

Section 1. Indemnification; Limitation of Liability.

(a) To the fullest extent permitted by the Delaware General Corporation Law as it now exists or may hereafter be amended, and excepts as otherwise provided in the Corporation's By-laws, (i) no Director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages arising from a breach of fiduciary duty owed to the Corporation or its stockholders; and (ii) the Corporation shall indemnify its officers and Directors.

(b) Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a Director of the Corporation in respect of any act, omission or condition existing or event or circumstance occurring prior to the time of such repeal or modification.

ARTICLE TEN

Section 1. ~~Classification~~Term of Directors.

~~(a) From the effective date of this Amended and Restated Certificate of Incorporation until the election of directors at the 2013 Annual Meeting of stockholders, pursuant to Section 141(d) of the General Corporation Law of the State of Delaware, the Board of Directors shall be divided into three classes of Directors, Class I, Class II and Class III, with the Directors in Class I having a term expiring at the 2013 Annual Meeting, the directors in Class II having a term expiring at the 2014 Annual Meeting and the directors in Class III having a term expiring at the 2015 Annual Meeting.~~

~~(b) Commencing with the election of directors at the 2013 Annual Meeting of stockholders, pursuant to Section 141(d) of the General Corporation Law of the State of Delaware, the Board of Directors shall be divided into two classes of directors, Class I and Class II, with the Directors in Class I having a term that expires at the 2014 Annual Meeting and the Directors in Class II having a term that expires at the 2015 Annual Meeting. The successors of the Directors who, immediately prior to the 2013 Annual Meeting, were members of Class I (and whose terms expire at the 2013 Annual Meeting) shall be elected to Class I; the directors who, immediately prior to the 2013 Annual Meeting, were members of Class II and whose terms were scheduled to expire at the 2014 Annual Meeting shall become members of Class I; and the directors who, immediately prior to the 2013 Annual Meeting, were members of Class III and whose terms were scheduled to expire at the 2015~~

~~Annual Meeting shall become members of Class II with a term expiring at the 2015 Annual Meeting.~~

~~(c) Commencing with the election of directors at the 2014 Annual Meeting of stockholders, pursuant to Section 141(d) of the General Corporation Law of the State of Delaware, there shall be a single class of Directors, Class I, with all Directors of such class having a term that expires at the 2015 Annual Meeting. The successors of the Directors who, immediately prior to the 2014 Annual Meeting of stockholders, were members of Class I (and whose terms expire at the 2014 Annual Meeting) shall be elected to Class I for a term that expires at the 2015 Annual Meeting, and the Directors who, immediately prior to the 2014 Annual Meeting, were members of Class II and whose terms were scheduled to expire at the 2015 Annual Meeting shall become members of Class I with a term expiring at the 2015 Annual Meeting.~~

~~(d) From and after the election of directors at the 2015 Annual Meeting of stockholders, the Board of Directors shall cease to be classified as provided in Section 141(d) of the General Corporation Law of the State of Delaware, and the Directors elected at the 2015 Annual Meeting (and each Annual Meeting thereafter) shall be elected for a term expiring at the next Annual Meeting and may be removed~~

~~with or without cause.~~ Each Director ~~elected at any Annual Meeting~~ shall hold office until ~~such Director's~~ the next annual meeting of stockholders and until such Director's successor shall have been duly elected and qualified or until the Director's earlier death, resignation, or removal.

Section 2. Removal. ~~Until the cessation of the classified Board of Directors, pursuant to Article Ten Section 1(d) and subject to the rights, if any, of the holders of any series of Preferred Stock to remove Directors (Any Director may be removed, with or without cause) and fill the vacancies thereby created (as specified in any duly authorized certificate of designation of any series of Preferred Stock), no Director may be removed from office except for cause and the affirmative vote of the,~~ by the holders of a majority of the shares ~~of Common Stock then outstanding~~ then entitled to vote at an election of Directors. Notwithstanding the foregoing, if the holders of any class or series of capital stock are entitled by the provisions of this Certificate (including any duly authorized certificate of designation of any series of Preferred Stock) to elect one or more Directors, such Director or Directors so elected may be removed with or without cause by the vote of the holders of a majority of the outstanding shares of that class or series entitled to vote in the election of such Director or Directors or as otherwise provided in a duly authorized certificate of designation of a class or series of Preferred Stock.

Section 3. Vacancies. Subject to the rights of the holders of any series of Preferred Stock to remove Directors and fill the vacancies thereby created (as specified in any duly authorized certificate of designation of any series of Preferred Stock) and subject to ARTICLE SEVEN, vacancies occurring on the Board of Directors for any reason may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at any meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy shall hold office until the next ~~election of the class for which such Directors shall have been chosen~~ annual meeting of stockholders and until his or her successor shall have been duly elected and qualified or until such Director's earlier death, resignation, or removal.

ARTICLE ELEVEN

Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the Corporation may be kept (subject to any provision contained in the Delaware General Corporation Law) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

ARTICLE TWELVE

Subject to the rights of holders of any series of Preferred Stock to act by written consent as specified in any duly authorized certificate of designation of any series of Preferred Stock, the stockholders of the Corporation may not take any action by written consent in lieu of a meeting, and must take any actions at a duly called annual or special meeting of stockholders and the power of stockholders to consent in writing without a meeting is specifically denied. Except as otherwise required by law, special meetings of stockholders of the Corporation may be called only by the Board of Directors pursuant to a resolution adopted by the affirmative vote of the majority of the total number of

Directors then in office, by the chief executive officer of the Corporation or, if there is no chief executive officer, by the most senior executive officer of the Corporation.

ARTICLE THIRTEEN

~~Notwithstanding any other provisions of this Certificate or any provisions of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of the capital stock required by law or this Certificate (including any duly authorized certificate of designation of any series of Preferred Stock), the affirmative vote of the holders of at least two-thirds (2/3) of the combined voting power of all of the then outstanding shares of the Corporation eligible to be cast in the election of Directors generally shall be required to alter, amend or repeal or ARTICLES NINE, TEN or TWELVE hereof, or this ARTICLE THIRTEEN, or any provision thereof or hereof.~~

ARTICLE FOURTEEN

~~The~~ Subject to any duly authorized certificate of designation of any series of Preferred Stock, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders, Directors or any other person herein are granted subject to this reservation.

ARTICLE ~~FIFTEEN~~ FOURTEEN

The Corporation expressly elects to be governed by Section 203 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the undersigned on behalf of the Corporation for the purpose of amending and restating the Certificate of Incorporation pursuant to the General Corporation Law of the State of Delaware, under penalties of perjury does hereby declare and certify that this is the act and deed of the Corporation and the facts stated herein are true, and accordingly has hereunto signed this ~~Certificate of~~Amended and Restated Certificate of Incorporation this ~~1st~~ ___ day of ~~May, 2012~~ _____, 2025.

**NRG Energy, Inc.,
a Delaware corporation**

By: _____

Name: ~~Michael R. Bramnick~~

Title: ~~Executive Vice President and General Counsel~~