

2011 DEC -7 A 11: 04  
CHIEF CLERK'S OFFICE

XOOM Energy Illinois, LLC

Application for Certificate of  
Service Authority under Section  
16-115 of the Public Utilities Act.

Docket No. 11-0705

**VERIFIED SUPPLEMENTAL RESPONSE TO THE  
ADMINISTRATIVE LAW JUDGE'S NOVEMBER 10, 2011 RULING**

XOOM Energy Illinois, LLC ("Applicant"), by its counsel, Michelle W. Harding, respectfully submits this Verified Response to the Administrative Law Judge's November 10, 2011 Ruling relating to XOOM Energy Illinois' Application to become certified as an Alternative Retail Electric Supplier ("ARES"), and states as follows:

**Qualifications of Agents and Contractors:**

As indicated in Applicant verified response submitted on November 18, 2011, Applicant and its parent company, XOOM Energy, LLC ("XOOM") "will enter into a service agreement...for the management of customer service, billing, and other back office functions (operations) of Applicant."

The above identified Service Agreement between Applicant and XOOM was executed on December 2, 2011 and is submitted herein.

Pursuant to Applicant's Operating Agreement, XOOM is the single-member manager of Applicant and its officers are authorized to conduct business, including executing binding agreement, on behalf of Applicant. A copy of Applicant's Operating Agreement is being submitted under a motion for protective order. A public redacted version of Applicant's Operating Agreement is attached hereto.

Applicant certifies that XOOM will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

**Technical Requirements:**

**Subsection 451.330(b)** – Applicant must have at least one individual on its staff with at least four years' experience buying and selling power energy in wholesale markets; and at least one year experience working for an entity that is either a member of PJM, a market participant in the Midwest ISO, or has a system operator certificate from NERC,

or has earned Certified Energy Procurement Professional status by the Association of Energy Engineers (or equivalent certification).

In accordance with Section 451.330(d) and the Service Agreement between Applicant and XOOM which is attached hereto, Applicant has submitted the name and resumes of Robert Blake, COO XOOM Energy, and Jason Loehde, Manager Pricing and Structure, XOOM Energy as evidence of Applicant's meeting the Technical Requirements of Subsection 451.330(b).

**Managerial Requirements:**

**Subsection 451.340**, an applicant shall be deemed to possess sufficient managerial capabilities to serve retail customers under Subpart D if, in management positions, it has:

- Three or more individuals with four or more years of experience with enterprise financial and administration responsibilities including profit and loss responsibilities,
- Three or more individuals with four years' experience buying and selling power and energy in wholesale markets, and
- Three or more individuals with four years electric systems operational experience.

In accordance with Section 451.340(a) and the Service Agreement between Applicant and XOOM which is attached hereto, Applicant has submitted the name and resumes of Tom Ulry, CEO XOOM Energy, Andrew Coppola, Vice President of Supply, XOOM Energy, Robert Blake, COO XOOM Energy, Jason Loehde, Manager Pricing and Structure XOOM Energy, and David Johnson, Manager of Energy Forecasting XOOM Energy as evidence of Applicant's meeting the Managerial Requirements of Subsection 451.340.

Respectfully submitted,

**XOOM ENERGY ILLINOIS, LLC**

By: Michelle W. Harding  
General Counsel, XOOM Energy, LLC  
Single Member manager, XOOM  
Energy Illinois, LLC

Michelle W. Harding  
Vice President, Secretary and  
General Counsel  
XOOM Energy, LLC  
13850 Ballantyne Corporate Place  
Suite 150



MASTER SERVICES AGREEMENT

*Public*

This MASTER SERVICES AGREEMENT (this "Agreement") is entered into as of this 2nd day of December, 2011 by and between XOOM Energy Illinois, LLC ("Retail Party"), and XOOM Energy, LLC, a Delaware corporation ("Service Provider").

RECITALS

WHEREAS, Retail Party is a wholly-owned Subsidiary of Service Provider.

WHEREAS, Service Provider may enter into transactions with a commodities supplier (the "Secured Supplier"), pursuant to which (i) the Secured Supplier may supply natural gas and electric power and related products and services to the Service Provider and (ii) Service Provider may supply natural gas and electric power and related products and services to the Retail Party and (iii) Retail Party may sell retail natural gas and electric power to Customers in the Service Territory.

WHEREAS, Retail Party and Service Provider will enter into that certain ISDA Master Agreement ("ISDA Agreement"), pursuant to which Service Provider will sell electricity, natural gas and renewable energy certificates to Retail Party pursuant to the terms and conditions thereof.

WHEREAS, Retail Party wishes to retain Service Provider to act as its agent to manage and service (i) the Portfolio (as defined below) and (ii) any other agreements entered by Retail Party (the "Contracts"), and Service Provider has agreed to provide such services on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1  
DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms have the following meanings:

**"Affiliate"** means, with respect to a specified entity, an entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such entity.

**"Agreement"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Annual Budget"** has the meaning ascribed thereto in Section

**"Business Day"** means a day on which commercial banks settle payments in New York, New York.

**“Customer Contract”** means a contract for supply of retail natural gas or electric power to a customer in the Service Territory.

**“Party”** means either the Retail Party or the Service Provider.

**“Person”** shall mean any individual, partnership, corporation, trust, limited liability company or other entity.

**“Portfolio”** means those certain Customer Contracts entered into by Retail Party.

**“Services”** means (i) all services described in Exhibit A and (ii) all additional management and administrative services required in connection with the operation and management of the business operations of Retail Party that are reasonably requested by Retail Party, including any (a) operations management, record keeping, legal services, financial services and support, insurance coverage, and other administrative service support, (b) management and administrative services with respect to performance under Retail Party’s retail natural gas and electric energy and related service sales contracts and the contracts providing the supply there-under provided that Service Provider shall have the right under Section 4.3 to an increase in the Annual Budget associated with such additional services; and provided further that once reflected in the Annual Budget, Exhibit A shall be deemed amended to include such additional services.

**“Service Territory”** means the State of Illinois.

**“Subsidiary”** with respect to any Person, means any corporation, partnership, trust, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the members of the board of directors or similar governing body is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

Section 1.2 Rules of Construction. For purposes of this Agreement (including all exhibits, schedules and amendments) (i) all references to Articles, Recitals and Sections are, unless otherwise expressly stated, references to Articles, Recitals and Sections of this Agreement, (ii) the headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement, (iii) the singular shall include the plural and vice versa, (iv) any reference to any statute, agreement or instrument in this Agreement shall be a reference to the same as amended, supplemented or re-enacted from time to time, (v) the word “may” shall be construed as permissive, and the word “shall” shall be construed as imperative, and (vi) the term “including” shall be construed as “including, but not limited to”. All exhibits and schedules to this Agreement shall be treated for all purposes as part of this Agreement.

**ARTICLE 2  
PURPOSE AND SCOPE OF AGREEMENT**

Section 2.1 Appointment. Subject to the terms and conditions of this Agreement, Retail Party hereby appoints and authorizes Service Provider to act as its exclusive agent to provide the Services to Retail Party, and Service Provider hereby agrees to such appointment and authorization on its behalf to take all actions and provide all Services associated with the business operations of Retail Party. Service Provider may, in the performance and provision of Services to the Retail Party, use such employees, independent contractors, service providers, designees or agents as it may see fit (any of the foregoing, the "Agents").

Section 2.2 Specific Responsibilities. Without limiting the generality of Section 2.1, Service Provider shall furnish, undertake, provide, or cause to be provided all labor and personnel sufficient to perform the Services as described in this Agreement and as may be directed by Retail Party.

Section 2.3 Power Scheduling. With respect to all power schedules in connection with Power Transactions under and as defined in the ISDA Agreement, Service Provider shall, or shall cause its Agents to, schedule only such quantity of power to the applicable Delivery Point (as defined in the ISDA Agreement) as will actually be used by Retail Party's retail customers for any delivery period under the applicable Power Transaction, and in no event shall Retail Party take title to any power in excess of the quantity as will actually be used by Retail Party's retail customers for any delivery period under the applicable Power Transaction. Service Provider will be exclusively responsible for all "forecasting" of power requirements for any Retail Entity's Customers in connection with Power Transactions with Retail Party under and as defined in the ISDA Agreement.

Section 2.4 Performance of Services. Service Provider shall perform, or shall cause the Agents to perform, the Services and fulfill its obligations under this Agreement in accordance with applicable law and in a proper and workmanlike manner in accordance with methods and practices customarily used in good and prudent management and with that degree of skill, diligence, foresight and prudence reasonably and ordinarily expected from and exercised by experienced service contractors engaged in similar activity under similar circumstances and conditions.

Section 2.5 Agents Providing Services. For the purpose of this Agreement, Service Provider shall be an independent contractor engaged by the Retail Party for a limited purpose, and no employee or independent contractor or agent of the Service Provider shall be a servant or employee of the Retail Party. Service Provider shall be responsible for payment of all Taxes arising out of the Service Provider activities under this Agreement, including, by way of illustration but not limitation, federal and state income taxes, sales and use taxes, social security taxes, unemployment insurance taxes, and any other taxes or business license fees as required.

**ARTICLE 3  
TERM AND TERMINATION**

Section 3.1 Term. The term of this Agreement shall commence as of the date hereof and shall continue in force through December 31, 2014 (“Initial Term”); provided that this Agreement shall automatically renew for successive one-year periods (“Renewal Term”) unless either Party provides the other Party with written notice of termination at least 180 days prior to the expiry of the Initial Term or Renewal Term, as appropriate. Notwithstanding the foregoing, this Agreement may be terminated prior the expiration of the Initial Term or any Renewal Term, as applicable, in accordance with Section 3.2 or 3.3.

Section 3.2 Termination by Service Provider. Service Provider may by written notice to the Retail Party at any time terminate this Agreement with or without cause; provided that such notice shall be given at least 30 days in advance of the termination of this Agreement.

Section 3.3 Termination by Retail Party. The Retail Party may by written notice to Service Provider at any time terminate this Agreement with or without cause; provided that such notice shall be given at least 30 days in advance of the termination of this Agreement.

Section 3.4 Termination Without Prejudice. Termination or expiry of this Agreement shall be without prejudice to the Party’s rights, obligations and/or liabilities which may have accrued before the effective date of such termination or expiry, provided that termination or expiry of this Agreement shall not relieve any Party hereto of liability that has accrued or arisen prior to the date of such termination or expiry.

**ARTICLE 4  
PAYMENT AND RECORDS**

Section 4.1 Payment. As full and complete compensation for Service Provider’s performance of the Services under this Agreement, Retail Party agrees to pay a monthly services fee in the amount equal to the amount set forth in the Annual Budget for such month (the “Services Fee”). Each month on or before the last day of the month, the Service Provider shall send an invoice to the Retail Party detailing the Services Fee for the previous month. Service Provider and Retail Party acknowledge and agree that the Services Fee shall be the total compensation payable to the Service Provider for performing the Services under this Agreement and that the Services Fee is intended to cover all expenses of the Service Provider incurred with respect to this Agreement. Service Provider and Retail Party agree that the Service Fee identified herein shall not apply until such time as the Retail Party’s gas and power state licensing applications have been approved and the Retail Party is providing those services to customers.

Section 4.2 Accounting Records. Service Provider shall maintain in accordance with generally accepted accounting practices all necessary books, records, accounts and other documents sufficient to accurately and completely reflect all costs incurred under this Agreement.

Section 4.3 Annual Budget. Beginning in calendar year 2012, the Service Provider shall submit to the Retail Party, thirty (30) days prior to the end of each calendar year, an annual budget that sets

forth the costs, fees, and expenses that are anticipated to be incurred by the Service Provider in performing the Services hereunder during the immediately following calendar year (the "Annual Budget"). The Annual Budget shall be derived from and include an annual plan setting forth the estimated schedule of Services performed, operational needs, and expenditures required by Service Provider to perform the Services. The initial Annual Budget is attached hereto as Exhibit B. In the event that during the effectiveness of an Annual Budget (i) Retail Party requests additional Services, or (ii) as a result of the growth of the Retail Party's business operations, needs for services materially deviates from the Services contemplated in the Annual Budget, then the Service Provider shall be entitled to a commercially reasonable adjustment to the Annual Budget then in effect to reflect the corresponding increase in the costs of providing additional Services.

## **ARTICLE 5 CONFIDENTIALITY AND PROPRIETARY INFORMATION**

Section 5.1 General Obligation of Confidentiality. Service Provider acknowledges that all non-public information or rights therein provided to, obtained or developed by Service Provider in the performance of the Services is the sole and exclusive property of the Retail Party. Each Party agrees to hold in confidence, to refrain from using for any purpose other than in connection with the performance of this Agreement, and to refrain from communicating to any other Person:

- (a) The terms and conditions of this Agreement, unless the prior written consent of the other Party has been obtained; and
- (b) All commercial, technical or other proprietary information or documentation furnished or disclosed to the receiving Party by the disclosing Party in connection with the performance of this Agreement or obtained by the receiving Party in connection with this Agreement, unless the prior written consent of the disclosing Party shall have been obtained.

Section 5.2 Permitted Disclosures. Notwithstanding any provision of Section 5.1 to the contrary, the receiving Party shall have the right to disclose such information or documents without any requirement for prior written consent of the disclosing Party in the situations described below:

- (a) To its directors, officers and employees and to the directors, officers and employees of its Affiliates who require such confidential information in connection with a party's performance under this Agreement;
- (b) To any outside professional consultants, tax advisors, Agents and contractors;

(c) To the extent required or requested by any applicable law or the regulations of any recognized stock exchange or governmental or regulatory authority or the relevant taxing authority of any applicable jurisdiction; or

(d) To the extent that such information has become generally available to the public other than by reason of a breach of this Agreement by the receiving Party.

Section 5.3 Term of Confidentiality Obligation. The confidentiality provisions of this Agreement shall become effective as of the date of this Agreement and shall continue in effect for three years following the date of termination of the Agreement.

## **ARTICLE 6 BUSINESS CONDUCT**

Section 6.1 Conduct of Service Provider. Service Provider agrees to (i) maintain adequate internal controls; (ii) properly record and report all transactions; and (iii) comply with the laws applicable to it. Service Provider is in no way authorized to take any action on behalf of the Retail Party that would result in an inadequate or inaccurate recording and reporting of assets, liabilities or any other transaction, or which would put the Retail Party in violation of its obligations under applicable law. Service Provider shall maintain financial and other records as provided in its records retention policies, but no records retention policy shall provide for retention of material financial records for less than the statute of limitations period as set forth in the applicable law.

## **ARTICLE 7 INDEMNIFICATION; LIMITATION OF LIABILITY**

Section 7.1 Indemnification of Retail Party. Service Provider agrees to indemnify and hold harmless the Retail Party from and against any and all third party claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Retail Party in connection with the Services hereunder.

Section 7.2 Indemnification of Service Provider. Retail Party agrees to indemnify and hold harmless Service Provider and its directors, officers, employees, agents, contractors and successors (the "Service Provider Indemnified Persons"), from and against any and all third party claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against any Service Provider Indemnified Person in connection with the Services hereunder.

Section 7.3 Limitation on Damages. The Parties hereby acknowledge and agree that that in no event shall either Party be liable to the other for any consequential, incidental or punitive damages.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

Section 8.1 Notices. Any notices required to be given pursuant to this Agreement shall be in English and delivered in person or by courier service or by any electronic means of transmitting written communications which provides written confirmation of complete transmission, and shall be sent to the other Parties at the relevant addresses below; provided that Parties may at any time on giving 14 Business Days prior notice to the other Parties, designate different or further addresses to which notices and other communications are thenceforth to be sent. Notices shall be effective upon receipt.

If to Retail Party:

XOOM Energy Illinois, LLC  
13850 Ballantyne Corporate Place  
Suite 150  
Charlotte, NC 28277  
Attention: Michelle Harding, General Counsel  
Telephone: 704-274-1420  
Facsimile: 704- 274-1430

If to Service Provider:

XOOM Energy, LLC  
13850 Ballantyne Corporate Place  
Suite 150  
Charlotte, NC 28277  
Attention: Michelle Harding, General Counsel  
Telephone: 704-274-1420  
Facsimile: 704- 274-1430

Section 8.2 Governing Law. This Agreement shall be governed by and construed in accordance with the law of New York, without giving effect to any conflict or choice of law provision that would result in the imposition of the law of a different jurisdiction.

Section 8.3 Assignment. This Agreement shall not be assigned without the written consent of the non-assigning Party, which shall not be unreasonably withheld; provided that Service Provider may, without the consent of Retail Party, pledge, encumber or collaterally assign its rights under this Agreement or accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements.

Section 8.4 Rights Cumulative. Except where explicitly stated to the contrary in this Agreement, all remedies, rights, undertakings, obligations or agreements of the Parties arising by law, this Agreement or otherwise shall be cumulative and none thereof shall be in limitation of any other remedy, right, undertaking, obligation or agreement of such Parties.

Section 8.5 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any

manner materially adverse to any Party. Upon such determination that any term, provision, covenant or restriction is invalid, void or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 8.6 Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 8.7 Entire Agreement. This Agreement, the schedules attached hereto, the documents to be executed hereunder, and the exhibits attached hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof, and all other representations and warranties of any kind or nature express or implied are specifically disclaimed by the parties to this Agreement.

Section 8.8 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be an original, but which together shall constitute one and the same instrument.

Section 8.9 Amendment. This Agreement may not be amended except by an instrument in writing signed by each of the Parties. No supplement, alternation or modification of this Agreement shall be binding unless executed in writing by the Parties.

Section 8.10 No Waiver. No waiver by any Party or any one or more defaults by another Party in the performance of this Agreement shall operate or be construed as a waiver of any future default or defaults by the same Party, whether of a like or of a different character. Except as expressly provided in the Agreement, no Party shall be deemed to have waived, released or modified any of its rights under this Agreement unless such Party has expressly stated, in writing, that it does waive, release or modify such right.

Section 8.11 No Third Party Beneficiaries. Nothing in the Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action remedy or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third party beneficiary contract.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

**XOOM ENERGY, LLC**

By:   
Name: THOMAS WILEY  
Title: CEO

**XOOM ENERGY ILLINOIS, LLC**

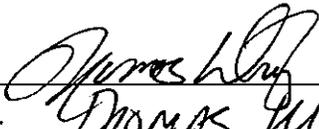
By:   
Name: THOMAS WILEY  
Title: CEO

Exhibit A

Description of "Services"

**(A) CONTRACT MANAGEMENT SERVICES**

Service Provider shall provide Retail Party the following services related to managing the obligations arising from and attendant to Retail Party's performance under the Contracts:

1. Manage and process all necessary retail customer enrollment/switching and provisioning requests associated with the Portfolio.
2. Manage and process all necessary retail customer enrollment/switching and provisioning requests associated with new Customers.
3. Coordinate with the Secured Supplier in accordance with any agreements between Service Provider and the Secured Supplier to schedule, forecast long-term and short-term hedges under variable time frames (month, week day, and hour-ahead), and settlement requirements and procedures necessary for the timely and effective purchase, sale, receipt or delivery of natural gas or power or other services under the Contracts.
4. Provide transportation nominations, transportation scheduling, transportation balancing, transportation imbalance reconciliation, proposals for utilization of excess transportation capacity through scheduling and relinquishment, through sales to third parties, and other general operational and planning advices.
5. Maintain records, confirmations and data concerning the transactions related to the Contracts consistent with the obligations of Retail Party under any agreements between Retail Party and Secured Supplier.
6. Verify all invoices and statements submitted to Retail Party under the Contracts.
7. Cause Retail Party to purchase, pursuant to any Retail Party and Service Provider, all quantities of natural gas or power or other services needed by Retail Party to reasonably supply the Portfolio.

**(B) BILLING AND COLLECTIONS SERVICES**

Services Provider shall provide or cause to be provided the following services for Retail Party in accordance with the Contracts:

1. Calculate and send the Customers' rates to the applicable utility distribution company (the "UDC").
2. Maintain support reporting of Retail Party's billed and unbilled revenue

3. Manage and assess late payment fees, ancillary charges, and other special TDSP charges pursuant to Customer provisioning.
4. Post and reflect payments in both the financial reporting and billing systems as related to Retail Party.
5. Monitor billing system to reflect renewals (including updating term and reflecting renewal rate).
6. Monitor rate updates for variable rate products under the Customer Contracts.
7. Evaluate payment trends and seek to offer value-added services and/or products.

**(C) FINANCIAL REPORTING**

Service Provider shall provide Retail Party the following financial reporting information and services, each prepared in accordance with US GAAP for Retail Party independent from Service Provider or any third party;

1. *Revenue* – total billed revenue for each Customer Contract as well as a net unbilled amount for the current accounting period.
2. *Accounts Receivable* – aging reports for all Customer Contracts, including bad debts information as required.
3. *Cost of Goods Sold* – provide calculations and supporting documentation for derivation of a unit cost figure.
4. *Cash Collections* – a report accumulating the cash receipts by Customer, for the Portfolio and Retail Party in aggregate.
5. *Tax Liabilities* – information sufficient to record, process and remit the necessary taxes for the Portfolio, and for the tax liability of direct and indirect owners of Retail Party
6. *Monthly Financial Accounting Reconciliation* – calculations and supporting documentation to reconcile the amounts paid, owed or otherwise by Retail Party during such month.

**(D) TECHNOLOGY AND IT SUPPORT**

1. Maintain and host environment for software processing of Retail Party's operations as detailed on Exhibit C ("Business Systems").
2. Maintain all Retail Party transactions separate and apart from those of Service Provider.
3. Maintain and regularly update records of all system user names and passwords, accessible data and reporting tools and functions.

4. Maintain a master list of all users and third party vendors, contact information and uses to the same.

**(E) RECORDS**

Preserve all records related to the Services and cause such records to be filed in the filing system of Retail Party. Such records shall include: Customer ID information (contracts), operating records, invoices, bills sent, and payments made and received under the Customer Contracts.

**(F) CUSTOMER SUPPORT**

1. Provide a call center to handle customer service issues for Customers.
2. Maintain call center statistics and customer options, as related to bill payment value-added options.
3. Preserve records of call driver statistics and seek to report/identify trends and address Customer issues accordingly.
4. Consider automation possibilities where applicable (i.e. bill payment options, market-related transactions) to provide increased
5. Use data to attempt to minimize Customer turnover rate.

Exhibit B

Initial Annual Budget

Service Provider will incur costs related to the services provided to the Retail Party in various forms. Costs incurred by third party vendors shall be billed to the Retail Party either as a direct cost applicable to the Services provided to the Retail party or on a prorated bases whereby the Service Provider shall prorate the Retail Party's portion of the total costs incurred based upon the number of accounts served and/or transactions supported, as may be deemed best and appropriate by the Service Provider. The direct costs and/or prorated costs to the Retail Party may be adjusted from time to time by the Service Provider where the costs incurred from the third party are based on the aggregate number of accounts served and/or transactions supported across retail parties being serviced by the Service Provider.

Each month the Service Provider will charge a Management Fee that is derived from an allocation of internal cost associated with providing administrative and management services to the Retail Party. The Management Fee may fluctuate based on the total number of retail parties being serviced by the Service Provider at any given time and the resources needed to provide adequate levels of support to all of the retail parties.

Exhibit C

Business Systems

The following systems are procured by Service Provider from third party vendors pursuant to services or license agreements. Service Provider will provide services to Retail Party subject to and pursuant to the limits of such vendor agreements.

PPL Solutions – back office services

Ventyx – supply capture & load forecasting

Quick Books - accounting

Public

# XOOM ENERGY ILLINOIS, LLC

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this "Agreement") for XOOM ENERGY ILLINOIS, LLC (the "Company"), is made and set forth as of the 25<sup>th</sup> day of May, 2011, by and between (i) the Company and (ii) Xoom Energy, LLC, a Delaware limited liability company and the sole member of the Company (the "Member").

The Member has agreed to organize and operate a limited liability company in accordance with the terms, and subject to the conditions, set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, intending legally to be bound, it is agreed as follows:

### Article I

#### Defined Terms

The following capitalized terms, as used herein, shall have the meanings specified in this Article 1. Other terms are defined in the text of this Agreement, and shall have the meanings respectively ascribed to them.

**"Act"** means the Illinois Limited Liability Company Act as amended from time to time.

**"Adjusted Capital Account Deficit"** means, with respect to any Interest Holder, the deficit balance, if any in the Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments.

- (i) the deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to Section 5.4.2, or is deemed obligated to restore pursuant to Regs. §1.704-2(b) (2) (ii) (c); and
- (ii) the deficit shall be increased by the items described in Regs. §§1.704-1(b) (2) (ii) (d) (4), (5), and (6).

**"Adjusted Capital Balance"** means, as of any day, an Interest Holder's total Capital Contributions less all amounts actually distributed to the Interest Holder pursuant to Sections 5.2.3.4 and 5.4 hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferee to the extent the Adjusted Capital Balance relates to the Interest transferred.

**"Affiliate"** means, with respect to any Member; any Person: (i) which owns more than fifty percent (50%) of the voting interests in the Member; or (ii) in which the Member owns more than fifty percent (50%) of the voting interests; or (iii) in which more than fifty percent (50%) of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

**"Agreement"** means this Agreement, as amended from time to time.

**"Capital Account"** means the account maintained by the Company for each Interest Holder in accordance with the following provisions:

(i) an Interest Holder's Capital Account shall be increased by the Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder's distributive share of Profit and any item in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of Article V (other than Section 5.3.3); and

(ii) an Interest Holder's Capital Account shall be decreased by the amount of money and the fair market value of any Company property distributed to the Interest Holder, the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company), the Interest Holder's distributive share of loss and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Article V (other than Section 5.3.3). Notwithstanding the foregoing, an Interest Holder's Capital Account shall not be decreased by the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company) to the extent that the amount of such Interest Holder's Capital Contribution has been reduced thereby.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. If the book value of Company property is adjusted pursuant to Section 5.3.3, the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regs. §1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

**"Capital Contribution"** means the total amount of each and the fair market value of any other assets contributed (or deemed contributed under Regs. §1.704-1(b) (2) (iv) (d) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

**"Capital Proceeds"** means the gross receipts received by the Company from the Capital Transaction.

**"Capital Transaction"** means any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damage awards, and insurance proceeds.

**"Cash Flow"** means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements and replacements, as determined by the General Managers. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

**"Code"** means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

**"Company"** means the limited liability company formed in accordance with this Agreement.

**"Interest"** shall mean a Member's share of the profits and losses of the Company and the right to receive distributions from the Company, determined in terms of the proportion that the

number of Units of any class issued to a Member bears to the aggregate of Units of all classes of ownership of the Company issued and outstanding from time to time.

**"Interest Holder"** means any Person who holds an Interest, whether as a Member or as an unadmitted assignee of a Member.

**"IL State"** means the Secretary of State of Illinois.

**"Majority Vote of the Members"** shall mean the vote of those Members who are entitled to cast more than 50% of the aggregate of all votes entitled to be cast on a matter.

**"Manager"** means Xoom Energy, LLC (acting in that capacity) and any other Person designated in Article VI hereof to oversee the day to day business affairs of the Company.

**"Member"** means Xoom Energy, LLC (acting in that capacity) and any Person who subsequently is admitted as a Member of the Company.

**"Member Loan Nonrecourse Deductions"** means any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regs. §1.704-2(i).

**"Membership Rights"** means all of the rights of a Member in the Company, including a Member's (i) Interest; (ii) right to inspect the Company's books and records; (iii) right to participate in the management of and vote on matters coming before the Company, as set forth herein; and (iv) unless this Agreement or the Articles of Organization provide to the contrary, right to act as an agent of the Company.

**"Minimum Gain"** has the meaning set forth in Regs. §1.704-2(d). Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under Code §704(b).

**"Negative Capital Account"** means a Capital Account with a balance of less than zero.

**"Nonrecourse Deductions"** has the meaning set forth in Regs. §1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regs. §1.704-2(c).

**"Nonrecourse Liability"** means any liability of the Company with respect to which no Member has personal liability determined in accordance with Code §752 and the Regulations promulgated thereunder.

**"Percentage"** means the ratio each Member's Units bear to the aggregate of all outstanding Units.

**"Person"** means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

**"Positive Capital Account"** means a Capital Account with a balance greater than zero.

**"Profit"** and **"Loss"** means, for each taxable year of the Company (or other period for which Profit or Loss must be computed) the Company's taxable income or loss determined in accordance with Code §703(a), with the following adjustments:

(i) all items of income, gain, loss deduction, or credit required to be stated separately pursuant to Code §703(a)(1) shall be included in computing taxable income or loss;

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;

(iii) any expenditures of the Company described in Code §705(a)(2)(B) (or treated as such pursuant to Regs. §1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;

(iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes.

(v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 5.3 hereof shall not be taken into account in computing Profit or Loss.

**"Regulations"** or **"Regs."** means the income tax regulations, including any temporary regulations, from time to time promulgated under the code.

**"Supermajority Vote of the Members"** means the vote of those Members who are entitled to cast more than 75% of the aggregate of all votes entitled to be cast on a matter.

**"Transfer"** means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means, voluntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

**"Withdrawal"** means a Member's involuntary disassociation from the Company by any means, including the occurrence of any of the following events:

(i) if the Member is an individual, the Member's adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property.

(ii) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(iii) if proceedings in bankruptcy, or for reorganization of the Member under the United States Bankruptcy Code (as amended) or any part thereof, or under any other applicable laws for the relief of debtors shall be commenced against the Member and shall not be discharged within sixty (60) days of their commencement;

(iv) if a receiver or trustee shall be appointed for the Member or for any substantial part of the Member's assets, or any proceedings shall be instituted for the dissolution or the full or partial liquidation of the Member (except with respect to any such appointments requested or instituted by the Member); or

(v) any other involuntary sale, hypothecation, pledge assignment, or attachment.

## Article II

### Formation

2.1 Organization. The Member has organized a limited liability company pursuant to the Act and the provisions of this Agreement and, for that purpose, and has caused Articles of Organization in the form attached as Exhibit A to be executed and filed for record with IL State on March 24, 2011.

2.2 Name of the Company. The name of the Company is "Xoom Energy Illinois, LLC". The Company may do business under that name and under any other name or names which the Manager selects. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file such certificates as may be required by law.

2.3 Purpose. The Company is organized (a) to engage in the retail sale of gas and electric energy and related services; and (b) to engage in, promote, conduct and carry on any other lawful acts or activities for which limited liability companies may be organized under the Act.

2.4 Term. The term of the Company shall begin on March 24, 2011, and shall continue in existence until April 1, 2037, unless its existence is sooner terminated pursuant to this Agreement, or unless it is extended by the Members.

2.5 Principal Office. The principal offices of the Company in the State of Illinois, and elsewhere, shall be at locations determined from time to time, by the Manager.

2.6 Resident Agent. The name and address of the Company's resident agent in the State of Illinois is The Illinois Corporation Services Company, 801 Adlai Stevenson Dr., Springfield, IL 62703, or such other Person who may be designated as such by the Manager, from time to time.

### Article III

#### Capital Accounts

3.1

3.2

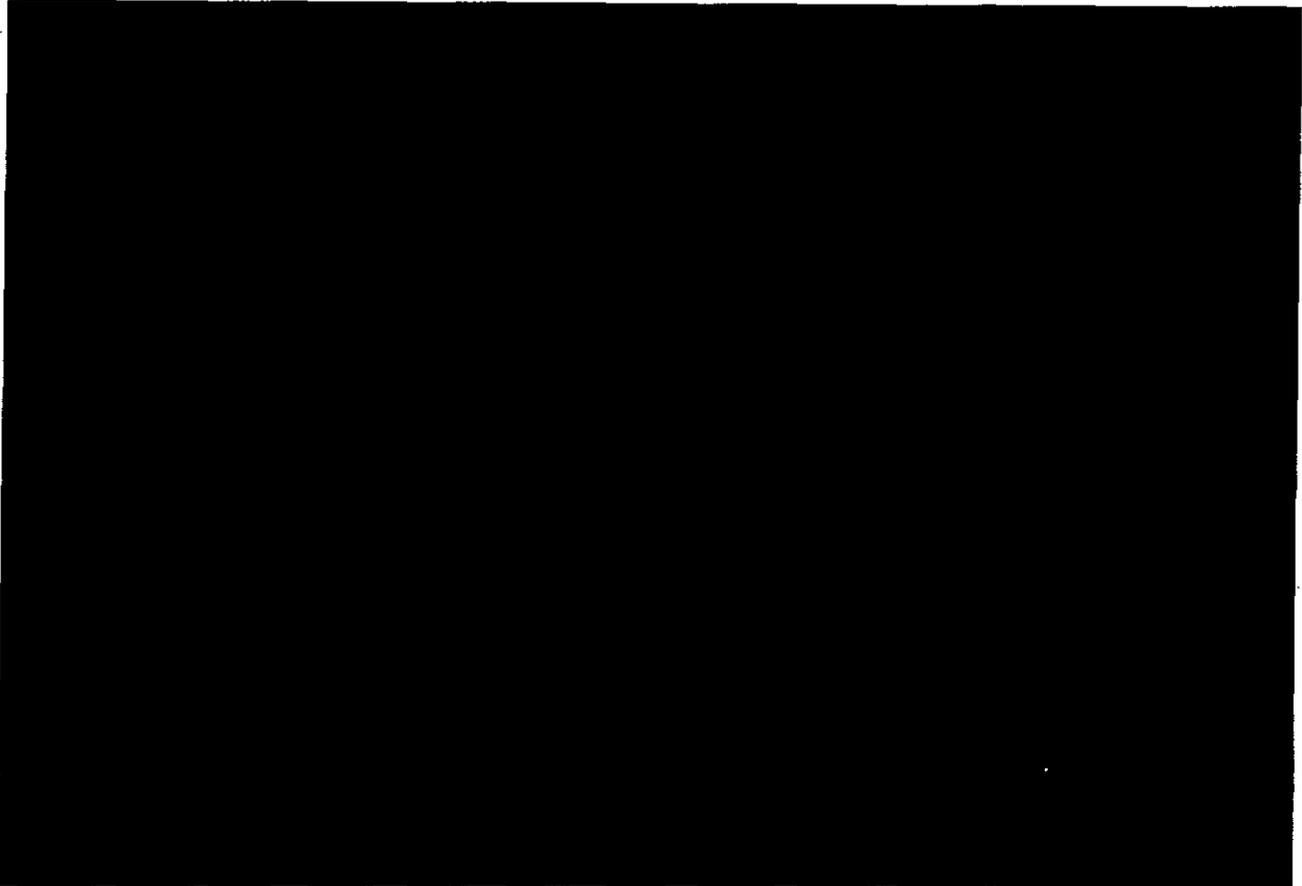
3.3

3.4

3.5

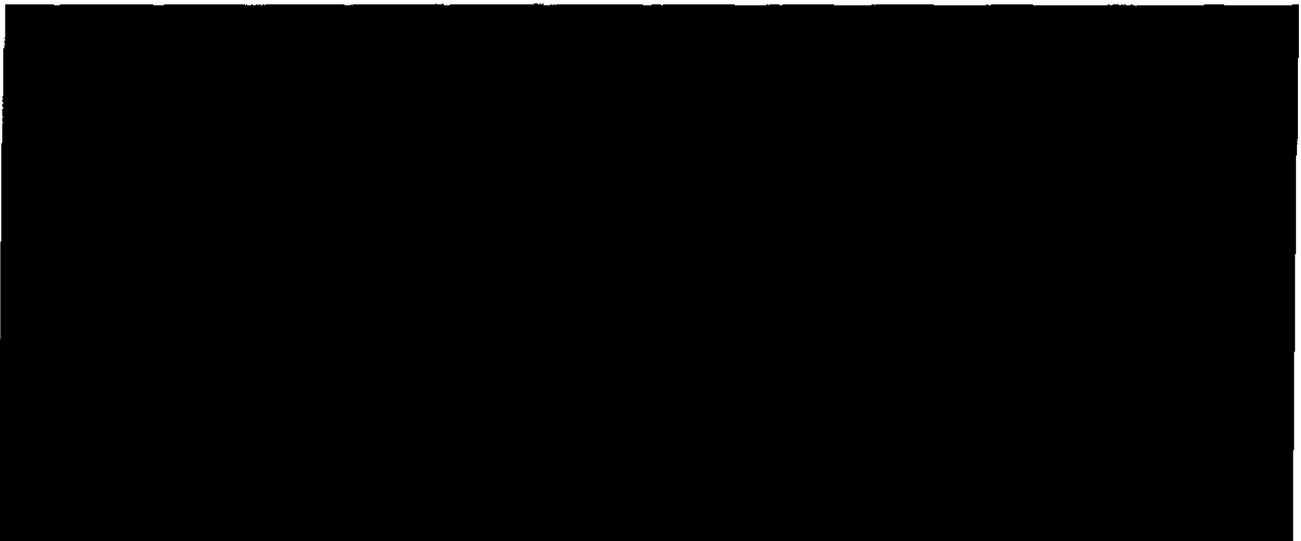
**Article IV**

**Units of Ownership**

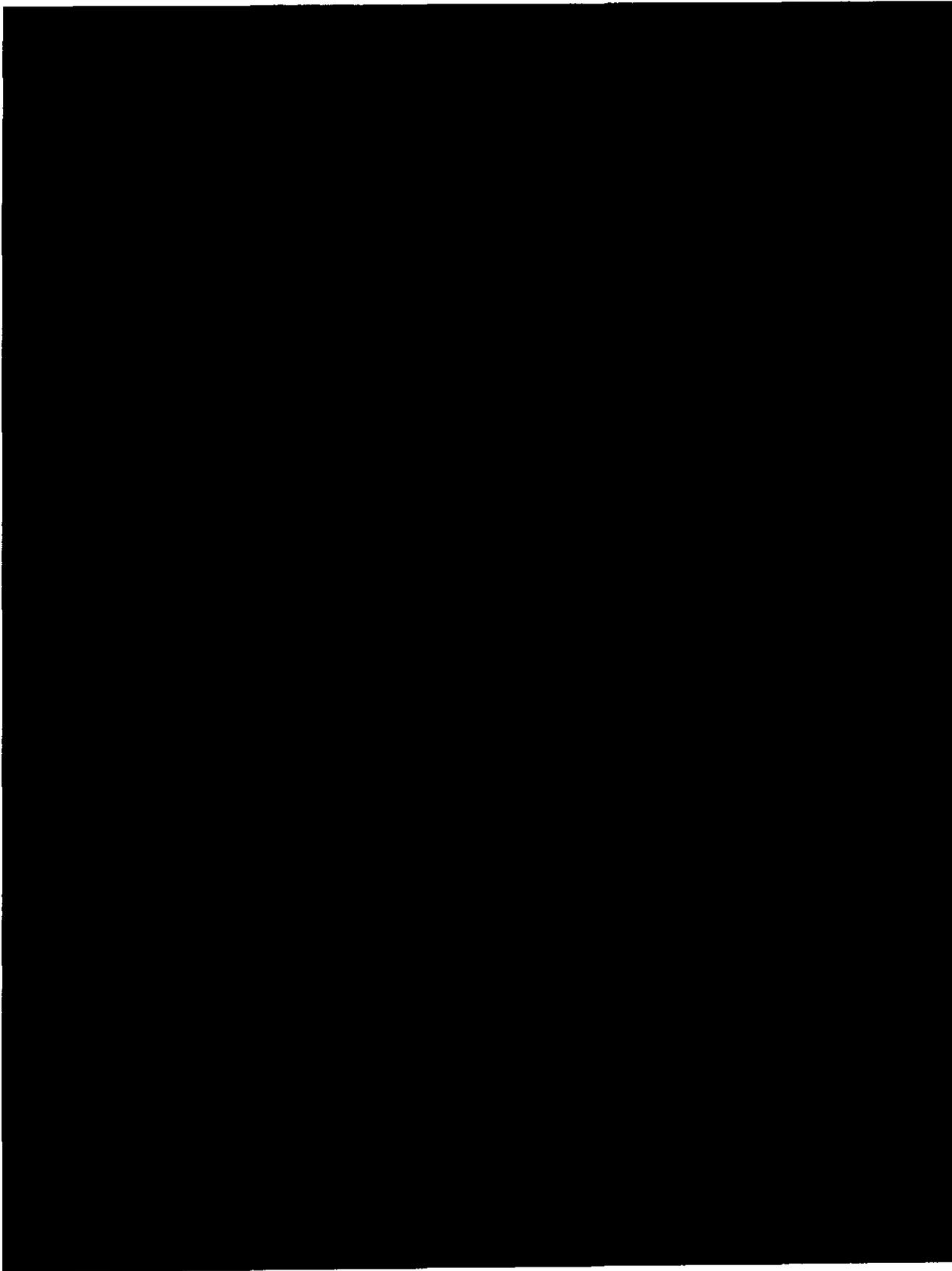


**Article V**

**Profit, Loss, and Distributions**









**Article VI**

**Management; Transfers Among Members**

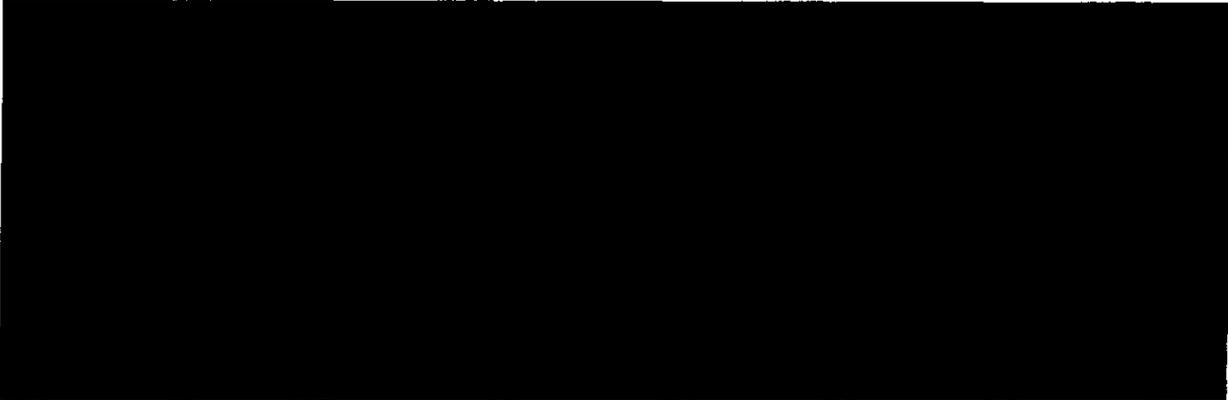
6.1 Management. The Company shall be managed by Xoom Energy, LLC as Manager. Except as otherwise provided in this Agreement, the Manager (through its designated and duly authorized officers acting in such capacity), shall have the right to act for and bind the Company in the ordinary course of business.





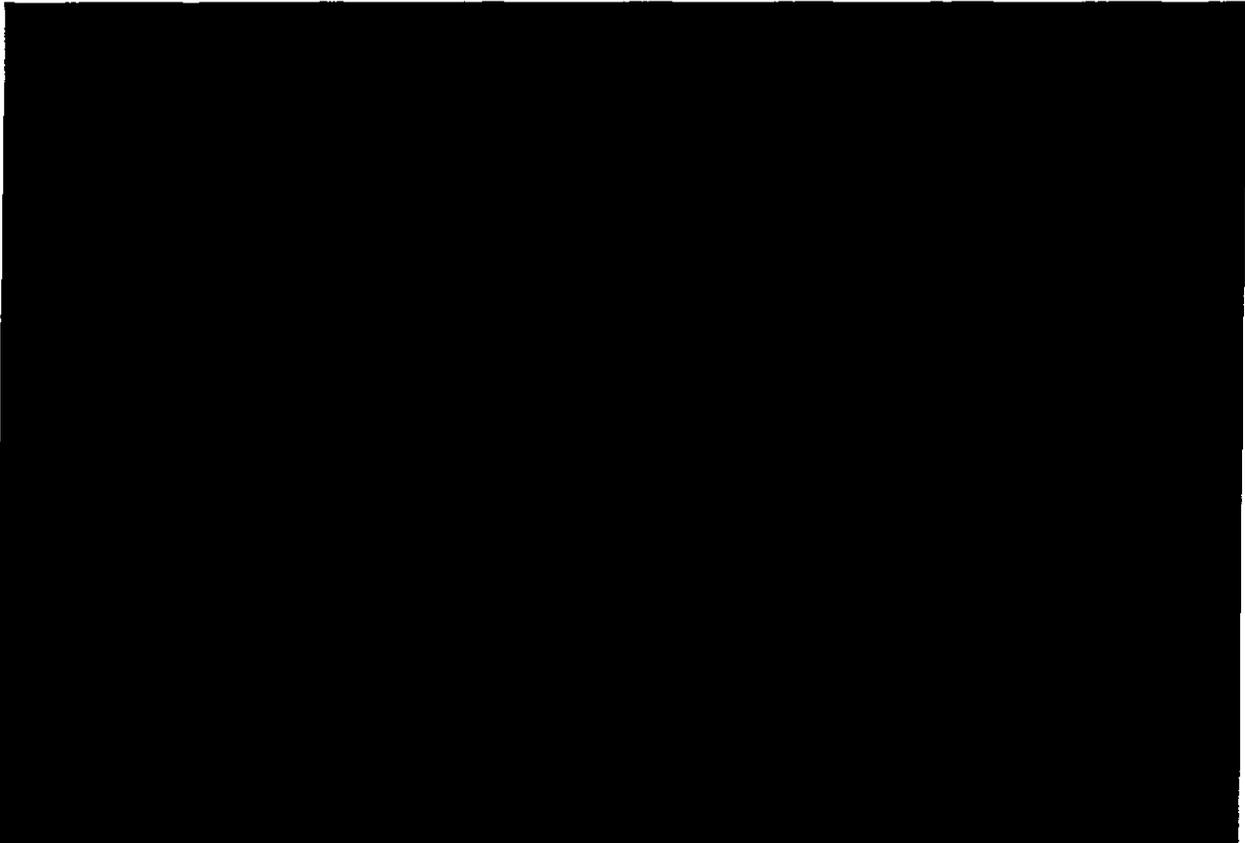
**Article VII**

**Members' Rights**



**Article VIII**

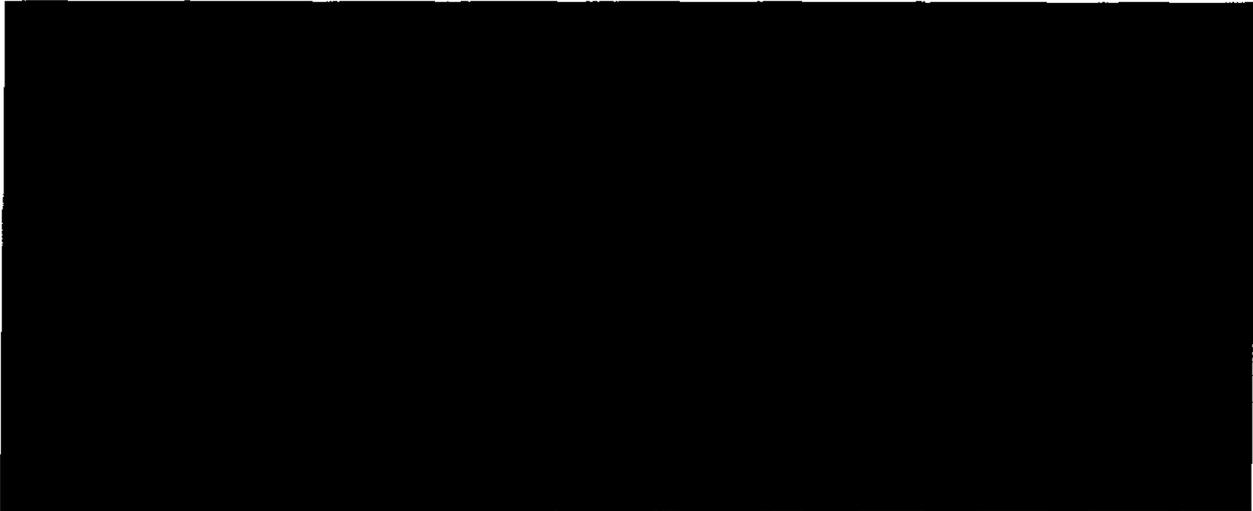
**Transfer of Interests to Third Parties**





**Article IX**

**Compensation, Reimbursements and Fees**



**Article X**

**Dissolution of the Company**





## Article XI

### Accounting Provisions

11.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

11.2 Tax Matters Partner. Xoom Energy, LLC, as the Member, shall be the Company's tax matters partner and shall have all powers and responsibilities provided in Code Section 5221, et seq.



## Article XII

### Reports



**Article XIII**

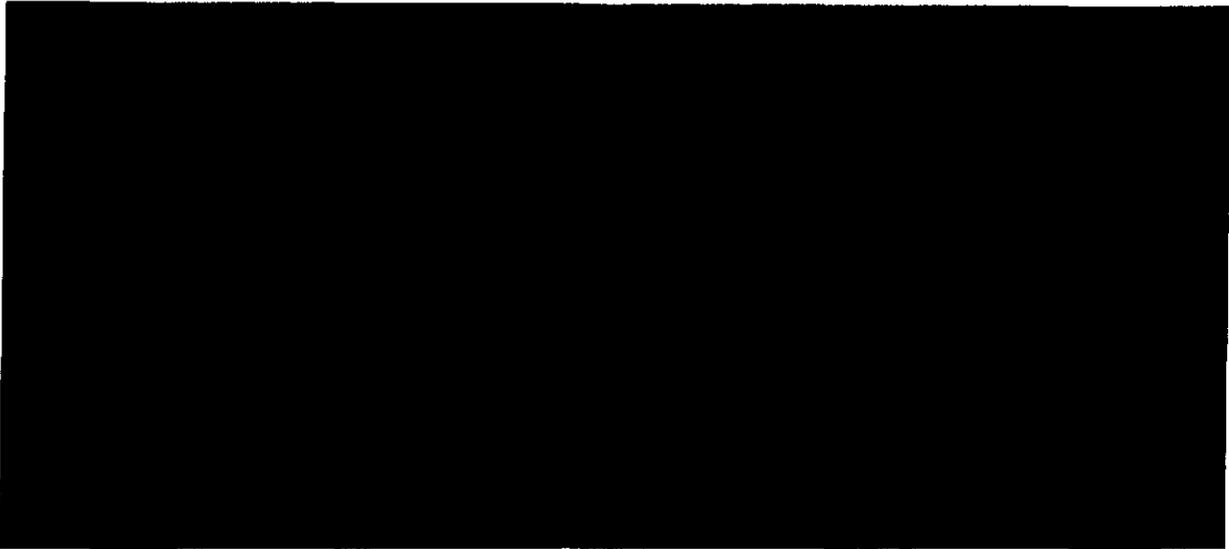
**Independent Activities;  
Transactions with Interested Parties**



**Article XIV**

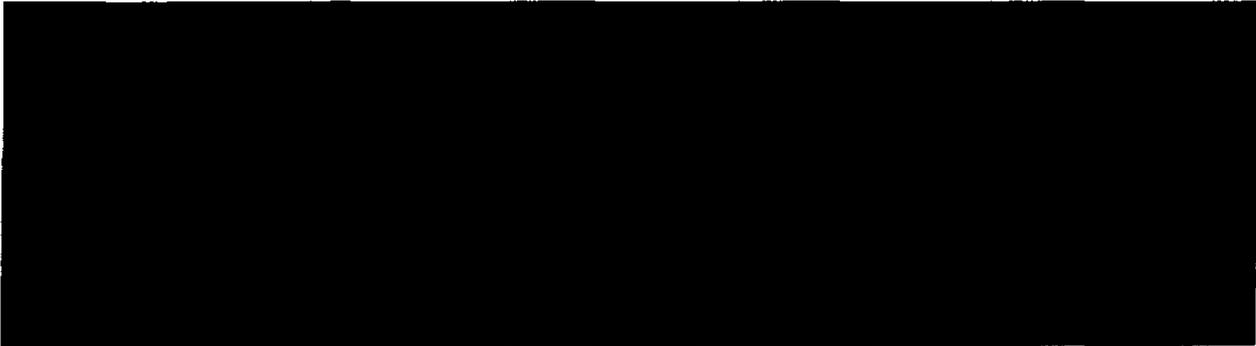
**Exculpation and Indemnification**





## Article XV

### Assurances



## Article XVI

### Amendments

This Agreement shall not be amended except by a written document, expressly for that purpose, approved and signed by all Members.

## Article XVII

### Miscellaneous

17.1 . Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall first be hand delivered, e-mailed or faxed and then confirmed, on the same day for delivery the next day, by reputable overnight courier service, return receipt requested, postage prepaid, and addressed to a Member. Notice shall be deemed to have been duly given or made on the date delivered. Any Member may change its address by giving notice in writing stating its new address to the other Members. Commencing on the fifth day after the giving of such notice, such newly designated address shall be such Member's address for the purposes of all notices or other communications required or permitted to be given pursuant to this Agreement. Notices to the Company shall be deemed made if given to all Members.

17.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of Illinois. Any action against the Company or the Members brought by any Member with regard to this Agreement or the rights and obligations of the Members or the Company under this Agreement shall be brought in the United States District Court for the Middle District of North Carolina located in Greensboro, NC. The parties hereby irrevocably consent to the jurisdiction of the aforementioned court and agree that service of process of the aforementioned court may be served upon any of them outside of North Carolina in the same manner as process may be served upon them within North Carolina.

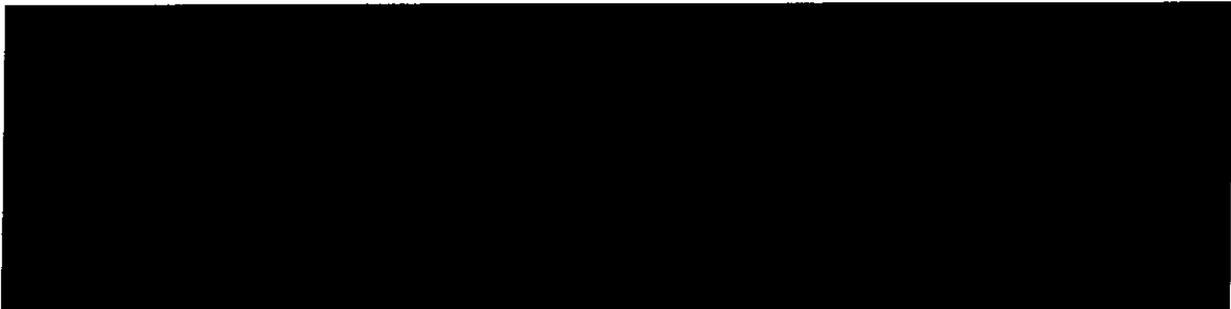
17.3 Gender. The use of any gender herein shall be deemed to be or include the other genders and the use of the singular herein shall be deemed to be or include the plural (and Vice-versa), wherever appropriate. The headings herein are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope of this Agreement, or the intent of the provisions thereof.

17.4 Binding Effect. This Agreement shall be binding upon, and insure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns, except as otherwise expressly provided herein.

17.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together constitute one and the same instrument.



17.7 Securities Laws Restrictions. The Interests described in this Agreement have not been registered under the Securities Act of 1933, as amended (the "Act") or under the securities laws of the State or any other jurisdiction (the "State Acts"). Consequently, these Interests may not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of, except in accordance with the provisions of the Act, the State Acts and this Agreement.



17.10 Currency. All payments hereunder, including, without limitation, capital contributions and distributions, shall be in U.S. dollars.

17.11 Entire Agreement. This Agreement contains a complete statement of all arrangements among the parties with respect to the Company and cannot be changed or terminated orally or in any manner other than as provided in Article XVI. There are no representations, agreements, arrangements or understandings (including but not limited to any

payments to any party hereto) oral or written, between or among the parties relating to the subject matter of this Agreement which are not fully expressed in this Agreement.

[signatures on next page]

IN WITNESS WHEREOF, the undersigned has executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

"Member"

"Company"

XOOM ENERGY, LLC

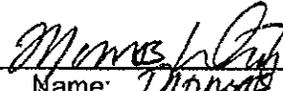
XOOM ENERGY ILLINOIS, LLC

By:

  
Name: Thomas L. Wiley  
Title: CEO

a duly authorized officer of Xoom Energy, LLC, acting on behalf of the Member, in that capacity

By:

  
Name: Thomas L. Wiley  
Title: CEO

a duly authorized officer of Xoom Energy, LLC, acting on behalf of the Manager, in that capacity

**Exhibit A**  
**To the**  
**Operating Agreement of**  
**Xoom Energy Illinois, LLC**

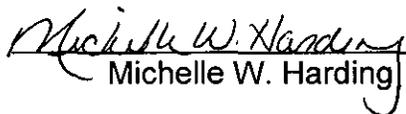
**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

XOOM Energy Illinois, LLC	)	Docket No. 11-0705
Application for Certificate of Service Authority	)	
To Be an Alternative Retail Electric Supplier	)	

**NOTICE OF FILING**

Please take notice that on December 2, 2011, the undersigned, an attorney, caused the Verified Supplemental Response to the Administrative Law Judge's November 10, 2011 Ruling, and attachments thereto, to be filed on behalf of XOOM Energy Illinois, LLC with the Chief Clerk of the Illinois Commerce Commission, in the above-referenced proceeding.

Dated: December 2, 2011

  
Michelle W. Harding

**CERTIFICATE OF SERVICE**

I, Michelle W. Harding, hereby certify that on December 2, 2011, copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list:

Michael L. Wallace  
Administrative Law Judge  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701  
[mwallace@icc.illinois.gov](mailto:mwallace@icc.illinois.gov)

Phil Hardas  
Administrative Law Judge's Assistant  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701  
[phardas@icc.illinois.gov](mailto:phardas@icc.illinois.gov)

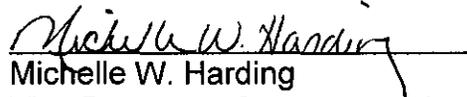
Yassir Rashid  
Administrative Law Judge's Assistant  
Illinois Commerce Commission

Thomas Ulry  
Chief Executive Officer  
XOOM Energy, LLC

---

527 East Capitol Avenue  
Springfield, Illinois 62701  
[yrashid@icc.illinois.gov](mailto:yrashid@icc.illinois.gov)

13850 Ballantyne Corporate Place, Ste. 150  
Charlotte, North Carolina

  
Michelle W. Harding  
Vice President, Secretary and  
General Counsel  
XOOM Energy, LLC  
13850 Ballantyne Corporate Place  
Suite 150  
Charlotte, North Carolina 28277  
Telephone: (704) 274-1420  
Facsimile: (704) 274-1430  
E-mail: [mharding@xoomenergy.com](mailto:mharding@xoomenergy.com)

*Confidential*

# XOOM ENERGY ILLINOIS, LLC

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this "Agreement") for XOOM ENERGY ILLINOIS, LLC (the "Company"), is made and set forth as of the 25<sup>th</sup> day of May, 2011, by and between (i) the Company and (ii) Xoom Energy, LLC, a Delaware limited liability company and the sole member of the Company (the "Member").

The Member has agreed to organize and operate a limited liability company in accordance with the terms, and subject to the conditions, set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, intending legally to be bound, it is agreed as follows:

### Article I

#### Defined Terms

The following capitalized terms, as used herein, shall have the meanings specified in this Article 1. Other terms are defined in the text of this Agreement, and shall have the meanings respectively ascribed to them.

**"Act"** means the Illinois Limited Liability Company Act as amended from time to time.

**"Adjusted Capital Account Deficit"** means, with respect to any Interest Holder, the deficit balance, if any in the Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments.

(i) the deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to Section 5.4.2, or is deemed obligated to restore pursuant to Regs. §1.704-2(b) (2) (ii) (c); and

(ii) the deficit shall be increased by the items described in Regs. §§1.704-1(b) (2) (ii) (d) (4), (5), and (6).

**"Adjusted Capital Balance"** means, as of any day, an Interest Holder's total Capital Contributions less all amounts actually distributed to the Interest Holder pursuant to Sections 5.2.3.4 and 5.4 hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferee to the extent the Adjusted Capital Balance relates to the Interest transferred.

**"Affiliate"** means, with respect to any Member; any Person: (i) which owns more than fifty percent (50%) of the voting interests in the Member; or (ii) in which the Member owns more than fifty percent (50%) of the voting interests; or (iii) in which more than fifty percent (50%) of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

**"Agreement"** means this Agreement, as amended from time to time.

**"Capital Account"** means the account maintained by the Company for each Interest Holder in accordance with the following provisions:

2011 DEC -7 A 11: 05  
CLERKS OFFICE  
ILLINOIS COMMERCE  
COMMISSION

(i) an Interest Holder's Capital Account shall be increased by the Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder's distributive share of Profit and any item in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of Article V (other than Section 5.3.3); and

(ii) an Interest Holder's Capital Account shall be decreased by the amount of money and the fair market value of any Company property distributed to the Interest Holder, the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company), the Interest Holder's distributive share of loss and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Article V (other than Section 5.3.3). Notwithstanding the foregoing, an Interest Holder's Capital Account shall not be decreased by the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company) to the extent that the amount of such Interest Holder's Capital Contribution has been reduced thereby.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. If the book value of Company property is adjusted pursuant to Section 5.3.3, the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regs. §1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

**"Capital Contribution"** means the total amount of each and the fair market value of any other assets contributed (or deemed contributed under Regs. §1.704-1(b) (2) (iv) (d) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

**"Capital Proceeds"** means the gross receipts received by the Company from the Capital Transaction.

**"Capital Transaction"** means any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damage awards, and insurance proceeds.

**"Cash Flow"** means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements and replacements, as determined by the General Managers. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

**"Code"** means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

**"Company"** means the limited liability company formed in accordance with this Agreement.

**"Interest"** shall mean a Member's share of the profits and losses of the Company and the right to receive distributions from the Company, determined in terms of the proportion that the

number of Units of any class issued to a Member bears to the aggregate of Units of all classes of ownership of the Company issued and outstanding from time to time.

**"Interest Holder"** means any Person who holds an Interest, whether as a Member or as an unadmitted assignee of a Member.

**"IL State"** means the Secretary of State of Illinois.

**"Majority Vote of the Members"** shall mean the vote of those Members who are entitled to cast more than 50% of the aggregate of all votes entitled to be cast on a matter.

**"Manager"** means Xoom Energy, LLC (acting in that capacity) and any other Person designated in Article VI hereof to oversee the day to day business affairs of the Company.

**"Member"** means Xoom Energy, LLC (acting in that capacity) and any Person who subsequently is admitted as a Member of the Company.

**"Member Loan Nonrecourse Deductions"** means any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regs. §1.704-2(l).

**"Membership Rights"** means all of the rights of a Member in the Company, including a Member's (i) Interest; (ii) right to inspect the Company's books and records; (iii) right to participate in the management of and vote on matters coming before the Company, as set forth herein; and (iv) unless this Agreement or the Articles of Organization provide to the contrary, right to act as an agent of the Company.

**"Minimum Gain"** has the meaning set forth in Regs. §1.704-2(d). Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under Code §704(b).

**"Negative Capital Account"** means a Capital Account with a balance of less than zero.

**"Nonrecourse Deductions"** has the meaning set forth in Regs. §1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regs. §1.704-2(c).

**"Nonrecourse Liability"** means any liability of the Company with respect to which no Member has personal liability determined in accordance with Code §752 and the Regulations promulgated thereunder.

**"Percentage"** means the ratio each Member's Units bear to the aggregate of all outstanding Units.

**"Person"** means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

**"Positive Capital Account"** means a Capital Account with a balance greater than zero.

**"Profit"** and **"Loss"** means, for each taxable year of the Company (or other period for which Profit or Loss must be computed) the Company's taxable income or loss determined in accordance with Code §703(a), with the following adjustments:

(i) all items of income, gain, loss deduction, or credit required to be stated separately pursuant to Code §703(a)(1) shall be included in computing taxable income or loss;

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;

(iii) any expenditures of the Company described in Code §705(a)(2)(B) (or treated as such pursuant to Regs. §1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;

(iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes.

(v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 5.3 hereof shall not be taken into account in computing Profit or Loss.

**"Regulations"** or **"Regs."** means the income tax regulations, including any temporary regulations, from time to time promulgated under the code.

**"Supermajority Vote of the Members"** means the vote of those Members who are entitled to cast more than 75% of the aggregate of all votes entitled to be cast on a matter.

**"Transfer"** means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means, voluntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

**"Withdrawal"** means a Member's involuntary disassociation from the Company by any means, including the occurrence of any of the following events:

(i) if the Member is an individual, the Member's adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property.

(ii) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(iii) If proceedings in bankruptcy, or for reorganization of the Member under the United States Bankruptcy Code (as amended) or any part thereof, or under any other applicable laws for the relief of debtors shall be commenced against the Member and shall not be discharged within sixty (60) days of their commencement;

(iv) if a receiver or trustee shall be appointed for the Member or for any substantial part of the Member's assets, or any proceedings shall be instituted for the dissolution or the full or partial liquidation of the Member (except with respect to any such appointments requested or instituted by the Member); or

(v) any other involuntary sale, hypothecation, pledge assignment, or attachment.

## Article II

### Formation

2.1 Organization. The Member has organized a limited liability company pursuant to the Act and the provisions of this Agreement and, for that purpose, and has caused Articles of Organization in the form attached as Exhibit A to be executed and filed for record with IL State on March 24, 2011.

2.2 Name of the Company. The name of the Company is "Xoom Energy Illinois, LLC". The Company may do business under that name and under any other name or names which the Manager selects. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file such certificates as may be required by law.

2.3 Purpose. The Company is organized (a) to engage in the retail sale of gas and electric energy and related services; and (b) to engage in, promote, conduct and carry on any other lawful acts or activities for which limited liability companies may be organized under the Act.

2.4 Term. The term of the Company shall begin on March 24, 2011, and shall continue in existence until April 1, 2037, unless its existence is sooner terminated pursuant to this Agreement, or unless it is extended by the Members.

2.5 Principal Office. The principal offices of the Company in the State of Illinois, and elsewhere, shall be at locations determined from time to time, by the Manager.

2.6 Resident Agent. The name and address of the Company's resident agent in the State of Illinois is The Illinois Corporation Services Company, 801 Adlai Stevenson Dr., Springfield, IL 62703, or such other Person who may be designated as such by the Manager, from time to time.

## Article III

### Capital Accounts

3.1 Capital Contributions. The Member shall make such contributions to the capital of the Company, on such terms and conditions, as the Member may from time to time determine, in the Member's sole discretion. The Member shall have no duty or obligation to make any other contributions to the capital of the Company for any purpose. All Capital contributions by the Member shall be recorded on the books and records of the Company. Property owned by the Member, in no event, shall be deemed owned by the Company, unless there is a writing affirmatively evidencing the Member's intent to transfer title of such property to the Company.

3.2 No Interest on Capital Contributions. Interest Holders shall not be paid interest on their Capital Contributions.

3.3 Return of Capital Contributions. Except as otherwise provided in this Agreement, no Interest Holder shall have the right to receive the return of any Capital Contribution.

3.4 Form of Return of Capital. If an Interest Holder is entitled to receive a return of a Capital Contribution, the Company may distribute cash, notes, property, or a combination thereof to the Interest Holder in return of the Capital Contribution.

3.5 Capital Accounts. A separate Capital Account shall be maintained for each Interest Holder.

3.6 Loans. Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and the Member agree.

## Article IV

### Units of Ownership

4.1 Units of Ownership. The Company shall issue Interests in the Company in the form of uncertificated Units. All Units shall be identical in all respects, and the holders thereof shall be entitled to participate in all of the rights and benefits of ownership of Units in the Company in proportion to the number of Units respectively held by them, without regard to class.

4.2 Transferability of Units. The Member agrees not to transfer, or permit the transfer of, any of the Member's Units other than in accordance with the terms and conditions of this Agreement. The Member further agrees that this Agreement shall apply to any Units issued to, or acquired by, the Member subsequent to the date hereof.

4.3 Voting Rights of Units. Subject to the provisions of this Section 4.3, each Unit shall entitle the holder thereof to one (1) vote in all proceedings in which action shall be taken by Members of the Company.

4.4 Single Member. The Company was formed with the intention that it would have only one member, such that at all times the Company will be disregarded as an entity separate from its owner for federal tax purposes under section 301.7701-3(b)(1)(ii) of the Treasury Regulations. All provisions hereof shall be interpreted and construed consistently therewith, notwithstanding any possible implications to the contrary. Accordingly, any action hereunder that would cause the Company to have more than one member shall be made in conjunction with the execution by the Company, and all of those Persons who are to become members of the Company, of an amended and restated operating agreement setting forth, at a minimum, (a) the relative rights, obligations and duties of such members in respect of the Company, (b) the manner in which the Company shall be operated and (c) the manner in which the Company shall be characterized for federal tax purposes (i.e., as a partnership or an association taxable as a corporation). The provisions of this Agreement that would otherwise appear to be inapplicable in the single Member context hereof are intended to facilitate such an amendment and restatement, in the event that the Company is to have more than one Member.

## Article V

### Profit, Loss, and Distributions

5.1 Distributions of Cash Flow and Allocations of Profit or Loss Other Than Capital Transactions.

5.1.1 Profit or Loss Other Than from a Capital Transaction. After giving effect to the special allocations set forth in Section 5.3, for any taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of Section 5.2.1 and 5.2.2) shall be allocated to the Interest Holders in proportion to their Percentages. In the event that, for any taxable year, Profit is allocated to the Member resulting in current year taxable income or a current tax obligation to the Member, then the Manager shall determine, under Section 5.5.1, below, that a distribution is to be made in an amount sufficient to enable the Member to satisfy the current tax obligation.

5.1.2 Cash Flow. Cash Flow for each taxable year of the Company, if any, as determined by the Manager in accordance with the definition of Cash Flow, shall be distributed to the Interest Holders in proportion to their Percentages not later than seventy-five (75) days after the end of the taxable year.

5.2 Distributions of Capital Proceeds and Allocation of Profit or Loss from Capital Transactions.

5.2.1 Profit. After giving effect to the special allocations set forth in Section 5.3, Profit from a Capital Transaction shall be allocated to the Interest Holders in proportion to their Percentages.

5.2.2 Loss. After giving effect to the special allocations set forth in Section 5.3, Loss from a Capital Transaction shall be allocated to the Interest Holders in proportion to their Percentages.

5.2.3 Capital Proceeds. Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

5.2.3.1 to the payment of all expenses of the Company incident to the Capital Transaction; then

5.2.3.2 to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder); then

5.2.3.3 to the establishment of any reserves which the Manager deems necessary for liabilities or obligations of the Company, then

5.2.3.4 the balance shall be distributed to the Interest Holders in proportion to their Percentages.

5.3 Regulatory Allocations

5.3.1 Qualified Income Offset. No Interest Holder shall be allocated Losses or deductions if the allocation causes an Interest Holder to have an Adjusted Capital Account Deficit. If an Interest Holder received (a) an allocation of Loss or deduction (or item thereof) or (b) any distribution, which causes the Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Interest Holder, before any other allocation is made of Company items for that taxable year, in the amount and in the proportions required to eliminate the excess as quickly as possible. This Section 5.3.1 is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code §704(b).

5.3.2 Minimum Gain Chargeback. Except as set forth in Regs. §§1.704-2(f)(2), (3) and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Interest Holder, prior to any other allocation pursuant to this Article V, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regs. §1.701-2(g). Allocations of gross income and gain pursuant to this Section 5.3.2 shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code §752), to the extent of the Minimum Gain attributable to those assets; and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 5.3.2 shall constitute a "minimum gain chargeback" under Regs. §1.704-2(f).

5.3.3 Contributed Property and Book Ups. In accordance with Code §704(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the

Interest Holders so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purpose and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code §704(c) and the Regulations thereunder.

5.3.4 Code §754 Adjustment. To the extent an adjustment to the tax basis of any Company asset pursuant to Code §734(b) or Code §743(b) is required, pursuant to Regs. §1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Interest Holders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that section of the Regulations.

5.3.5 Nonrecourse Deductions. Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Interest Holders in proportion to their Percentages.

5.3.6 Member Loan Nonrecourse Deductions. Any Member Loan Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Interest Holder who bears the risk of loss with respect to the loan to which the member Loan Nonrecourse Deduction is attributable in accordance with Regs. §1.704-2(b).

5.3.7 Guaranteed Payments. To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to Section 5.3 hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code §707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code §707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

5.3.8 Unrealized Receivables. If an Interest Holder's Interest is reduced (provided the reduction does not result in a complete termination of the Interest Holder's Interest), the Interest Holder's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code §751) shall be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section 5.4 hereof which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Interest Holder, be specially allocated among the Interest Holders in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. Any questions as to the aforesaid allocation of ordinary income (recapture), to the extent such questions cannot be resolved in the manner specified above, shall be resolved by the Manager.

5.3.9 Withholding. All amounts required to be withheld pursuant to Code §1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Interest Holders for all purposes under this Agreement.

#### 5.4 Liquidation and Dissolution.

5.4.1 Except as otherwise provided in this Agreement, if the Company is liquidated, the assets of the Company shall be distributed to the Member in accordance with the balances in its Capital Account, after taking into account the allocations of Profit or Loss pursuant

to Sections 5.1 or 5.2, if any, and distributions, if any, of cash or property, if any, pursuant to Sections 5.1 and 5.2.3.

5.4.2 No Member shall be obligated to restore a Negative Capital Account.

5.5 General.

5.5.1 Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Manager.

5.5.2 If any assets of the Company are distributed in kind to the Interest Holders, those assets shall be valued on the basis of their fair market value, and any Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Manager. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in Section 5.2 and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the distribution of the assets in liquidation pursuant to Section 5.4.

5.5.3 All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or a Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss, or proceeds attributable to a Capital Transaction or to any other extraordinary non-recurring items of the Company.

5.5.4 The Manager is hereby authorized, upon the advice of the Company's tax counsel, to amend this Article V to comply with the Code and the Regulations promulgated under Code §704(b); provided, however, that no amendment shall materially affect distributions to an Interest Holder without the Interest Holder's prior written consent.

## Article VI

### Management; Transfers Among Members

6.1 Management. The Company shall be managed by Xoom Energy, LLC as Manager. Except as otherwise provided in this Agreement, the Manager (through its designated and duly authorized officers acting in such capacity), shall have the right to act for and bind the Company in the ordinary course of business. All acts of Michelle W. Harding (an officer of Manager, acting as such), who served as the incorporator and who attended to the administrative needs of the Company prior to this Agreement, are hereby authorized, ratified, confirmed and accepted as acts of the Manager. The Company shall keep separate books and records, which shall be open for inspection by any Member upon reasonable notice. The Manager may withdraw as such upon sixty (60) days' written notice to the Member. Withdrawal by the Manager, as the Manager, shall not affect the withdrawing Manager's Units or be deemed to be a withdrawal by the Manager as a Member of the Company.

6.2 Decisions of Members. Any Member may at any time call for a Meeting of the Members at the Company's principal place of business. Written notice not less than 10 and not more than 90 days before each Meeting is required to be sent by the requesting Member, stating

the time, place and purpose of the Meeting. All matters at the Meeting shall be decided by the Majority Vote of the Members.

6.3 Admission of Additional Members. Upon the consent of the Member, and compliance with this Agreement, additional Members may be admitted to the Company.

## Article VII

### Members' Rights

7.1 Members not Employees. Except as otherwise determined by the Manager, no salary shall be paid to any Member nor shall any Member have a drawing account.

7.2 Approval Right of the Members. Notwithstanding anything in Article VI, the Majority Vote of the Members shall be required for the following:

7.2.1 Any amendment to this Agreement, except one made in connection with the admission of new members pursuant to section 6.3 above;

7.2.2 The selection to continue the Company as provided in Section 10.2; and

7.2.3 The dissolution or termination of the Company.

## Article VIII

### Transfer of Interests to Third Parties

8.1 Transfer of Interests

8.1.1 No Member may effect a Transfer, directly or indirectly, of all or any portion of the Member's interest other than with the prior written consent by the Member and Manager, which consent may be withheld or conditioned in the Manager's sole and exclusive discretion.

8.1.2 No Transfer of any part of an Interest in the Company (whether voluntary, involuntary or by operation of law) may be made unless all of the following conditions have been satisfied:

8.1.2.1 No such Transfer shall be made which, in the opinion of counsel to the Company, may result in the termination of the Company for the purposes of Section 708 of the Code;

8.1.2.2 No such Transfer shall be made to a minor, incompetent or bankrupt;

8.1.2.3 No such Transfer shall be made if, in the opinion of counsel to the Company, such assignment may not be effected without registration under the Securities Act of 1933, as amended, or would result in the violation of any applicable state securities laws;

8.1.2.4 The transferee, if requested by the Manager, presents an opinion of counsel, acceptable to counsel to the Company, that such assignment will not adversely affect the status of the Company as a partnership for federal income tax purposes;

8.1.2.5 The transferee executes and delivers such documents as the Manager shall deem reasonably necessary or advisable to cause it to become a Member; and

8.1.2.6 The transferee agrees in writing to be bound by the terms and provisions of this Agreement.

8.1.3 Any Transfer in contravention of any of the provisions of this Section 8.1 shall be void and ineffectual and shall not bind or be recognized by the Company or the Members.

## Article IX

### Compensation, Reimbursements and Fees

#### 9.1 Reimbursements.

9.1.1 The Company will reimburse the Member for any loans made to or on behalf of the Company, in connection with the purposes of the Company.

9.1.2 The Member shall be entitled to reimbursement for reasonable, ordinary and necessary expenses incurred on behalf of the Company.

9.2 Expenses. All expenses in connection with the Company's business activities shall be considered Company expenses. The Member shall pay its own legal and accounting fees in connection with protecting or enforcing its particular interest in the Company.

The Member and Affiliates of the Members may provide other services to the Company (such as management services), provided that the compensation for such services is commercially reasonable and the contract for services or materials is on an arm's length basis.

## Article X

### Dissolution of the Company

10.1 Events of Dissolution. The Company shall be dissolved upon expiration of the term of the Company as provided in Section 2.4 or upon the happening of any of the following:

10.1.1 The sale or disposition of all or substantially all of the Company's assets, and the distribution of the proceeds thereof to the Member;

10.1.2 The decision of the Member;

10.1.3 Upon an event which makes it unlawful for the Company's business to be continued; or

10.1.4 The entry of a decree of judicial dissolution.

10.2 Winding Up. Upon dissolution under Section 10.1, no further business shall be conducted by the Company except for the taking of such action as shall be necessary for the winding up of the affairs of the Company and the distribution of its assets to the Member pursuant to the provisions hereof, and thereupon the Manager (hereinafter referred to as the "liquidator") shall act as liquidating trustee and immediately proceed to wind up and terminate the business and affairs of the Company.

10.3 Sale of Company Assets. Upon dissolution, the liquidator shall sell such of the Company assets as it deems necessary or appropriate. In lieu of the sale of any or all of the Company property, the liquidator may convey and assign all or any part of the Company property

to the Member in undivided interests as tenants in common or such other form of similar ownership as shall be applicable to the jurisdiction where the property is located. A full accounting shall be made of the accounts of the Company and the Member thereof and of the Company's assets, liabilities and income, from the date of the last accounting to the date of such dissolution. The Profits and Losses of the Company shall be determined to the date of dissolution and transferred, as provided in Article V, to the respective Capital Accounts of the Member. In accounting for distributions of Company property, such property shall be valued at the fair market value at the date of dissolution as determined by the liquidator, except that no value shall be placed upon the firm name or goodwill of the Company. Any difference between the valuation of the Company property and its book value shall be considered as though it represented profit or loss, and shall be allocated to the Capital Account of the Member as provided in Section 5.1. Any gain or loss on disposition of Company property shall be credited or charged to the Capital Account of the Member in the same manner as the difference between the valuation of Company property and its book value.

10.4 Distribution of Assets. The liquidator shall apply the remaining Company assets in the following order of priority:

10.4.1 First, to the payment and discharge of, or reservation for, all of the Company's debts and liabilities and the expenses of dissolution and winding up, in order or priority as provided by law.

10.4.2 Second, to the creation of a reserve fund for contingent liabilities to the extent deemed reasonable by the liquidator.

10.4.3 Third, the balance to the Member to the extent of and in proportion to its Capital Account after taking into account the allocations of Profit or Loss and prior distributions of cash or property pursuant to Article V.

10.5 Return of Capital Contributions. The Member shall look solely to the assets of the Company for the return of its Capital Contributions, and if the Company property remaining after the payment or discharge of the debts, obligations and liabilities of the Company is insufficient to return the Capital Contributions, there shall be no recourse therefore against the Members or the liquidator.

## Article XI

### Accounting Provisions

11.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

11.2 Tax Matters Partner. Xoom Energy, LLC, as the Member, shall be the Company's tax matters partner and shall have all powers and responsibilities provided in Code Section 5221, et seq.

11.3 Tax Elections. All Company elections permitted under the Code, including without Limitation elections under Code Section 754, shall be made by the Majority Vote of the Members.

## Article XII

### Reports

12.1 Reports. As soon as practicable after the end of each fiscal year, the Manager, under the direction of the Tax Matters Partner, shall cause to be delivered to each Member the financial statements prepared by the Company or its accountants regarding the Company, including a balance sheet, an income statement, Members' Capital Accounts and changes in financial condition. In addition, the Manager shall cause to be delivered to each Member as soon as practicable after the end of each fiscal year all information relating to the Company necessary for the preparation by each Member of federal income tax returns and compilations of the financial condition of the Company. Any Member shall have the further right to a private audit of the Company's books of account, provided that such audit is made at the expense of the Member desiring same and after due and reasonable notice.

12.2 Company List. The Manager shall maintain a list of the names and addresses of all Members at the principal office of the Company. Such list shall be made available for the review of any Member, or representative, at reasonable times, and upon request, either in person or by mail, the Manager shall furnish a copy of such list to any Member, or representative, for the cost of reproduction and mailing.

12.3 Access. The Members and/or their authorized representatives shall be permitted access to all records of the Company after adequate notice, at any reasonable time.

### **Article XIII**

#### **Independent Activities; Transactions with Interested Parties**

13.1 Devotion of Time and Effort. Except as provided in Section 13.2, each of the parties hereto may engage in whatever other activities a party chooses. The Manager shall diligently and faithfully devote such of its time to the business of the Company as may be necessary to properly conduct the affairs of the Company.

13.2 Independent Activities. The Members may engage in the acquisition and development of other businesses, both for their own account and for others, and nothing contained herein shall be deemed to prevent such parties from engaging in and continuing such activities, or initiating further such other limited liability companies, corporations, partnerships, joint ventures or other entities in which they are or may become a party, nor as requiring them to permit the Company or any of the Members to participate in any such operations in which they may be interested.

13.3 Transactions with Interested Parties. The fact that a Member or any Affiliate is directly or indirectly interested in or connected with any Person employed by the Company or from whom the Company may buy merchandise, materials, services or other property shall not prohibit the Company from employing, or from dealing with, such Person provided such dealings are on commercially reasonable terms.

### **Article XIV**

#### **Exculpation and Indemnification**

14.1 Liability of Members. To the extent permitted by the Act, the Members, including the Manager in their respective capacities as such, shall not be liable to the Company or to the other Members for any act or omission, done in good faith, and within what was believed to be the scope of Company business, unless the same shall have been culpable of willful or wanton misconduct, recklessness, or in breach of its fiduciary obligations (if any) in connection therewith.

14.2 Indemnification of Members. To the extent permitted by the Act, the Company shall indemnify and hold harmless the Members against any and all claims, actions, demands, costs, expenses (including attorneys/ fees), damages and losses as a result of any allegation, claim or legal proceeding relating to any act or omission concerning the activities of the Company, unless the person or party again whom any such allegation or claim is made or legal processing is directed was culpable of willful or wanton misconduct, recklessness, or in breach of its fiduciary obligations (if any) in connection therewith. The indemnification of the Members shall be limited to and recoverable only out of the assets of the Company.

14.3 Indemnification of Manager. To the extent permitted by the Act, the Company shall indemnify and hold harmless the Manager against any and all claims, actions, demands, costs, expenses (including attorneys/ fees), damages and losses as a result of any allegation, claim or legal proceeding relating to any act or omission concerning service as Manager, unless the Manager was culpable of willful or wanton misconduct, recklessness, or in breach of fiduciary obligations in connection therewith. The indemnification of the Manager shall be limited to and recoverable only out of the assets of the Company.

## **Article XV**

### **Assurances**

15.1 Execution of Documents by Members. Each Member hereby agrees to execute all such certificates and other documents confirming hereto and to do all such filing, recording, publishing and other acts as may be deemed by the Majority Vote of the Members appropriate to comply with the requirements of law for the formation and operation of a limited liability company.

15.2 Filing of Documents by Members. The Members shall promptly execute, acknowledge, file with the proper offices and publish in each jurisdiction in which the Company conducts business such notices, certificates, statements or other instruments as may be necessary or appropriate to comply with the requirements for the formation and operation of a limited liability company under the laws of that state.

## **Article XVI**

### **Amendments**

This Agreement shall not be amended except by a written document, expressly for that purpose, approved and signed by all Members.

## **Article XVII**

### **Miscellaneous**

17.1 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall first be hand delivered, e-mailed or faxed and then confirmed, on the same day for delivery the next day, by reputable overnight courier service, return receipt requested, postage prepaid, and addressed to a Member. Notice shall be deemed to have been duly given or made on the date delivered. Any Member may change its address by giving notice in writing stating its new address to the other Members. Commencing on the fifth day after the giving of such notice, such newly designated address shall be such Member's address for the purposes of all notices or other communications required or permitted to be given pursuant to this Agreement. Notices to the Company shall be deemed made if given to all Members.

17.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of Illinois. Any action against the Company or the Members brought by any Member with regard to this Agreement or the rights and obligations of the Members or the Company under this Agreement shall be brought in the United States District Court for the Middle District of North Carolina located in Greensboro, NC. The parties hereby irrevocably consent to the jurisdiction of the aforementioned court and agree that service of process of the aforementioned court may be served upon any of them outside of North Carolina in the same manner as process may be served upon them within North Carolina.

17.3 Gender. The use of any gender herein shall be deemed to be or include the other genders and the use of the singular herein shall be deemed to be or include the plural (and Vice-versa), wherever appropriate. The headings herein are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope of this Agreement, or the intent of the provisions thereof.

17.4 Binding Effect. This Agreement shall be binding upon, and insure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns, except as otherwise expressly provided herein.

17.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together constitute one and the same instrument.

17.6 Interest Held for Investment. Each Member does hereby represent and warrant by the execution of this Agreement that (A) its interest was obtained for investment purposes only and not for resale or distribution, (B) it is qualified to analyze the merits and risks of a contribution to the Company, (C) it has not relied on the advice of any of the Members or their counsel in making its decision to contribute to the Company and become a Member herein, and (D) it has had the opportunity to consult with counsel of its own choosing, should it so desire.

17.7 Securities Laws Restrictions. The interests described in this Agreement have not been registered under the Securities Act of 1933, as amended (the "Act") or under the securities laws of the State or any other jurisdiction (the "State Acts"). Consequently, these interests may not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of, except in accordance with the provisions of the Act, the State Acts and this Agreement.

17.8 Application of Subchapter K. Unless approved by all Members in writing, no election shall be made by the Company or any Member for the Company to be excluded from the application of the provisions of Subchapter K of the Code, or from any similar provisions of state and foreign tax laws which relate to the taxation of partnerships.

17.9 Waiver of Partition. Each Member (and its representatives, successors and assigns) hereby irrevocably waives any and all right to maintain any actions for partition, to compel any sale with respect to any assets or properties of the Company or to cause a judicial dissolution of the Company.

17.10 Currency. All payments hereunder, including, without limitation, capital contributions and distributions, shall be in U.S. dollars.

17.11 Entire Agreement. This Agreement contains a complete statement of all arrangements among the parties with respect to the Company and cannot be changed or terminated orally or in any manner other than as provided in Article XVI. There are no representations, agreements, arrangements or understandings (including but not limited to any

payments to any party hereto) oral or written, between or among the parties relating to the subject matter of this Agreement which are not fully expressed in this Agreement.

[signatures on next page]

IN WITNESS WHEREOF, the undersigned has executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

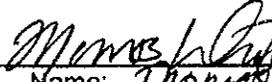
"Member"

XOOM ENERGY, LLC

By:   
Name: Thomas L. Wiley  
Title: CEO  
a duly authorized officer of Xoom Energy, LLC, acting on behalf of the Member, in that capacity

"Company"

XOOM ENERGY ILLINOIS, LLC

By:   
Name: Thomas L. Wiley  
Title: CEO  
a duly authorized officer of Xoom Energy, LLC, acting on behalf of the Manager, in that capacity

**Exhibit A**  
**To the**  
**Operating Agreement of**  
**Xoom Energy Illinois, LLC**