

A.

THE COMPANIES ACTS 1985 to
1989

ARTICLES OF ASSOCIATION

of

FIFE ENERGY LIMITED
Registered number 137656



Burness
— *Solicitors* —

THE COMPANIES ACTS 1985 to 1989

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

FIFE ENERGY LIMITED

(adopted by a Special Resolution passed 24 September 1998)

PRELIMINARY

1. (a) The Regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1983 No. 1052) (such Table being hereinafter called "Table A") shall apply to the Company save in so far as they are excluded or varied hereby and such Regulations (save as to excluded or varied) and the Articles hereinafter contained shall be the regulations of the Company.
- (b) In these Articles the expression "the Act" means the Companies Act 1985, but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

SHARE RIGHTS

2. (1) The authorised share capital of the Company is £56,590 divided into 53,192 Ordinary Shares of £1 each (the "Ordinary Shares") and 33,980,000 Special Shares of £0.0001 each (the "Special Shares").
- (2) The rights attached to the Ordinary Shares and the Special Shares are as follows:-
 - (i) **Income**

The Special Shares shall not entitle the holders thereof to participate in the distribution of any profits other than Fife Electric Profits or Global Environmental Profits.

(ii) **Capital**

On a return of assets on liquidation or otherwise the surplus assets of the Company remaining after payment of its liabilities shall be distributed as follows:

- (a) in paying or assigning to the holders of the Special Shares as a class the Relevant Sum (and the Special Shares shall not entitle the holders thereof to any further distribution in respect of the surplus assets of the Company); and
- (b) thereafter, any such surplus assets shall be distributed among the holders of the Ordinary Shares rateably according to the amounts paid up or credited as paid up on the Ordinary Shares held by them respectively.

The Relevant Sum shall mean:

- (aa) if at the date on which the said return on assets is made by the Company (or, if the said return is made in more than one payment, the last date) (the "Return Date") the holders of the Special Shares shall have received both the Fife Electric Payment and the Global Environmental Payment, the sum of £1000;
- (bb) if at the Return Date the Fife Electric Payment but not the Global Environmental Payment shall have been received by the holders of the Special Shares a distribution in specie (in such manner as may reasonably be determined by the liquidator) of a right to participate in 28% of the Global Environmental Payment;
- (cc) if at the Return Date the Global Environmental Payment but not the Fife Electric Payment shall have been received by the holders of the Special Shares a distribution in specie (in such manner as may reasonably be determined by the liquidator) of a right to participate in 28% of the Fife Electric Payment;
- (dd) if at the Return Date neither the Fife Electric Payment nor the Global Environmental Payment shall have been received by the holders of the Special Shares a distribution in specie (in such manner as may

reasonably be determined by the liquidator) of a right to participate in 28% of both such Payments;

(iii) **Fife Electric Profits**

On receipt by the Company of the Fife Electric Payment (as hereinafter defined) the Fife Electric Profits (as hereinafter defined) shall forthwith, and without the need for any declaration by the Directors or any resolution of the Company, be distributed by way of dividend among the holders of the Special Shares rateably according to the amounts paid up or credited as paid up on the Special Shares held by them respectively.

For the purposes of this paragraph (iii):-

“Fife Electric Payment” shall mean the payment of £10,000,000 to be made by Fife Electric Limited (“FEL”) (registered in Scotland No. 170041), pursuant to an Option Agreement (the “Fife Electric Option Agreement”) dated 10 and 11 December 1996 between FE and the Company, in respect of the Fife Electric Project, or by any assignee of FEL or by any successor of FEL to the Fife Electric Project, or any greater or lesser payment made to the Company in lieu of the said sum of £10,000,000 following termination or expiry of the Fife Electric Option Agreement which is consideration to the Company for transfer of the land described in the Fife Electric Option Agreement.

“Fife Electric Project” shall mean the project for the construction and operation of a 350 MW Power Station at part of Westfield Development Centre, Fife, as described in the Fife Electric Option Agreement.

“Fife Electric Profits” shall mean an amount (inclusive of associated tax credit) equal to 28% of the Fife Electric Payment after deduction of:

- (i) the reasonable professional fees (including VAT thereon) and disbursements incurred or payable by the Company in connection with the grant and exercise of the option conferred by the Fife Electric Option Agreement, and completion of the transfer of land pursuant thereto; and

- (ii) a provision for corporation tax (and for any other taxation for which the Company is liable) at the rate applicable for the financial year in which the Fife Electric Payment is payable to the Company, on the amount of the gain comprised in the Fife Electric Payment which the auditors of the Company estimate will be taxable (and without making any allowance or deduction for any other allowance or loss which may be available to the Company to reduce or eliminate such liability to taxation).

(iv) **Global Environmental Profits**

On receipt by the Company of the Global Environmental Payment (as hereinafter defined) the Global Environmental Profits (as hereinafter defined) shall forthwith, and without the need for any declaration by the Directors or any resolution of the Company, be distributed by way of dividend among the holders of the Special Shares rateably according to the amounts paid up or credited as paid up on the Special Shares held by them respectively.

For the purposes of this Article (iv):-

“Global Environmental Payment” shall mean the payment of £2,000,000 to be made by Global Environmental Limited (“GEL”) (having its principal place of business at 1500 Chiquita Center, 250 East Fifth Street, Cincinnati, OH45202, USA), pursuant to an Option Agreement (the “Global Environment Option Agreement”) dated 13 December 1995 between GEL and the Company, in respect of the Global Environmental Project, or by any assignee of GEL or by any successor of GEL to the Global Environmental Project, or any greater or lesser payment made to the Company in lieu of the said sum of £2,000,000 following termination or expiry of the Global Environmental Option Agreement which is consideration to the Company for transfer of the land described in the Global Environmental Option Agreement.

“Global Environmental Project” shall mean the project for the construction and operation of a waste elimination plant at part of Westfield Development Centre, Fife, as described in the Global Environmental Option Agreement.

"Global Environmental Profits" shall mean an amount (inclusive of associated tax credit) equal to 28% of the Global Environmental Payment after deduction of:

- (i) the reasonable professional fees (including VAT thereon) and disbursements incurred or payable by the Company in connection with the grant and exercise of the option conferred by the Global Environmental Option Agreement, and completion of the transfer of land pursuant thereto; and
- (ii) a provision for corporation tax (and for any other taxation for which the Company is liable) at the rate applicable for the financial year in which the Global Environmental Payment is payable to the Company, on the amount of the gain comprised in the Global Environmental Payment which the auditors of the Company estimate will be taxable (and without making any allowances or deduction for any other allowance or loss which may be available to the Company to reduce or eliminate such liability to taxation).

In the event of disagreement regarding the calculation of the Fife Electric Profits or the Global Environmental Profits, the matter in dispute may be referred by the Company or any holder of Special Shares to an independent person (the "Expert") (acting as expert and not as arbiter) nominated by the Company and the relevant holder or, in the event of a disagreement as to nomination, appointed on the application of either party by the President for the time being of the Institute of Chartered Accountants in Scotland. The decision of the Expert shall be final and binding and his costs shall be borne as he shall direct.

(v) **Arrears of dividend on Special Shares**

In the event that, at the date (the "Due Dividend Date") when the Fife Electric Payment and/or the Global Environmental Payment (the "Relevant Payment") is to be distributed in accordance with paragraphs (iii) and (iv) respectively of this Article the Company is prohibited from making such a distribution by virtue of Section 270 of the Companies Act 1985, the following provisions shall apply:

- (a) on the Due Dividend Date the Company shall pay to the holders of the Special Shares on account of the

Relevant Payment the maximum sum (if any) which can then properly be paid by the Company;

- (b) the Company shall pay to the holders of the Special Shares on account of the balance of the Relevant Payment for the time being remaining outstanding, and until the Relevant Payment shall have been paid in full, the maximum sum (if any) which can properly be paid by the Company as soon as such sum can lawfully be paid by the Company.

Following the receipt of either the Fife Electric Payment and/or the Global Environmental Payment the Company shall pay no dividends to its Ordinary Shareholders, until such time as the dividends to the Special Shares have been paid in full.

(vi) **Voting**

Subject to any rights or restrictions for the time being attached to any class or classes of shares, at General Meetings on a show of hands every member holding Ordinary Shares who is present in person or by proxy (or in the case of a corporation by a duly appointed representative) shall have one vote and on a poll every member shall have one vote for each Ordinary Share of which he is the holder. Special Shares shall entitle the holder thereof to receive notice of and to attend and address all General Meetings and to receive copies of all circulars sent to holders of shares or debentures in the Company and of all resolutions of the Company in General Meeting but shall not entitle the holders thereof to vote at any General Meeting.

(vii) **Variation of Rights**

The rights attached to the Special Shares shall be deemed to be varied by:

- (a) any alteration to this Article; or
- (b) by the winding up of the Company; or
- (c) by any arrangement by which either or both of the Fife Electric Payment or the Global Environmental Payment will or may be received by the Company other than as a once off capital payment in cash; or

- (d) the Fife Electric Payment or the Global Environmental Payment being less than, respectively, £10,000,000 and £2,000,000; or
- (e) any development or construction being undertaken by the Company on the land to which the Fife Electric Option Agreement and/or the Global Environmental Option Agreement relates or related

but not otherwise.

Any such variation may be made only with the consent in writing of the holders of three-fourths of the issued Special Shares or with the sanction of an Extraordinary Resolution passed at a separate meeting of the holders of the Special Shares. To every such separate meeting all the provisions of these Articles relating to General Meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be two persons at least holding or representing by proxy one-third in nominal amount of the issued shares of the Special Shares unless all the Special Shares are registered in the name of a single corporate shareholder in which case the quorum shall be one person being the duly authorised representative of such shareholder (but so that if at any adjourned meeting of such holders a quorum as above defined is not present those members who are present shall be a quorum) and that the holders of the Special Shares shall, on a poll, have one vote in respect of every share of the class held by them respectively.

- 3. Pursuant to Section 95(1) of the Act, Sections 89(1) and 90(1) to (6) (inclusive) of the Act shall not apply to any allotment to which the members have given prior approval by Special Resolution.
- 4. The lien conferred by Clause 8 in Table A shall attach also to fully paid-up shares, and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person indebted or under liability to the Company, where he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company. Clause 8 in Table A shall be modified accordingly.
- 5. The liability of any Member in default in respect of a call shall be increased by the addition at the end of the first sentence of Clause 18 in Table A of the words

“and all expenses that may have been incurred by the Company by reason of such non-payment”.

GENERAL MEETINGS AND RESOLUTIONS

6. Every notice convening a General Meeting shall comply with the provisions of Section 372(3) of the Act as to giving information to Members in regard to their right to appoint proxies and notices of and other communications relating to any General Meeting which any Member is entitled to receive shall be sent to the Directors and to the Auditors for the time being of the Company.
7.
 - (a) If a quorum is not present within half a hour from the time appointed for a General Meeting the General Meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine; and if at the adjourned General Meeting a quorum is not present within half an hour from the time appointed therefor such adjourned General Meeting shall be dissolved.
 - (b) Clause 41 in Table A shall not apply to the Company.

APPOINTMENT OF DIRECTORS

8.
 - (a) Clause 64 in Table A shall not apply to the Company.
 - (b) The maximum number and minimum number respectively of the Directors may be determined from time to time by Ordinary Resolution in General Meeting of the Company. Subject to and in default of any such determination there shall be no maximum number of Directors and the minimum number of Directors shall be one. Whensoever the minimum number of Directors shall be one, a sole Director shall have authority to exercise all the powers and discretions by Table A and by these Articles expressed to be vested in the Directors generally, and Clause 89 in Table A shall be modified accordingly.
 - (c) The Directors shall not be required to retire by rotation and Clauses 73 to 80 (inclusive) in Table A shall not apply to the Company.
 - (d) No person shall be appointed a Director at any General Meeting unless either:-
 - (i) he is recommended by the Directors; or
 - (ii) not less than fourteen days more than thirty five clear days before the date appointed for the General Meeting, notice

signed by a Member qualified to vote at the General Meeting has been given to the Company of the intention to propose that person for appointment, together with notice signed by that person of his willingness to be appointed.

- (e) Subject to paragraph (d) above, the Company may by Ordinary Resolution in General Meeting appoint any person who is willing to act to be a Director, either to fill a vacancy or as an additional Director.
- (f) The Directors may appoint a person who is willing to act to be a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number determined in accordance with paragraph (b) above as the maximum number of Directors and for the time being in force.

BORROWING POWERS

- 9. The Directors may exercise all the powers of the Company to borrow money without limit as to amount and upon such terms and in such manner as they think fit, and subject (in the case of any security convertible into shares) to Section 80 of the Act to grant any mortgage, charge or standard security over its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

ALTERNATE DIRECTORS

- 10.
 - (a) An alternate Director shall not be entitled as such to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct, and the first sentence of Clause 66 in Table A shall be modified accordingly.
 - (b) A Director, or any such other person as is mentioned in Clause 65 in Table A, may act as an alternate Director to represent more than one Director, and an alternate Director shall be entitled at any meeting of the Directors or of any committee of the Directors to one vote for every Director whom he represents in addition to his own vote (if any) as a Director, but he shall count as only one for the purpose of determining whether a quorum is present.

GRATUITIES AND PENSIONS

11. (a) The Directors may exercise the powers of the Company conferred by Clause 3(ii)(s) of the Memorandum of Association of the Company and shall be entitled to retain any benefits received by them or any of them by reason of the exercise of any such powers.
- (b) Clause 87 in Table A shall not apply to the Company.

PROCEEDINGS OF DIRECTORS

12. (a) A Director may vote, at any meeting of the Directors or of any committee of the Directors, on any resolution, notwithstanding that it in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever, and if he shall vote on any such resolution as aforesaid his vote shall be counted; and in relation to any such resolution as aforesaid he shall (whether or not he shall vote on the same) be taken into account in calculating the quorum present at the meeting.
- (b) Clauses 94 to 97 (inclusive) in Table A shall not apply to the Company.

THE SEAL

13. (a) If the Company has a seal it shall only be used with the authority of the Directors or of a committee of Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and by the Secretary or second Director. The obligation under Clause 6 of Table A relating to the sealing of share certificates shall apply only if the Company has a seal. Clause 101 of Table A shall not apply to the Company.
- (b) The Company may exercise the powers conferred by Section 39 of the Act with regard to having an official seal for use abroad and such powers shall be vested in the Directors.

INDEMNITY

14. (a) Every Director or other officer or Auditor of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in

connection with any application under Section 144 or Section 727 of the Act in which relief is granted to him by the Court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.

- (b) The Directors shall have power to purchase and maintain for any Director, officer or Auditor of the Company insurance against any such liability as is referred to in Section 310(1) of the Act.
- (c) Clause 118 in Table A shall not apply to the Company.

TRANSFER OF SHARES

- 15. (a) Energy Investors Fund II LP ("Investors") may transfer any shares with the prior consent of the Directors, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing Investors may, without the prior consent of the Directors, transfer any shares to (i) any current or future shareholders of the company, Global Energy Europe Limited (registered in England and Wales No. 2636168) or Global Energy Inc., (ii) any investment fund now existing or hereafter organised managed by Energy Investors Management Company ("EIMC") or EIF Group Management Company ("EIFG"), (EIMC, EIFG and any affiliates of either of them providing management services similar to those of EIMC and EIFG being hereinafter referred to as "EIF Management") or any affiliate of EIF Management ("an EIF fund"), (iii) any person or entity acquiring all or a substantial portion of investment interests of Investors or any other EIF fund, (iv) any person or entity or any trustee or collateral agent therefor as security for (AA) any indebtedness of investors or any other EIF fund secured by all or a substantial portion of Investors or such other EIF funds investment portfolio or (BB) any letters of credit, performance bonds or guarantees or other credit support provided in connection with the indebtedness subscribed in sub-clause (AA) above.
- (b) Subject to sub-clause (a) of this Article the Directors may in their absolute discretion and without assigning any reason therefor decline to register the transfer of a share, whether or not it is a fully paid share and the first sentence of Clause 24 in Table A shall not apply to the company.

DRAFT 10/09/98

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