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

FORM 10-Q

(Mark One)
☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2012

Or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 000-30939

ACTIVE POWER, INC.

(Exact name of registrant as specified in its charter)

Delaware	**74-2961657**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2128 W. Braker Lane, BK12, Austin, Texas	**78758**
(Address of principal executive offices)	**(Zip Code)**

(512) 836-6464
(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one)

Large Accelerated Filer	☐	Accelerated Filer	☒
Non-Accelerated Filer	☐ (Do not check if a smaller reporting company)	Smaller Reporting Company	☐

Indicate by check mark whether the registrant is a Shell Company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

The number of shares of common stock, par value of $0.001 per share, outstanding at April 30, 2012 was 95,256,115.

ACTIVE POWER, INC.
FORM 10-Q
INDEX

PART I – FINANCIAL INFORMATION

Item 1. **Condensed Consolidated Financial Statements.**

Active Power, Inc.
Condensed Consolidated Balance Sheets
(in thousands)

	March 31, 2012 (unaudited)	December 31, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	$ 18,042	$ 10,357
Restricted cash	1,400	389
Accounts receivable, net of allowance for doubtful accounts of $262 and $337 at March 31, 2012 and December 31, 2011, respectively	15,609	11,163
Inventories	8,388	9,439
Prepaid expenses and other	913	414
Total current assets	44,352	31,762
Property and equipment, net	3,133	2,861
Deposits and other	407	404
Total assets	$ 47,892	$ 35,027
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 6,139	$ 4,757
Accrued expenses	4,184	5,351
Deferred revenue	5,693	2,366
Revolving line of credit	5,535	5,535
Total current liabilities	21,551	18,009
Long-term liabilities	748	726
Stockholders' equity:		
Common stock	95	80
Treasury stock	(115)	(115)
Additional paid-in capital	287,421	277,023
Accumulated deficit	(262,042)	(260,895)
Other accumulated comprehensive income (loss)	234	199
Total stockholders' equity	25,593	16,292
Total liabilities and stockholders' equity	$ 47,892	$ 35,027

See accompanying notes.

Active Power, Inc.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(in thousands, except per share amounts)
(unaudited)

	Three Months Ended March 31,	
	2012	2011
Revenues:		
Product revenue	$ 16,406	$ 14,738
Service and other revenue	3,392	2,591
Total revenue	19,798	17,329
Cost of goods sold:		
Cost of product revenue	11,996	10,522
Cost of service and other revenue	2,495	2,097
Total cost of goods sold	14,491	12,619
Gross profit	5,307	4,710
Operating expenses:		
Research and development	1,288	921
Selling and marketing	3,547	3,470
General and administrative	1,544	1,368
Total operating expenses	6,379	5,759
Operating profit (loss)	(1,072)	(1,049)
Interest expense, net	(114)	(33)
Other income (expense), net	39	16
Net loss	$ (1,147)	$ (1,066)
Net loss per share, basic and diluted	$ (0.01)	$ (0.01)
Shares used in computing net loss per share, basic and diluted	84,829	79,848
Comprehensive loss:		
Net loss	$ (1,147)	$ (1,066)
Translation gain (loss) on subsidiaries denominated in foreign currencies	36	310
Comprehensive loss	$ (1,111)	$ (756)

Active Power, Inc.
Condensed Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

	Three Months Ended March 31,	
	2012	**2011**
Operating activities		
Net loss	$ (1,147)	$ (1,066)
Adjustments to reconcile net loss to cash used in operating activities:		
Depreciation expense	252	358
Change to allowance for doubtful accounts	(75)	(43)
Unrealized gain on marketable securities	—	(8)
(Gain) Loss on disposal of fixed assets	(29)	(20)
Stock-based compensation	364	324
Changes in operating assets and liabilities:		
Restricted cash	(1,011)	—
Accounts receivable	(4,371)	(291)
Inventories	1,051	(1,370)
Prepaid expenses and other assets	(502)	(294)
Accounts payable	1,382	655
Accrued expenses	(1,167)	(2,017)
Deferred revenue	3,327	934
Long-term liabilities	22	81
Net cash used in operating activities	(1,904)	(2,757)
Investing activities		
Purchases of property and equipment	(495)	(326)
Net cash used in investing activities	(495)	(326)
Financing activities		
Proceeds from private placement of common stock	9,750	—
Issuance costs of private placement	(122)	—
Proceeds from draw on revolving line of credit	2,017	1,000
Payments on revolving line of credit	(2,017)	—
Proceeds from employee stock purchases	420	141
Purchases of treasury stock	—	(12)
Net cash provided by financing activities	10,048	1,129
Translation gain (loss) on subsidiaries in foreign currencies	36	310
Change in cash and cash equivalents	7,685	(1,644)
Cash and cash equivalents, beginning of period	10,357	15,416
Cash and cash equivalents, end of period	$ 18,042	$ 13,772

See accompanying notes.

Active Power, Inc.
Notes to Condensed Consolidated Financial Statements
March 31, 2012
(unaudited)

1. Significant Accounting Policies

Organization and Basis of presentation

Active Power, Inc. and its subsidiaries (hereinafter referred to as "we", "us", "Active Power" or the "Company") manufacture and provide critical power quality and infrastructure solutions that provide business continuity and protect customers in the event of an electrical power disturbance. Our products and solutions are designed to deliver continuous clean power, protecting customers from voltage fluctuations, such as surges and sags, and frequency fluctuations, and also to provide ride-through, or temporary, power to bridge the gap between a power outage and the restoration of utility power. Our target customers are those global enterprises requiring "power insurance" because they have zero tolerance for downtime in their mission critical operations. The Uninterruptible Power Supply ("UPS") products we manufacture use kinetic energy to provide short-term power as a cleaner alternative to electro-chemical battery-based energy. We sell stand-alone UPS products as well as complete continuous power and infrastructure solutions, including containerized continuous power systems that we brand as PowerHouse. We sell our products globally through direct, manufacturer's representatives, Original Equipment Manufacturer ("OEM") channels and IT partners. Our current principal markets are Europe, Middle East and Africa ("EMEA"), Asia and North America.

The accompanying condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles and include the accounts of the Company and its consolidated subsidiaries. In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments (consisting only of normal recurring items) necessary to present fairly the consolidated financial position of the Company and its consolidated results of operations and cash flows. These interim financial statements should be read in conjunction with the financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2011.

2. Supplemental Balance Sheet Information

Restricted Cash

Restricted cash balance of $1.4 million as of March 31, 2012 consists of secured performance and deposit guarantees given to customers. Upon satisfaction of these guarantees, the restriction on these funds will be released.

Receivables

Accounts receivable consist of the following (in thousands):

	March 31, 2012	December 31, 2011
Trade receivables	$ 15,871	$ 11,500
Allowance for doubtful accounts	(262)	(337)
	$ 15,609	$ 11,163

Inventory

We state inventories at the lower of cost or market, using the first-in-first-out-method (in thousands):

	March 31, 2012	December 31, 2011
Raw materials	$ 5,859	$ 6,493
Work in process	2,293	3,085
Finished goods	1,822	1,680
Allowances for obsolescence	(1,586)	(1,819)
	$ 8,388	$ 9,439

Property and Equipment

Property and equipment consist of the following (in thousands):

	March 31, 2012	December 31, 2011
Equipment	$ 10,104	$ 9,980
Demonstration units	2,297	1,345
Computers and purchased software	4,073	4,029
Furniture and fixtures	370	369
Leasehold improvements	7,511	7,425
Construction in progress	439	1,107
	24,794	24,255
Accumulated depreciation	(21,661)	(21,394)
	$ 3,133	$ 2,861

Accrued Expenses

Accrued expenses consist of the following (in thousands):

	March 31, 2012	December 31, 2011
Compensation and benefits	$ 1,876	$ 3,037
Warranty liability	524	583
Property, income, state, sales and franchise tax	436	529
Professional fees	626	463
Other	722	739
	$ 4,184	$ 5,351

Warranty Liability

Generally, the warranty period for our power quality products is 12 months from the date of commissioning or 18 months from the date of shipment from Active Power, whichever period is shorter. Occasionally we offer longer warranty periods to certain customers. The warranty period for products sold to our primary OEM customer, Caterpillar, is 12 months from the date of shipment to the end-user, or up to 36 months from shipment. This is dependent upon Caterpillar complying with our storage requirements for our products in order to preserve this warranty period beyond the standard 18-month limit. We provide for the estimated cost of product warranties at the time revenue is recognized and this accrual is included in accrued expenses and long-term liabilities on the accompanying consolidated balance sheet.

Changes in our warranty liability are presented in the following table (in thousands):

Balance at December 31, 2011	$	613
Warranty expense		294
Warranty charges incurred		(351)
Balance at March 31, 2012	$	556
Warranty liability included in accrued expenses	$	524
Long-term warranty liability		32
Balance at March 31, 2012	$	556

Revenue Recognition

In general, we recognize revenue when four criteria are met: (i) persuasive evidence that an arrangement exists; (ii) delivery has occurred or services have been rendered; (iii) the sales price is fixed or determinable; and (iv) collectability is reasonably assured. In general, revenue is recognized when revenue-generating transactions generally fall into one of the following categories of revenue recognition:

- We recognize product revenue at the time of shipment for substantially all products sold directly to customers and through distributors because title and risk of loss pass on delivery to the common carrier. Our customers and distributors do not have the right to return products. If title and risk of loss pass at some other point in time, we recognize such revenue for our customers when the product is delivered to the customer and title and risk of loss have passed.

- We recognize installation and service and maintenance revenue at the time the service is performed.

- We recognize revenue associated with extended maintenance agreements ("EMAs") over the life of the contracts using the straight-line method, which approximates the expected timing in which applicable services are performed. Amounts collected in advance of revenue recognition are recorded as a current or long-term liability based on the time from the balance sheet date to the future date of revenue recognition.

- We recognize revenue on certain rental programs over the life of the rental agreement using the straight-line method. Amounts collected in advance of revenue recognition are recorded as a current or long-term liability based on the time from the balance sheet date to the future date of revenue recognition.

- Shipping costs reimbursed by the customer are included in revenue.

Multiple element arrangements ("MEAs"). Arrangements to sell products to customers frequently include multiple deliverables. Our most significant MEAs include the sale of one or more of our CleanSource UPS or PowerHouse products, combined with one or more of the following products: design services, project management, commissioning and installation services, spare parts or consumables, and EMAs. Delivery of the various products or performance of services within the arrangement may or may not coincide. Certain services related to design and consulting may occur prior to delivery of product and commissioning and installation typically takes place within six months of product delivery, depending upon customer requirements. EMAs, consumables, and repair, maintenance or consulting services generally are delivered over a period of one to five years. In certain arrangements revenue recognized is limited to the amount invoiced or received that is not contingent on the delivery of future products and services.

When arrangements include multiple elements, we allocate revenue to each element based on the relative selling price and recognize revenue when the elements have stand-alone value and the four criteria for revenue recognition have been met for each element. We establish the selling price of each element based on Vendor Specific Objective Evidence ("VSOE") if available, Third Party Evidence ("TPE") if VSOE is not available, or best estimate of selling price ("BESP") if neither VSOE nor TPE is available. We generally determine selling price based on amounts charged separately for the delivered and undelivered elements to similar customers in stand-alone sales of the specific elements. When arrangements include an EMA, we recognize revenue related to the EMA at the stated contractual price on a straight-line basis over the life of the agreement.

Any taxes imposed by governmental authorities on our revenue-producing transactions with customers are shown in our consolidated statements of operations on a net-basis; that is, excluded from our reported revenues.

3. Net Income (Loss) Per Share

The following table sets forth the computation of basic and diluted net income (loss) per share (in thousands, except per share data):

	Three Months Ended March 31,	
	2012	2011
Net loss	$ (1,147)	$ (1,066)
Basic and diluted:		
Weighted-average shares of common stock outstanding used in computing basic and diluted net loss per share	84,829	79,848
Basic and diluted net loss per share	$ (0.01)	$ (0.01)
Common stock equivalents that were not included in the calculation because the option price was greater than the average market price of the common shares or the net loss would cause the effect of the options to be anti-dilutive:		
Employee stock options	9,659	9,969
Restricted stock units	1,022	-
	10,681	9,969

There were no restricted stock units outstanding at March 31, 2011. As of March 31, 2012 and 2011, respectively, there was no common stock subject to repurchase.

4. Fair Value of Financial Instruments

Investments in marketable securities consist of money-market funds, commercial paper and debt securities with readily determinable fair values. Active Power accounts for investments that are reasonably expected to be realized in cash, sold or consumed during the year as short-term investments. We classify investments in marketable securities as available-for-sale and all reclassifications made from unrealized gains/losses to realized gains/losses are determined based on the specific identification method.

In accordance with our investment policy and guidelines, our short-term investments are diversified among and limited to high quality securities with a minimum of investment grade ratings. We actively monitor our investment portfolio to ensure compliance with our investment objective to preserve capital, meet liquidity requirements and maximize return on our investments. We do not require collateral or enter into master netting arrangements to mitigate our credit risk.

Effective October 1, 2008, we adopted an accounting standard that defines fair value, establishes a framework for measuring fair value as well as expands on required disclosures regarding fair value measurements. This standard applies to reported balances that are required or permitted to be measured at fair value under existing accounting pronouncements; accordingly, the standard does not require any new fair value measurements of reported balances.

Level 1—uses quoted prices in active markets for identical assets or liabilities we have the ability to access.

Level 2—uses observable inputs other than quoted prices in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.

Level 3—uses one or more significant inputs that are unobservable and supported by little or no market activity, and that reflect the use of significant management judgment.

Inputs are referred to as assumptions that market participants would use in pricing the asset or liability. The uses of inputs in the valuation process are categorized into a three-level fair value hierarchy.

Our Level 1 assets and liabilities consist of cash equivalents and short-term investments, which are primarily invested in money-market funds. These assets are classified as Level 1 because they are valued using quoted prices in active markets and other relevant information generated by market transactions involving identical assets and liabilities.

The fair value of our cash equivalents, which are primarily invested in money-market funds, was determined using the following inputs as of March 31, 2012 and December 31, 2011 (in thousands):

March 31, 2012

	Fair Value Measurements at Reporting Date Using			
	Level 1	Level 2	Level 3	Total
Money-market funds	$ 3,092	$ —	$ —	$ 3,092
Total	$ 3,092	$ —	$ —	$ 3,092
Amounts included in:				
Cash and cash equivalents	$ 3,092	$ —	$ —	$ 3,092
Short-term investments	—	—	—	—
Total	$ 3,092	$ —	$ —	$ 3,092

December 31, 2011

	Fair Value Measurements at Reporting Date Using			
	Level 1	Level 2	Level 3	Total
Money-market funds	$ 3,093	$ —	$ —	$ 3,093
Total	$ 3,093	$ —	$ —	$ 3,093
Amounts included in:				
Cash and cash equivalents	$ 3,093	$ —	$ —	$ 3,093
Short-term investments	—	—	—	—
Total	$ 3,093	$ —	$ —	$ 3,093

For cash and cash equivalents, marketable securities, accounts receivable, and accounts payable, the carrying amount approximates fair value because of the relative short maturity of those instruments.

5. Guarantees

In certain geographical regions, particularly Europe and Africa, we are sometimes required to issue performance guarantees to our customers as a condition of sale. These guarantees usually provide financial protection to our customers in the event that we fail to fulfill our delivery or product warranty obligations. We secure these guarantees with standby letters of credit through our bank. At March 31, 2012 and December 31, 2011, we had $2,426 and $446, respectively, of performance guarantees outstanding to customers that were secured with letters of credit.

Index

6. Stockholders' Equity

In March 2012 we sold approximately 14.3 million shares of common stock at a purchase price of $0.68 per share, for proceeds, net of fees and expenses, of approximately $9.6 million, in an offering made under a shelf registration statement that we had filed with the Securities and Exchange Commission and that had been declared effective in December 2009. The proceeds from this offering will be used by us to help fund our working capital requirements during 2012 and for general corporate purposes.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with, and is qualified in its entirety by reference to, the financial statements and notes thereto included in Item 1 of this Form 10-Q and the financial statements and notes thereto and our Management's Discussion and Analysis of Financial Condition and Results of Operations for the year ended December 31, 2011 included in our 2011 Annual Report on Form 10-K. This report contains forward-looking statements, within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, that involve risks and uncertainties. Our expectations with respect to future results of operations that may be embodied in oral and written forward-looking statements, including any forward-looking statements that may be included in this report, are subject to risks and uncertainties that must be considered when evaluating the likelihood of our realization of such expectations. Our actual results could differ materially. The words "believe," "expect," "intend," "plan," "project," "will" and similar phrases as they relate to us are intended to identify such forward-looking statements. In addition, please see the "Risk Factors" in Part 1, Item 1A of our 2011 Annual Report on Form 10-K and in Part II, Item 1A of this Form 10-Q for a discussion of items that may affect our future results.

Overview

Active Power designs and manufactures continuous power and infrastructure solutions. These solutions ensure continuity for data centers and other mission critical operations in the event of power disturbances.

Our products and solutions are designed to deliver continuous conditioned ("clean") power during power disturbances and outages, voltage sags and surges, and provide ride-through power in the event of utility failure, supporting operations until utility power is restored or a longer term alternative power source, such as a diesel generator is started. We believe our products offer an advantage over those of our competitors in the areas of power density (less space) and energy efficiency, total cost of ownership, system reliability, modular design, and the economically green benefits of our solutions.

We have sold our patented flywheel-based uninterruptible power supply ("UPS") systems since 1999. As of March 31, 2012, we have shipped more than 3,300 flywheels in UPS system installations, delivering more than 825 megawatts of power to customers in 42 countries around the world with more than 110 million runtime hours of operation.

In addition to selling stand alone UPS systems, we also manufacture and sell continuous power systems ("CPS") that integrate our UPS products with other related equipment such as switchgear and backup diesel generators, and that are sold as a complete power solution for customers. Our CPS systems can be sold in a containerized format, or as individual components, and offer the same customer benefits with regard to operating efficiency, reliability and cost as our UPS products.

Our success with containerized CPS solutions enabled us to work with our partners to develop other power infrastructure solutions. We design and build enclosures that have a fully built out interior – including electrical, cooling, monitoring and other elements – ready for the customer to add their IT racks and servers. Once the customer adds their IT equipment to our infrastructure solution, they have a functional modular data center. These products can be deployed rapidly and at a lower cost than traditional brick-and-mortar solutions and are optimally suited for hyper-scale IT and cloud applications.

We are headquartered in Austin, Texas, with international offices in the United Kingdom, Germany, and China.

We continue to develop client relationships by selling directly and through our network partners. Specifically, we bring products to market through the following distribution methods:

- sales made directly by us;
- manufacturer's representatives;
- distributors;
- OEM partners; and
- strategic IT partners

We believe a number of underlying macroeconomic trends place Active Power in a strong position to be one of the leading providers of critical power protection. These trends include:

- increasing business costs of downtime;
- a rapidly expanding need for data center infrastructure
- ever-increasing demands placed on the public utility infrastructure;
- an inadequate investment in global utility infrastructure;
- rising costs of energy worldwide driven by volume of energy used; and
- an increasing demand for economically green solutions.

We have evolved significantly since the company was founded in 1992. Our early focus was on research and development of the core products that continue to enable the business today. Over the past several years, we have focused our efforts on brand, markets, and channels of distribution. As we go forward, it's critical for us to focus on both technology development to maintain and grow our leadership position and build channels of distribution to have more avenues into the market. The technological foundation of Active Power has yielded more than 100 worldwide patents and a highly differentiated, cost-efficient product platform that we have evolved into an expanding suite of infrastructure solutions.

Active Power has developed and implemented a go-to-market strategy to set the direction for our sales and marketing initiatives and plans around the following components:

- Customer: Data Center Applications Across Vertical Markets
- Distribution: Partner Enabled Distribution Strategy Transacted Locally
- Geography: 9 Global Markets around 4 Centers of Operation
- Products: Continuous Power and Infrastructure Solutions
- Value: Ingenious Efficient, Reliable, Green Solutions

As a result of this strategy, we have been successful in growing our revenue, improving our operating performance, broadening our global footprint, diversifying our customer base, broadening our sales channels and partners, and moving higher up the customer value chain with innovative developments of our core underlying product technology.

Results of Operations

($ in thousands)	Three Months ended March 31, 2012	% of total revenue	2011	% of total revenue	Variance 2012 vs. 2011 $	%
Product revenue	$ 16,406	83%	$ 14,738	85%	$ 1,668	11%
Service and other revenue	3,392	17%	2,591	15%	801	31%
Total revenue	19,798	100%	17,329	100%	2,469	14%
Cost of product revenue	11,996	61%	10,522	61%	1,474	14%
Cost of service and other revenue	2,495	13%	2,097	12%	398	19%
Total cost of goods sold	14,491	73%	12,619	73%	1,872	15%
Gross profit	5,307	27%	4,710	27%	597	13%
Operating expenses:						
Research and development	1,288	7%	921	5%	367	40%
Selling and marketing	3,547	18%	3,470	20%	77	2%
General and administrative	1,544	8%	1,368	8%	176	13%
Total operating expenses	6,379	32%	5,759	33%	620	11%
Operating loss	(1,072)	(5)%	(1,049)	(6)%	23	2%
Interest expense, net	(114)	(1)%	(33)	—	81	245%
Other income (expense), net	39	—	16	—	23	144%
Net loss	$ (1,147)	(6)%	$ (1,066)	(6)%	$ 81	8%

Product revenue. Product revenue primarily consists of sales of our CleanSource power quality products, CPS and other data center infrastructure solutions. Our CleanSource power quality products are comprised of both UPS and DC product lines and our CPS are comprised of our UPS systems and some combination of third party ancillary equipment, such as engine generators and switchgear. The CPS products may be sold in a containerized solution that we call PowerHouse, or as separate equipment. Our infrastructure solutions provide power distribution, cooling capabilities, security systems, fire suppression and monitoring capabilities for our IT channel partners. Our product revenue was derived from the following sources:

($ in thousands)	Three Months Ended March 31,		Variance	
	2012	2011	$	%
Product revenue:				
UPS product revenue	$ 4,216	$ 9,315	$ (5,099)	(55)%
Continuous Power Systems	4,931	4,672	259	6%
Infrastructure solutions	7,259	751	6,508	867%
Total product revenue	$ 16,406	$ 14,738	$ 1,668	11%

Product revenue for the three-month period ended March 31, 2012 increased approximately $1.7 million, or 11%, compared to the same period of 2011. This increase is primarily attributable to an increase in sales of data center infrastructure solutions revenues, as our solutions have gained market acceptance. Sales related to our infrastructure solutions and CPS products are generally larger in value and are purchased by fewer customers relative to our UPS products. Sales related to our infrastructure solutions comprised 44% of our product revenue for the first quarter of 2012 compared to 5% for the first quarter of 2011, and sales related to our CPS products comprised 30% of our product revenue for the first quarter of 2012 compared to 32% for the first quarter of 2011. Due to the small number of customers and large order values, the amount of revenues from our CPS and infrastructure solutions can fluctuate materially between quarters based on the timing of product shipments. Sales of our UPS products decreased by 55% from the first quarter of 2011 primarily due to the absence of large UPS installations this quarter compared to our customer mix in the first quarter of 2011 and from lower sales from our OEM partners.

Product revenue increased 11%, compared to the fourth quarter of 2011 due to an increase in our infrastructure solutions and CPS products revenue . This increase compares to a 10% decrease in product revenue in the first quarter 2011 as compared to the fourth quarter of 2010, primarily due to the timing of infrastructure solutions and CPS products revenue, UPS product revenue decreased in the first quarters of 2011, as is typical in the first quarter. The UPS industry in general, and our business in particular, traditionally has experienced a seasonal decline in revenue during the first calendar quarter of each year.

Product sales from our OEM channels for the three-month period ended March 31, 2012 decreased by approximately $4.3 million, or 80%, compared to the first quarter of 2011 and were approximately $141,000 or 12% lower compared to the fourth quarter of 2011. The first quarter of 2011 OEM revenue included several multi-megawatt UPS installations in Europe that resulted in significant revenue that period. The size and volume of orders from our OEM channels can fluctuate significantly on a quarterly basis and in 2012 we have seen fewer, but larger value transactions from our OEM channel. We have supported our OEM partners' efforts to sell total solutions to their customers that include generators and switchgear that they manufacture along with our UPS systems as a total solution. If our OEM partners are successful with this strategy, we believe that it will help drive an increase in our UPS product revenue. However, as our OEM partners sell more solutions, the quarterly volume of revenue becomes more variable. Sales to Caterpillar, our primary OEM channel, represented 6% of our product revenue for the three-month period ended March 31, 2012 compared to 36% of our product revenue in the first quarter of 2011. Caterpillar remains one of our largest customers as well as our largest OEM customer.

Our CPS and infrastructure solutions transactions tend to be larger in value and from a smaller number of customers compared to sales of our UPS products. This smaller number of customers with greater transaction value can contribute to large quarterly fluctuations in revenue from each product family, due to the timing of orders or shipments in any particular accounting period. The size of these transactions has been increasing and individual CPS and infrastructure transactions have been as high as $6 million in 2011. A small number of transactions can therefore lead to significant revenue, but cause greater volatility in our quarterly results and increase liquidity risk for us as we continue to refine and improve the payment terms of these opportunities as part of our working capital management.

The first quarter of 2012 saw a $7.1 million, or 365%, increase in product revenue from our IT channel compared to the first quarter of 2011. This increase was primarily due to the sale of infrastructure solutions for one of our IT channel partners for them to re-sell to end users in conjunction with sales of the partner's IT and computing products.

North America revenues represented 64% of our product revenue for the three-month period ended March 31, 2012, compared to 53% for the same period in 2011 and 62% of product revenue in the three-month period ended December 31, 2011.

We also sell products directly to customers in Asia and Western Europe and we have a network of international distributors in other territories that sell products for us. In these markets, customers are more likely to purchase a total power solution from us rather than a stand-alone UPS system. This usually results in a longer selling cycle and makes quarterly results from these regions more volatile. Thus the amount of revenue from our international markets can fluctuate significantly on a quarterly basis. Product sales to customers in Asia represented 9% of our product revenue in the three-month period ended March 31, 2012, compared to 1% for the first quarter of 2011 and 14% of product revenue in the fourth quarter of 2011. Product sales in EMEA represented 26% of product revenue in the three-month period ended March 31, 2012, compared to 46% for the first quarter of 2011 and 24% of product revenue in the fourth quarter of 2011. These fluctuations are primarily attributable to variations in sales of our CPS products in each region in the relevant periods and illustrate the impact of larger orders from fewer customers on quarterly revenue for each of these regions.

Product sales of Active Power branded products through our direct and manufacturer's representative channels were 39% of our product revenue for the three-month period ended March 31, 2012, compared to 51% in the first quarter of 2011, and 39% of our product revenue for the fourth quarter of 2011. As direct sales typically have higher profit margins than sales through our OEM channels, we will continue to focus on our direct sales channel to increase revenue and improve profit margins and to decrease our dependency upon our OEM channel. We believe sales of our Active Power branded products in markets that are not covered by our OEMs will continue to increase over time and will continue to become a larger percentage of our total revenue.

Our products perform well in harsh environments where power quality or reliability is particularly poor, which makes them a good fit for countries with a poor power infrastructure or in harsh manufacturing or process environments, or situations where reliability is paramount, such as mission-critical business applications. Therefore, we have traditionally focused our direct sales efforts on these types of customer situations.

Service and other revenue. Service and other revenue primarily relates to revenue generated from both traditional (after-market) service work and from customer-specific system engineering. This includes revenue from design, installation, startup, repairs or reconfigurations of our products and the sale of spare or replacement parts to our OEM and end-user customers. It also includes revenue associated with the costs of travel of our service personnel and revenues or fees received upon contract deferment or cancellation. Revenue from extended maintenance contracts with our customers is also included in this revenue category.

Service and other revenue increased by approximately $801,000, or 31%, for the three-month period ended March 31, 2012, compared to the first quarter of 2011. These increases reflect higher levels of service and contract work from direct product sales and from higher professional fees associated with PowerHouse and other CPS sales. For these CPS customers, we provide a full power solution, including design services, site preparation, installation of an entire power solution and provision of all products required to provide a turnkey product to the end user, often including maintenance services. We had increased service revenues from maintenance contracts and repair-related activities as our increasing installed base of UPS customers provides greater opportunities to generate such revenues. Where we make sales through our OEM channel, it is typical for the OEM to provide these types of services to their end-user customers, so these revenue opportunities do not typically exist for us on our OEM sales. We anticipate that service and other revenue will continue to grow with product revenue, particularly as our PowerHouse system revenue grows and as our installed base of UPS product expands, because as more units are sold to customers, more installation, startup and maintenance services will be required.

Cost of product revenue. Cost of product revenue includes the cost of component parts of our products, ancillary equipment that is sourced from external suppliers, personnel, equipment and other costs associated with our assembly and test operations, depreciation of our manufacturing property and equipment, shipping costs, warranty costs, and the costs of manufacturing support functions such as logistics and quality assurance. The cost of product revenue as a percentage of total product revenue was 73% for the three-month period ended March 31, 2012, compared to 71% for the same period in 2011. These increases in costs as a percentage of revenue reflect higher levels of unabsorbed overhead costs attributable to a lower level of UPS system production. We continue to operate a manufacturing facility that has a manufacturing and testing capacity significantly greater than our current product revenue levels. A large portion of the costs involved in operating this manufacturing facility are fixed in nature and we can incur up to $600,000 in unabsorbed overhead each quarter depending on the level of UPS system production. We continue to work on reducing our product costs through design enhancements and modifications, vendor management programs and increasing our sales volume to absorb these expenses.

Cost of service and other revenue. Cost of service and other revenue includes the cost of component parts that we use in service or sell as spare parts, as well as labor and overhead costs of our service organization, including travel and related costs incurred in fulfilling our service obligations to our customers. Costs paid to third parties in fulfillment of service and design or installation services are also included in costs of service and other revenue. The cost of service and other revenue decreased to 74% of service and other revenue in the three-month period ended March 31, 2012, compared to 81% for the same period of 2011. The decrease in the current quarter reflects higher utilization of our service personnel and improved margins on the professional service work we perform for CPS and infrastructure systems installation. We have also had higher costs relative to the increase in service and other revenues as we have continued to expand our service team as we broaden the geographic regions where we have service capability as our total business grows. The utilization of our service personnel will also be affected by the number of PowerHouse and infrastructure solution products implemented in a particular period, and in periods where we have a low number of installation projects we would expect our costs as a percentage of revenue to increase. A large portion of the costs involved in operating our service organization are fixed in nature and we incur approximately $300,000 to $600,000 in unabsorbed overhead each quarter. We continue to work on reducing our service overhead through better utilization of our service employees and cost control measures. This infrastructure also means that we can leverage this investment and grow our service capabilities substantially by adding direct technical labor only as required.

Gross profit. For the three-month period ended March 31, 2012 our gross profit margin was 27% of revenue, compared to a 27% gross profit margin for the first quarter of 2011, and a 20% gross profit margin for the fourth quarter of 2011. The improvement from the previous quarter reflects improved margins on our UPS business and improved execution and pricing on manufacturing and delivery of our CPS and infrastructure solutions. Historically our CPS and infrastructure products have generated lower margins for us than sales of our UPS product because they include a higher proportion of third party ancillary equipment. Our ability to improve our gross profit will depend, in part, on our ability to continue to reduce material costs, improve our sales channel mix, increase sales of higher margin products such as our UPS products, increase product prices, improve our professional service margins through pricing and operating efficiency, and increase our total revenues to a level that will allow us to improve the utilization of our manufacturing and service operations.

Research and development. Research and development expense primarily consists of compensation and related costs for employees engaged in research, development and engineering activities, third party consulting and product development activities, as well as an allocated portion of our occupancy costs. Overall, our research and development expenses were approximately $367,000, or 40%, higher in the first quarter of 2012 compared to the first quarter of 2011 and were $172,000, or 12%, lower than the fourth quarter of 2011. We are currently developing a new generation of UPS product that we believe will offer greater power modularity and space efficiencies especially as we target the larger power market segments. We have increased headcount to support this new product development and to support new infrastructure and UPS products that we believe will contribute to future revenue growth for us. We believe research and development expenses in the second quarter of 2012 will remain at similar levels to those recorded in the first quarter of 2012.

Selling and marketing. Selling and marketing expense primarily consists of compensation, including variable sales compensation, and related costs for sales and marketing personnel, and related travel, selling and marketing expenses, as well as an allocated portion of our occupancy costs and the cost of our foreign sales operations. Selling and marketing costs were approximately $77,000, or 2%, higher in the first quarter of 2012 compared to the first quarter of 2011 and increased approximately $132,000, or 4%, from the fourth quarter of 2011 primarily from continued investment in our sales organization size. We believe that sales and marketing expenses during the remainder of 2012 will remain at similar levels to those recorded in the first quarter of 2012, except for changes in variable selling expenses that are based on fluctuations in total revenue and gross profit margins.

General and administrative. General and administrative expense is primarily comprised of compensation and related costs for executive and administrative personnel, professional fees, and taxes, including sales, property and franchise taxes. General and administrative expenses for the first quarter of 2012 increased approximately $176,000, or 13%, compared to the same period in 2011 due to higher headcount and professional services fees, and decreased by approximately $603,000, or 28%, as compared to the fourth quarter of 2011 due to approximately $830,000 of costs we incurred during the fourth quarter of 2011 relating to separation of employment and for costs incurred in hiring a new Chief Executive Officer.

Interest expense, net. Net interest expense has increased from approximately $33,000 in the first quarter of 2011 to approximately $114,000 in the first quarter of 2012, or by 245%. We incurred higher interest expense as we had a larger average outstanding balance on our revolving credit facility. Our average cash and investments balance over the three-month period ending March 31, 2012 has decreased by $532,000, or 4%, compared to the average balance over the same period ending March 31, 2011. The lower cash balances and lower interest rate environment resulted in a decrease in interest income.

Other income (expense), net. Other income (expense) in the first quarter of 2012 and 2011 reflects foreign exchange gains (losses) on a bank account held in foreign currencies by our subsidiary company.

Liquidity and Capital Resources

Our primary sources of liquidity at March 31, 2012 are our cash and investments on hand, our bank credit facilities and projected cash flows from operating activities. If we meet our cash flow projections in our current business plan, we expect that we have adequate capital resources in order to continue operating our business for at least the next 12 months. Our business plan and our assumptions around the adequacy of our liquidity are based on estimates regarding expected revenues and future costs. However, there are potential risks in which our revenues may not meet our projections, our costs may exceed our estimates or our working capital needs may be greater than anticipated. Further, our estimates may change and future events or developments may also affect our estimates. Any of these factors may change our expectation of cash usage in the remainder of 2012 and beyond or significantly affect our level of liquidity, which may limit our opportunity to pursue certain opportunities to grow our business.

A substantial increase in sales of our PowerHouse or our infrastructure solutions products or a substantial increase in UPS sales may materially impact the amount of liquidity required to fund our operations. The amount of time between the receipt of payment from our customers and our expenditures for raw materials, manufacturing and shipment of products (the cash cycle) for sales of our CleanSource UPS product can be as short as 45 days, and is typically 60 days. However, the cash cycle on a PowerHouse sale can be as much as 210 days, depending upon customer payment terms. We intend to mitigate the financial impact of this longer cash cycle by requiring customer deposits and periodic payments where possible from our customers. This is not always commercially feasible, and in order to increase our PowerHouse sales, we may be required to make larger investments in inventory and receivables. These larger investments may require us to obtain additional sources of working capital, debt or equity financing in order to fund this business.

Should additional funding be required, we would expect to raise the required funds through borrowings or public or private sales of debt or equity securities. If we raise additional funds through the issuance of debt or equity securities, the ownership of our stockholders could be significantly diluted. If we obtain additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, and the terms of the debt securities issued could impose significant restrictions on our operations. We do not know whether we will be able to secure additional funding, or funding on terms acceptable to us, to continue our operations as planned. If financing is not available, we may be required to reduce, delay or eliminate certain activities or to license or sell to others some of our proprietary technology.

The following table summarizes the quarterly changes in cash used in operating activities:

($ in thousands)	Three months ended March 31,		Variance 2012 vs. 2011	
	2012	2011	$	%
Cash used in operating activities	$ (1,904)	$ (2,757)	$ 853	31%

Cash used in operating activities decreased by $853,000 in the three-month period ended March 31, 2012 compared to the same period of 2011. This was primarily due to changes in our working capital requirements caused by the timing of product shipments to our customers. This timing of large orders can cause large fluctuations in the amount of cash required for operations on a quarterly basis.

The fluctuations in working capital are impacted by the timing of product order and shipment. In the first quarter of 2012, we saw a $1.1 million decrease in inventory as our work-in-progress levels declined. Our receivables increased by $4.4 million over the quarter, reflecting the higher revenue levels and a higher proportion of revenues that were recognized towards the end of the reporting period compared to the first quarter of 2011. Restricted cash increased $1.0 million over the first quarter of 2012, due to a secured performance guarantee given to a customer in connection with a future order. Upon delivery of product to the customer, the guarantee will lapse and the restriction on these funds will be released. Our accounts payable increased $1.4 million since December 31, 2011, but we have seen large fluctuations in the balance of accounts payable as we receive large power and infrastructure orders, and lengthened timing of payments from our customers. Accrued expenses decreased by $1.2 million since December 31, 2011, reflecting payments of annual incentive compensation. These uses of funds were offset by an increase in deferred revenue of $3.3 million since December 31, 2011, which primarily reflects the receipt of customer deposits and advance payments related to the timing of our large CPS and infrastructure projects. We anticipate that cash provided by (used in) operations will fluctuate significantly based upon the volume and size of our CPS and infrastructure solutions sold and by the timing of product delivery relative to our reporting periods, and that such volatility in sources and uses of funds will continue as our CPS and infrastructure solutions businesses continue to grow.

The following table summarizes the quarterly changes in cash used in investing activities:

($ in thousands)	Three months ended March 31,		Variance 2012 vs. 2011	
	2012	2011	$	%
Cash used in investing activities	$ (495)	$ (326)	$ (169)	(52)%

Investing activities primarily consist of purchases of property and equipment. Capital expenditures were $495,000 in the three-month period ending March 31, 2012, compared to approximately $326,000 in the same period of 2011, as we invested in multiple demonstration CPS systems in Asia and Europe, and as we commenced tooling for our next generation UPS product.

The following table summarizes the quarterly changes in cash provided by financing activities:

($ in thousands)	Three months ended March 31,		Variance 2012 vs. 2011	
	2012	2011	$	%
Cash provided by financing activities	$ 10,048	$ 1,129	8,919	790%

Funds provided by financing activities during the three months ended March 31, 2012 primarily reflect the sale of common stock pursuant to which we sold approximately 14.3 million shares of common stock at a purchase price of $0.68 per share, for proceeds, net of fees and expenses, of approximately $9.6 million, and from proceeds from the exercise of employee stock options.

The shares were sold pursuant to a prospectus included in our shelf registration statement on Form S-3 dated November 24, 2009, as amended on December 17, 2009 (Registration No. 333-163301), which was declared effective by the Securities and Exchange Commission (the "SEC") on December 21, 2009, as supplemented by a prospectus supplement dated March 7, 2012 filed with the SEC pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the "Offering"). No discounts or placement agent fees were payable in connection with the Offering, and we expect to use the proceeds from the Offering for working capital requirements and general corporate purposes.

In connection with the Offering, we also entered into a Side Letter Agreement with Kinderhook Partners, LP pursuant to which Kinderhook Partners, LP was granted the right to designate one member of our board of directors. We are obligated to use our reasonable best efforts to cause to be appointed any designee of Kinderhook Partners, LP to the board of directors within 10 days after we receive written notice of such designation (the "Side Letter"). Until such designee has been appointed to our board of directors, we will invite a representative of Kinderhook Partners, LP to attend all meetings of our board of directors in a nonvoting observer capacity.

We have also entered into a Resale Registration Rights Agreement (the "Rights Agreement") pursuant to which we are obligated to prepare promptly and file with the SEC as soon as practicable, but in no event later than May 1, 2012, a Registration Statement on Form S-3 (or, if Form S-3 is not then available, on such form of Registration Statement as is then available to effect a registration of all of the shares) covering the resale of shares of Common Stock held by Kinderhook Partners LP. If the registration statement is not declared effective by July 3, 2012, then we will be obliged to pay a certain amount in liquidated damages. All expenses incurred by us in connection with registrations, filings or qualifications pursuant to the Rights Agreement will be borne by us.

We believe that our cash and investments and our sources of available liquidity will be sufficient to fund our operations for at least the next 12 months. Our sales cycle is such that we generally have visibility two to three quarters in advance for future orders that allows us to predict revenues over this period of time with some degree of confidence. However, a sudden change in business volume or product mix, positive or negative, from any of our business or channel partners or in our direct business could significantly impact our expected revenues. The recent global economic downturn has reduced our confidence at predicting future revenues, and even with improving economic conditions, there is still uncertainty and risk in our forecasting. This two to three quarter window of sales visibility does provide us with some opportunity to adjust expenditures or take other measures to reduce our cash consumption if we can see and anticipate a shortfall in revenue or give us time to identify additional sources of funding if we anticipate an increase in our working capital requirements due to increased revenues or changes in our revenue mix. A significant increase in sales, especially in our PowerHouse or our infrastructure solutions business, would likely increase our working capital requirements, due to the longer production time and cash cycle of sales of these products. We established a revolving bank credit facility to help finance a growth in PowerHouse and infrastructure solutions and believe that this will be adequate to sustain further growth in these products.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

We invest our cash in a variety of financial instruments, including bank time deposits, and taxable variable rate and fixed rate obligations of corporations, municipalities, and local, state and national government entities and agencies. These investments are denominated in U.S. dollars.

Our interest income is sensitive to changes in the general level of U.S. interest rates, particularly since the majority of our investments are in short-term instruments. We believe that our investment policy is conservative, both in terms of the average maturity of investments that we allow and in terms of the credit quality of the investments we hold. Because of the nature of the majority of our investments, we do not believe a 1% decline in interest rates would have a material effect on interest income or their fair value.

Our international sales were historically made in U.S. dollars. As we have increased sales in foreign markets and opened operations in multiple foreign countries, we have executed more transactions that are denominated in other currencies, primarily Euro and British pounds. Those sales and expenses in currencies other than U.S. dollars can result in translation gains and losses which have not been significant to date. Currently, we do not engage in hedging activities for our international operations other than an increasing the amount of sales and support expenses being incurred in foreign currencies as a natural hedge. However, recent volatility in currencies, particularly with the pound and Euro, is increasing the amount of potential translation gains and losses and we may engage in hedging activities in the future to mitigate the risks caused by such currency volatility.

Our international business is subject to the typical risks of any international business, including, but not limited to, the risks described in Item 1A, "Risk Factors." Accordingly, our future results could be materially harmed by the actual occurrence of any of these or other risks.

Item 4. Controls and Procedures.

Evaluation of disclosure controls and procedures.

Our Chief Executive Officer and our Chief Financial Officer, based on the evaluation of our disclosure controls and procedures (as defined in Rule 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) required by paragraph (b) of Rule 13a-15 or Rule 15d-15, have concluded that, as of March 31, 2012, our disclosure controls and procedures were effective to ensure that the information we are required to disclose in reports that we file or submit under the Exchange Act, (i) is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and (ii) is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in internal control over financial reporting.

During the three months ended March 31, 2012, there were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and Rule 15d-15(d) under the Exchange Act that have materially affected, or that we believe are reasonably likely to materially affect, our internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

We are, from time to time, subject to various legal proceedings, claims and litigation arising in the ordinary course of business. We do not believe we are party to any currently pending legal proceedings the outcome of which may have a material effect on our operations or consolidated financial position. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse affect on our financial position, results of operations or cash flows.

Item 1A. Risk Factors.

You should carefully consider the risks described below and in Item 1A of our 2011 Annual Report on Form 10-K before making a decision to invest in our common stock or in evaluating Active Power and our business. The risks and uncertainties described below and in our 2011 Annual Report on Form 10-K are not the only ones we face. Additional risks and uncertainties that we do not presently know, or that we currently view as immaterial, may also impair our business operations. This report is qualified in its entirety by these risk factors.

The actual occurrence of any of the risks described below and in our 2011 Annual Report on Form 10-K could materially harm our business, financial condition and results of operations. In that case, the trading price of our common stock could decline.

Our increased emphasis on larger and more complex system solutions and customer concentration may affect our ability to accurately predict the timing of revenues and to meet short-term expectations of operating results.

Our increased emphasis on larger and more complex system solutions has increased the effort and time required by us to complete sales to customers. Further, a larger portion of our quarterly revenue is derived from relatively few large transactions with relatively few customers. For example, during the three months ended March 31, 2012, our three largest customers contributed 71% of our revenue. Any delay in completing these large sales transactions or reduction in the number of customers or large transactions, may result in significant fluctuations in our quarterly revenue. Further, we use anticipated revenues to establish our operating budgets and a large portion of our expenses, particularly rent and salaries are fixed in the short term. As a result, any shortfall or delay in revenue could result in increased losses and would likely cause our operating results to be below public expectations. The occurrence of any of these events would likely materially adversely affect our results of operations and likely cause the market price of our common stock to decline.

We are significantly dependent on our relationships with Hewlett Packard and Caterpillar. If these relationships are unsuccessful, for whatever reason, our business and financial prospects would likely suffer.

Caterpillar including its dealer network is our primary OEM customer and our largest single customer for our flywheel-based products. Caterpillar and its dealer network accounted for 24%, 19%, 16% and 7% of our revenue in 2009, 2010, 2011, and the three months ended March 31, 2012, respectively. HP is our largest IT channel partner and accounted for 12%, 25%, 36% and 52% of our revenue in 2009, 2010, 2011 and the three months ended March 31, 2012, respectively. A number of factors could cause these customers to cancel or defer orders, including interruptions to their operations due to a downturn in their industries, delays or changes in their product offerings or securing other sources for the products that we manufacture, or developing such products internally. If our relationships with HP or with Caterpillar are not successful or suffers a material adverse change, such as a material reduction in the level of orders or their failure to timely pay us, our business and operating results would likely suffer.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

None.

Item 5. Other Information.

None.

Item 6. Exhibits.

The following documents are filed as exhibits to this report:

3.1	Restated Certificate of Incorporation, dated June 7, 2006
3.2	Second Amended and Restated Bylaws as adopted February 1, 2007
3.3	Amendment to Second Amended and Restated Bylaws as adopted December 6, 2007
4.1*	Specimen certificate for shares of Common Stock (filed as Exhibit 4.1 to Active Power's IPO Registration Statement on Form S-l (SEC File No. 333-36946)
4.2*	See Exhibits 3.1, 3.2 and 3.3 for provisions of the Certificate of Incorporation and Bylaws of the registrant defining the rights of holders of common stock
10.1	.Severance Benefits Agreement, dated March 1, 2012, between Active Power, Inc. and J. Douglas Milner
10.2	Offer Letter, dated February 20, 2012, between Active Power, Inc. and J. Douglas Milner.
10.3 *	Securities Purchase Agreement dated March 7, 2012 between Active Power, Inc. and the Purchasers (as defined therein) (filed as Exhibit 10.1 to Active Power's Current Report on Form 8-K filed on March 8, 2012)
10.4*	Side Letter Agreement dated March 7, 2012 between Active Power, Inc. and Kinderhook Partners, L.P. (filed as Exhibit 10.2 to Active Power's Current Report on Form 8-K filed on March 8, 2012)
10.5*	Resale Registration Rights Agreement dated March 7, 2012 between Active Power, Inc. and Kinderhook Partners, L.P. (filed as Exhibit 10.3 to Active Power's Current Report on Form 8-K filed on March 8, 2012)
10.6+	Purchase Agreement, effective as of June 1, 2011, between Active Power, Inc. and Caterpillar Inc.
31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2003
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15(d)-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2003
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2003
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2003
101	The following financial statements from the Active Power's Quarterly Report on Form 10-Q for the quarter ended March 31, 2012, formatted in XBRL: (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations and Comprehensive Loss, (iii) Condensed Consolidated Statements of Cash Flows, and (iv) Notes to Condensed Consolidated Financial Statements.

* Incorporated by reference to the indicated filing.

\+ Confidential treatment has been requested with respect to certain portions of this exhibit.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ACTIVE POWER, INC.
(Registrant)

April 30, 2012
(Date)

/s/ J. Douglas Milner

J. Douglas Milner
President and Chief Executive Officer
(Principal Executive Officer)

April 30, 2012
(Date)

/s/ John K. Penver

John K. Penver
Vice President of Finance, Chief Financial Officer and Secretary
(Principal Financial and Accounting Officer)

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION

OF

ACTIVE POWER, INC.

Active Power, Inc., a corporation organized and existing under the Delaware General Corporation Law (the "DGCL"), Does Hereby Certify:

First: The original Certificate of Incorporation of this corporation was filed with the Secretary of State of Delaware on March 29, 2000 under the name "Active Power, Inc." An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on August 4, 2000, a Certificate of Correction was filed with the Secretary of State of Delaware on June 6, 2006 and a Certificate of Amendment to Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on June 6, 2006.

Second: The Restated Certificate of Incorporation of Active Power, Inc. in the form attached hereto as Annex A has been duly adopted in accordance with the provisions of Section 245 of the DGCL by the directors of this corporation. Pursuant to Section 245 of the DGCL, this Restated Certificate of Incorporation of Active Power, Inc. is an integration into a single instrument of all provisions of Active Power's certificate of incorporation that are no in effect and therefore approval by the stockholders of this corporation is not required.

Third: The Restated Certificate of Incorporation so adopted reads in full as set forth in Annex A attached hereto and is incorporated herein by this reference.

In Witness Whereof, Active Power, Inc. has caused this Restated Certificate of Incorporation to be signed by its duly authorized and elected officer this 7th day of June, 2006.

ACTIVE POWER, INC.

By: /s/ Michael Chibib
Michael Chibib
Vice President and General Counsel

ANNEX A

RESTATED CERTIFICATE OF INCORPORATION
OF
ACTIVE POWER, INC.

ARTICLE I

The name of this corporation shall be Active Power, Inc. (the "Company").

ARTICLE II

The address of the registered office of the Company in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent at that address is The Corporation Trust Company.

ARTICLE III

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

A. Authorized Shares. The aggregate number of shares that the Company shall have authority to issue is One Hundred Sixty Million (160,000,000), (a) One Hundred Fifty Million (150,000,000) shares of which shall be common stock, par value $0.001 per share ("Common Stock"), and (b) Ten Million (10,000,000) shares of which shall be preferred stock, par value $0.001 per share ("Preferred Stock"). Of such shares of Preferred Stock, Four Hundred Thousand (400,000) shall be designated as "Series A Junior Participating Preferred Stock," the rights, preferences and privileges of which are set forth in the Certificate of Designation of Series A Junior Participating Preferred Stock of Active Power filed with the Secretary of State of Delaware on December 18, 2001.

B. Common Stock. Each share of Common Stock shall have one vote on each matter submitted to a vote of the stockholders of the Company. Subject to the provisions of applicable law and the rights of the holders of the outstanding shares of Preferred Stock, if any, the holders of shares of Common Stock shall be entitled to receive, when and as declared by the Board of Directors of the Company, out of the assets of the Company legally available therefor, dividends or other distributions, whether payable in cash, property or securities of the Company. The holders of shares of Common Stock shall be entitled to receive, in proportion to the number of shares of Common Stock held, the net assets of the Company upon dissolution after any preferential amounts required to be paid or distributed to holders of outstanding shares of Preferred Stock, if any, are so paid or distributed.

C. Preferred Stock.

1. Series. The Preferred Stock may be issued from time to time by the Board of Directors as shares of one or more series. The description of shares of each additional series of Preferred Stock, including any designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption shall be as set forth in resolutions adopted by the Board of Directors.

2. Rights and Preferences. The Board of Directors is expressly authorized, at any time, by adopting resolutions providing for the issuance of, or providing for a change in the number of, shares of any particular series of Preferred Stock and, if and to the extent from time to time required by law, by filing certificates of amendment or designation which are effective without stockholder action, to increase or decrease the number of shares included in each series of Preferred Stock, but not below the number of shares then issued, and to set in any one or more respects the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms and conditions of redemption relating to the shares of each such series. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, setting or changing the following:

a. the dividend rate, if any, on shares of such series, the times of payment and the date from which dividends shall be accumulated, if dividends are to be cumulative;

b. whether the shares of such series shall be redeemable and, if so, the redemption price and the terms and conditions of such redemption;

c. the obligation, if any, of the Company to redeem shares of such series pursuant to a sinking fund;

d. whether shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes and, if so, the terms and conditions of such conversion or exchange, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

e. whether the shares of such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the extent of such voting rights;

f. the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Company; and

g. any other relative rights, powers, preferences, qualifications, limitations or restrictions thereof relating to such series.

ARTICLE V

A director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Company or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law or (d) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

ARTICLE VI

The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Company.

ARTICLE VII

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

ARTICLE VIII

Election of directors at an annual or special meeting of stockholders need not be by written ballot unless the Bylaws of the Company shall so provide.

ARTICLE IX

A. At each annual meeting of stockholders, directors of the Company shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified. Effective immediately following the closing of the initial public offering of the Company's capital stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the " Initial Public Offering"), the directors of the Company shall be divided into three classes as nearly equal in size as is practicable, hereby designated as Class I, Class II and Class III. The initial Class I, Class II and Class III directors shall be those directors designated and elected by resolution of the Board of Directors or stockholders prior to the Initial Public Offering. The term of office of the initial Class I directors shall expire at the first annual meeting of stockholders following the closing of the Initial Public Offering (the "First Public Company Annual Meeting "); the term of office of the initial Class II directors shall expire at the next succeeding annual meeting of stockholders; and the term of office of the initial Class III directors shall expire at the second succeeding annual meeting of stockholders. At each annual meeting after the First Public Company Annual Meeting, directors to replace those of a Class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and qualified. If the number of directors is hereafter changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable.

B. Vacancies occurring on the Board of Directors for any reason may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at a meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy shall hold office until the next succeeding annual meeting of stockholders of the Company and until his or her successor shall have been duly elected and qualified.

ARTICLE X

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

ARTICLE XI

Effective upon the closing of the Initial Public Offering, stockholders of the Company may not take action by written consent in lieu of a meeting but must take any actions at a duly called annual or special meeting.

ARTICLE XII

Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of the capital stock required by law or this Certificate of Incorporation, effective as of the Initial Public Offering, the affirmative vote of the holders of at least two-thirds (2/3) of the combined voting power of all of the then-outstanding shares of the Company entitled to vote shall be required to alter, amend or repeal Articles IX or XI or this Article XII, or any provisions thereof.

ARTICLE XIII

Subject to Article XII above, the Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

* * *

Exhibit 3.2

SECOND AMENDED AND RESTATED BYLAWS OF ACTIVE POWER, INC., a Delaware corporation

TABLE OF CONTENTS

SECOND AMENDED AND RESTATED BYLAWS
OF
ACTIVE POWER, INC.,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.1 **Registered Office**. The registered office of the corporation shall be the registered office named in the certificate of incorporation of the corporation, or such other office as may be designated from time to time by the Board of Directors in the manner provided by law.

Section 1.2 **Other Offices**. The corporation may have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require. The books of the corporation may be kept (subject to any provision contained in the Delaware General Corporation Law) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in these Bylaws.

ARTICLE II

CORPORATE SEAL

The corporate seal shall consist of a die bearing the name of the corporation. Said seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or reproduced.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 3.1 **Place of Meetings**. Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the principal executive offices of the corporation. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 3.12 of these Bylaws.

Section 3.2 **Annual Meeting**.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of Directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors; (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing in proper form to the Secretary of the corporation, and any such business, other than nominations of persons for election to the Board of Directors, must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to or mailed and received by the Secretary of the corporation not later than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the date of the proxy statement delivered by or at the direction of the Board of Directors to stockholders in connection with the preceding year's annual meeting; provided, however, that if either (i) the date of the annual meeting is advanced more than thirty (30) days or delayed (other than as a result of adjournment) more than sixty (60) days from such an anniversary date or (ii) no such proxy statement was delivered to stockholders in connection with the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the corporation. To be in proper form, a stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting:

(i) a brief description of the business desired to be brought before the annual meeting (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the certificate of incorporation or these Bylaws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting;

(ii) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and, if applicable, intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice or introduce the business specified in the notice;

(iii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business;

(iv) the class and number of shares of the corporation which are beneficially owned by the stockholder;

(v) any material interest of the stockholder in such business; and

(vi) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in such stockholder's capacity as a proponent of a stockholder proposal.

The chairman of the meeting shall determine whether any business proposed to be transacted by the stockholders has been properly brought before the meeting and, if any proposed business has not been properly brought before the meeting, the chairman shall declare that such proposed business shall not be presented for stockholder action at the meeting. For purposes of this Section 3.2, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act. Notwithstanding any provision in this Section 3.2 to the contrary, requests for inclusion of proposals in the corporation's proxy statement made pursuant to Rule 14a-8 under the Exchange Act shall be deemed to have been delivered in a timely manner if delivered in accordance with such Rule. Notwithstanding compliance with the requirements of this Section 3.2, the chairman presiding at any meeting of the stockholders may, in his sole discretion, refuse to allow a stockholder or stockholder representative to present any proposal which the corporation would not be required to include in a proxy statement under any rule promulgated by the Securities and Exchange Commission.

(c) Only persons who are nominated in accordance with the procedures set forth in this paragraph shall be eligible for election as Directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the corporation entitled to vote in the election of Directors at the meeting who complies with the notice procedures set forth in this paragraph. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation in accordance with the provisions of paragraph (b) of this Section 3.2. Such stockholder's notice shall set forth (i) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a Director: (A) the name, age, business address and residence address of such person; (B) the principal occupation or employment of such person; (C) the class and number of shares of the corporation which are beneficially owned by such person; (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required in each case pursuant to Regulation 14A under the Exchange Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee, and to serving as a Director if elected); and (ii) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (b) of this Section 3.2. At the request of the Board of Directors, any person nominated by a stockholder for election as a Director shall furnish to the Secretary of the corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a Director of the corporation unless nominated in accordance with the procedures set forth in this paragraph. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if the chairman should so determine, the chairman shall so declare at the meeting, and the defective nomination shall be disregarded.

Section 3.3 **Special Meetings**.

(a) Special meetings of the stockholders of the corporation may only be called, for any purpose or purposes, by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized Directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) No business may be transacted at such special meeting otherwise than specified in the resolution calling for the meeting. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request other than any actions effected prior to the corporation's initial public offering of its capital stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Initial Public Offering"). Upon determination of the time and place of the meeting, notice shall be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Bylaws. If the notice is not given within sixty (60) days after the receipt of the request, the person or persons requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders may be held.

Section 3.4 **Notice of Meetings**. Except as otherwise provided by law or these Bylaws or the certificate of incorporation of the corporation, as the same may be amended or restated from time to time and including any certificates of designation thereunder (hereinafter, the "Certificate of Incorporation"), and for actions effected prior to an Initial Public Offering (for which no notice need be given) notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date, time, means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and purpose or purposes of the meeting. Notice of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by a waiver by electronic transmission by the person entitled to such notice, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 3.5 **Quorum**. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by duly authorized proxy, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all actions taken by the holders of a majority of the votes cast, excluding abstentions, at any meeting at which a quorum is present shall be valid and binding upon the corporation; provided, however, that Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of Directors. Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority (plurality, in the case of the election of Directors) of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

Section 3.6 **Adjournment and Notice of Adjourned Meetings** . Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares casting votes, excluding abstentions. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 3.7 **Voting Rights**. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 7.5 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. Elections of Directors need not be by written ballot, unless otherwise provided in the Certificate of Incorporation.

Section 3.8 **Joint Owners of Stock**. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; or (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the Delaware General Corporation Law, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of clause (c) shall be a majority or even-split in interest.

Section 3.9 **List of Stockholders**. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours at the principal place of business of the corporation. If the meeting is to be held at a place, the list shall be produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 3.10 **No Action Without Meeting**. Effective upon the closing of the corporation's Initial Public Offering, the stockholders of the corporation may not take action by written consent without a meeting and must take any actions at a duly called annual or special meeting.

Section 3.11 **Organization**.

(a) At every meeting of stockholders, unless another officer of the corporation has been appointed by the Board of Directors to serve as chairman of the meeting, the Chief Executive Officer or, if the Chief Executive Officer is absent, the President, or, if the President is absent, the Chief Financial Officer or, if the Chief Financial Officer is absent, the most senior Vice President present, or, in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. Unless the Board of Directors or the chairman of the meeting shall have approved another person to serve as secretary of the meeting, the Secretary, or, in his absence, an Assistant Secretary (if any) shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules, regulations and procedures for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules, regulations and procedures of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to convene and adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

Section 3.12 **Meeting by Remote Communication**. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors may in its sole discretion permit stockholders to participate in a meeting of stockholders by means of remote communication and shall be deemed present in person and permitted to vote at such meeting, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at such meeting by means of remote communication is a stockholder, (ii) the corporation shall implement reasonable measures to provide such stockholders a reasonable opportunity to participate in such meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of such meeting substantially concurrently with such proceedings, and (iii) if any stockholder votes or takes other action at such meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

ARTICLE IV

DIRECTORS

Section 4.1 **Number and Term of Office; Classification**.

(a) The number of directors which shall constitute the whole Board of Directors shall be determined from time to time by the Board of Directors (provided that no decrease in the number of directors which would have the effect of shortening the term of an incumbent director may be made by the Board of Directors), provided that the number of directors shall be not less than one (1). At each annual meeting of stockholders, Directors of the corporation shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified or until such Director's earlier death, resignation or due removal; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law. Directors need not be stockholders unless so required by the Certificate of Incorporation. If, for any reason, the Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

(b) Effective immediately following the closing of the Initial Public Offering, the Directors of the corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The initial Class I, Class II and Class III directors shall be those directors designated and elected by resolution of the Board of Directors or stockholders prior to the Initial Public Offering. The term of office of the initial Class I directors shall expire at the first annual meeting of stockholders following the closing of the Initial Public Offering (the "First Public Company Annual Meeting"); the term of office of the initial Class II directors shall expire at the next succeeding annual meeting of stockholders; and the term of office of the initial Class III directors shall expire at the second succeeding annual meeting of stockholders. At each annual meeting of stockholders following the First Public Company Annual Meeting, Directors to replace those of the Class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and qualified. If the number of directors is hereafter changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable.

Section 4.2 **Powers**. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 4.3 **Vacancies**. Vacancies occurring on the Board of Directors may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum. Each Director so elected shall hold office for the unexpired portion of the term of the Director or newly created directorship whose place shall be vacant and until his successor shall have been duly elected and qualified or until such Director's earlier death, resignation or due removal. A vacancy in the Board of Directors shall be deemed to exist under this Section 4.3 in the case of (i) the death, removal or resignation of any Director; (ii) an increase in the authorized number of Directors pursuant to Section 4.1(a) above; or (iii) if the stockholders fail at any meeting of stockholders at which Directors are to be elected (including any meeting referred to in Section 4.6 below) to elect the number of Directors then constituting the whole Board of Directors.

Section 4.4 **Resignation**. Any Director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more Directors shall resign from the Board of Directors, effective at a future date, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 4.5 **Removal**. At a special meeting of stockholders called for such purpose and in the manner provided herein, subject to any limitations imposed by law or the Certificate of Incorporation, the Board of Directors, or any individual Director, may only be removed from office for cause, and a new Director or Directors shall be elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of Directors.

Section 4.6 **Meetings**.

(a) Annual Meetings. Unless the Board shall determine otherwise, the annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Regular Meetings. Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the principal executive offices of the corporation. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all directors.

(c) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, and subject to the notice requirements contained herein, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any two of the Directors.

(d) Telephone Meetings. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) Notice of Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be given by mail, overnight courier service or electronic transmission, at least one (1) day before the date of the meeting. Such notice need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Certificate of Incorporation or these Bylaws. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be deemed waived by any Director by attendance thereat, except when the Director attends the meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after such meeting, each of the Directors not present shall provide a waiver of notice in writing or by electronic transmission, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 4.7 Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Article XI hereof, for which a quorum shall be one-third of the exact number of Directors fixed from time to time in accordance with Section 4.1 hereof, but not less than one (1), a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 4.1 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum be present or otherwise, a majority of the Directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a vote of the majority of the Directors present, unless a different vote is required by law, the Certificate of Incorporation or these Bylaws.

Section 4.8 Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.9 Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 4.10 Committees.

(a) Executive Committee. The Board of Directors may by resolution passed by a majority of the whole Board of Directors appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and specifically granted by the Board of Directors, shall have, and may exercise when the Board of Directors is not in session, all powers of the Board of Directors in the management of the business and affairs of the corporation except such committee shall not have the power or authority to amend the Certificate of Incorporation, to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders of the corporation a dissolution of the corporation or a revocation of a dissolution, or to amend these Bylaws.

(b) Other Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of paragraphs (a) and (b) of this Section 4.10 may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 4.10 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any Director by attendance thereat, except when the Director attends such special meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. The Secretary of the corporation or, in the absence of the Secretary, any person appointed by the chairman of the meeting, or, in the absence of a chairman, any person appointed by a majority of the members of the committee present, shall act as secretary of such meeting.

Section 4.11 Organization.

(a) Chairman of the Board of Directors. The Board of Directors shall elect a Chairman of the Board of Directors from its membership. The Chairman of the Board of Directors, when present, shall preside at all meetings of the Board of Directors. The Chairman of the Board of Directors shall have such other powers as the Board of Directors shall designate from time to time. The Chairman of the Board of Directors shall not be deemed to be an officer of the corporation solely by virtue of appointment as the Chairman of the Board of Directors, such status as an officer only being conferred if and to the extent such person is elected as an officer of the corporation pursuant to Article V of these Bylaws.

(b) Vice Chairman of the Board of Directors. The Board of Directors may, but is not required to, elect a Vice Chairman of the Board of Directors from its membership. If there is no Chairman of the Board of Directors or if the Chairman of the Board of Directors is not present at a meeting of the Board of Directors, the Vice Chairman of the Board of Directors, if any, shall preside as chairman of any such meeting. The Vice Chairman of the Board of Directors shall not be deemed to be an officer of the corporation solely by virtue of appointment as the Vice Chairman of the Board of Directors, such status as an officer only being conferred if and to the extent such person is elected as an officer of the corporation pursuant to Article V of these Bylaws.

(c) Meetings in Absence of Chairman or Vice Chairman. In the event that the Chairman and the Vice Chairman of the Board of Directors are not present at a meeting of the Board of Directors, a chairman chosen by a majority of the Directors present shall act as chairman of such meeting.

ARTICLE IX

OFFICERS

Section 5.1 Officers Designated. The officers of the corporation shall be a Chief Executive Officer, a President, a Secretary, and a Chief Financial Officer. The Board of Directors may, in its discretion, create additional offices and assign such duties to such officers as it may deem appropriate from time to time, which such officers may include without limitation a Treasurer, a Chief Operating Officer, one or more executive and non-executive Vice Presidents (any one or more of which such executive Vice Presidents may be designated as Executive Vice President or Senior Vice President or other similar title), one or more Assistant Secretaries, one or more Assistant Treasurers. Any number of offices may be held by the same person unless otherwise prohibited by applicable law, the Certificate of Incorporation or these Bylaws.

Section 5.2 Tenure and Duties of Officers.

(a) General. Except as otherwise provided in these Bylaws, the officers of the corporation, shall be appointed by the Board of Directors and shall exercise such powers, perform such duties and hold such office for such terms as shall be determined from time to time by the Board of Directors, until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal.

(b) Duties of the Chief Executive Officer. Subject to the control of the Board of Directors, the Chief Executive Officer of the corporation shall have general supervision, direction, and control of the business and the officers of the corporation, and shall perform the duties of the President at such times when the President is absent. He shall have the general powers and duties of management usually vested in the office of Chief Executive Officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. Unless the Board of Directors otherwise determines (including by election of a President), the Chief Executive Officer hold the office and perform the duties of the President at such times when a President is not in office.

(c) Duties of President. Subject to subject to the control of the Board of Directors and such supervisory powers as may be given by the Board of Directors to the Chief Executive Officer, the President shall have general supervision, direction, and control of the business and other officers of the corporation. He shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. Unless the Board of Directors otherwise determines (including by election of a Chief Executive Officer), the President shall hold the office and perform the duties of the Chief Executive Officer at such times when a Chief Executive Officer is not in office.

(d) Duties of Vice Presidents. In the absence or disability of the Chief Executive Officer and President, the Vice Presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a Vice President designated by the Board of Directors, shall perform all the duties of the President and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, these Bylaws or the President.

(e) Duties of Secretary. The Secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates (if any) evidencing such shares, and the number and date of cancellation of every such certificate surrendered for cancellation. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director. The Chief Financial Officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the president, the Chief Executive Officer, or the directors, upon request, an account of all his transactions as Chief Financial Officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws. The Treasurer, if any be designated, may, but need not serve as the Chief Financial Officer.

Section 5.3 **Subordinate Officers**. The Board of Directors may appoint, or empower the Chief Executive Officer, the President or any other officer of the corporation to appoint, such other officers and agents as the business of the corporation may require, each of whom shall perform such duties, have such authority, and hold office for such period, as the Board of Directors may from time to time determine in accordance with these Bylaws, until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal.

Section 5.4 **Delegation of Authority**. For any reason that the Board of Directors may deem sufficient, the Board of Directors may, except where otherwise provided by statute, delegate the powers or duties of any officer to any other person, and may authorize any officer to delegate specified duties of such office to any other person. Any such delegation or authorization by the Board shall be effected from time to time by resolution of the Board of Directors.

Section 5.5 **Resignations**. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 5.6 **Removal**. Any officer may be removed from office at any time, either with or without cause, by the vote or written consent of a majority of the Directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

Section 5.7 **Vacancies in Offices**. Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors or by any officer upon whom such power may be conferred by the Board of Directors.

Section 5.8 **Authority and Duties of Officers**. In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the Board of Directors or these Bylaws.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND

VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 6.1 **Execution of Corporate Instruments**. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chief Executive Officer, President, any executive Vice President, Chief Financial Officer, Chief Operating Officer (if any), Treasurer (if any), or, upon the authority conferred by the Board of Directors, President or Chief Executive Officer, any non-executive Vice President, and by the Secretary, Assistant Secretary (if any) or Assistant Treasurer (if any). All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 6.2 **Voting of Securities Owned by the Corporation**. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman or Vice Chairman of the Board of Directors, Chief Executive Officer, President, any executive Vice President, Chief Financial Officer, Chief Operating Officer (if any), or Treasurer (if any).

ARTICLE VII

SHARES OF STOCK

Section 7.1 **Form and Execution of Certificates**. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chief Executive Officer, the President or any executive Vice President and by the Secretary or an Assistant Secretary (if any) or the Chief Financial Officer, Treasurer (if any) or an Assistant Treasurer (if any), certifying the number of shares and the class or series owned by him in the corporation. Where such certificate is countersigned by a transfer agent other than the corporation or its employee, or by a registrar other than the corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 7.2 **Lost Certificates**. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 7.3 **Transfers**.

(a) Transfers of record of shares of stock of the corporation shall be made only on its books by the holders thereof, in person or by attorney duly authorized and upon the surrender of a properly endorsed certificate or certificates for a like number of shares. Upon surrender to the corporation or a transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. The Board of Directors shall have the power and authority to make all such other rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the corporation.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the Delaware General Corporation Law.

Section 7.4 **Fixing Record Dates**.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed by the Board of Directors, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.5 **Registered Stockholders**. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 8.1 **Execution of Other Securities**. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 7.1), may be signed by the Chief Executive Officer, the President or any executive Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary (if any), or the Chief Financial Officer, Treasurer (if any) or an Assistant Treasurer (if any); provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Chief Financial Officer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before any bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 9.1 **Declaration of Dividends**. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 9.2 **Dividend Reserve**. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

The fiscal year of the corporation shall end as of December 31st, unless otherwise fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

Section 11.1 **Directors and Executive Officers**. The corporation shall indemnify its Directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the corporation may limit the extent of such indemnification by individual contracts with its Directors and executive officers; and, provided, further, that the corporation shall not be required to indemnify any Director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its Directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law.

Section 11.2 **Other Officers, Employees and Other Agents**. The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

Section 11.3 **Good Faith**.

(a) For purposes of any determination under this Article XI, a Director or executive officer shall be deemed to have acted in good faith and in a manner such officer reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, to have had no reasonable cause to believe that such officer's conduct was unlawful, if such officer's action is based on information, opinions, reports and statements, including financial statements and other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the Director or executive officer believed to be reliable and competent in the matters presented;

(ii) counsel, independent accountants or other persons as to matters which the Director or executive officer believed to be within such person's professional competence; and

(iii) with respect to a Director, a committee of the Board upon which such Director does not serve, as to matters within such committee's designated authority, which committee the Director believes to merit confidence; so long as, in each case, the Director or executive officer acts without knowledge that would cause such reliance to be unwarranted.

(b) The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

(c) The provisions of this Section 11.3 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth by the Delaware General Corporation Law.

Section 11.4 **Expenses**. The corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by any Director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article XI or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 11.5 of this Article XI, no advance shall be made by the corporation if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

Section 11.5 **Enforcement**. Without the necessity of entering into an express contract, all rights to indemnification and advances to Directors and executive officers under this Article XI shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the Director or executive officer. Any right to indemnification or advances granted by this Article XI to a Director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, also shall be entitled to be paid the expense of prosecuting his claim. The corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such person has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

Section 11.6 **Non-Exclusivity of Rights**. The rights conferred on any person by this Article XI shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its Directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.

Section 11.7 **Survival of Rights**. The rights conferred on any person by this Article XI shall continue as to a person who has ceased to be a Director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11.8 **Insurance**. To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article XI.

Section 11.9 **Amendments**. Any repeal or modification of this Article XI shall only be prospective and shall not affect the rights under this Article XI in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

Section 11.10 **Savings Clause**. If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Director and executive officer to the full extent not prohibited by any applicable portion of this Article XI that shall not have been invalidated, or by any other applicable law.

Section 11.11 **Certain Definitions**. For the purposes of this Article XI, the following definitions shall apply:

(a) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(b) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(c) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article XI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(d) References to a "director," "officer," "employee," or "agent" of the corporation shall include without limitation, situations where such person is serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(e) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article XI.

ARTICLE XII

NOTICES

Section 12.1 **Notice to Stockholders**. Whenever, under the provisions of law or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any stockholder, it shall not be construed to mean personal notice, but such notice may be given (i) in writing, by mail, addressed to such stockholder, at his or her address as it appears on the records of the corporation, with postage thereon prepaid or (ii) by electronic transmission when such stockholder has consented to the delivery of notice in such form. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or Assistant Secretary, if any, of the corporation or to the corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or action. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent of the corporation that the notice has been given shall in the absence of fraud, be prima facie evidence of the facts stated therein. As used in these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Notice given in writing by mail shall be deemed to be given at the time when the same shall be deposited postage prepaid in the United States mail. Notice given by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which a stockholder or director has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which a stockholder or director has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to a stockholder or director of such specific posting, upon the later of (x) such posting and (y) the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to a stockholder.

Section 12.2 **Notice to Directors**. Any notice required to be given to any director may be given by the method stated in Section 12.1 or in person, except that such notice other than one which is delivered personally shall be sent to such physical or electronic address (or by such other method of electronic transmission) as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

Section 12.3 **Address Unknown**. If no address of a stockholder or Director be known, notice may be sent to the principal executive officer of the corporation.

Section 12.4 **Affidavit of Mailing**. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

Section 12.5 **Failure to Receive Notice**. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any Director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent such person in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such Director to receive such notice.

Section 12.6 **Notice to Person with Whom Communication Is Unlawful**. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Section 12.7 **Notice to Person with Undeliverable Address**. Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or Bylaws of the corporation, to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at such person's address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph. The exception provided in clause (i) of this Section 12.7 shall not be applicable to any notice returned or undeliverable if such notice was given by electronic transmission.

ARTICLE XIII

AMENDMENTS

Section 13.1 **Amendments**. Except as otherwise provided in the Certificate of Incorporation, these Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, by the holders of a majority of the outstanding voting shares or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

Section 13.2 **Application of Bylaws**. In the event that any provisions of these Bylaws is or may be in conflict with any law of the United States, of the state of incorporation of the corporation or of any other governmental body or power having jurisdiction over this corporation, or over the subject matter to which such provision of these Bylaws applies, or may apply, such provision of these Bylaws shall be inoperative to the extent only that the operation thereof unavoidably conflicts with such law, and shall in all other respects be in full force and effect.

Exhibit 3.3

AMENDMENT TO THE

SECOND AMENDED AND RESTATED BYLAWS

OF

ACTIVE POWER, INC.

Section 7.1 of Article VII of the Second Amended and Restated Bylaws (the " Bylaws") of Active Power, Inc. (the "Company"), was amended and restated in its entirety by the Company's Board of Directors on December 6, 2007 to read as follows:

" **Section 7.1 Stock Certificates.** The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock of the corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation buy the Chairman or vice-chairperson of the Board of Directors, or the President or vice-president and by the Secretary or an assistant secretary of the corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be by a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form."

Section 7.3(a) of Article VII of the Company's Bylaws was amended and restated in its entirety by the Company's Board of Directors on December 6, 2007 to read as follows:

" **Section 7.3 Transfers.**

(a) Stock of the corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the corporation only by the record holder of such stock or by his or her attorney lawfully constituted in writing and, if such stock is certificated, upon the surrender of the certificate therefor, which shall be canceled before a new certificate shall be issued. The Board of Directors shall have the power and authority to make all such other rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the corporation."

Exhibit 10.1

SEVERANCE BENEFITS AGREEMENT

THIS SEVERANCE BENEFITS AGREEMENT (the "Agreement") is made as of the 1st day of March, 2012 between Active Power, Inc., (the "Company"), and Doug Milner, an individual resident of Alpharetta, Georgia ("Employee"). Employee and the Company are collectively referred to herein as the "Parties."

1. At-Will Employment Status. Employee has accepted employment with the Company on an "at will" basis, which means that either the Company or Employee may terminate Employee's employment with the Company at any time and for any or no reason.

2. Severance Benefits upon Involuntary Termination Without Cause or Resignation for Good Reason. Although Employee's employment is at-will, if Employee is terminated by the Company without Cause (as defined below) or resigns with Good Reason (as defined below), then Employee shall be entitled to receive:

(a) continuing severance pay at a rate equal to 100% of Employee's base salary, as then in effect (less applicable withholding taxes), for a period of twelve (12) months from the date of such termination, to be paid periodically in accordance with the Company's normal payroll practices; and

(b) all stock options and restricted stock held by Employee in which Employee would have vested if Employee had remained employed with the Company for a period of twelve (12) months following the date of termination shall immediately vest and, if applicable, become exercisable as of the date of termination; and

(c) if Employee elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") for Employee, within the time period prescribed pursuant to COBRA, the Company will reimburse Employee for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Employee's termination) until the earlier of (i) a period of twelve (12) months from the last date of employment of the Employee with the Company, (ii) until Employee has secured other employment, or (iii) the date Employee is no longer eligible to receive continuation coverage pursuant to COBRA. COBRA reimbursements shall be made by the Company to Employee consistent with the Company's normal expense reimbursement policy, provided that Employee submits documentation to the Company substantiating Employee's payments for such COBRA coverage; and

(d) all or a portion of Employee's bonus under the Company's Executive Bonus Program, as may be in effect, for the year in which Employee's termination without Cause or resignation for Good Reason occurs, determined as follows: (i) with respect to corporate or individual objectives that are measured over a period of time (such as revenue for a fiscal year), the amount of such bonus with respect to such objective shall be determined based on a comparison of the amount of such objective actually achieved through the date of such termination against a pro rated portion (based on a number of days, weeks or months, as applicable, during the applicable measurement period for which Employee remained a service provider of the Company) of the target objective, and shall be payable on a pro rata basis (based on the number of days during the applicable measurement period for which Employee remained a service provider of the Company), and (ii) with respect to corporate or individual objectives that are measured based on the occurrence of a specific event at a point in time, the full amount of such bonus with respect to such objective shall be payable if such objective is achieved prior to the date of such termination. All determinations of the amount of the achievement of such objectives and the amounts of such bonuses shall be made by the Board of Directors of the Company, in its sole discretion.

3. Acceleration Upon Termination After a Change in Control. Although Employee's employment is at-will, in the event that Employee is terminated by the Company without Cause or resigns with Good Reason within twelve (12) months after a Change in Control (as defined below), in addition to the benefits set forth in Sections 2(a), 2(b) and 2(d), but in lieu of the benefits set forth in Section 2(b) above, one hundred percent (100%) of the stock options and restricted stock units held by Employee prior to the date of the Change of Control shall immediately vest and, if applicable, become exercisable as of the date of termination.

4. Confidential Information/ Non-Competition Agreement.

(a) Employee is employed hereunder by the Company in a confidential relationship wherein Employee, in the course of his employment with the Company, has and will continue to become familiar with and aware of Confidential Information (as defined in the Confidentiality Agreement (as defined below)), including but not limited to confidential information regarding the Company's customers and specific manner of doing business, including the processes, techniques and trade secrets utilized by the Company, and future plans with respect thereto. In consideration for Employee's promises herein and in the Confidentiality Agreement, the Company agrees to provide Employee with such Confidential Information; in return, Employee recognizes and acknowledges that such information must be maintained in confidence, and to further such protection agrees to the restrictive covenants set forth in this Section 4.

(b) Employee acknowledges that Employee's fulfillment of the obligations contained in this Agreement, including, but not limited to, Employee's obligation neither to use, except for the benefit of the Company, or to disclose the Company's Confidential Information and Employee's obligation not to compete contained in this Section 4 is necessary to protect the Company's Confidential Information and to preserve the Company's value and goodwill. Employee further acknowledges the time, geographic and scope limitations of Employee's obligations under this Section 4 are reasonable, especially in light of the Company's desire to protect its Confidential Information, and that Employee will not be precluded from gainful employment if Employee is obligated not to compete with the Company during the period and within the Territory as described in this Section 4.

(c) Employee will not, during the period of his employment by or with the Company, and for a period of twelve (12) months immediately following the termination of his employment with the Company, for any reason whatsoever, directly or indirectly, for himself or on behalf of or in conjunction with any other person, company, partnership, corporation, business or entity of whatever nature:

(i) engage, as an officer, director, shareholder, owner, partner, joint venturer, or in a managerial capacity, whether as an employee, independent contractor, consultant or advisor, or as a sales representative, in any business selling any products or services in direct competition with the Company, within 100 miles of (i) the principal executive offices of the Company or (ii) any place where the Company conducts business, provides products or services, or in which the Company (including the subsidiaries thereof) is in the process of initiating business operations as of the date on which Employee's employment by the Company hereunder is terminated (the "Territory");

(ii) call upon any person who is, at that time, within the Territory, an employee of the Company (including the subsidiaries thereof) in a managerial capacity for the purpose or with the intent of enticing such employee away from or out of the employ of the Company (including the subsidiaries thereof);

(iii) call upon any person or entity which is, at that time, or which has been, within one (1) year prior to that time, a customer of the Company (including the subsidiaries thereof') within the Territory for the purpose of soliciting or selling products or services in direct competition with the Company within the Territory;

(iv) call upon any prospective acquisition candidate, on Employee's own behalf or on behalf of any competitor, which candidate was either called upon by the Company (including the subsidiaries thereof) or for which the Company made an acquisition analysis, for the purpose of acquiring such entity, provided however, that this section (iv) will not apply if the Company affirmatively declined to proceed with the acquisition; or

(v) disclose customers of the Company (or the subsidiaries thereof) to any person, firm, partnership, corporation or business for any competitive reason.

As used in Section 4(c), references to the business, customers, Territory, etc. of the Company refer to the status of the Company prior to any Change in Control (*i.e.*, such breadth of business, customers, Territory, etc. shall not automatically be expanded to include those of a successor to the Company resulting from a Change in Control). Notwithstanding the above, the foregoing covenant shall not be deemed to prohibit Employee from acquiring as an investment not more than three percent (3%) of the capital stock of a competing business, whose stock is traded on a national securities exchange or over-the-counter.

(d) Because of the difficulty of measuring economic losses to the Company as a result of a breach of the foregoing covenant, and because of the immediate and irreparable damage that could be caused to the Company for which it would have no other adequate remedy, Employee agrees that the foregoing covenant may be enforced by the Company in the event of breach by him by injunctions and restraining orders without the necessity of posting any bond therefor.

(e) In the course of Employee's employment with the Company, Employee will become exposed to certain of the Company's confidential information and business relationships, which the above covenants are designed to protect and Employee agrees to keep such confidential information in the strictest confidence. It is agreed by the parties that the foregoing covenants in this Section 4 impose a reasonable restraint on Employee in light of the activities and business of the Company (including the Company's subsidiaries) on the date of the execution of this Agreement and the current plans of the Company (including the Company's subsidiaries); but it is also the intent of the Company and Employee that such covenants be construed and enforced in accordance with the changing activities, business and locations of the Company (including the Company's subsidiaries) throughout the term of this covenant, subject to the following paragraph. For example, if, during Employee's term of employment, the Company (including the Company's subsidiaries) engages in new and different activities, enters a new business or established new locations for its current activities or business in addition to or other than the activities or business of the Company (including the Company's subsidiaries) as of the date of this Agreement or the locations currently established therefor, then, to the extent described in Section 4(c), Employee will be precluded from soliciting the customers or employees of such new activities or business or from such new location and from directly competing with such new business within 100 miles of its then-established operating locations through the term of this covenant.

(f) The covenants in this Section 4 are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any court of competent jurisdiction shall determine that the scope, time or territorial restrictions set forth herein are unreasonable, then it is the intention of the Parties that such restrictions be reformed and enforced to the fullest extent which the court deems reasonable, and the Agreement shall thereby be reformed to such extent.

(g) All of the covenants in this Section 4 shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of Employee against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants.

(h) It is specifically agreed that the period of twelve (12) months following Employee's employment set forth at the beginning of this Section 4, during which the agreements and covenants of Employee made in this Section 4 shall be effective, shall be computed by excluding from such computation any time during which Employee is in violation of any provision of this Section 4.

5. Conditions Precedent. Any severance payments and/or benefits contemplated by Sections 2 and 3 above are conditional on Employee:

(a) continuing to comply with the terms of this Agreement and the Employee Proprietary Information Agreement between Employee and the Company (the "Confidentiality Agreement");

(b) signing and not revoking a separation agreement and release of claims in a form reasonably acceptable to the Company (the "Release") which becomes effective and irrevocable no later than sixty (60) days following the termination date (such deadline, the " Release Deadline"). If the Release does not become effective and irrevocable by the Release Deadline, Employee will forfeit any rights to severance payments and benefits under this Agreement. In no event will severance payments or benefits be paid or provided until the Release becomes effective and irrevocable.

(i) In the event the termination occurs at a time during the calendar year where the Release could become effective in the calendar year following the calendar year in which Employee's termination occurs (whether or not it actually becomes effective in the following year), then any severance payments and benefits under this Agreement that would be considered Deferred Payments (as defined in below) will be paid on the first payroll date to occur during the calendar year following the calendar year in which such termination occurs, or, if later, (A) the date the Release actually becomes effective, (B) such time as required by the payment schedule applicable to each payment or benefit as set forth in Section 2 above or (C) such time as required by Section 8 below.

(ii) No severance payments and benefits under this Agreement will be paid or provided until the Release becomes effective and irrevocable, and any such severance payments and benefits otherwise payable between Employee's termination date and the date the Release becomes effective and irrevocable will be paid on the date the Release becomes effective and irrevocable. In the event of Employee's death before all of the severance payments and benefits under this Agreement have been paid, such unpaid amounts will be paid in a lump sum payment promptly following such event to Employee's designated beneficiary, if living, or otherwise to the personal representative of Employee's estate; and

(c) in the event of a resignation for Good Reason, providing the Company with written notice of the acts or omissions constituting the grounds for Good Reason within ninety (90) days of the initial existence of the grounds for Good Reason and a reasonable opportunity for the Company to cure the conditions giving rise to such Good Reason, which shall not be less than thirty (30) days following the date of notice from Employee. If the Company cures the conditions giving rise to such Good Reason within thirty (30) days of the date of such notice, Employee will not be entitled to severance payments and/or benefits contemplated by Sections 2 or 3 above if Employee thereafter resigns from the Company based on such grounds. Unless otherwise required by law, no severance payments and/or benefits under Sections 2 or 3 will be paid and/or provided until after the expiration of any relevant revocation period.

6. Definitions. For purposes of this Agreement,

(a) *Cause*. For purposes of this Agreement, "Cause" means (i) Employee's obligations of Employee's position (for reasons other than death or Disability (as defined below)), which failure, if curable within the discretion of the Company, is not cured to the reasonable satisfaction of the Company within thirty (30) days after receipt of written notice from the Company of such failure; (ii) Employee's failure to devote the same amount of time in the performance of his duties and responsibilities as Chief Executive Officer as would be expected of a person in the same position whose principal residence is located in Austin, Texas, which failure, if curable within the discretion of the Company, is not cured to the reasonable satisfaction of the Company within thirty (30) days after receipt of written notice from the Company of such failure; (iii) Employee's failure or refusal to comply with reasonable written policies, standards and regulations established by the Company from time to time which failure, if curable in the discretion of the Company, is not cured to the reasonable satisfaction of the Company within thirty (30) days after receipt of written notice of such failure from the Company; (iv) any act of personal dishonesty, fraud, embezzlement, misrepresentation, or other unlawful act committed by Employee that results in a substantial gain or personal enrichment of Employee at the expense of the Company; (v) Employee's violation of a federal or state law or regulation applicable to the Company's business, which violation was or is reasonably likely to be materially injurious to the Company; (vi) Employee's violation of, or a plea of nolo contendere or guilty to, a felony under the laws of the United States or any state; (vii) the Employee's material breach of the terms of Section 4 of this Agreement or of the Confidentiality Agreement; or (viii) failing to consent to or to satisfactorily complete the Company's background check following his acceptance of employment with the Company or failing to satisfy the federal immigration requirements set forth under paragraph 8 of his offer letter.

(b) *Change in Control*. For purposes of this Agreement, "Change in Control" shall mean the occurrence of any of the following events:

(i) Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company, except that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board will not be considered a Change in Control; or

(ii) Change in Effective Control of the Company. If the Company has a class of securities registered pursuant to Section 12 of the Exchange Act, a change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) Change in Ownership of a Substantial Portion of the Company's Assets . A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For these purposes, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing provisions of this definition, a transaction will not be deemed a Change in Control unless the transaction qualifies as a change in control event within the meaning of Section 409A.

Further and for the avoidance of doubt, a transaction will not constitute a Change in Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(c) *Disability*. For purposes of this Agreement, "Disability" shall mean the inability of Employee to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(d) *Good Reason*. For purposes of this Agreement, "Good Reason" shall mean, without Employee's written consent: (i) there is a material reduction of the level of Employee's base compensation (except where there is a general reduction applicable to the management team generally); (ii) there is a material reduction in Employee's overall responsibilities or authority, or scope of duties, provided, however, that a reduction in responsibilities, authority or duties solely by virtue of the Company being acquired and made part of a larger entity (as, for example, when the Chief Executive Officer of the Company remains as such following a Change of Control but is not made the Chief Executive Officer of the acquiring corporation) will not constitute "Good Reason" so long as Employee continues to maintain substantially the same duties and responsibilities with respect to the primary business of the Company; (iii) the Company's material breach of this Agreement or the Employee's offer letter, which failure is not cured within thirty (30) days after receipt of written notice from Employee of such failure; or (iv) a material change in the geographic location at which Employee must perform his services; provided, that in no instance will the relocation of Employee to a facility or a location of fifty (50) miles or less from Employee's then current office location be deemed material for purposes of this Agreement. In no instance will a resignation by Employee be deemed to be for Good Reason if it is made more than twenty four (24) months following the initial occurrence of any of the events that otherwise would constitute Good Reason hereunder.

(e) The Board shall make all determinations relating to termination, including without limitation any determination regarding Cause .

7. Tax Treatment. The Company makes no representations or warranties with respect to the tax consequences of the payment of any sums to Employee under the terms of this Agreement. Employee agrees and understands that, with the exception of the withholdings from the severance payments, Employee is responsible for payment of any local, state and/or federal taxes on the sums paid hereunder by the Company and any penalties or assessments thereon. Employee further agrees to indemnify and hold the Company harmless from any claims, demands, deficiencies, penalties, assessments, executions, judgments, or recoveries by any government agency against the Company for any amounts claimed due on account of Employee's failure to pay federal or state taxes or damages sustained by the Company by reason of any such claims, including reasonable attorney fees.

8. Section 409A.

(a) Notwithstanding anything to the contrary in this Agreement, no severance payments or benefits payable to Employee, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits, is considered deferred compensation under Internal Revenue Code Section 409A (together, the "Deferred Payments") will be payable until Employee has a "separation from service" within the meaning of Section 409A ("Section 409A") of the Internal Revenue Code of 1986, as amended (the "Code"). Similarly, no severance payable to Employee, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Employee has a "separation from service" within the meaning of Section 409A.

(b) Further, if Employee is a "specified employee" within the meaning of Section 409A at the time of Employee's separation from service (other than due to death), any Deferred Payments that otherwise are payable within the first six (6) months following Employee's separation from service will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of Employee's separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, in the event of Employee's death following Employee's separation from service but prior to the six (6) month anniversary of Employee's separation from service (or any later delay date), then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Employee's death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment and benefit payable under the Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(c) Any severance payment that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations shall not constitute Deferred Payments for purposes of the Agreement. Any severance payment that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit shall not constitute Deferred Payments for purposes of the Agreement. For purposes of this subsection (c), " Section 409A Limit" will mean the lesser of two (2) times: (i) Employee's annualized compensation based upon the annual rate of pay paid to Employee during Employee's taxable year preceding Employee's taxable year of Employee's separation from service as determined under Treasury Regulation Section 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Employee's employment is terminated.

(d) The foregoing provisions are intended to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided under the Agreement will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. Employee and the Company agree to work together in good faith to consider amendments to the Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A.

9. Limitation on Payments. In the event that the severance and other benefits provided for in this Agreement or otherwise payable to Employee (i) constitute "parachute payments" within the meaning of Section 280G of the Code, and (ii) would be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then Employee's benefits under this Agreement shall be either

(a) delivered in full, or

(b) delivered as to such lesser extent which would result in no portion of such benefits being subject to the Excise Tax,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Employee on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting "parachute payments" is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: reduction of cash payments, cancellation of equity awards granted within the twelve (12) month period prior to a "change in control" (as determined under Code Section 280G) that are deemed to have been granted contingent upon the change in control (as determined under Code Section 280G), cancellation of accelerated vesting of equity awards, reduction of employee benefits.

Unless the Company and Employee otherwise agree in writing, any determination required under this Section shall be made in writing by the Company's independent public accountants (the "Accountants"), whose determination shall be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and Employee shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company shall bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section.

10. Confidential Information. Employee shall continue to comply with the terms and conditions of the Confidentiality Agreement, and maintain the confidentiality of all of the Company's confidential and proprietary information. Such information includes, but is not limited to, all customer lists, equipment, records, data, notes, reports, proposals, correspondence, specifications, drawings, blueprints, sketches, materials, or other documents or property belonging to the Company.

11. Miscellaneous.

(a) Withholding Taxes. The Company may withhold from all benefits payable under this Agreement all federal, state, city or other taxes as shall be required pursuant to any law or governmental regulation or ruling.

(b) Entire Agreement; Binding Effect. This Agreement and the Confidentiality Agreement set forth the entire understanding between the Parties as to the subject matter of this Agreement and supersede all prior agreements, commitments, representations, writings and discussions between them; and neither of the Parties shall be bound by any obligations, conditions, warranties or representations with respect to the subject matter of this Agreement, except as expressly provided herein or therein or as duly set forth on or subsequent to the date hereof in a written instrument signed by the proper and fully authorized representative of the party to be bound hereby. This Agreement is binding on Employee and on the Company and his/her and its successors and assigns (whether by assignment, by operation of law or otherwise).

(c) Arbitration. The Parties agree that any and all disputes arising out of, or relating to, the terms of this Agreement, their interpretation, and any of the matters herein released, shall be subject to binding arbitration as set forth under Section 13 of the Confidentiality Agreement.

(d) Governing Law; Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the employment laws of Texas and the other laws of the State of Texas as they apply to contracts entered into and wholly to be performed therein by residents thereof. In addition, each party hereto irrevocably and unconditionally agrees that, subject to Section 11(c) above, any suit, action or other legal proceeding arising out of this Agreement may be brought only in a state or federal court within Texas.

(e) Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

(f) Effect of Headings. The Section and subsection headings contained herein are for convenience only and shall not affect the construction hereof.

(g) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

Employee	**Active Power, Inc.**
/s/ Doug Milner	
Signature	By: /s/ John K. Penver
	Name: John K. Penver
Doug Milner	
(Print Name)	Title: Chief Financial Officer
Dated: February 23, 2012	Dated: March 7, 2012

Exhibit 10.2

February 20, 2012

Doug Milner
180 Ardsley Lane
Alpharetta, GA 30005

Re: Offer of Employment with Active Power, Inc.

Dear Doug:

On behalf of Active Power, Inc. (the "
the Board of Directors of the Company. In this position, you will be expected to devote your full business time, attention, and energies to the performance of your duties with the Company at its location in Austin, Texas, or while traveling on Company business. The effective date of your employment will be March 5, 2012 or such other date as you and the Company mutually agree in writing.

The terms of this offer of employment are as follows:

1. At-Will Employment. You should be aware that your employment with the Company is for no specified period and constitutes "at-will" employment. As a result, you are free to terminate your employment at any time, for any reason or for no reason. Similarly, the Company is free to terminate your employment at any time, for any reason or for no reason. We request that you give the Company at least two weeks' notice in the event of a resignation. Notwithstanding the foregoing, you may be eligible for certain severance payments upon any such termination of your employment pursuant to the terms and conditions of the Company's Severance Benefits Agreement, a copy of which is attached hereto as Exhibit B (the "Severance Agreement").

2. Position and Duties. You will serve in a full-time capacity as CEO of the Company. In addition, and subject to the requisite Board and/or stockholder approval, you will serve on the Company's Board of Directors (the " Board") for as long as you are employed as CEO. You will render such business and professional services consistent with your executive position, as shall reasonably be assigned to you by the Company's Board.

3. Compensation. The Company will pay you a salary at the rate of $400,000 per year (the " Base Salary"), payable in accordance with the Company's standard payroll policies, including compliance with applicable withholding. Any increase or decrease in Base Salary (together with the then existing Base Salary) shall serve as the "Base Salary" for future employment under this offer letter. The first and last payment by the Company to you will be adjusted, if necessary, to reflect a commencement or termination date other than the first or last working day of a pay period.

4. Equity Grants. Subject to approval by the Board, you will be granted the following: (a) an option to purchase 750,000 shares of the Company's Common Stock (the "Option Shares") at an exercise price equal to the fair market value per share of the Common Stock on the date the Board approves the option grant; and (b) 250,000 restricted stock units (" RSU's"). The Option Shares and RSU's shall vest as follows: 25% of the Option Shares and RSU's shall vest upon completion of one year of service measured from your vesting commencement date, and the balance of the Option Shares and RSU's shall vest quarterly in a series of 12 successive equal installments upon your completion of each additional quarter of service measured from the one-year anniversary of your vesting commencement date. This option grant and the RSU grant shall both be subject to the terms and conditions of the Company's 2010 Equity Incentive Plan and Stock Option Agreement, including vesting requirements (the " Stock Agreements"). Subject to the Company's insider trading policy, and subject to applicable securities laws, Employee may establish a 10b5-1 trading plan that provides for the sale of RSU's to satisfy any taxes payable as a result of the vesting of the RSU's.

5. Bonus Program. You will be eligible to earn a bonus of up to 100% of your Base Salary based on the achievement of corporate objectives at target and MBO's, subject to the terms and conditions of the Company's Executive Bonus Program as approved from time to time by the Board of Directors (the "Bonus Program"). The bonus is determined and paid at the time and manner set forth under the Bonus Program by the Board of Directors, and the amount of bonus payable may be subject to thresholds and accelerators. Subject to the Severance Agreement, receipt of any bonus is contingent upon your continued employment with the Company through the date the bonus is paid. Any bonus payment for 2012 will be pro-rated for the remainder of the year, provided that it has been earned under the Bonus Program. Except with respect to 2012, and subject to the Severance Agreement, no "pro-rated" or partial bonus will be provided unless approved by the Board in its sole discretion.

6. Benefits. During the term of your employment, you will be entitled to four (4) weeks vacation and benefits covering employees at your level, as such may be in effect from time to time.

7. Temporary Living Expenses; Relocation Assistance. The Company is also offeri for your move from Alpharetta, Georgia to Austin, Texas: (a) the reasonable costs of moving your and your family's household goods to Austin, (b) closing costs on the purchase of a home in Austin (the "Relocation Expenses"). The Company will reimburse you for the following temporary living expenses, not to exceed $40,000 per any calendar year (prorated for partial years based on the number of months that you are employed with the Company) (the " Temporary Living Expenses"): (a) temporary corporate housing for the period beginning with your date of hire and continuing until you complete your relocation process, up to a maximum of twenty six (26) months from your date of hire (the " Temporary Housing Period"), (b) coach airfare for you between Austin and Alpharetta, Georgia for you to visit family on weekends, and (c) reasonable travel expenses for up to two (2) house hunting trips to Austin during the Temporary Housing Period for you and your family. We will only reimburse you for these expenditures once you submit valid receipts to the Company and they are approved by the Board of Directors. If any Relocation Expenses or Temporary Living Expenses are deemed taxable income to you, the Company will tax equalize these items (the "Gross-Up") no later than the end of the calendar year following the calendar year in which you remit the tax on the payment for which the Company is providing the Gross-Up to fully offset your taxes attributable to relocation expenses. In addition to the reimbursement for Relocation Expenses and the Temporary Living Expenses, the Company will provide to you a car for your use in Austin during the Temporary Housing Period only. The Board expects that during the Temporary Housing Period you will devote the same amount of time in the performance of your duties and responsibilities as Chief Executive Officer as would be expected of a person in the same position whose principal residence is located in Austin, Texas. Notwithstanding the foregoing, if, on or before the one (1) year anniversary of your date of hire, you resign your employment with the Company for any reason other than Good Reason (as defined in the Severance Agreement) or are terminated for Cause (as defined in the Severance Agreement), you will repay the entire amount of reimbursements provided to you by the Company for Relocation Expenses and Temporary Living Expenses, as well as all costs and expenses of the Company to lease a car to be provided to you during the Temporary Housing Period and any Gross-Up paid to you by the Company, within fifteen (15) business days of such termination date.

8. Immigration Laws. For purposes of federal immigration laws, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided within 3 business days of the effective date of your employment, or your employment relationship with the Company may be terminated.

9. Employee Proprietary Information Agreement. As a condition of this offer of employment, you will be required to complete, sign, and return the Company's standard form of employee proprietary information agreement (the "EPIA"), a copy of which is attached hereto as Exhibit A.

10. Severance Benefits. Should you accept the position offered by the Company, you will be eligible for severance benefits subject to the terms and conditions, including any conditions precedent, of the Severance Agreement.

11. Resignation on Termination. By signing below, you understand and agree that, upon the termination of your employment, regardless of the reason for such termination, you shall immediately (and with contemporaneous effect) resign any directorships, offices or other positions that you may hold in the Company or any affiliate, unless otherwise agreed in writing by you and the Company.

12. Background Check. You also understand that this offer of employment is contingent upon the successful completion of a background check, and you consent to such background check, and agree to timely complete the Company's standard forms required for such check upon request by the Company.

13. Indemnification. The Company will extend to you the coverage under its directors' and officers' insurance policy currently in effect. The Company will also enter into its standard form of Indemnification Agreement with you, providing for, among other things, indemnification in connection your discharging your fiduciary duties to the Company.

14. General. This offer letter, the EPIA, the Severance Agreement, and the Stock Agreements (if an option and/or restricted stock unit grant is approved by the Board) covering the grant described in paragraph 4, when signed by you, set forth the terms of your employment with the Company and supersede any and all prior representations and agreements, whether written or oral. In the event of a conflict between the terms and provisions of this offer letter and the EPIA, the Severance Agreement, and the Stock Agreements, the terms and provisions of the EPIA, the Severance Agreement, and the Stock Agreements will control. Any amendment of this offer letter or any waiver of a right under this offer letter must be in a writing signed by you and an officer of the Company. **Texas law will govern this offer letter**.

We look forward to you joining the Company. If the foregoing terms are agreeable, please indicate your acceptance by signing this offer letter in the space provided below and returning it to me, along with your completed and signed EPIA and Severance Agreement.

Sincerely,

ACTIVE POWER, INC.

By: /s/ Benjamin L.Scott
Benjamin L. Scott, Chairman of the Board

AGREED TO AND ACCEPTED:

"Employee"

/s/ Doug Milner
Doug Milner

Exhibit A

Employee Proprietary Information Agreement

EXHIBIT 10.6

PURCHASE AGREEMENT

This Agreement is made effective as of the 1st day of June 2011 (the "***Effective Date***"), by and between Caterpillar Inc., a Delaware corporation with principal offices in Peoria, Illinois ("***Buyer***") and Active Power, Inc., a Delaware corporation with principal offices in Austin, Texas ("***Seller***"). This Agreement hereby supersedes and replaces that certain Purchase Agreement entered into by and between Buyer and Seller having an effective date as of January 1, 2008, and any subsequent amendments. Buyer and Seller hereby agree as follows:

1. **Products Covered by Agreement**. This Agreement concerns the purchase and sale of the parts or products listed in **Exhibit A** ("***Products***"). Each Product will be manufactured by Seller to the specifications that are set forth in the relevant Caterpillar drawings for that Product (for each Product, the "***Specifications***"). Buyer and Seller may agree in writing to modify the list of Products in **Exhibit A** or any of the Specifications for any Product from time to time, and the modified Specifications will apply to all of that Product that is ordered by Buyer after the modification; the modification will only apply to previously ordered but unshipped Product if mutually agreed by the parties in writing. As set forth on **Exhibit A**, some Products are designated as "Production Products." and others are designated as Spare Part Products."

2. **Purchase and Sale of Product**.

(a) Buyer's Requirements. Subject to Section 11, Seller will supply and Buyer will purchase one hundred percent (100%) of its Electric Power Division's requirements for each Product. Seller will provide Buyer an approved PPAP (Production Part Approval Process) for every Product and every change to Product prior to shipment of Product. Seller understands that Buyer makes no guarantee as to the quantity of Product it will require,

(b) Forecasts and Firm Orders.

(i) Buyer's forecasted requirements will be made available to Seller on a quarterly basis. Any forecasts or estimates of such requirements provided to Seller by Buyer shall be non-binding, and Seller acknowledges that it shall not be entitled to and shall not rely on such forecasts or estimates as binding commitments unless they are expressly stated as such by Buyer in writing.

(ii) Buyer will place orders with Seller by sending the order consist file (each, a "***Firm Order***") specifying the Product, quantity, requested and/or restricted shipping dates, and delivery location.

(c) Seller's Acceptance or Rejection of Firm Orders.

(i) Each Firm Order shall be subject to acceptance by Seller. Seller's acceptance shall be indicated in writing and confirm the ship date. If Seller has not rejected such Firm Order within five (5) days from the date Buyer places Firm Order, such Firm Order shall be deemed accepted by Seller. Once a Firm Order has been accepted by Seller, it cannot be modified or canceled except by the parties' mutual written consent, or as set forth in Section 2(f) below.

(d) Lead Times.

(i) Seller has designated "***Standard Lead Times***" for each Product on **Exhibit A**. The term "***Standard Lead Time***" means the minimum period of time between when Seller receives a Firm Order from Buyer for a particular Product, and when Seller makes that Product available for shipment at Seller's dock.

(ii) If Buyer requests a ship date sooner than the Standard Lead Time after the Firm Order is placed (each, an " ***Expedited Ship Date***"), and if Seller can provide that Product on required ship date without incurring additional costs, Seller will do so at Buyer's request for no fee; otherwise, Seller will quote Buyer the additional charges to meet such ship date that will be required, and the ship date that Seller can offer for that Product, and Buyer can accept or reject those charges. If Buyer rejects those charges, then the ship date will be deemed to be the Standard Lead Time for that Product after the date that Firm Order was received by Seller.

(iii) If a Firm Order does not specify a ship date, then the ship date will be deemed to be the Standard Lead Time for that Product after the date that Firm Order was received by Seller.

(iv) Seller can modify the Standard Lead Times on **Exhibit A**, from time to time on sixty (60) days written notice to Buyer, subject to Buyer's consent which shall not be unreasonably withheld.

(v) Seller agrees that the Standard Lead Times on **Exhibit A** for each Product will not be longer than the shortest average lead times provided by Seller for that Product to any other customer of Seller that purchases the same Product at similar volume levels.

(e) Shipping.

(i) Each Firm Order shall specify Buyer's dealers' freight carrier and Buyer's dealers' account number with that carrier or Buyer will provide a Bill of Lading to Seller within [*] of the scheduled ship date, so that all freight charges can be paid directly by Buyer's dealers to the carrier. Seller will provide Buyer a signed Buyer Bill of Lading for Product within [*] of shipment of Product. Otherwise Seller will specify its own freight carrier and invoice delivery charges to Buyer. In that event, unless otherwise directed by Buyer in writing. Seller shall obtain insurance at Buyer's expense from the carrier for losses incurred during shipment.

---

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

(ii) All Products shall be shipped F.C.A. Seller's facility (lncoterms 2000). Title to each Product shall pass to Buyer upon Seller's tender of the Product to the freight carrier at Seller's loading dock.

(iii) if a Firm Order does not specify an Expedited Ship Date, and if the quantity of that Product to be shipped in that month as indicated by Buyer's forecast does not exceed [*] of the expected quarterly quantity, for that Product and month, and if Seller tenders the Product to the freight carrier later than the specified ship date, then as Buyer's exclusive remedy, Seller will be responsible for any special freight charges that are reasonably incurred to try to hasten the delivery date for that Product in light of Seller's late tender to the freight carrier.

(f) Change Orders.

(i) Buyer can cancel or modify a Firm Order without liability to Seller by notifying Seller in writing before Seller has accepted that Firm Order. Seller or Buyer may not cancel or modify a Firm Order after acceptance without the other party's written consent.

(ii) *After* Seller has accepted a Firm Order, if Buyer notifies Seller in writing that Buyer wishes to cancel, modify the configuration of, increase or reduce the quantity of, or delay the ship date for one or more Products ordered in a Firm Order (each, a " ***Change Order***"), then in each case, Seller shall respond to the Change Order within [*]. If Seller can accept the Change Order without incurring additional costs, Seller will do so for no fee; otherwise, Seller will requote the new price and availability of Product to Buyer, and Buyer can accept or reject the Change Order. If Seller does not respond to the Change Order within [*] then it will be assumed that Seller can provide the Change Order without additional costs. If Buyer rejects the Change Order, the original terms of the accepted Firm Order will apply.

(iii) No change orders will be accepted within [*] of the expected ship date, unless mutually agreed by both Seller and Buyer.

---

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

(g) Software. Seller agrees to allow Buyer the right to provide Seller's monitoring and service software known as UPS View, to Buyer's dealers through a password protected website with no restriction on licensing and at no additional cost. Seller acknowledges Buyer will take no additional action to monitor usage or distribution of UPS View which is downloaded from the password protected website.

3. **Price Containment**. Both Seller and Buyer are committed to controlling and reducing costs, and both recognize that effective cost control as set forth in this Section 3 is of the essence to this Agreement. While this Agreement is in effect, Seller will maintain a cost control and reduction program with respect to Product, and will review costs on a regular basis for progress toward the objective of maintaining or reducing Seller's prices to Buyer. Interaction between Buyer's and Seller's engineering and purchasing personnel regarding costs will be encouraged. All cost savings generated by Buyer and Seller working together will be shared on a 50/50 basis by reducing the Prices set forth on **Exhibit A**. taking into consideration expenses of both Buyer and Seller to implement the cost reduction. All cost savings generated solely by Seller which still allow Seller to strictly comply with all drawings and Specifications, and does not change form, fit or function of Product, will not change Prices. If Seller requests a Price increase, the Price Increase Process set forth in **Exhibit B** will be followed.

4. **Product Change Control**. Seller agrees to notify Buyer by Engineering Change Notice ("***ECN***") if stock used to make any Product is being changed, must be reworked, scrapped or exhausted. Seller will provide a minimum [*] advance notice of all ECN's prior to implementation except for "emergency" or safety-related changes that must be implemented sooner, and agrees to give Buyer as much notice as is reasonably possible. Seller further agrees as follows:

- ECN will include all necessary details, including updated digital line drawings to enable Buyer to implement ECN.
- Seller agrees to rework at no charge to Buyer all Product identified in the ECN as requiring rework.
- For each part or Product that is subject to the ECN that Buyer has purchased in the twelve month (12) period prior to the effective date of the ECN that is still in Buyer's inventory, Seller agrees to pay Buyer [*] for all Product identified in the ECN as required to be scrapped.
- Seller agrees to conduct quarterly Engineering Design Reviews with buyer. These reviews will discuss all design changes than are scheduled for implementation over the next 180 days.

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

5. **Product Prices**. Prices will be as shown in **Exhibit A**. **Exhibit A** may be modified from time to time by the signed written agreement of both parties, or as provided in Section 3 above. The prices shown on **Exhibit A** do not include installation charges, freight and handling charges, applicable taxes, and Buyer shall be responsible for all such charges and taxes. (Unless Buyer furnishes a proper exemption certificate, Buyer shall be charged for all sales taxes, however designated, levied or based on the sales of Products specifically excluding any income taxes related to the sale of Products.)

6. **Payment Terms**. Seller shall invoice Buyer for each Product after that Product ships from Seller's facility. [*]

7. **Term**. The initial term of this Agreement shall be five (5) years commencing on the Effective Date. This Agreement shall automatically be extended for additional terms of one (1) year each unless either party gives written notice to terminate at least three (3) months, prior to the end of the initial term or any additional term or unless otherwise terminated pursuant to the provisions hereof.

8. **Warranty**.

(a) Warranty as to Products. Seller warrants that each Product shall be free from defects and in full conformity with the Specifications for the warranty term. The term of Seller's warranty to Buyer is [*] from the date Product is placed in service with the end-user (provided that in no event shall this period [*] after the date Seller shipped that Product). [*] warranty period set forth above, will not apply for a particular Product if Seller establishes and provides reasonable evidence to Buyer that Buyer or Buyer's dealer has not complied with the Storage Guidelines in Caterpillar document TIBU4855, which is attached hereto as **Exhibit D**, with respect to that Product, and such failure to comply was the primary cause for the Product failure.

(b) Modification of Storage Guidelines. The Storage Guidelines can be modified upon mutual agreement with Buyer and Seller, not to be unreasonably withheld.

(c) Remedy With Respect to Parts. Buyer stocks some Spare Part Products through its Morton, Illinois distribution facility (" ***Stocked Spare Parts***"). When a Stocked Spare Part is required to repair a defective or non-conforming Product during the applicable warranty period (each, a "***Required Replacement Part***"), Buyer will use that Stocked Spare Part as the Required Replacement Part, and will submit a reimbursement claim to Seller. When a warranty repair to a defective or non-conforming Product requires a Required Replacement Part that is not a Stocked Spare Part, Buyer will order that Required Replacement Part from Seller in accordance with this Agreement, and then will submit a reimbursement claim to Seller. Subject to Section 8(c) and Section 8(f), Seller will reimburse Buyer the Price of that Required Replacement Part that was (i) necessary to complete the repair of the Product that was under warranty and (ii) purchased by Buyer from Seller and paid for by Buyer in accordance with this Agreement,

---

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

(i) If a part on the Warranty Recall Parts List attached hereto as **Exhibit E** is reasonably believed by Buyer to be defective or non-conforming to Specification, and is replaced with a Required Replacement Part, Buyer must return that defective or non-conforming part to Seller (or require its dealers to return it to Seller), along with the warranty claim, within [*] of the repair date. Seller shall reimburse all shipping costs for the return of the defective or non-conforming part, provided the requirements as set forth in **Exhibit F** are followed. The Warranty Recall Parts List may only be modified by mutual agreement of both Buyer and Seller, such agreement not to be unreasonably withheld.

(ii) Buyer shall be responsible for informing its dealers of the Warranty Recall Parts List, and requiring its dealers to return failed parts on this Warranty Recall Parts List to Seller with the claim history documentation.

(iii) If a warranty reimbursement claim is paid by Seller and the Required Replacement Part was a Stocked Spare Part, then, in addition to reimbursing Buyer the Price of the Required Replacement Part, Seller will pay Buyer an additional [*] of the Price of the Required Replacement Part to account for Buyer's cost of logistics. This additional amount will not be paid if the Required Replacement Part is not a Stocked Spare Part.

(d) Remedy With Respect to Labor. When a repair to a defective or non-conforming Product that is under warranty requires labor, then, in addition to any parts reimbursement pursuant to Section 8(c) above, and subject to the limitations set forth in this Section 8(d) and in Section 8(f) Seller will reimburse Buyer for the labor charges that are actually incurred by Buyer and that are reasonably necessary to complete the repair of the Product. Seller's obligation is limited to the labor rates (in dollars per hour) not to exceed [*] per hour, and the labor hours set forth on Seller's "Time Required Guide" or "TRG" Schedule that is attached hereto as **Exhibit G** If a warranty labor reimbursement claim is submitted by Buyer to Seller and it exceeds the labor hours in Seller's TRG Schedule, then Seller shall adjust the claim and reimburse only the adjusted amount. Seller's TRG Schedule can only be modified if mutually agreed to by both Seller and Buyer and will be reviewed annually, such agreement not to be unreasonably withheld.

(e) Remedy With Respect to Travel Charges. If Buyer or Buyer's dealer performs warranty labor that is reimbursable by Seller under Section 8(d) above at the site of an end user of the Product, then Seller shall also reimburse Buyer for the documented, customary and reasonable travel expenses incurred by Buyer, for travel by automobile, so long as (i) the warranty labor is performed by Buyer's dealers and the technician performing the warranty service is currently trained by the Buyer, as described below in Section 8, with respect to that particular Product, and (ii) the travel expenses are not required to be paid by the end-user customer under **Exhibit C** or another agreement with that end-user customer.

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

(f) Conditions on Warranty. Seller may reject all or a portion of any warranty claim, including a claim under Section 8(c), all associated warranty labor claims under Section 8(d), and all associated travel charge claims under Section 8(e), if the defective or non-conforming part is found on the Warranty Recall Part List and is not returned to Seller for that particular warranty reimbursement claim within the [*] period required by Section 8(c), or if the part is returned but is found not to be defective or non-conforming, or if warranty labor has been provided on that Product by a technician who was not at that time certified by Seller with regard to that particular Product as provided below in Section 8.

(g) Monthly Statement. A monthly statement of Buyer warranty claims, including notice of specific Product failures, and summary information on the causes of such failure, comments from the service technician, serial number, model number and installation date will be sent by Buyer to Seller. This statement, currently called the "Field Incident Report," shall be used by Seller in its process of determining the validity of the warranty claims submitted in that month. Seller shall respond to each warranty claim listed in the Field Incident Report with amount of warranty to be recovered by Buyer from Seller with justification as to the amount. This response shall occur within fourteen (14) days from Seller's receipt of Field Incident Report and/or receipt of the returned part if applicable, whichever comes last.

(h) Special Buyer Programs. Seller's participation in Buyer's "Product Improvement Programs" (PIP), "Product Support Programs" (PSP), "Extended Warranty" terms, and other policy actions are to be negotiated on a case-by-case basis by both parties, documented in writing and signed by both parties. Participation in these programs will be based on an amount mutually agreed to by Seller and Buyer.

(i) Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY MADE IN THIS SECTION 8, SELLER DISCLAIMS ALL OTHER WARRANTIES ON ANY GOODS OR SERVICES PROVIDED BY SELLER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, OF NON-INFRINGEMENT, OR OF FITNESS FOR A PARTICULAR PURPOSE. THE SOLE REMEDY FOR ANY BREACH OF SELLER'S EXPRESS LIMITED WARRANTY SHALL BE THE REMEDIES THAT ARE EXPRESSLY SET FORTH IN THIS SECTION 8.

---

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

9. **Product Training**.

(a) In order for Seller's warranty to be valid with respect to a particular Product, all work performed on that Product by Buyer or Buyer's dealers' personnel must be performed by personnel who have completed training on that Product as offered by Buyer. If Buyer permits any service personnel to work on a Product without having proper training from Buyer, then Seller's warranty with regard to that Product will be invalidated and Seller will not reimburse any labor or travel charges.

(b) Buyer's dealers' service personnel must successfully complete Buyer's training course. Seller will provide certified training for Buyer's trainers of Product at a mutually agreed upon price and time. Training courses are specific to particular Products. If any new Product is added to this Agreement, or if the Specification of a Product is modified to an extent that Seller reasonably believes re-training is necessary, then previously certified training personnel will be given an updated course with regard to those new or modified Products to be certified on those new or modified Products, and subsequently, Buyer's dealers will be trained on these updates by Buyer's trainers. In addition, certified trainers will be given an update course at least once every three (3) years to remain certified, even if no new or modified Product has been released. Buyer will keep records of all persons trained on Product and will make those records available to Seller at Seller's reasonable request in connection with warranty claims, such request not to be unreasonably withheld.

(c) Seller may provide sales and marketing support to Buyer's key dealers, only if requested by Buyer, and as agreed to by Seller.

10. **Indemnification**.

(a) Seller agrees to indemnify, defend, and hold Buyer, its subsidiaries, affiliates, directors, officers, employees and agents harmless from and against all claims, demands, liabilities, loss, damage, cost, and expense, of whatsoever nature, including attorneys' fees, arising from or in any way connected with the injury or death of any person or loss or damage to property as a consequence of, or attributable to, any defect of design, material, or workmanship of Product or failure of Product to conform with Seller's and Buyer's Specifications, drawings, and data.

(b) Buyer agrees to indemnify, defend, and hold Seller harmless against and from all claims, demands, liabilities, loss, damage, cost, and expense, of whatsoever nature paid to a third party or incurred in the defense of a claim arising on account of Buyer's (i) misrepresentation of the Product or providing unauthorized representations or warranties to its customers, (ii) modifications to the Product, or (iii) negligence or other fault of products or services of Buyer.

11. **Termination**.

(a) Notice. Either party may give the other party notice of default of this Agreement if (i) the other party materially breaches this Agreement: (ii) the other party anticipatorily repudiates any material provision of this Agreement and fails to provide adequate assurance of future performance; or (3) the other party becomes insolvent, files a petition for relief under any bankruptcy, insolvency or similar law, or makes an assignment for the benefit of its creditors.

(b) Notices of Default and Cure Period. Any notice of default shall be in writing in accordance with Section 12, reference this Section 11, and specify the default that is the basis for the notice. The defaulting party shall have sixty (60) days in which to cure the default, and the Agreement shall not terminate if the defaulting party cures the default within the cure period. (However, if the default cannot be cured within the cure period, no cure period will be available.) During any cure period, the parties shall continue to perform this Agreement except that Seller may stop delivering goods and services under this Agreement during the cure period if the default is the Buyer's failure to pay amounts that are due.

(c) In addition to the rights provided in Section 11(a), Buyer may terminate this Agreement at any time, either totally or partially, in the event:

(i) Quality - Products consistently and materially fail to meet the Specifications as they exist today and are communicated to Seller from time to time, or Seller fails to maintain its status as a Caterpillar certified supplier (including maintaining a current quality plan).

(ii) Delivery - Seller is substantially and consistently failing to meet Buyer's Firm Orders with respect to mutually agreed shipment dates. Buyer should not have to expedite normal deliveries. It is the obligation of the Seller to maintain an up to schedule condition after a reasonable time period. That time period will be agreed upon by Seller and Buyer for each part number listed in **Exhibit A**.

(iii) Competitiveness - Seller fails to be responsive to the market place or fails to remain competitive on a worldwide basis with other manufacturers of comparable parts or products in terms of price.

(iv) Default Generally - Default by Seller in any obligation owed by Seller to Buyer.

Buyer's decision on termination shall be final. Buyer will be reasonable in making the final decision.

12. **Notices**. When written notice is required by this Agreement, it shall be sent by certified mail, by courier that provides confirmation of delivery, by email with an email message being sent in return by the recipient confirming delivery, or by such other written or electronic method as will permit the sender and recipient to verify delivery, to the addresses set forth below:

For Caterpillar:
560 Rehoboth Road
Griffin, Georgia 30252
Attn: Brian L. Blevins, Global Purchasing Category Manager
Fax: (309) 992-6688
Email: Blevins_Brian_L@cat.com

With copies to:
Caterpillar Inc.
100 N.E. Adams Street
Peoria, Illinois 61629-7310
Attn: Chief Legal Officer
Fax: (309) 675-6620

To Seller:
Active Power, Inc.
2128 West Braker Lane, BK12
Austin, Texas 78758
Attn: John Penver, CFO
Fax: (512) 836-4511
Email: jpenver@activepower.com

Written notice may also be sent by facsimile to the numbers listed above, but such notice shall not be effective unless the sender receives a return facsimile acknowledging receipt of the notice. Notice shall be deemed received when actually delivered to the recipient (as demonstrated by postal records, in the case of notice sent by mail. Facsimile and emailed notice shall be deemed received upon receipt by the recipient, as reflected in the reply message received by the sender as described. Notice of delivery by courier shall be deemed received on the date of confirmation of delivery. The addresses and transmittal numbers set forth above can be changed only by written notice that complies with the requirements of this Section.

13. **Use of Other Supply Sources**. Nothing in this Agreement shall prevent Buyer from seeking other sources for alternatives to Product if Seller's production capacity is insufficient to meet Buyer's needs.

14. **Change in Ownership and Control**. During this Agreement, if there is a change in the ownership and control of either party, the other party shall have the option of terminating this Agreement immediately by giving written notice thereof within sixty (60) days of being notified of the occurrence of such change of control; provided that if a party provides advance notice of a bona fide proposed change of control (including the identity of the principal owners after such change of control occurs) the other party will within sixty (60) days provide written notification to the first party as to whether it will exercise such termination right if the change of control occurs. For purposes of this Section 14, a change in the ownership and control of either Buyer or Seller or a parent company of either party, if appropriate shall be deemed to have occurred if and only if and when any one or more persons (excluding existing owners) acting individually or jointly is or becomes a beneficial owner, directly or indirectly, of securities representing more than thirty-three percent (33%) of the combined voting power of the then outstanding securities of Seller or Buyer or the parent company of either party.

15. **Force Majeure**. Neither Buyer nor Seller shall be liable to the other for any delay in or failure of performance of their respective obligations hereunder if' such performance is rendered impossible or impracticable by reason of fire, explosion, earthquake, drought, embargo, war, riot, act of God or of public enemy, an act of governmental authority, agency or entity, or any other similar contingency, delay, failure or cause, beyond the reasonable control of the party whose performance is affected, irrespective of whether such contingency is specified herein or is presently occurring or anticipated by either party. In the event either party is prevented from fulfilling its obligations under this Agreement because of such a force majeure as described herein, both the Seller and Buyer shall make every reasonable effort to continue to maintain as much as reasonably possible the supplier-customer relationship established under this Agreement. However, if Buyer or Seller is unable to meet its obligations hereunder because of the conditions described above and such inability continues for a period of sixty (60) days, the other party shall have the right to terminate this Agreement upon thirty (30) days prior written notice (which will not be effective if the force majeure ceases prior to the expiration of this 30-day period).

16. **Assignment; Applicable Law**. This Agreement is not assignable by either party without the written consent of the other party. This Agreement and any matter related in any way to this Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to the conflict of laws provisions thereof.

17. **Entire Agreement**. This Agreement and the terms and conditions referenced in any purchase order issued by Buyer in connection with this Agreement (to the extent not inconsistent with this Agreement) constitutes the entire agreement and understanding between the parties with respect to the subject matters herein and therein, and supersedes and replaces any and all prior agreements, understandings, representations, and promises, whether oral or written, between them with respect to such matters. Both parties agree that the terms and conditions of any Seller quotation, offer, acknowledgment or similar document, however designated, shall not apply.

18. **Waiver**. The provisions of this Agreement may be waived, altered, amended, or repealed in whole or in part only upon the written consent of Buyer and Seller. The waiver by either party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

19. **Severability**. Invalidation of any of the provisions contained herein, or the application of such invalidation thereof to any person, by legislation, judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full force and effect, unless enforcement as so modified would be unreasonable or inequitable under all the circumstances or would frustrate the purposes hereof.

20. **Construction**. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

21. **Counterparts**. Section headings contained herein are for ease of reference only and shall not be given substantive effect. This Agreement may be signed in one or more counterparts, each to be effective as an original.

22. **Testing and Test Reports**. Seller shall test each Production Product prior to shipment. Seller will maintain all test reports for Production Products for a period of thirty-six (36) months after shipment, and will promptly provide them to Buyer upon Buyer's request. Seller's testing process and test report contents will be subject to Buyer's approval, which will not be unreasonably withheld, conditioned, or delayed.

23. **Limitation of Liability**. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, UNDER ANY EQUITY, COMMON LAW, TORT, CONTRACT, ESTOPPEL, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES, OR BUYER'S COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. THIS LIMITATION OF LIABILITY SHALL NOT APPLY. HOWEVER, TO (a) ANY AMOUNT THAT IS EXPRESSLY PAYABLE UNDER ANOTHER PROVISION OF THIS AGREEMENT; (b) ANY OBLIGATION UNDER THIS AGREEMENT, AT LAW, OR OTHERWISE, TO INDEMNIFY OR HOLD A PARTY OR OTHER PERSON HARMLESS AGAINST A THIRD PARTY CLAIM; (c) ANY PARTY'S OR PERSON'S CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF ANY PARTY'S OR PERSON'S INTELLECTUAL PROPERTY RIGHTS; (d) ANY VIOLATION OF AN EXPRESS CONFIDENTIALITY COVENANT: OR (e) PERSONAL INJURY OR PROPERTY DAMAGE.

24. **Compliance with Laws**. Both parties will comply with the provisions of all applicable laws and regulations from which liability may accrue to the other party for any violation thereof.

25. **Confidentiality of Agreement**. When a party has disclosed this Agreement to potential investors and/or inquirers, that party will notify the other party of the identity of the investor and/or inquirer to whom this Agreement has been disclosed. Except with respect to potential investors and/or acquirers that have agreed in writing to maintain the terms of this Agreement in confidence, the terms of this Agreement as well as its existence shall be kept confidential and not disclosed by either party without the express written consent of the other party, or unless required by law or governmental or judicial order, in which case the party will give the other party prompt notice of any such requirement or order (if permitted by law) and each party will cooperate in good faith with the other party's efforts if any to obtain confidential treatment, a protective order, or other reasonable means to maintain the confidentiality of this Agreement.

26. **Branding, Trademarks, and Copyright**. Except as required under law, nothing in this Agreement authorizes Buyer to use any name, trademark, trade dress, or other designation or mark that belongs to, or to a reasonable person in the relevant market for the Products would identify Seller. Buyer is not licensed to use any marketing collateral or other works of authorship that belong to Seller, regardless whether related to the Products. Unless otherwise agreed by Seller in writing, Buyer shall resell the Products under Buyer's brand, product names, and marks, and shall generate and use its own marketing collateral, developed independently of Seller and Seller's materials.

27. **Licenses**.

(a) As between the parties. Seller shall own all rights, title and interest in and to the Products except as otherwise provided in the "Phase II Development and Phase III Feasibility Study Agreement" dated January 22, 1999 and the "Phase III Product Development Agreement" effective September 1, 2001. If this Agreement is terminated by Buyer pursuant to Section 11, Seller hereby grants to Buyer, effective as of such termination date, a non-exclusive, worldwide, royalty-bearing license (including the right to sublicense only to Buyer's wholly owned subsidiaries) to make, have made, use and/or sell the Products. The license granted by the preceding sentence shall only be effective for eighteen (18) months beginning on the effective date of the termination, and Buyer shall pay a royalty to Seller of (A) [*] per delivered megajoule per published rating by Seller for each Product designated by Seller as a "Phase II Product," and (B) [*] per kVA for each Product designated by Seller as a "Phase III Product."

(b) Each of Buyer and Seller grants to the other party an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license (including the right to sublicense only to that party's wholly owned subsidiaries) to make, have made, use, sell and otherwise exploit, during and after the term of this Agreement, any modifications, improvements, inventions, know-how, ideas, or suggestions made with respect to the other party's Proprietary Information by that party's employees or contractors who have had access to such Proprietary Information. If something ceases to be Proprietary Information pursuant to Section 25 above, any license granted with respect thereto while such information was Proprietary Information will be unaffected.

---

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

28. **Parts Support**. During this Agreement or following any termination hereof, other than termination by Seller due to a breach by Buyer, Seller shall provide, or at its option shall cause to be provided, such quantities of Spare Part Products to Buyer as Buyer may request from time to time for a period of [*] after the last shipment made by Seller under this Agreement of a Production Product that uses the requested Spare Part Product. Seller shall provide such Spare Part Products at a price not to exceed Seller's then-current prices provided to other customer under similar terms and conditions, provided that such Spare Part Products are reasonably and commercially available to Seller. If for any reason Seller is unable to provide Spare Part Products to Buyer pursuant to its obligation under Section 28, then Seller grants to Buyer a non-exclusive, perpetual, worldwide, royalty-bearing license to make, have made, use, and sell those particular Spare Part Products using Seller's proprietary designs. The foregoing license is subject to a royalty of [*] of the applicable price set forth in Seller's most current catalog or price list for those Spare Part Products.

29. This Agreement hereby supersedes and replaces that certain Purchase Agreement entered into by and between Buyer and Seller having an effective date as of January 1, 2008, and any subsequent amendments.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives as of the date first set forth above.

CATERPILLAR INC. ("***Buyer***")	ACTIVE POWER., INC. ("***Seller***")
By: /s/ Frank Crespo	By: /s/ John Penver
Name: Frank H. Crespo	Name: John K. Penver
Title: CPO, Vice President	Title: Chief Financial Officer
Date: 12/16/2011	Date: 01/11/2012

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

EXHIBIT A: [*]

Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

EXHIBIT A: [*]

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

EXHIBIT B: PRICE INCREASE PROCESS

This process will be used whenever Seller requests a price increase for a Product listed in **Exhibit A**, including changes to these Products that do not require a new part number to be released.

1. On the date Seller requests a price increase, Seller will submit to Buyer the proposed price increase, the Effective Date of the price increase, and data related to the material or component cost drivers that are prompting Seller to propose the price increase (The price increase Effective Date shall not be less than [*] from the date this data is received by Buyer). Seller is not obligated to share any data that it or a third party may consider confidential, and may instead provide a non-confidential summary of that data; however, Buyer must be able to correlate the data using industry standard material cost indexes. This data may include, for example,
    a. 3rd party supplier invoices illustrating the increase in material costs, labor or service charges.
    b. Increased material content (bill of material) or labor requirements, and the costs of the added requirements.
    c. Commodity prices at the time of the previous quote, and the content within Product.
    d. Commodity prices at the current time, and the content within Product.

2. Buyer will review and validate the information submitted by Seller. For component cost increases that can not be correlated to industry standard material cost indexes, both Buyer and Seller will work together to try and offset the component increase by:
    a. Jointly meeting with the supplier(s) causing the component cost increase to investigate cost reduction/avoidance ideas
    b. Investigating other components with the Product for possible cost reduction ideas

3. If an agreement is reached on the price increase, then Exhibit A will be amended in writing and such new prices will be implemented on the Effective Date, or as otherwise mutually agreed to by Buyer and Seller. No retroactive price increases will be allowed.

4. If no agreement is reached on the proposed price increase prior to the Effective Date, then,

    a. Seller will have the option for ten (10) days to notify Buyer in writing that Seller has withdrawn its proposal for a price increase;

    b. If Seller does not exercise its option to withdraw its price increase proposal, then the price increase as proposed by Seller will take effect on the Effective Date. If the price increase takes effect without Buyer's written consent, then Buyer will have the option during the period of ten (10) days after the Effective Date: (i) terminate this Agreement in its entirety by giving Seller [*] written notice; or (ii) cancel the part numbers and all orders for Product affected by this price increase.

---

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

EXHIBIT C: CATERPILLAR STANDARD LIMITED WARRANTY

Effective with sales to the first user on or after January 1, 2006

CATERPILLAR LIMITED WARRANTY

Industrial Engine Products and Electric Power Generation Products

Worldwide

Caterpillar Inc. or any of its subsidiaries, ("Caterpillar") warrants new and Remanufactured engines and electric power generation products sold by it, (including any products of other manufacturers packaged and sold by Caterpillar), to be free from defects in material and workmanship.

This warranty does not apply to Caterpillar Motoren (CM) product, engines sold for use in on-highway vehicle or marine applications, engines in machines manufactured by or for Caterpillar, 3500 and 3600 Family engines used in locomotive applications, 3000 Family engines, C0.5 through C4.4 and ACERT (C6.6, C7, C9, C11, C13, C15, C18, C27, and C32) engines used in industrial applications, or Caterpillar brand batteries. These products are covered by other Caterpillar warranties.

This warranty is subject to the following:

Warranty Period

- For Uninterruptible Power Supply (UPS) systems, the warranty period is 12 months after date of delivery to the first user.
- For new industrial engines, electric power generation products (excluding UPS systems), the warranty period is 12 months (24 months for Automatic Transfer Switch (ATS) product, mobile agricultural and standby electric power generation applications) after date of delivery to the first user.
- For Selective Catalytic Reduction (SCR) and Oxidation Catalyst products, the warranty period is 12 months (24 months for standby electric power generation applications) after date of delivery to the first end user.
- For Diesel Particulate Filter (DPF) products, the warranty period is 24 months* for standby electric power generation applications after date of delivery to the first user.

*if the product is operating in California, USA the warranty period is 60 months or 4200 hours, whichever occurs first after date of delivery to the first user.

- For all Remanufactured engines, the warranty period is 6 months (12 months for mobile agricultural and standby electric power generation applications) after date of delivery to the first user.

Caterpillar Responsibilities

If a defect in material or workmanship is found during the warranty period, Caterpillar will, during normal working hours and through a place of business of a Caterpillar dealer or other source approved by Caterpillar:

- Provide (at Caterpillar's choice) new, Remanufactured or Caterpillar-approved repaired parts or assembled components needed to correct the defect.

Note: Items replaced under this warranty become the property of Caterpillar.

- Replace lubricating oil, filters, coolant and other service items made unusable by the defect.
- Provide reasonable or customary labor needed to correct the defect, including labor to disconnect the product from and reconnect the product to its attached equipment, mounting, and support systems, if required.

For new 3114, 3116 and 3126 engines and electric power generation products (including any new products of the other manufacturers packaged and sold by Caterpillar):

- Provide travel labor, up to four hours round trip if, in the opinion of Caterpillar, the product cannot reasonably be transported to a place of business of a Caterpillar dealer or other source approved by Caterpillar (travel labor in excess of four hours round trip, and any meals, mileage, lodging, etc. is the user's responsibility).

For all other products:

- Provide reasonable travel expenses for authorized mechanics, including meals, mileage, and lodging, when Caterpillar chooses to make the repair on-site.

User Responsibilities

The user is responsible for:

- Providing proof of the delivery date to the first user.
- Labor costs, except as stated under "Caterpillar Responsibilities", including costs beyond those required to disconnect the product from and reconnect the product to its attached equipment, mounting and support systems.
- Travel expenses not covered under "Caterpillar Responsibilities".
- All costs associated with transporting the product to and from the place of business of a Caterpillar dealer or other source approved by Caterpillar.
- Premium or overtime labor costs.
- Parts shipping charges in excess of those which are usual and customary.
- Local taxes, if applicable.
- Costs to investigate complaints, unless the problem is caused by a defect in Caterpillar material or workmanship.
- Giving timely notice of a warrantable failure and promptly making the product available for repair.
- Performance of the required maintenance (including use of proper fuel, oil, lubricants and coolant) and items replaced due to normal wear and tear.
- Allowing Caterpillar access to all electronically stored data.

SELF5405

Limitations

Caterpillar is not responsible for:

- Failures resulting from any use or installation which Caterpillar judges improper.
- Failures resulting from attachments, accessory items and parts not sold or approved by Caterpillar.
- Failures resulting from abuse, neglect and/or improper repair.
- Failures resulting from user's delay in making the product available after being notified of a potential product problem.
- Failures resulting from unauthorized repair or adjustments, and unauthorized fuel-setting changes.
- Damage to parts, fixtures, housings, attachments, and accessory items that are not part of the engine or electric power generation product (including any products of other manufacturers packaged and sold by Caterpillar).
- Repair of components sold by Caterpillar that is warranted directly to the user by their respective manufacturer. Depending on type of application, certain exclusions may apply. Consult your Caterpillar dealer for more information.

For products operating outside of Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands and Tahiti, the following is applicable:

NEITHER THE FOREGOING EXPRESS WARRANTY NOR ANY OTHER WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED, IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS WHICH IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT CATERPILLAR EMISSION-RELATED COMPONENTS WARRANTIES FOR NEW ENGINES, WHERE APPLICABLE. REMEDIES UNDER THIS WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS SPECIFIED HEREIN.

CATERPILLAR IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION (CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS) IS EXCLUDED IN ITS ENTIRETY.

For personal or family use engines or electric power generation products, operating in the USA, its territories and possessions, some states do not allow limitations on how long an implied warranty may last nor allow the exclusion or limitation of incidental or consequential damages. Therefore, the previously expressed exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights, which vary by jurisdiction. To find the location of the nearest Caterpillar dealer or other authorized repair facility, call (800) 447-4986. If you have questions concerning this warranty or its applications, call or write:

In USA and Canada: Caterpillar Inc., Engine Division, P.O. Box 610, Mossville, IL 61552-0610, Attention: Customer Service Manager, Telephone (800) 447-4986. Outside the USA and Canada: Contact your Caterpillar dealer.

For products operating in Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands and Tahiti, the following is applicable:

THIS WARRANTY IS IN ADDITION TO WARRANTIES AND CONDITIONS IMPLIED BY STATUTE AND OTHER STATUTORY RIGHTS AND OBLIGATIONS THAT BY ANY APPLICABLE LAW CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED ("MANDATORY RIGHTS"). ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED (BY STATUTE OR OTHERWISE), ARE EXCLUDED.

NEITHER THIS WARRANTY NOR ANY OTHER CONDITION OR WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED (SUBJECT ONLY TO THE MANDATORY RIGHTS), IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS WHICH IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

TO THE EXTENT PERMITTED UNDER THE MANDATORY RIGHTS, IF CATERPILLAR IS THE SUPPLIER TO THE USER, CATERPILLAR'S LIABILITY SHALL BE LIMITED AT ITS OPTION TO (a) IN THE CASE OF SERVICES, THE SUPPLY OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN, AND (b) IN THE CASE OF GOODS, THE REPAIR OR REPLACEMENT OF THE GOODS, THE SUPPLY OF EQUIVALENT GOODS, THE PAYMENT OF THE COST OF SUCH REPAIR OR REPLACEMENT OR THE ACQUISITION OF EQUIVALENT GOODS.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

CATERPILLAR IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNLESS IMPOSED UNDER MANDATORY RIGHTS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION (CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS) IS EXCLUDED IN ITS ENTIRETY.

This warranty covers every major component of the products. Claims under this warranty should be submitted to a place of business of a Caterpillar dealer or other source approved by Caterpillar. For further information concerning either the location to submit claims or Caterpillar as the issuer of this warranty, write Caterpillar Inc., 100 N.E. Adams St., Peoria, IL USA 61629.

SELF5405

EXHIBIT D: UPS STORAGE GUIDELINES – TIBU4855-00

Introduction

The problem that is identified below does not have a known permanent solution. Until a permanent solution is known, use the solution that is provided below.

Problem

The vacuum pump has incurred an early hour failure due to one or more of the following results:

- z improper procedure for storage
- z improper setup procedure
- z improper troubleshooting procedure

Solution

The following procedures will provide enhanced information regarding the vacuum pump:

- z procedure for storage
- z setup procedure
- z troubleshooting procedure

Procedure for Storage

Normal Operating Range

Minimum temperature ... 0 °C (32 °F)
Maximum temperature ... 40 °C (104 °F)

Range of Humidity Minimum Humidity "Non-condensing" ... 5% Maximum Humidity "Non-condensing" ... 95%
The vacuum pump has the following specifications for short term storage:
Short Term Temperature Range Minimum temperature ... −25 °C (−13 °F) Maximum temperature ... 70 °C (158 °F)
Short Term Range of Humidity Minimum Humidity "Non-condensing" ... 65% Maximum Humidity "Non-condensing" ... 95%
Short Term Storage - Short Term defines the storage period of two months or less.
Short Term conditions cover the time when the equipment is in transit from the factory to the dealer or from the dealer to the customer site. The system should be stored under short term conditions for only two months or less.
The vacuum pump has the following specifications for long term storage:
Long Term Temperature Range Minimum temperature ... 0 °C (32 °F) Maximum temperature ... 40 °C (104 °F)
Long Term Range of Humidity Minimum Humidity "Non-condensing" ... 5% Maximum Humidity "Non-condensing" ... 95%
Long Term Storage - Long Term defines the storage period of three to twelve months.
The system can be stored under long term conditions without any additional concerns. If the UPS is stored longer than one year, you will need to change the oil for the vacuum pump. Thereafter, change the oil in the vacuum pump annually. After completing the oil change for the vacuum pump, you will need to energize the vacuum pump. Operate the vacuum pump for four hours. Operation of the pump will ensure proper lubrication of the seals for the vacuum pump.
The vacuum pump is shipped from Service Parts without oil. Therefore, you are not required to change the oil for the vacuum pump for any inventory from service parts.
Do not utilize a vacuum pump that has exceeded specifications for storage of the vacuum pump. Do not utilize a vacuum pump that has exceeded the operational environmental specifications of the vacuum pump. The vacuum pump must be replaced. The replacement cost of the vacuum pump is not a warrantable repair.

Setup Procedure

The vacuum pump has a tamperproof label. This prohibits the service technician from utilizing a 120 VAC source to begin the process for vacuum draw on the flywheel during the commissioning procedure. A tamperproof label that is corrupted will void any warranty claim that is associated with the vacuum pump.
To operate the vacuum pump prior to commissioning the system, temporarily disconnect the 240 VAC internal wiring to the receptacle on the right side of the pump. Connect a 240 VAC line cord from an external source. Ensure that you have removed the external 240 VAC source prior to energizing the input terminals.
Refer to the appropriate Operation and Maintenance Manual when you perform the following procedures:

- z commissioning of the UPS
- z replacement (field service) of the vacuum pump
- z installation of bearings for the flywheel

In addition, perform the following operations:

- z When you change the bearing retainers in order to install bearings, complete the procedure in a timely manner. Installation of the bearings in place of the bearing retainers should be completed prior to energizing the vacuum pump. Efficient installation will minimize any possible contamination of the chamber for the flywheel. Efficient installation should decrease the time that is required to create an acceptable vacuum level within the chamber for the flywheel.
- z Do not use a 120 VAC source to begin the vacuum draw on the flywheel.

- Remove any externally connected 240 VAC source from the vacuum pump.
- Perform a thorough inspection of the vacuum lines and connection points. Look for any possible discrepancies that could result in a vacuum leak.
- Verify that the vacuum pump has clean, fresh oil. Verify that the oil for the vacuum pump is filled to the appropriate level. Use **190-8487** Vacuum Pump Oil for the vacuum pump. The pump capacity is 0.7 liters. The capacity of the container for the oil (service parts) is 1.0 liter.
- Do not overfill the reservoir for the vacuum pump. Overfilling the reservoir will cause the following results: misting oil from the vacuum pump, contamination of the interior of the UPS and the appearance of a leaking vacuum pump.
- The vacuum pump is equipped with two control switches. One switch controls the gas ballast. The other switch controls the operation mode of the vacuum pump. For normal operation of the vacuum pump, turn the gas ballast switch to the Closed position ("O"). The switch for the mode selector is in the Full Clockwise position.

- Remove the air bubbles from the vacuum system by turning the switch for the ballast from the 0 position to the II position. The switch for the ballast is located on the top middle of the pump behind the exhaust port. Run the pump for 1 hour. Return the switch for the ballast to the 0 position and allow the pump to pull a vacuum.
- For systems that have been in dealer storage with an age equal to or exceeding 12 months, lubricate the O-ring seal of the polymer elbow. The O-ring is located on the suction side of the vacuum pump. Utilize **6V-2055** Grease for the O-ring.

NOTICE
Use rubber gloves when handling the o-ring. Do not use bare hands.

Troubleshooting Procedure

A properly sealed flywheel with a properly operating vacuum pump will yield a minimum reading for the vacuum of 35 millitorr within three hours of operation.

If the results of your troubleshooting indicate that the fault actually resides with the vacuum pump, perform a "Dead Head" test on the vacuum pump. To perform the "Dead Head" test, you will require the following service tool:

- **295-5408** Sensor Kit ("Dead Head")

1. Verify that the system is in bypass mode. Verify that the flywheel is disengaged. Refer to the appropriate Systems Operation, Testing and Adjusting.
2. De-energize the vacuum pump.
3. Disconnect the input vacuum hose and the 90 degree elbow assembly between the flywheel and the right side of the vacuum pump.
4. Connect the **295-5409** Adapter Plate into the fitting for the vacuum pump. See Step 3.
5. Connect the **200-8452** Vacuum Sensor to the **295-5409** Adapter Plate .
6. Disconnect the wiring harness for the flywheel installed vacuum sending unit at the flywheel.
7. Connect the wiring harness from Step 6 to the test **200-8452** Vacuum Sensor .
8. For a single module unit, connect your laptop computer to the RS-232 connector that is located on the "I/O" board. For a multiple module unit, connect your laptop computer to the RS-232 connector that is located on the "PCI" board.
9. Start the UPSView program. Establish communications.
10. Select the appropriate telemetry tile in order to view the "Vacuum Gauge".
11. Energize the vacuum pump.
12. Monitor the reading of vacuum pressure via UPSView.
13. An acceptable reading for the vacuum pump is 10 millitorr or less. If the vacuum pump produces a reading greater than 10 millitorr, replace the pump.
14. Upon completion of the "Dead Head" test, return the system back to the original configuration.
15. Return the system to on-line status. Refer to the appropriate Systems Operation, Testing and Adjusting.

EXHIBIT E: [*]

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

EXHIBIT F: SHIPPING REQUIREMENTS FOR WARRANTY RECALL PARTS

Packaging Rules: Return parts must be properly packaged to prevent any shipment damage. The use of original shipping containers is preferred. All PWAs and semiconductor parts must be placed in an ESDS bag when packaged for return shipment.

Shipping Rules:		
	Domestic*	Standard Ground Freight
		No Overnight Shipments***
		No Collect Shipments
	International**	Standard Air Freight
		No Overnight Shipments***
		No Collect Shipments

Notes:

* All domestic parts returns must be accompanied by a Parts Return Tag.

** International parts returns must be accompanied by a copy of the warranty order. All international parts shipments must be claimed as a warranty replacement part to avoid importation fees.

*** Overnight shipping will not be accepted without prior written approval from Active Power's Service Manager, Director of Service, or VP of Service.

EXHIBIT G: [*]

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portion.

Exhibit 31.1

CERTIFICATIONS

I, J. Douglas Milner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Active Power, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 30, 2012

/s/ J. Douglas Milner
J. Douglas Milner
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, John K. Penver, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Active Power, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 30, 2012

/s/ John K. Penver
John K. Penver
Vice President of Finance, Chief Financial Officer and Secretary
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Active Power, Inc. (the "Company") for the period ending March 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, J. Douglas Milner, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ J. Douglas Milner
J. Douglas Milner
President and Chief Executive Officer
April 30, 2012

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Active Power, Inc. (the "Company") for the period ending March 31, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John K. Penver, Vice President of Finance, Chief Financial Officer and Secretary of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ John K. Penver
John K. Penver
Vice President of Finance, Chief Financial Officer and Secretary
April 30, 2012