

SOUTHWESTERN ENERGY CO

FORM 8-K (Current report filing)

Filed 02/27/12 for the Period Ending 02/24/12

Address	2350 N. SAM HOUSTON PARKWAY EAST SUITE 125 HOUSTON, TX 77032
Telephone	2816184700
CIK	0000007332
Symbol	SWN
SIC Code	1311 - Crude Petroleum and Natural Gas
Industry	Oil & Gas Operations
Sector	Energy
Fiscal Year	12/31

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): February 24, 2012

SOUTHWESTERN ENERGY COMPANY

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

1 -08246
(Commission File Number)

2350 N. Sam Houston Pkwy. E., Suite 125,
Houston, Texas
(Address of principal executive offices)

71-0205415
(IRS Employer Identification No.)

77032
(Zip Code)

(281) 618-4700
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 144a-12 under the Exchange Act (17 CFR 240.144a-12)
 Pre-commencement communications pursuant to Rule 144d-2(b) under the Exchange Act (17 CFR 240.144d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Section 5 - Corporate Governance and Management

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) As previously disclosed, on December 9, 2011, Gene A. Hammons, President of Southwestern Midstream Services Company and its subsidiaries, Southwestern Energy Services Company, DeSoto Gathering Company, LLC and Angelina Gathering Company, LLC, and a Named Executive Officer of Southwestern Energy Company (the "Company"), advised the Company's Board of Directors of his intended retirement effective March 31, 2012 (the "Retirement Date"). In recognition of his substantial contributions to the Company and the ongoing need for his expertise as a consultant to the Company, on February 22, 2012, the Compensation Committee of the Board of Directors approved and authorized the Company's President & Chief Executive Officer to enter into a letter agreement (the "Letter Agreement") with Mr. Hammons providing for the following in connection with his separation from the Company as of the Retirement Date: (i) with respect to the portions of the performance units granted to him under the Company's 2002 Performance Unit Plan (the "Performance Unit Plan") on December 10, 2009, December 9, 2010 and December 8, 2011 that were not vested as of the Retirement Date but would have vested on or before December 31, 2012 (each an "Accelerated PUP"), the Company will pay Mr. Hammons for such Accelerated PUPs in accordance with the overall level of achievement under the original grants or upon a Change of Control (as defined in the Performance Unit Plan) at the time that payment is due and required to be made under the Performance Unit Plan and (ii) a one-year consulting agreement (the "Consulting Agreement") pursuant to which Mr. Hammons will provide consulting services to the Company until March 31, 2013, unless earlier terminated by either party. In consideration for Mr. Hammons' consulting services, the Company will pay Mr. Hammons the sum of \$50,000.00 per month during the term of the Consulting Agreement. In the event the Company terminates the Consulting Agreement without cause, Mr. Hammons will be entitled to receive the monthly payments through the remaining term. In addition, under the Consulting Agreement, Mr. Hammons will be subject to non-disclosure, non-solicitation, non-competition and non-disparagement provisions. The Letter Agreement, including the Consulting Agreement, is attached hereto as [Exhibit 10.1](#), and each agreement was executed by the Company and Mr. Hammons on February 24, 2012. Each of these agreements is incorporated by reference herein as if set forth in full and the descriptions of their material terms set forth above are qualified in their entirety by reference to such exhibit.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On February 23, 2012, the Board of Directors of the Company, based in part upon the recommendation of its Nominating and Governance Committee, approved a number of corporate governance changes including increasing the stock ownership requirements for certain executives and amending and restating the Company's Bylaws to, among other things, permit electronic notifications and clarify certain provisions, including with respect to stockholder proposals. The material amendments of the provisions of the Company's Bylaws can be found in Articles II, III and V of the Bylaws. The Bylaws, as amended and restated (the "Amended and Restated Bylaws"), are filed as Exhibit 3.1 hereto and incorporated by reference herein as if set forth in full and the foregoing description of the Amended and Restated Bylaws is qualified by reference to such exhibit.

Section 9 - Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibits. The following exhibit is being furnished as part of this Report.

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of Southwestern Energy Company Effective as of February 23, 2012.
10.1	Letter Agreement dated February 24, 2012 between Southwestern Energy Company and Gene A. Hammons, including Consulting Agreement of even date.

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 hereunto duly authorized.

SOUTHWESTERN ENERGY COMPANY

Dated: February 24, 2012

By: /s/ GREG D. KERLEY

Name: Greg D. Kerley
Title: Executive Vice President and
Chief Financial Officer

EXHIBIT INDEX

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BYLAWS
OF
SOUTHWESTERN ENERGY COMPANY
(A Delaware Corporation)

As Amended and Restated Effective February 23, 2012

BYLAWS
OF
SOUTHWESTERN ENERGY COMPANY
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

- 1.1 **Registered Office.** The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.
- 1.2 **Other Offices.** The Corporation may also 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.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 **Place of Meetings.** Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors.

2.2 **Annual Meetings.** The Annual Meeting of Stockholders of the Corporation (the "Annual Meeting") for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. Any other proper business may be transacted at the Annual Meeting.

2.3 **Nature of Business at Meetings of Stockholders.** No business may be transacted at an Annual Meeting, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the Annual Meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the Annual Meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.3 and on the record date for the determination of stockholders entitled to notice of and to vote at such Annual Meeting and (ii) who complies with the notice procedures set forth in this Section 2.3. Clause (c) of the immediately preceding sentence shall be the exclusive means for a stockholder to make business proposals (other than director nominations made in accordance with Section 2.4 and other than matters properly brought under Rule 14a-8 under the Securities

Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting) before an Annual Meeting.

At any meeting of stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For business to be properly brought before a meeting by a stockholder, the stockholder must have given timely notice thereof (and timely updates and supplements thereto) in proper written form to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, such notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than fifty (50) nor more than seventy-five (75) days prior to the meeting date; provided, however, that in the event that less than forty-five (45) days' notice of the meeting date is given to stockholders, notice by the stockholder must be so received no later than the close of business on the 15th day following the day on which notice of the meeting date was first mailed. In no event shall any adjournment or postponement of a meeting, or the giving of any notice thereof, commence a new time period for the giving of a stockholder's notice as described above.

In addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than 5 business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) business days prior to the date for the meeting, or any adjournment or postponement thereof, in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof.

To be in proper form, a stockholder's notice given pursuant to this Section 2.3 shall set forth, as to the stockholder giving the notice and each beneficial owner, if any, on whose behalf the proposal is made: (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting and the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), (ii) the name and address of the stockholder proposing such business, as they appear on the Corporation's books, and of such beneficial owner, (iii) (A) the class and number of shares of capital stock of the Corporation that are, directly or indirectly, owned beneficially or of record by such stockholder, such beneficial owner or any of their respective affiliates or associates or others acting in concert therewith, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or

series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard of whether the stockholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (any of the foregoing, a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith has a right to vote any class or series of shares of the Corporation, (D) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such stockholder or beneficial owner, or any of their respective affiliates or associates or persons acting in concert therewith, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such stockholder with respect to any class or series of the shares of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares of the Corporation (any of the foregoing, "Short Interests"), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder or beneficial owner that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, and (G) any performance-related fees (other than an asset-based fee) that such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including any such interests held by members of such person's immediate family sharing the same household, (iv) a description of all arrangements or understandings between such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith, and any other person or persons (including their names) in connection with the proposal of such business and any material interest of such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith, in such business, (v) to the extent not required by clauses (ii) through (iv), any disclosures that would be required pursuant to Item 5 or Item 6 of Schedule 13D under the Exchange Act if the requirements therein were applicable to such stockholder and such beneficial owner and any other information relating to such stockholder and beneficial owner that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder and (vi) a

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representation that such stockholder intends to appear in person or by proxy at the meeting to bring such business before the meeting. The presiding officer of the meeting shall, if the facts warrant, determine that business was not properly brought before the meeting in accordance with the foregoing procedure and, if he should so determine, he may so declare to the meeting and any such business not properly brought shall not be transacted. Notwithstanding the provisions of this paragraph or of Section 2.14, so long as the Corporation is subject to Rule 14a-8 under the Exchange Act, business consisting of a proposal properly included in the Corporation's proxy statement with respect to a meeting pursuant to such Rule may be transacted at a meeting, provided that the stockholder making such proposal complies with the requirements of such rule, including paragraph (h) thereof.

2.4 Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances and except as provided in Section 3.2 of these Bylaws. Nominations of persons for election to the Board of Directors at any Annual Meeting, or at any Special Meeting of Stockholders called for the purpose of electing directors, may be made (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.4 and on the record date for the determination of stockholders entitled to notice of and to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.4. Clause (b) of the immediately preceding sentence shall be the exclusive means for a stockholder to make director nominations before an Annual Meeting or Special Meeting of stockholders.

At any meeting of stockholders, only such director nominations shall be considered as shall have been properly brought before the meeting. In addition to any other applicable requirements, for a nomination to be properly brought before a meeting of stockholders by a stockholder pursuant to clause (b) of the immediately preceding paragraph, such stockholder must have given timely notice thereof (and timely updates and supplements thereto) in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than fifty (50) nor more than seventy-five (75) days prior to the meeting date; provided, however, that in the event that less than forty-five (45) days' notice of the meeting date is given to stockholders, notice by the stockholder must be so received no later than the close of business on the fifteenth (15th) day following the day on which notice of the meeting date was first mailed. In no event shall any adjournment or postponement of a meeting, or the giving of any notice thereof, commence a new time period for the giving of a stockholder's notice as described above.

In addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such

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update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than 5 business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) business days prior to the date for the meeting, or any adjournment or postponement thereof, in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof.

To be in proper form, a stockholder's notice given pursuant to this Section 2.4 shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i) the name, age, business address and residence address of the nominee, (ii) the principal occupation or employment of the nominee, (iii) the class and number of shares of capital stock of the Corporation that are owned beneficially or of record by the nominee, (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder and (v) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder, or any beneficial owner on whose behalf the nomination is made, or any of their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand; and (b) as to the stockholder giving the notice and each beneficial owner, if any, on whose behalf the nomination is made, (i) the name and address of the stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the information required by clauses (iii)(A) through (iii)(G) of the fourth paragraph of Section 2.3, (iii) a description of all arrangements or understandings between such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith, and each proposed nominee or any other person or persons (including their names) pursuant to which the nomination(s) are to be made and any material interest of such stockholder or beneficial owner, or any of their respective affiliates or associates or others acting in concert therewith, in such nomination, (iv) to the extent not required by clauses (b)(ii) and (b)(iii), any disclosures that would be required pursuant to Item 5 or Item 6 of Schedule 13D under the Exchange Act if the requirements therein were applicable to such stockholder and such beneficial owner and any other information relating to such stockholder and beneficial owner that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder and (v) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice. Such notice must be accompanied by (x) a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected and (y) a completed and signed questionnaire, representation and agreement required by the next succeeding paragraph of this Section 2.4. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable

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stockholder's understanding of the independence, or lack thereof, of such nominee. The presiding officer of the meeting shall, if the facts warrant, determine that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he may so declare to the meeting and the defective nomination shall be disregarded.

To be eligible to be a nominee for election or re-election by the stockholders as a director of the Corporation, a person must deliver (not later than the deadline prescribed for delivery of

notice under the second paragraph of this Section 2.4) to the Secretary of the Corporation a written questionnaire with respect to the background and qualification of such person and, if applicable, the background of any other person on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person: (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person as to how such person, if elected as a director, will act or vote (in his or her capacity as a director of the Corporation) on any issue or question (a "Voting Commitment") that has not been disclosed in such questionnaire; or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director, with such person's duties under applicable law, as a director of the Corporation; (ii) is not and will not become a party to any agreement, arrangement or understanding with any person other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed in such questionnaire; and (iii) in such person's individual capacity and on behalf of any person on whose behalf the nomination is being made, would be in compliance, if elected as a director, and will comply with, applicable law and all conflict of interest, confidentiality and other policies and guidelines of the Corporation (including the Corporation's Corporate Governance Guidelines) applicable to directors generally and publicly available (whether on the Corporation's website or otherwise) as of the date of such representation and agreement.

2.5 Special Meetings. Unless otherwise required by law or by the Certificate of Incorporation, Special Meetings of Stockholders, for any purpose or purposes, may be called by either (i) the Chairman, (ii) the President, (iii) the Secretary, (iv) the Board of Directors or (v) the written request of holders having an aggregate "net long position" of not less than twenty percent (20%) of the outstanding shares of the Corporation's common stock as of the date of such request ("Special Meeting Request"). "Net long position" shall be determined with respect to each requesting holder in accordance with the definition thereof set forth in Rule 14e-4 under the Securities Exchange Act of 1934, provided that (x) for purposes of such definition, in determining such holder's "short position," the reference in such Rule to "the date the tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired" shall be the date of the relevant Special Meeting Request and the reference to the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the Corporation's common stock on the New York Stock Exchange on such date (or, if such date is not a trading day, the next succeeding trading day) and (y) the net long position of such holder shall be reduced by the number of shares as to which such holder does not, or will not, have the right to vote or direct the vote at the Special Meeting or as to which such holder has entered into any derivative or other agreement,

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arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Whether the requesting holders have complied with the requirements of this Article and related provisions of the By-laws shall be determined in good faith by the Board, which determination shall be conclusive and binding on the Corporation and the stockholders. At a Special Meeting of Stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto); provided, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any Special Meeting.

Notwithstanding the foregoing, a Special Meeting shall not be held if (i) the Special Meeting request relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) the Special Meeting request is delivered during the period commencing ninety (90) days prior to the first anniversary of the date of the notice of annual meeting for the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) thirty (30) calendar days after the first anniversary of the date of the immediately preceding annual meeting, (iii) an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item"), other than the election of directors, was presented at a meeting of the stockholders held not more than twelve (12) months before the Special Meeting request is delivered, (iv) a Similar Item was presented at a meeting of the stockholders held not more than ninety (90) days before the Special Meeting request is delivered (and, for purposes of this clause (iv), the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors) or (v) a Similar Item is included in the Corporation's notice as an item of business to be brought before a Stockholder meeting that has been called by the time the Special Meeting request is delivered but not yet held.

Upon the written request of any stockholders who have called a Special Meeting, it shall be the duty of the Secretary of the Corporation to fix the date of the Special Meeting, which shall be held at such date and time as the Secretary may fix, not less than fifteen (15) nor more than sixty (60) days after the receipt of the request (provided that such request complies with all applicable provisions of these Bylaws), and to give due notice thereof in accordance with the applicable provisions of these Bylaws.

2.6 Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a Special Meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting 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 notice of and to vote at such meeting. Whenever any notice is required by these Bylaws to be given, personal notice is not meant unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by (i) depositing the same in a post office box in a sealed postage paid wrapper, addressed to the person entitled thereto at his last known post office address, and such notice shall be deemed to have been given on the date of such mailing or (ii) by electronic transmission to the extent permitted by the General Corporation Laws of the State of Delaware (the "DGCL"). Any notice required to be given under these

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Bylaws may be waived by the person entitled thereto. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by statute.

2.7 Adjournments. Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such 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, notice of the adjourned meeting in accordance with the requirements of Article VI hereof shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

2.8 Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the presiding officer of the meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 2.7 hereof, until a quorum shall be present or represented.

2.9 Voting. (a) Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, any question, with the exception of the election of directors, brought before any meeting of the stockholders shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote thereat, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 2.12 of this Article II, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 2.11 of this Article II. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(b) Except as otherwise provided in the Certificate of Incorporation, a nominee for director shall be elected to the Board of Directors by stockholders if the votes cast for such nominee's election exceed the votes cast against such nominee's election; provided, however, that directors shall be elected by a plurality of the votes cast in any "contested election." A "contested election" means any election of directors by the stockholders for which (i) the Corporation receives a notice that a stockholder has nominated a person for election to the Board of Directors that was timely made in accordance with the applicable nomination periods provided in these Bylaws, and (ii) such nomination has not been withdrawn on or before the 10th day before the Corporation first mails its initial proxy statement in connection with such election of directors; provided, however, that the determination that an election is a contested election

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shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee but instead will be permitted to withhold a vote from a nominee.

2.10 Proxies. Each stockholder entitled to vote at a meeting of the stockholders may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such

stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such telegram, cablegram or transmission, provided that any such telegram or cablegram must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing, telegram, cablegram or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing, telegram, cablegram or transmission for any and all purposes for which the original writing, telegram, cablegram or transmission could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, telegram, cablegram or transmission.

2.11 List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. 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) either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the

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meeting, or, if not so specified, at the place where the meeting is to be held or (ii) during ordinary business hours, at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

2.12 Record Date. (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix 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 the 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 the 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) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting shall be established pursuant to this Section 2.12(b). In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix 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 date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice delivered to the Secretary at the principal executive offices of the Corporation, request that the Board of Directors fix a record date. To be valid and effective, the written notice must set forth the action or actions proposed to be taken by written consent and must be received by the Secretary at the principal executive offices of the Corporation. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such written notice is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Section 2.12(b)). If no record date has been fixed by the Board of Directors within ten (10) days after the date on which such written notice is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date after the expiration of such ten day time period on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner prescribed by the DGCL. If no record date has been fixed by the Board of Directors, and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

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2.13 Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 2.11 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

2.14 Conduct of Meetings. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the Chairman of the Board or the presiding officer of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the Chairman of the Board or the presiding officer of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding officer of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

2.15 Inspectors of Election. In advance of any meeting of the stockholders, the Board of Directors, by resolution, the Chairman of the Board of Directors or the President shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the stockholders, the presiding officer of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

2.16 Certain Matters Relating to Stockholder Proposals. Without limiting the applicability of Sections 2.3 and 2.4, a stockholder who seeks to have any proposal included in the Corporation's proxy materials must provide notice as required by and otherwise comply with the applicable requirements of the rules and regulations under the Exchange Act. Except for the immediately preceding sentence, nothing in Section 2.3 or 2.4 shall be deemed to affect any rights of (i) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act; or (ii) the holders of any class or series of preferred stock of the Corporation, voting as a class separately from the holders of common stock, to elect directors pursuant to any applicable provisions of such class or series preferred stock or the Certificate of Incorporation. Subject to Rule 14a-8 under the Exchange Act, nothing

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in these Bylaws shall be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Corporation's proxy statement any nomination of director or directors or any other business proposal.

2.17 Inspectors of Written Consent. In the event of the delivery, in the manner provided by Section 2.12(b) of these Bylaws and applicable law, to the Corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent and without a meeting shall be effective until such inspectors have completed their review, determined that the requisite number of valid and unrevoked consents delivered to the Corporation in accordance with

Section 2.12(b) and applicable law have been obtained to authorize or take the action specified in the consents, and certified such determination for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders. Nothing contained in this Section 2.17 shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

ARTICLE III

DIRECTORS

3.1 Number, Quorum, Qualifications and Retirement. (a) The Board of Directors shall consist of not less than six (6) nor more than ten (10) members. The number of directors shall be fixed from time to time by resolution of a majority of the entire Board, provided that changes in the size of the Board of more than thirty percent (30%) above or below the established range may only be adopted with the approval of holders of a majority of the Corporation's outstanding voting stock. A majority of the directors shall constitute a quorum for the transaction of business. Directors need not be stockholders.

(b) The directors shall be elected in the manner provided in the Delaware General Corporation Law and the provisions of these Bylaws (including Section 2.9 hereof). Any nominee for director in an uncontested election (as defined in Section 2.9 hereof) who receives a greater number of votes "against" his or her election than votes "for" such election shall, to the extent not previously provided, promptly (and in any event no later than the first regularly scheduled meeting of the Board of Directors following certification of the stockholders' vote) submit his or her resignation conditioned upon the acceptance of such resignation by the Nominating and Governance Committee. The Nominating and Governance Committee of the Board of Directors shall consider all of the relevant facts and circumstances and recommend to the Board of Directors the action to be taken with respect to such conditional resignation. The Board of Directors will consider the Nominating and Governance Committee's recommendation

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and decide whether to accept or reject any tendered resignation no later than ninety (90) days following certification of the stockholders' vote. Following the Board's decision on such recommendation, the Corporation will promptly publicly disclose the Board's decision and process (including, if applicable, the reason or reasons for rejecting the tendered resignation(s)) in a periodic or current report filed with the Commission.

To the extent that one or more directors' resignations are accepted by the Board of Directors, the Nominating and Governance Committee will recommend to the Board of Directors whether to fill such vacancy or vacancies or, to the extent permitted by the Certificate of Incorporation or these Bylaws, to reduce the size of the Board.

Any director whose resignation is being considered pursuant to this provision will not participate in the Nominating and Governance Committee recommendation or Board consideration regarding whether or not to accept such director's resignation. If the resignation of a member of the Nominating and Governance Committee is under consideration with respect to the same election, then the independent directors who were elected at such election will appoint a Board of Directors committee amongst themselves solely for the purpose of considering the tendered resignations and will recommend to the Board of Directors whether to accept or reject them. Such committee may, but need not, consist of all of the independent directors who were elected. If less than three (3) independent directors were re-elected, then the entire Board of Directors shall consider the tendered resignations, provided, however, that a director may not participate in the consideration of his or her own resignation.

(c) Retired directors may be appointed to the position of director emeritus by the unanimous vote of the board or after having twenty (20) years of service and shall be invited, but not required, to attend the Annual Meeting and shall be available for consultation with management as required. Only existing non-employee members of the board of directors are eligible to become directors emeriti. Employee members of the board of directors will become eligible for the position of director emeritus after their employee status has ended. Any director becoming a director emeritus is no longer eligible for election as a director. A director emeritus may resign at any time.

3.2 Vacancies. Any vacancy on the Board of Directors that results from an increase in the number of directors may be filled by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring on the Board of Directors may be filled by a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy resulting from an increase in the number of directors shall hold office for a term that shall coincide with the remaining term of other directors. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor.

3.3 Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

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3.4 Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, or by any two directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

3.5 Organization. At each meeting of the Board of Directors, the Chairman of the Board of Directors, or, in his or her absence, a director chosen by a majority of the directors present, shall act as chairman. The Secretary of the Corporation shall act as secretary at each meeting of the Board of Directors. In case the Secretary shall be absent from any meeting of the Board of Directors, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the presiding officer of the meeting may appoint any person to act as secretary of the meeting.

3.6 Resignations and Removals of Directors. Any director of the Corporation may resign at any time, by giving notice in writing to the Chairman of the Board of Directors, the President or the Secretary of the Corporation. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by applicable law and subject to the rights, if any, of the holders of shares of preferred stock then outstanding, any director or the entire Board of Directors may be removed from office at any time, with or without cause, by the affirmative vote of the holders of at least a majority in voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors.

3.7 Quorum. Except as otherwise required by law or the Certificate of Incorporation, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

3.8 Actions of the Board by Written Consent. Unless otherwise provided in 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 the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

3.9 Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, members of the Board of Directors of the

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Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of

which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.9 shall constitute presence in person at such meeting.

3.10 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. 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 any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required.

3.11 Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors and a stated salary for service as director, payable in cash and/or securities. A director emeritus shall receive an annual fee of \$2,000 for the remainder of his life and such health care benefits as the Corporation provides to its full time employees. No such payment shall preclude any director or director emeritus from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

3.12 Executive Committee. The directors may appoint from their number an executive committee which may make its own rules of procedure and shall meet where and as provided by such rules, or by a resolution of the directors. A majority shall constitute a quorum, and in every case the affirmative vote of a majority of all the members of the committee shall be necessary to the adoption of any resolution. During the intervals between the meetings of the directors the executive committee shall have and may exercise all the powers of the directors in the management of the business and affairs of the Corporation, including power to authorize the seal of the Corporation to be affixed to all papers which may require it, in such manner as such committee shall deem best for the interests of the Corporation, in all cases in which specific directions shall not have been given by the directors.

3.13 Chairman of the Board of Directors. The directors shall appoint from their number a Chairman of the Board of Directors, who shall preside at all meetings of the stockholders and of the Board of Directors and shall be a member of the executive committee, if any. The Chairman of the Board of Directors shall have supervision of such matters as may be designated to him by the Board of Directors or the executive committee.

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3.14 Vice Chairman of the Board of Directors. The directors may appoint from their number a Vice Chairman, who shall be vested with all the powers and perform all of the duties of the Chairman of the Board of Directors in the absence or disability of the latter unless or until the Board of Directors shall otherwise determine.

ARTICLE IV

OFFICERS

4.1 General. The officers of the Corporation shall be a President, one or more Vice Presidents, one or more of whom may be designated as Executive Vice President and shall have senior authority, a Secretary, a Treasurer, and such assistants and other officers as may from time to time be elected or appointed by the Board of Directors. The Board of Directors, by resolution, may also designate the Chairman and the Vice Chairman of the Board of Directors as officers. Two or more offices may be held by the same person.

4.2 Chairman of the Board of Directors. If designated as an officer of the Corporation, the Chairman of the Board of Directors, in addition to his responsibilities as a director, shall have supervision of such matters as may be designated to him by the Board of Directors or the executive committee.

4.3 Vice Chairman of the Board of Directors. If the Chairman and the Vice Chairman of the Board of Directors are designated as an officer of the Corporation, the Vice Chairman of the Board of Directors shall be vested with all the powers and shall perform all the duties of the Chairman in the absence or disability of the latter unless or until the Board of Directors shall otherwise determine. He shall have such other powers and perform such other duties as shall be prescribed by the Board of Directors.

4.4 President. The President shall, in the absence of a Chairman of the Board, preside at all meetings of the directors, and act as Chairman at, and call to order all meetings of the stockholders; and he shall have power to call special meetings of the stockholders and directors for any purpose or purposes, appoint and discharge, subject to the approval of the directors, employees and agents of the Corporation, make and sign contracts and agreements in the name and behalf of the Corporation, except that he be not authorized to dispose or encumber material assets of the Corporation without the authority of the Board of Directors, and while the directors and/or committees are not in session he shall have general management and control of the business and affairs of the Corporation; he shall see that the books, reports, statements and certificates required by the statute under which this Corporation is organized or any other laws applicable thereto are properly kept, made and filed according to law; and he shall generally do and perform all acts incident to the office of President, or which are authorized or required by law.

4.5 Vice President. The Vice Presidents in the order of their seniority shall be vested with all the powers and shall perform all the duties of the President in the absence or disability of

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the latter, unless or until the directors shall otherwise determine. They shall have such other powers and perform such other duties as shall be prescribed by the directors.

4.6 Secretary. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and directors, and all other notices required by law or by these Bylaws, and in case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman of the Board of Directors, the President, or by the directors or stockholders upon whose requisition the meeting is called as provided in these Bylaws. He shall record all proceedings of the meetings of the Corporation and of the directors in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the directors or the President. He shall have custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the directors or the President, and attest the same. He shall be sworn to the faithful discharge of his duties.

4.7 Assistant Secretary. The Assistant Secretary shall be vested with the powers and shall perform all the duties of Secretary in the absence or disability of the latter, unless or until the directors shall otherwise determine. He shall have such other powers and perform such other duties as shall be prescribed by the directors.

4.8 Treasurer. The Treasurer shall have the custody of all funds, securities, evidences of indebtedness and other valuable documents of the Corporation; he shall receive and give or cause to be given receipts and acquittances for moneys paid in on account of the Corporation and shall pay out of the funds on hand all just debts of the Corporation of whatever nature upon maturity of the same; he shall enter or cause to be entered in books of the Corporation to be kept for that purpose full and accurate accounts of all monies received and paid out on account of the Corporation, and, whenever required by the President or the Board of Directors, he shall render a statement of his cash accounts. He shall, unless otherwise determined by the Board of Directors, have charge of the original stock books, transfer books and stock ledgers and act as transfer agent in respect of the stock and securities of the Corporation; he shall prepare and submit from time to time to the Board of Directors financial, cash and operating budgets or estimates; he shall prepare and submit such other financial data and information as he shall be directed to by the Board of Directors; and he shall perform all of the other duties incident to the office of Treasurer. He shall give the Corporation a bond for the faithful discharge of his duties in such amount and with such surety as the Board of Directors shall prescribe.

4.9 Assistant Treasurer. The Assistant Treasurer shall be vested with all the powers and shall perform all the duties of Treasurer in the absence or disability of the latter, unless or until the directors shall otherwise determine. He shall have such other powers and perform such other duties as shall be prescribed by the directors.

4.10 Controller. The Corporate Controller shall be responsible for directing the Corporation's accounting functions. Specific areas include the development and maintenance of planning and budgeting systems, analysis and interpretation of trends requiring management's attention, the preparation of financial and management reports and procedures, and senior management. Ancillary responsibilities include the supervision of external auditors, and participation in the planning and execution of the utility rate cases.

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4.11 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

4.12 Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

ARTICLE V

STOCK

5.1 Form of Certificates. The shares of the Corporation may be represented by certificates or may be uncertificated. Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation (i) by the Chairman of the Board of Directors, or the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation. Absent a specific request for such a certificate by the registered owner or transferee thereof, all shares may be uncertificated upon the original issuance thereof by the Corporation or upon surrender or any certificate representing such shares to the Corporation or its transfer agent.

5.2 Signatures. Any or all of the signatures on a 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 by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

5.3 Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate 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. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require

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and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

5.4 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation by the Corporation or the Corporation's transfer agent and upon the surrender of a certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. Within a reasonable time after the transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the General Corporation Law of the State of Delaware. Subject to the provisions of the Certificate of Incorporation and these By-Laws, the Board of Directors may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the Corporation. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

5.5 Dividend Record Date. 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 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, 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.

5.6 Record Owners. 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 to hold liable for calls and assessments a person registered on its books as the owner of shares, 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 required by law.

5.7 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

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ARTICLE VI

NOTICES

6.1 Notices. Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex, cable or otherwise electronically as permitted by law.

6.2 Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the 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. Neither the business to be transacted at, nor the purpose of, any Annual or Special Meeting or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these Bylaws.

ARTICLE VII

GENERAL PROVISIONS

7.1 Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 3.8 hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. 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 its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

7.2 Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

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7.3 Fiscal Year. The fiscal year of the Corporation shall end on December 31 of each year unless changed by resolution of the Board of Directors.

7.4 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

8.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 8.3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or 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 action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

8.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 8.3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the

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Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

8.3 Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 8.1 and 8.2, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

8.4 Good Faith Defined. For purposes of any determination under Section 8.3, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 8.4 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 in Sections 8.1 and 8.2, as the case may be.

8.5 Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 8.3, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Sections 8.1 and 8.2. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 8.1 and 8.2, as the case may be. Neither a contrary determination in the specific case

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under Section 8.3 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 8.5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

8.6 Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

8.7 Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these Bylaws, any agreement, a vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 8.1 and 8.2 shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Sections 8.1 and 8.2 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

8.8 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

8.9 Certain Definitions. For purposes of this Article VIII, references to "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 or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation 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 VIII with respect to the resulting or surviving corporation as such

person would have with respect to such constituent corporation if its separate existence had continued. The term "other enterprise" as used in this Article VIII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, 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 or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person 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 VIII.

8.10 Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.11 Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

ARTICLE IX AMENDMENTS

9.1 Amendments. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such meeting of the stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the holders of at least a majority of the outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

9.2 Entire Board of Directors. As used in this Article IX and in these Bylaws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

* * *

Adopted as of: February 23, 2012



Steve Mueller
Chief Executive Officer

Corporate Office
2350 N Sam Houston Pkwy E
Suite 125
Houston, Texas 77032
Tel: 281 618 2800
Fax: 281 618 4820
www.swn.com

February 24, 2012

Dear Gene:

This agreement (the "Letter Agreement") will serve to confirm our agreement regarding your retirement from Southwestern Energy Company ("Southwestern Energy") and the subsequent consulting services you will provide to Southwestern Energy, and the status of your benefits, following your retirement and separation from employment. For purposes of this Letter Agreement, the term "Southwestern Energy" will include Southwestern Energy and all subsidiaries and affiliated and successor companies of each of them. We have agreed with you as follows:

1. Retirement:

(a) *Retirement*. You will separate from service with Southwestern Energy upon your voluntary retirement on March 31, 2012 (the "Retirement Date"). On such date you will also resign from the Board and all other positions with, and boards of directors of, any subsidiaries and affiliated companies (including any joint ventures) of Southwestern Energy.

(b) *Benefits Following Retirement*. On your Retirement Date, you will cease to be an active employee of Southwestern Energy. As such, you will not be eligible to participate as an active employee of Southwestern Energy in any compensation, welfare or retirement plans, or accrue any vacation or paid time off days, following your Retirement Date; however, consistent with applicable Southwestern Energy policy for its retired employees, you may elect to continue, under the terms prevailing from time to time, to receive the medical and life insurance coverage provided to salaried employees of Southwestern Energy, with any premiums due in respect thereof to be paid by you. Upon your Retirement Date, you may be entitled to certain payments or benefits under Southwestern Energy welfare and retirement benefit plans as a retired employee. Separate communications will be provided to you closer to your Retirement Date regarding all of these arrangements.

2. Stock Plan and Performance Unit Plan: The effect that your separation from service with Southwestern Energy due to your voluntary retirement with Southwestern Energy on the Retirement Date will have on your rights, if any, with respect to any outstanding Southwestern Energy stock options or other equity-based awards that you may hold immediately prior to the effective date of separation, will be as set forth in the terms of the 2004 Stock Incentive Plan and the 2002 Performance Unit Plan, as amended (the "Performance Unit Plan"), and applicable award documents or agreements. However, notwithstanding anything else contained in the Performance Unit Plan or such award documents or agreements to the contrary, with respect to the portions of the performance units granted to you under the on December 10, 2009, December 9, 2010 and December 8, 2011 that were not vested as of the Retirement Date but would have vested on or before December 31, 2012 (each an "Accelerated PUP"), the Company shall pay you for such Accelerated PUPs in accordance with the overall level of achievement under the original grants or upon a Change of Control (as defined in the Performance Unit Plan) at the time that payment is due and required to be made under the Performance Unit Plan.

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The Right People doing the Right Things,
wisely investing the cash flow from our
underlying Assets, will create Value+®

3. Consulting: Subsequent to, and not as a condition of your retirement, you agree to enter into a consulting agreement with Southwestern Energy substantially in the form attached to this Letter Agreement (the "Consulting Agreement" that will commence on the Retirement Date and end on March 31, 2013 (such period, the "Consulting Period"). Pursuant to the Consulting Agreement, you will be retained, and you agree to serve, as a consultant to Southwestern Energy providing such consulting services and advice as management and the Board reasonably requests. In exchange for these services, Southwestern Energy will pay you a fee of \$50,000.00 per month (the "Consulting Fee").

4. Applicable Law: This Letter Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles thereof.

5. Severability; Amendment; Assignment: The provisions of this Letter Agreement shall be deemed severable, and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the other provisions hereof. This Letter Agreement may only be amended or modified by a written agreement executed by you and Southwestern Energy (or any successor thereof). You may not assign or transfer any rights or obligations you have under this Letter Agreement.

6. Counterparts: This Letter Agreement may be executed in one or more counterparts, which shall, collectively or separately, constitute one agreement.

Please sign the enclosed copy of this Letter Agreement and the attached Consulting Agreement and return them to me to signify your understanding and acceptance of the terms and conditions contained herein.

Very truly yours,

/s/ STEVEN L. MUELLER
Steven L. Mueller
President & Chief Executive Officer
As authorized by the Compensation Committee of
the Board of Directors

The foregoing has been read and accepted as a binding agreement between Southwestern Energy Company and the undersigned as of the date of this Letter Agreement.

/s/ GENE A. HAMMONS
Gene A. Hammons

The Right People doing the Right Things,
wisely investing the cash flow from our
underlying Assets, will create Value+®

CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") is entered into this 24th day of February, 2012, by and between **GENE A. HAMMONS**, an individual, ("Consultant") and **SOUTHWESTERN ENERGY COMPANY** (the "Company"), a Delaware corporation.

WHEREAS, Consultant is employed as President of the Company's subsidiaries, Southwestern Midstream Services Company, Southwestern Energy Services Company, DeSoto Gathering Company, L.L.C., Angelina Gathering Company, L.L.C. and SWN Producer Services, L.L.C. as well as a director of certain of those subsidiaries;

WHEREAS, Consultant will be retiring from his employment with the Company and all of its subsidiaries, affiliates, joint ventures, partnerships or any other business enterprises, as well as from any office or position with any trade group or other industry organization which he holds on behalf of the Company or its subsidiaries or affiliates, effective as of March 31, 2012 (the "Effective Date"); and

WHEREAS, the Company desires that Consultant be available to provide certain consulting services to the Company, including assistance to successfully prosecute and defend various pending legal matters (collectively, the "Consulting Services") and assist in the transition of his former responsibilities with respect to the midstream services business of the Company and its subsidiaries and such other activities as may be requested from time to time by the Company (collectively, the "Company's Midstream Business") and Consultant has agreed to perform consulting work for the Company by providing such Consulting Services;

THEREFORE, the parties wish to enter an agreement whereby Consultant continues to provide the Company with the benefit of his valuable experience and knowledge of the oil and gas industry and the Company's operations, and to that end they hereby covenant and agree as follows:

ARTICLE 1

Scope of Work and Compensation

1.1 Consultant's Services. Consultant shall provide the Consulting Services to the Company from time to time as requested by the Company. Consultant will devote such time as is reasonably required to perform the Consulting Services for the Company under this Agreement but shall have discretion in selecting the dates and times he performs such Consulting Services, giving due regard to the needs of the Company's business; provided, however, that if the Company needs Consultant to prepare for potential or actual litigation, or to testify in trial proceedings or at a hearing, Consultant shall use his best efforts to comply with the Company's requests.

1.2 Consideration. In consideration for the Consulting Services, for the period from the Effective Date through March 31, 2013, the Company will pay Consultant the rate of \$50,000.00 per month.

1.3 Expenses. In addition, the Company shall reimburse the Consultant for any reasonable out of pocket expenses incurred by the Consultant pursuant to the terms of this agreement.

ARTICLE 2

Term

2.1 Term. This Agreement shall commence on the Effective Date and shall terminate on March 31, 2013, unless earlier terminated by either party hereto. Either party may terminate this Agreement upon thirty (30) days prior written notice; provided, however, if the Company terminates this Agreement without cause, Consultant shall be entitled to receive the monthly payments described in Section 1.2 for the remaining term of the Agreement.

2.2 Survival. The provisions of Articles 4 and 5 of this Agreement shall survive the termination of this Agreement and shall remain in full force and effect thereafter for the duration specifically stated in those Articles.

ARTICLE 3

Independent Contractor

3.1 Taxes. Each party acknowledges that Consultant is not an employee for state or federal tax purposes or any other purpose and that neither the Company nor any of its subsidiaries or affiliates is obligated to pay any contribution to Social Security, unemployment insurance or to withhold federal or state taxes. It is understood that the Company will not withhold any amounts from Consultant's consideration hereunder for payment of federal, state or local taxes of any nature. Consultant shall be responsible for all taxes arising from any and all amounts paid to him under this Agreement, and he shall be responsible for all payroll taxes and fringe benefits of his employees, if any. Consultant agrees that, as an independent contractor, it is his responsibility to report and pay any contributions for taxes, unemployment insurance, Social Security and other benefits for himself or anyone he employs.

3.2 Benefits. Consultant expressly acknowledges and agrees that he (i) is acting as an independent contractor in performing the Consulting Services hereunder, (ii) is not entitled to health, accident, disability, workers' compensation or any other insurance coverage from the Company, its subsidiaries or affiliates and (iii) shall not be entitled to any rights and or privileges of employees of the Company, its subsidiaries or affiliates and shall not be considered in any way to be an employee of the Company, its subsidiaries or affiliates. Consultant and Consultant's employees, if any, will not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan provided by the Company to its employees and no workers' compensation insurance shall be obtained by Company covering Consultant or Consultant's employees.

3.3 No Representation or Agency. The relationship between Consultant and the Company created by this Agreement shall be that of independent contractor, and Consultant shall have no authority to bind or act as agent for the Company, its subsidiaries or affiliates or any of

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their employees for any purpose. Consultant does not and shall not represent the Company, its Board of Directors, its officers, or any other employee of the Company in any transaction or communication; nor shall Consultant make any claim to do so unless expressly authorized to do so in writing by the Chief Executive Officer of the Company. Except as otherwise provided in this Agreement, the Company shall not exercise control over Consultant or direct the methods or means employed by Consultant in performing the Consulting Services. The Company shall not direct Consultant in the performance of the Consulting Services hereunder and is solely interested in the attainment of the desired results.

ARTICLE 4

Non-Disclosure, Non-Use and Non-Disparagement Agreements

4.1 "Proprietary Information" Defined. For the purposes of this Agreement, "Proprietary Information" shall mean any and all information in any form related in any way to the Company's business that was disclosed to Consultant by any person or entity in the course of, or in furtherance of, Consultant's prior employment with the Company or his Consulting Services rendered hereunder. Proprietary Information shall be deemed to include, without limitation, any trade secrets; methods; processes; formulae; systems; techniques; original inventions; prototypes; computer programs; customer lists; seismic data; lease terms and conditions; pricing and cost data and formulae; financial data, systems, and methods; extraction and production data, methods, systems, plans, and infrastructure; marketing techniques and plans; drawings and blueprints; business policies and practices; designs, reports, manuals, correspondence, and business plans of any nature; testing and research projects and data of any nature; past, present, and future development plans; engineering plans and specifications; manufacturing systems and methods; service systems and methods; past, present, and future products; sales and distribution data, methods, systems, and plans; suppliers; customers and clients; and any information received from a third-party that the Company is obligated to treat as confidential. Notwithstanding the foregoing, Proprietary Information shall not include any information that is, or becomes through no breach of obligations of confidentiality by Consultant, known to the public.

4.2 Property of the Company. Consultant acknowledges that all Proprietary Information (including all copies and reproductions thereof) remains the sole and exclusive property of the Company, and he has returned to the Company all documents, notes, removable computer disks, correspondence, manuals, and other papers and media containing Proprietary Information, including any and all copies, reproductions, or summaries of same, that he acquired during the course of his previous employment with the Company and will return all such materials that he may obtain in the course of rendering Consulting Services hereunder. Consultant further agrees that he shall permanently delete or otherwise permanently destroy any and all Proprietary Information that may be contained on any non-removable computer hard drive or other data storage device that is Consultant's personal property.

4.3 Non-Disclosure Covenant. Consultant (a) shall in perpetuity maintain in trust and confidence and not disclose to any third party, either orally or in writing, any Proprietary Information without the prior express written authorization of the Company; and (b) shall in perpetuity not use Proprietary Information for any personal or business purpose, whether for

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himself or any third-party, other than in furtherance of his Consulting Services to the Company hereunder.

4.4 Non-Disparagement Covenant. Consultant agrees that he shall not publicly or privately disparage or criticize the Company, its subsidiaries, affiliates, officers, directors or employees. The Company agrees that its executive officers and directors will not, and will not knowingly permit the Company to, publicly or privately disparage or criticize Consultant.

4.5 Third-Parties. In the event that Consultant elects to use the service of any other person, entity or organization in the performance of Consultant's duties hereunder, no Proprietary Information shall be disclosed to that person, entity or organization until such person, entity or organization has executed an agreement in form satisfactory to the Company covenanting to protect the confidentiality of such Proprietary Information and acknowledging the Company's ownership of all right, title and interest in such Proprietary Information.

ARTICLE 5

Non-Competition and Non-Solicitation

5.1 Non-Competition Covenant. Consultant acknowledges that in his previous employment as President of the Midstream Business, he acquired an intimate knowledge of the business activities of the Company and its subsidiaries in the States of Texas, Oklahoma, Arkansas, Louisiana and Pennsylvania, and he agrees this wide scope of knowledge necessitates a broad geographical area of non-competition in order to protect the business interests of the Company. Therefore, Consultant agrees that from the Effective Date and through March 31, 2013 (the "Non-Compete Period"), he shall not, directly or indirectly, as owner, operator, agent, employee, independent contractor, or consultant of any corporation, partnership, association, agency, or other business entity, use the Company's Proprietary Information by engaging in the business of oil and natural gas exploration, development, extraction, sale, gathering or transportation in the areas in which the Company had operations or had identified prospects as of the date of this Agreement in the States of Texas, Oklahoma, Arkansas, Louisiana and Pennsylvania (collectively, the "Non-Compete Areas").

5.2 Non-Solicitation. Consultant agrees that during the Non-Compete Period, he shall not directly or indirectly, on behalf of himself or any other person, firm, corporation, partnership, association, agency, or other business entity:

a. Call upon any person or entity who was a customer of the Company (i) on the date of this Agreement, (ii) at any time during Consultant's prior employment with the Company and its subsidiaries, or (iii) during the term of this Agreement, for the purpose of soliciting business or otherwise;

b. Call upon any person or entity who was an employee, agent, or representative of the Company (i) on the date of this Agreement, or (ii) who is such at any time during the Non-Compete Period, for the purpose of soliciting or inducing such person or entity either to discontinue their business relationship with the Company or to establish a business relationship with

