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

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2014

or

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

For the transition period from _____ to _____

Commission File Number: 000-30939

ACTIVE POWER, INC.

(Exact name of registrant as specified in its charter)

Delaware	**74-2961657**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2128 W. Braker Lane, BK 12, Austin, Texas	**78758**
(Address of principal executive offices)	**(Zip Code)**

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

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

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

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

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

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

The number of shares of common stock, par value of $0.001 per share, outstanding at April 28, 2014 was 23,078,761.

ACTIVE POWER, INC.
INDEX

PART I – FINANCIAL INFORMATION	3
Item 1. Condensed Consolidated Financial Statements.	3
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.	11
Item 3. Quantitative and Qualitative Disclosures about Market Risk.	15
Item 4. Controls and Procedures.	15
PART II – OTHER INFORMATION	15
Item 1. Legal Proceedings.	15
Item 1A. Risk Factors.	16
Item 6. Exhibits.	17

PART I – FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements.

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

	March 31, 2014 (unaudited)	December 31, 2013
ASSETS		
Current assets:		
Cash and cash equivalents	$ 18,656	$ 12,261
Restricted cash	520	520
Accounts receivable, net of allowance for doubtful accounts of $261 and $313 at March 31, 2014 and December 31, 2013, respectively	9,398	9,075
Inventories, net	12,921	12,020
Prepaid expenses and other	575	680
Total current assets	42,070	34,556
Property and equipment, net	2,798	3,056
Deposits and other	296	295
Total assets	$ 45,164	$ 37,907
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 4,427	$ 2,993
Accrued expenses	4,530	5,583
Deferred revenue	2,577	2,749
Revolving line of credit	5,535	5,535
Total current liabilities	17,069	16,860
Long-term liabilities	746	741
Stockholders' equity:		
Preferred stock - $0.001 par value; 2,000 shares authorized	-	-
Common stock - $0.001 par value; 30,000 shares authorized; 23,145 and 19,452 issued and 23,079 and 19,388 outstanding at March 31, 2014 and December 31, 2013, respectively	23	19
Treasury stock	(222)	(215)
Additional paid-in capital	301,886	290,964
Accumulated deficit	(275,042)	(271,168)
Other accumulated comprehensive income	704	706
Total stockholders' equity	27,349	20,306
Total liabilities and stockholders' equity	$ 45,164	$ 37,907

See accompanying notes.

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

	Three Months Ended March 31,	
	2014	2013 (restated)
Revenues:		
Product revenue	$ 7,457	$ 11,450
Service and other revenue	3,481	2,974
Total revenue	10,938	14,424
Cost of goods sold:		
Cost of product revenue	5,905	7,966
Cost of service and other revenue	2,105	2,104
Total cost of goods sold	8,010	10,070
Gross profit	2,928	4,354
Operating expenses:		
Research and development	2,080	1,631
Selling and marketing	2,888	2,937
General and administrative	1,606	1,134
Total operating expenses	6,574	5,702
Loss from Operations	(3,646)	(1,348)
Interest expense, net	(101)	(82)
Other income (expense), net	(127)	9
Net loss	$ (3,874)	$ (1,421)
Net loss per share, basic and diluted	$ (0.19)	$ (0.07)
Shares used in computing net loss per share, basic and diluted	20,574	19,225
Comprehensive loss:		
Net loss	$ (3,874)	$ (1,421)
Translation loss on subsidiaries denominated in foreign currencies	(2)	(301)
Comprehensive loss	$ (3,876)	$ (1,722)

See accompanying notes.

Active Power, Inc.
Condensed Consolidated Statement of Stockholders' Equity
(in thousands; unaudited)

	Common Stock		Treasury Stock					
	Number of Shares	Par Value	Number of Shares	At Cost	Additional Paid-In Capital	Accumulated Deficit	Accumulated Comprehen-sive Income (Loss)	Total Stockholders' Equity
Balance at December 31, 2013	19,452	$ 19	51	$ (215)	$ 290,964	$ (271,168)	$ 706	$ 20,306
Employee stock option exercises	34	-	-	-	108	-	-	108
Release of Restricted Stock	8	-	-	-	-	-	-	-
Shares held in treasury	-	-	2	(7)	-	-	-	(7)
Net translation loss on foreign subsidiaries	-	-	-	-	-	-	(2)	(2)
Stock-based compensation	-	-	-	-	333	-	-	333
Sale of common stock, net of issuance costs	3,651	4	-	-	10,481	-	-	10,485
Net loss	-	-	-	-	-	(3,874)	-	(3,874)
Balance at March 31, 2014	23,145	$ 23	53	$ (222)	$ 301,886	$ (275,042)	$ 704	$ 27,349

See accompanying notes.

Active Power, Inc.
Condensed Consolidated Statement of Cash Flows
(in thousands; unaudited)

	Three Months Ended March 31,	
	2014	2013 (restated)
Operating activities		
Net loss	$ (3,874)	$ (1,421)
Adjustments to reconcile net loss to cash provided by (used in) operating activites:		
Depreciation expense	314	262
Change to allowance for doubtful accounts	(52)	(42)
Impairment on fixed assets	-	(17)
Stock-based compensation	333	137
Changes in operating assets and liabilities:		
Restricted cash	-	(129)
Accounts receivable	(271)	4,530
Inventories	(901)	1,649
Prepaid expenses and other assets	104	(3,463)
Accounts payable	1,434	872
Accrued expenses	(1,053)	(23)
Deferred revenue	(172)	(728)
Long term liabilities	5	61
Net cash provided by (used in) operating activities	(4,133)	1,688
Investing activities		
Purchases of property and equipment	(56)	(231)
Proceeds from sale of fixed assets	-	17
Net cash used in investing activities	(56)	(214)
Financing activities		
Proceeds from public offering of common stock, net of issuance costs	10,485	-
Proceeds from employee stock purchases	108	388
Taxes paid related to net share settlement of equity awards	(7)	(36)
Net cash provided by financing activities	10,586	352
Translation loss on subsidiaries in foreign currencies	(2)	(301)
Change in cash and cash equivalents	6,395	1,525
Cash and cash equivalents, beginning of period	12,261	13,524
Cash and cash equivalents, end of period	$ 18,656	$ 15,049

See accompanying notes.

Active Power, Inc.
Notes to Condensed Consolidated Financial Statements
March 31, 2014
(unaudited)

1. Significant Accounting Policies

Organization and Basis of presentation

Active Power, Inc. and its subsidiaries (hereinafter referred to as "we", "us", "Active Power" or the "Company") design, manufacture, and sell flywheel-based uninterruptible power supply ("UPS") products and modular infrastructure solutions ("MIS"). Our products and solutions are based on our patented flywheel and power electronics technology and are designed to ensure continuity for data centers and other mission critical operations in the event of power disturbances. We also offer services, including hardware and software maintenance, on all Active Power products, and other professional services such as assessment and implementation for our customers' infrastructure projects.

Our products and solutions are designed to deliver continuous conditioned power during power disturbances and outages, voltage sags and surges, and provide ride-through power in the event of utility failure, supporting operations until utility power is restored or a longer term alternative power source, such as a diesel generator, is started. We sell our products globally through our direct sales force, manufacturer's representatives, Original Equipment Manufacturer ("OEM") channels and IT partners. Our current principal markets are the Americas, Europe, Middle East and Africa ("EMEA"), and Asia.

We were founded as a Texas Corporation in 1992 and reincorporated in Delaware in 2000 prior to our initial public offering. Our headquarters are in Austin, Texas, with international offices in the United Kingdom, Germany and China.

The accompanying condensed consolidated balance sheet as of December 31, 2013, which has been derived from our audited financial statements, and the unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP") for interim financial statements and pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for interim reporting, and include the accounts of the Company and its consolidated subsidiaries. All intercompany transactions and balances have been eliminated upon consolidation. In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments (consisting only of normal recurring items) necessary to present fairly the consolidated financial position of the Company and its consolidated results of operations and cash flows. These interim financial statements should be read in conjunction with the financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2013. Please refer to our filing on Form 10-Q/A for the period ended March 31, 2013 for information regarding the restatement of our financial results for the period ended March 31, 2013.

2. Supplemental Balance Sheet Information

Restricted Cash

Our restricted cash balance of $0.5 million as of March 31, 2014 consists primarily of secured performance and deposit guarantees given to customers. Upon satisfaction of these guarantees, the restriction on these funds will be released.

Receivables

Accounts receivable consist of the following (in thousands):

	March 31, 2014	December 31, 2013
Trade receivables	$ 9,659	$ 9,388
Less: Allowance for doubtful accounts	(261)	(313)
	$ 9,398	$ 9,075

We estimate an allowance for doubtful accounts based on factors related to the credit risk of each customer. Historically, our credit losses have been minimal, primarily because the majority of our revenues were generated from large customers, including Caterpillar, Inc. ("Caterpillar") and Hewlett Packard Corporation ("HP").

Inventories

Inventories consist of the following (in thousands, net of allowance):

	March 31, 2014	December 31, 2013
Raw materials	$ 5,018	$ 4,521
Work in process	3,105	2,429
Finished goods	4,798	5,070
	$ 12,921	$ 12,020

Accrued Expenses

Accrued expenses consist of the following (in thousands):

	March 31, 2014	December 31, 2013
Compensation, severance and benefits	$ 1,914	$ 2,685
Warranty liability	462	529
Taxes	424	483
Professional fees	517	759
Other	1,213	1,127
	$ 4,530	$ 5,583

Warranty Liability

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

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

Balance at December 31, 2013	$ 562
Warranty expense	132
Payments	(215)
Adjustments	9
Balance at March 31, 2014	$ 488

Warranty liability included in accrued expenses	$ 462
Long-term warranty liability	26
Balance at March 31, 2014	$ 488

Revenue Recognition

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

- We recognize product revenue at the time of shipment for a significant portion of all products sold directly to customers and through distributors because title and risk of loss pass on delivery to the common carrier. Our customers and distributors do not have the right to return products. If title and risk of loss pass at some other point in time, we recognize such revenue for our customers when the product is delivered to the customer and title and risk of loss have passed. We may enter into bill-and-hold arrangements and when this happens delivery may not occur, but other criteria are reviewed to determine proper timing of revenue recognition.

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

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

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

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

When collectability is not reasonably assured, we defer revenue and will recognize revenue on a cost recovery basis as payments are received.

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

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

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

3. Net Loss Per Share

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

	Three Months Ended March 31,	
	2014	2013 (restated)
Net loss	$ (3,874)	$ (1,421)
Basic and diluted:		
Weighted-average shares of common stock oustanding used in computing basic and diluted net loss per share	20,574	19,225
Basic and diluted net loss per share	$ (0.19)	$ (0.07)

The calculation of diluted loss per share excludes 2,673,364 and 2,315,899 shares of common stock issuable upon exercise of employee stock options as of March 31, 2014 and 2013, respectively, and non-vested shares of common stock issuable upon exercise of 42,923 and 178,638 restricted stock units as of March 31, 2014 and 2013, respectively, because their inclusion would be anti-dilutive.

4. Fair Value of Financial Instruments

Fair value is measured based on an exit price, representing the amount that would be received to sell an asset or paid to satisfy a liability in an orderly transaction between market participants. Fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, fair value is established, which categorizes the inputs used in measuring fair value as follows:

Level 1—Quoted prices in active markets for identical assets or liabilities.

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

Level 3—One or more significant inputs that are unobservable and supported by little or no market data.

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

Our financial instruments consist principally of cash and cash equivalents, accounts receivable, accounts payable and our revolving line of credit. We believe all of these financial instruments are recorded at amounts that approximate their current market values.

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

Our cash and cash equivalents include money-market funds for which the fair value was determined using Level 1 inputs and was $3.1 million as of March 31, 2014 and December 31, 2013. For cash and cash equivalents, accounts receivable, and accounts payable, the carrying amount approximates fair value because of the relative short maturity of those instruments.

5. Guarantees

In certain geographical regions, particularly Europe, we are sometimes required to issue performance guarantees to our customers as a condition of sale. These guarantees usually provide financial protection to our customers in the event that we fail to fulfill our delivery or warranty obligations. We secure these guarantees with standby letters of credit through our bank. At both March 31, 2014 and December 31, 2013, we had a $0.5 million performance guarantee outstanding to a customer that was secured with a letter of credit. This guarantee expired on April 17, 2014. There is no foreseeable risk that we will not be able to meet the performance obligations. Our restricted cash, as shown on the balance sheet, is related to this guarantee.

6. Stockholders' Equity

In March 2014, we sold approximately 3.7 million shares of common stock at a purchase price of $3.15 per share in a public underwritten offering made under a shelf registration statement that we had filed with the SEC and that had been declared effective in June 2013. This offering resulted in proceeds, net of expenses including underwriting discounts, commissions and fees of $0.8 million and professional service expenses of $0.2 million, of approximately $10.5 million. The proceeds from this offering will be used by us to help fund our working capital requirements and for general corporate purposes.

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

The following discussion should be read in conjunction with, and is qualified in its entirety by reference to, the financial statements and notes thereto included in Item 1 of this Form 10-Q and the financial statements and notes thereto and our Management's Discussion and Analysis of Financial Condition and Results of Operations for the year ended December 31, 2013 included in our 2013 Annual Report on Form 10-K. This report contains forward-looking statements, within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, that involve risks and uncertainties. Our expectations with respect to future results of operations that may be embodied in oral and written forward-looking statements, including any forward-looking statements that may be included in this report, are subject to risks and uncertainties that must be considered when evaluating the likelihood of our realization of such expectations. Our actual results could differ materially. The words "believe," "expect," "intend," "plan," "project," "will" and similar phrases as they relate to us are intended to identify such forward-looking statements. In addition, please see the "Risk Factors" in Part 1, Item 1A, of our 2013 Annual Report on Form 10-K and in Part II, Item 1A, of this Form 10-Q for a discussion of items that may affect our future results.

Overview

Active Power designs, manufactures, and sells flywheel-based uninterruptible power supply ("UPS") products and modular infrastructure solutions ("MIS"). Our products and solutions are based on our patented flywheel and power electronics technology and are designed to ensure continuity for data centers and other mission critical operations in the event of power disturbances. We also offer services, including hardware and software maintenance, on all Active Power products, and other professional services such as assessment and implementation for our customers' infrastructure projects.

Our products and solutions are designed to deliver continuous, conditioned power during power disturbances and outages, voltage sags and surges, and to provide ride-through power in the event of utility failure, supporting operations until utility power is restored or a longer term alternative power source, such as a diesel generator, is started.

Our headquarters are in Austin, Texas, and we have international offices in the United Kingdom, Germany, and China.

Results of Operations

	Three Months Ended March 31,				Variance 2014 vs, 2013	
($ in thousands)	2014	% of total revenue	2013 (restated)	% of total revenue	$	%
Product revenue	$ 7,457	68%	$ 11,450	79%	$ (3,993)	-35%
Service and other revenue	3,481	32%	2,974	21%	507	17%
Total revenue	10,938	100%	14,424	100%	(3,486)	-24%
Cost of product revenue	5,905	54%	7,966	55%	(2,061)	-26%
Cost of service and other revenue	2,105	19%	2,104	15%	1	0%
Total cost of goods sold	8,010	73%	10,070	70%	(2,060)	-20%
Gross profit	2,928	27%	4,354	30%	(1,426)	-33%
Operating expenses:						
Research and development	2,080	19%	1,631	11%	449	28%
Selling and marketing	2,888	26%	2,937	20%	(49)	-2%
General and administrative	1,606	15%	1,134	8%	472	42%
Total operating expenses	6,574	60%	5,702	39%	872	15%
Loss from Operations	(3,646)	-33%	(1,348)	-9%	(2,298)	-170%
Interest expense, net	(101)	-1%	(82)	-1%	(19)	-23%
Other income (expense), net	(127)	-1%	9	0%	(136)	-1511%
Net Loss	$ (3,874)	-35%	$ (1,421)	-10%	$ (2,453)	-173%

Product revenue. Our product revenue was derived from the following sources:

($ in thousands)	Three Months Ended March 31,		Variance	
	2014	2013 (restated)	$	%
Product revenue:				
UPS product revenue	$ 6,636	$ 7,420	$ (784)	-11%
Modular Infrastructure Solutions	821	4,030	(3,209)	-80%
Total product revenue	$ 7,457	$ 11,450	$ (3,993)	-35%

Total product revenue for the three-month period ended March 31, 2014 decreased by $4.0 million, or 35%, compared to the same period in 2013. The decrease was driven primarily by a $3.2 million reduction in MIS sales, where a large order in the first quarter of 2013 was not repeated in 2014. UPS revenue was down $0.8 million, or 11%. We expect product mix to continue to fluctuate as we obtain large customer orders for either UPS or MIS products in any particular quarter.

Product revenue from our OEM channels for the three-month period ended March 31, 2014 was $1.5 million, a decrease of approximately $0.5 million, or 23%, compared to revenue of $2.0 million for the first quarter of 2013. This reflected decreased OEM activity in the EMEA market, partially offset by an increase in activity in the Americas. The size and volume of orders from our OEM channels can fluctuate significantly on a quarterly basis and we continue to see fewer, but larger value transactions from our OEM channel. We have supported our OEM partners' efforts to sell total solutions to their customers that include generators and switchgear that they manufacture along with our UPS products. Sales to Caterpillar, our primary OEM channel, represented $1.5 million, or 20% of our product revenue, for the three-month period ended March 31, 2014, compared to $2.0 million, or 17% of our product revenue, in the comparable period of 2013. Caterpillar remains one of our largest UPS customers as well as our largest OEM customer.

Product revenue from our IT channel for the first quarter of 2014 was $0.8 million, compared to $0.9 million for the first quarter of 2013, which represents a $0.1 million, or 11%, decrease. This reduction reflects decreased demand for our MIS products during the first quarter of 2014 from our IT channel partners, primarily HP. The level of orders from this channel fluctuates depending on our partners' success and the end user's need for infrastructure solutions.

Product revenue in the Americas was $5.0 million, or 67% of our product revenue, for the three-month period ended March 31, 2014, compared to $10.0 million, or 88% of our product revenue, for the same period in 2013. The decrease reflects lower MIS revenues which historically have largely originated in the North American market.

We sell products directly to customers in Asia and EMEA and also through a network of international distributors. Product sales to customers in Asia were $0.7 million, or 10% of our total product revenue, in the three-month period ended March 31, 2014, compared to $(0.3) million, or (3)%, for the same period in 2013. The increase was primarily driven by negative revenue in the 2013 period associated with adjustments made to revenue from distributors in China. See Footnote 2 to our March 31, 2013 Form 10-Q/A for more information regarding adjustments to our revenues for the three-month period ended March 31, 2013 in the Asia region. Product revenue in EMEA was $1.7 million, or 23% of product revenue, in the three-month period ended March 31, 2014, compared to $1.7 million, or 15%, for the same period of 2013. This fluctuation is primarily attributable to variations in sales of our MIS products in each region in the relevant period and illustrates the impact of larger orders from fewer customers for each of these regions. Products may sometimes be shipped outside of the region in which the revenues were generated.

Sales of our branded products through our direct and manufacturer's representative channels represented 69% and 75% of our product revenue for the three-month periods ended March 31, 2014 and 2013, respectively.

Service and other revenue. Service and other revenue increased by approximately $0.5 million, or 17%, for the three-month period ended March 31, 2014, compared to the same period of 2013. This increase reflects higher professional fees associated with MIS product sales recorded in the first quarter of 2014.

Cost of product revenue. The cost of product revenue as a percentage of total product revenue was 79% for the three-month period ended March 31, 2014, compared to 70% for the same period in 2013. The increase in costs as a percentage of revenue reflects a lower rate of absorption of overhead costs due to the lower revenue and production. During the first quarter of 2014 and 2013, we operated a manufacturing facility that has a manufacturing and testing capacity significantly greater than required by our current product revenue levels.

Cost of service and other revenue. The cost of service and other revenue was 60% of service and other revenue in the three-month period ended March 31, 2014, compared to 71% for the same period of 2013. The decrease reflects a shift in the types of services provided, with professional services being up in first quarter 2014 compared to the same period in 2013. The utilization of our service personnel will be affected by the number of MIS solution products implemented in a particular period, and in periods where we have a low number of installation projects we would expect our costs as a percentage of revenue to increase due to lower employee utilization.

Gross profit. For the three-month period ended March 31, 2014, our gross profit was 27% of revenue, compared to 30% for the first quarter of 2013. The decrease in the margin is related to under absorption of fixed overhead costs in manufacturing due to the lower revenue and manufacturing production in the quarter.

Research and development. Research and development expenses were approximately $0.4 million, or 28%, higher in the first quarter of 2014 compared to the first quarter of 2013. The increase was primarily due to development activities on our next generation of UPS product and higher severance costs. With our new product we feel we will offer greater power modularity and space efficiencies compared to our existing UPS products, especially as we target the higher power market segment.

Selling and marketing. Selling and marketing costs were approximately $49,000, or 2%, lower in the first quarter of 2014 compared to the first quarter of 2013.

General and administrative. General and administrative expenses for the first quarter of 2014 increased approximately $0.5 million, or 42%, compared to the same period in 2013 due to higher compensation expenses, severance and professional fees.

Interest expense, net. Net interest expense of $0.1 million remained relatively flat for the first quarter of 2014 compared to the first quarter of 2013. The interest expense incurred during 2014 and 2013 was in connection with the outstanding balance on our revolving credit facility.

Other income (expense), net. Other expense, net was $0.1 million in the first quarter of 2014 compared to other income, net of $9,000 in the first quarter of 2013, which primarily reflect foreign exchange losses or gains on bank accounts and sales contracts held in foreign currencies.

Liquidity and Capital Resources

Our primary sources of liquidity at March 31, 2014 are our cash and cash equivalents on hand, our bank credit facilities and projected cash flows from operating activities. If we meet our cash flow projections, we expect we will have adequate capital resources to continue operating our business for at least the next twelve months. Our projections and our assumptions around the adequacy of our liquidity are based on estimates regarding expected revenues and future costs. However, there are scenarios in which our revenues may not meet our projections, our costs may exceed our estimates or our working capital needs may be greater than anticipated. Further, our estimates may change and future events or developments may also affect our estimates. Any of these factors may change our expectation of cash usage in the remainder of 2014 and beyond or significantly affect our level of liquidity.

We are a party to an amended and restated Loan and Security Agreement with Silicon Valley Bank which provides for a total line of credit of up to $12.5 million, subject to certain borrowing bases, and a maturity date of August 5, 2014. The revolving loans made to us under this loan facility are secured by a lien on substantially all of our assets. We are currently in compliance with all loan covenants under the loan facility. As of March 31, 2014, we had outstanding borrowings of $5.5 million under this loan facility and, based on the borrowing base formula, the additional amount available to us for use ranged between $1.1 million and $3.9 million during the quarter. For further information regarding this loan facility, refer to our Annual Report on Form 10-K for the year ended December 31, 2013.

In March 2014, we sold approximately 3.7 million shares of common stock at a purchase price of $3.15 per share, for proceeds, net of fees and expenses, of approximately $10.5 million, in a public underwritten offering made under a shelf registration statement that we had filed with the Securities and Exchange Commission and that had been declared effective in June 2013. The proceeds from this offering will be used by us to help fund our working capital requirements and for general corporate purposes.

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

The following table summarizes the changes in cash provided by (used in) operating activities:

($ in thousands)	Three Months Ended March 31,		Variance	
	2014	2013	$	%
		(restated)		
Cash provided by (used in) operating activities	$ (4,133)	$ 1,688	$ (5,821)	-345%

Cash used in operating activities was $4.1 million in the three-month period ended March 31, 2014 compared to cash provided by operating activities of $1.7 million the same period of 2013. Cash used in operating activities in 2014 was primarily due to higher net losses combined with a reduction in accrued liabilities associated with payments made on professional fees, compensation and benefits. Cash provided by operating activities in 2013 was primarily driven by a source of cash resulting from a decrease from working capital reductions including a reduction in accounts receivables and inventory partially offset by an increase in prepaid expenses and other assets.

The fluctuations in working capital can be impacted by the timing of product orders and shipments. In the three-month period ended March 31, 2014, we saw an increase of approximately $0.9 million in inventory compared to December 31, 2013. There was also an increase in accounts payable of $1.4 million, a decrease in accrued expenses of $1.1 million, and an increase in receivables of $0.3 million from December 31, 2013 to March 31, 2014. These changes reflect the frequent changes in our working capital that can result in very large fluctuations in inventory, payables and receivables based on the large size of some of our orders.

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

($ in thousands)	Three Months Ended March 31,		Variance	
	2014	2013	$	%
		(restated)		
Cash used in investing activities	$ (56)	$ (214)	$ 158	74%

Investing activities primarily consist of purchases of property and equipment. Capital expenditures were $0.2 million, or 76% lower in the three-month period ending March 31, 2014, compared to the same period of 2013, as we invested less in capital improvements during the first quarter of 2014.

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

($ in thousands)	Three Months Ended March 31,		Variance	
	2014	2013	$	%
		(restated)		
Cash provided by financing activities	$ 10,586	$ 352	$ 10,234	2907%

Funds provided by financing activities in the period ending March 31, 2014 primarily includes the sale of common stock at a purchase price of $3.15 per share, for proceeds, net of fees and expenses, of approximately $10.5 million, in a public underwritten offering , and also reflects the proceeds from the exercise of employee stock options.

Funds provided during the three-months ended March 31, 2013 primarily reflect the proceeds received from stock option exercises.

We believe that our cash and cash equivalents, projected cash flows from operations and sources of available liquidity will be sufficient to fund our operations for the next twelve months. However, a sudden change in business volume, positive or negative, from any of our business or channel partners, or in our direct business, or any customer-driven events such as order or delivery deferral, could significantly impact our expected revenues and cash needs. The continuing global economic instability has increased the already present challenge of predicting future revenues. We do have some opportunity to adjust expenditures or take other measures to reduce our cash consumption if we see and anticipate a shortfall in revenue, or give us time to identify additional sources of funding if we anticipate an increase in our working capital requirements due to increased revenues or changes in our revenue mix. A significant increase in sales, especially in our MIS business, would likely increase our working capital requirements, due to the longer production time and cash cycle of sales of these products.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

For a description of our market risks, see Part I, Item 7A in our 2013 Annual Report on Form 10-K. There have been no material changes in our exposures to market risk since December 31, 2013.

Item 4. Controls and Procedures.

Evaluation of disclosure controls and procedures.

Our Chief Executive Officer and our Chief Financial Officer, based on the evaluation of our disclosure controls and procedures (as defined in Rule 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), required by paragraph (b) of Rule 13a-15 or Rule 15d-15, have concluded that, as of March 31, 2014, our disclosure controls and procedures were effective to ensure that the information we are required to disclose in reports that we file or submit under the Exchange Act, (i) is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and (ii) is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in internal control over financial reporting.

During the three months ended March 31, 2014, there were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and Rule 15d-15(d) under the Exchange Act that have materially affected, or that we believe are reasonably likely to materially affect, our internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

SEC Inquiry

By letter dated September 30, 2013, the SEC Division of Enforcement has notified us that it is conducting an investigation regarding us, including matters relating to our public statements regarding Digital China Information Services Company Limited ("Digital China") and our distribution relationships in China. We have been and intend to continue cooperating fully with the SEC.

Audit Committee Internal Investigation

The audit committee of our Board of Directors, with the assistance of independent counsel, conducted an investigation into the facts and circumstances surrounding our agreements and transactions with Qiyuan, including the statements made regarding Qiyuan's affiliation with Digital China. The investigation was completed in February 2014.

Stockholder Litigation

On September 10, 2013, a purported class action complaint was filed in the United States District Court for the Western District of Texas against us and certain of our former executives. The case is captioned Don Lee v. Active Power, Inc., et. al., Civil Action No. 1:3-cv-00797. The complaint alleges that on April 30, 2013, we announced during a conference call that we had entered into a strategic distribution partnership with Digital China. However, on September 5, 2013, after the close of trading, we disclosed that our partnership was with Qiyuan Network System Limited, which is neither an affiliate nor a subsidiary of Digital China. The complaint asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder, and seeks unspecified damages on behalf of all stockholders. On March 7, 2014, we filed a motion to dismiss the class action complaint. Plaintiffs filed an opposition to our motion on April 21, 2014. We have until May 21, 2014, to file our reply, and anticipate that it will take several months to obtain a ruling from the court on this motion.

On September 13, 2013 and October 14, 2013, two separate stockholders filed complaints in the District Court of Travis County, Texas purporting to bring derivative actions on behalf of us against certain current and former officers and directors of the Company. The first derivative action is captioned Okumura v. Almgren, et. al., Cause No. D-1-GN-13-003230 and the second derivative action is captioned David B. Shaev IRA v. Milner, et. al., Cause No. D-1-GN-13-003557. The allegations of each derivative complaint mirror those of the class action complaint, and they assert claims for breach of fiduciary duty, unjust enrichment, and/or abuse of control and seek damages on behalf of us. Defendants have entered into an agreement with each of the plaintiffs to stay both of the derivative actions pending the outcome of the motion to dismiss in the securities class action.

We have directors' and officers' and corporate liability insurance to cover risks associated with the stockholder litigation and we have notified our insurers of the complaints described above. Due to the early stage of each litigation, however, it is not possible to estimate the amount or range of possible loss that might result from adverse judgments or settlements of the actions.

Item 1A. Risk Factors.

You should carefully consider the risks described below and in Item 1A of our 2013 Annual Report on Form 10-K before making a decision to invest in our common stock or in evaluating Active Power and our business. The risks and uncertainties described below and in our 2013 Annual Report on Form 10-K are not the only ones we face. Additional risks and uncertainties that we do not presently know, or that we currently view as immaterial, may also impair our business operations.

The information presented below updates, and should be read in conjunction with, the risk factors and information disclosed in our 2013 Annual Report on Form 10-K. Except as presented below, there have been no material changes from the risk factors described in our 2013 Annual Report on Form 10-K.

Our business could be impacted by changes in liquidity and by customer credit risk on receivables.

We have a history of operating losses, and have not yet reached operating profitability on an annual basis. If our revenues do not meet our expectations, our costs exceed our estimates or our working capital needs are greater than anticipated, we may not have adequate liquidity to continue operating our business. Our cash requirements will depend on many factors, including future sales growth, the demand for our products, the gross profit we are able to generate with our sales, the timing and level of research and development funding, the rate of expansion of our sales and marketing activities, the rate of expansion of our manufacturing processes, litigation matters, and the timing and extent of research and development projects. For example, a substantial increase in sales of our CleanSource PowerHouse or our modular IT infrastructure solutions products or a substantial increase in UPS sales may materially impact the amount of working capital required to fund our operations. In order to increase our MIS sales, we may be required to make larger investments in inventory and receivables. These larger investments may require us to obtain additional sources of working capital, debt or equity financing in order to fund our business. Even if we obtain additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness.

Most of our sales are on an open credit basis. As a result of our customer concentration, our failure to collect receivables from any of our customers in a timely manner could have a significant adverse effect on our liquidity. The collection risk may potentially increase as we sell more PowerHouse products due to their higher average selling price. If future actual default rates on receivables differ from those currently anticipated, our working capital could decrease and we may not have adequate liquidity to continue operating our business.

Item 6. Exhibits.

See Index to Exhibits below following the signature page to this report, which is incorporated herein by reference.

SIGNATURES

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

ACTIVE POWER, INC.
(Registrant)

May 1, 2014
(Date)

/s/ Mark A. Ascolese
Mark A. Ascolese
President and Chief Executive Officer
(Principal Executive Officer)

May 1, 2014
(Date)

/s/ James A. Powers
James A. Powers
Chief Financial Officer and Secretary
(Principal Financial and Accounting Officer)

Index

INDEX TO EXHIBITS

Exhibit No.	Description of Exhibit
3.1†	Restated Certificate of Incorporation of Active Power, as amended
3.2†	Second Amended and Restated Bylaws of Active Power, as amended
4.1*	Specimen certificate for shares of Common Stock (filed as Exhibit 4.1 to Active Power's IPO Registration Statement on Form S-1 (SEC File No. 333-36946))
4.2†	See Exhibits 3.1 and 3.2 for provisions of the Certificate of Incorporation and Bylaws of the registrant defining the rights of holders of common stock
10.1†	Separation Agreement and Release, dated January 4, 2014, between Active Power and J. Noel Foley
31.1†	Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2†	Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15(d)-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1††	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2††	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101††	The following financial statements from the Active Power's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014, formatted in XBRL: (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations and Comprehensive Loss, (iii) Condensed Consolidated Statements of Cash Flows, and (iv) Notes to Condensed Consolidated Financial Statements.

* Incorporated by reference to the indicated filing.
† Filed with this report.
†† Furnished with this report.

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION
OF
ACTIVE POWER, INC.

Active Power, Inc., a corporation organized and existing under the Delaware General Corporation Law (the "DGCL"), DOES HEREBY CERTIFY:

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

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

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

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

ACTIVE POWER, INC.

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

ANNEX A

RESTATED CERTIFICATE OF INCORPORATION
OF
ACTIVE POWER, INC.

ARTICLE I

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

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

A. Authorized Shares. The aggregate number of shares that the Company shall have authority to issue is One Hundred Sixty Million (160,000,000), (a) One Hundred Fifty Million (150,000,000) shares of which shall be common stock, par value $0,001 per share (" Common Stock"), and (b) Ten Million (10,000,000) shares of which shall be preferred stock, par value $0.001 per share (" Preferred Stock"). Of such shares of Preferred Stock, Four Hundred Thousand (400,000) shall be designated as "Series A Junior Participating Preferred Stock," the rights, preferences and privileges of which are set forth in the Certificate of Designation of Series A Junior Participating Preferred Stock of Active Power filed with the Secretary of State of Delaware on December 18, 2001.

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

C. Preferred Stock.

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

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

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

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

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

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

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

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

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

ARTICLE V

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

ARTICLE VI

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

ARTICLE VII

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

ARTICLE VIII

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

ARTICLE IX

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

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

ARTICLE X

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

ARTICLE XI

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

ARTICLE XII

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

ARTICLE XIII

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

* * *

CERTIFICATE OF AMENDMENT OF
RESTATED CERTIFICATE OF INCORPORATION OF
ACTIVE POWER, INC.

Active Power, Inc., a corporation organized and existing under the laws of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: The name of this corporation is Active Power, Inc.

SECOND: The original Certificate of Incorporation of this corporation was filed with the Secretary of State of the State of Delaware on March 29, 2000. A Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on June 7, 2006.

THIRD: Pursuant to Section 242 of the General Corporate Law of the State of Delaware (the "DGCL"), this Certificate of Amendment of Restated Certificate of Incorporation amends and restates Article IV, Section A of the Restated Certificate of Incorporation of this corporation to read in its entirety as follows:

"A. Authorized Shares. Effective as of 5:00 p.m., Eastern time, on the date this Certificate of Amendment of Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware, each five (5) shares of the Company's Common Stock, par value $0.001 per share, issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock, par value $0.001 per share, of the Company. No fractional shares shall be issued and, in lieu thereof, any holder of less than one (1) share of Common Stock shall be entitled to receive cash for such holder's fractional share based upon the closing sales price of the Company's Common Stock as reported on the Nasdaq Capital Market, as of the date this Certificate of Amendment is filed with the Secretary of State of the State of Delaware. The aggregate number of shares that the Company shall have authority to issue is Thirty Two Million (32,000,000), (a) Thirty Million (30,000,000) shares of which shall be common stock, par value $0.001 per share ("Common Stock"), and (b) Two Million (2,000,000) shares of which shall be preferred stock, par value $0.001 per share ("Preferred Stock"). Of such shares of Preferred Stock, Eighty Thousand (80,000) shall be designated as "Series A Junior Participating Preferred Stock," the rights, preferences and privileges of which are set forth in the Certificate of Designation of Series A Junior Participating Preferred Stock of Active Power filed with the Secretary of State of Delaware on December 18, 2001."

FOURTH: This Certificate of Amendment of Restated Certificate of Incorporation has been duly adopted by the board of directors and stockholders of this corporation in accordance with the provisions of Section 242 of the DGCL.

IN WITNESS WHEREOF, Active Power, Inc. has caused this Certificate of Amendment of Restated Certificate of Incorporation to be signed by J. Douglas Milner, its President and Chief Executive Officer, this 21st day of December, 2012.

ACTIVE POWER, INC.

By: /s/ J. Douglas Milner
J. Douglas Milner,
President and Chief Executive Officer

Exhibit 3.2

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

TABLE OF CONTENTS

		Page
ARTICLE I OFFICES		1
Section 1.1	Registered Office	1
Section 1.2	Other Offices	1
ARTICLE II CORPORATE SEAL		1
ARTICLE III STOCKHOLDERS' MEETINGS		1
Section 3.1	Place of Meetings	1
Section 3.2	Annual Meeting	1
Section 3.3	Special Meetings	4
Section 3.4	Notice of Meetings	4
Section 3.5	Quorum	4
Section 3.6	Adjournment and Notice of Adjourned Meetings	5
Section 3.7	Voting Rights	5
Section 3.8	Joint Owners of Stock	5
Section 3.9	List of Stockholders	6
Section 3.10	No Action Without Meeting	6
Section 3.11	Organization	6
Section 3.12	Meeting by Remote Communication	7
ARTICLE IV DIRECTORS		7
Section 4.1	Number and Term of Office; Classification	7
Section 4.2	Powers	8
Section 4.3	Vacancies	8
Section 4.4	Resignation	8
Section 4.5	Removal	8
Section 4.6	Meetings	9
Section 4.7	Quorum and Voting	10
Section 4.8	Action Without Meeting	10
Section 4.9	Fees and Compensation	10
Section 4.10	Committees	10
Section 4.11	Organization	12
ARTICLE V OFFICERS		12
Section 5.1	Officers Designated	12
Section 5.2	Tenure and Duties of Officers	12
Section 5.3	Subordinate Officers	14
Section 5.4	Delegation of Authority	14
Section 5.5	Resignations	14
Section 5.6	Removal	14

TABLE OF CONTENTS
(Continued)

		Page
Section 5.7	Vacancies in Offices	14
Section 5.8	Authority and Duties of Officers	15
ARTICLE VI EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION		15
Section 6.1	Execution of Corporate Instruments	15
Section 6.2	Voting of Securities Owned by the Corporation	15
ARTICLE VII SHARES OF STOCK		16
Section 7.1	Form and Execution of Certificates	16
Section 7.2	Lost Certificates	16
Section 7.3	Transfers	16
Section 7.4	Fixing Record Dates	17
Section 7.5	Registered Stockholders	17
ARTICLE VIII OTHER SECURITIES OF THE CORPORATION		17
Section 8.1	Execution of Other Securities	17
ARTICLE IX DIVIDENDS		18
Section 9.1	Declaration of Dividends	18
Section 9.2	Dividend Reserve	18
ARTICLE X FISCAL YEAR		18
ARTICLE XI INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS		18
Section 11.1	Directors and Executive Officers	18
Section 11.2	Other Officers, Employees and Other Agents	19
Section 11.3	Good Faith	19
Section 11.4	Expenses	19
Section 11.5	Enforcement	20
Section 11.6	Non-Exclusivity of Rights	20
Section 11.7	Survival of Rights	20
Section 11.8	Insurance	21
Section 11.9	Amendments	21
Section 11.10	Savings Clause	21
Section 11.11	Certain Definitions	21
ARTICLE XII NOTICES		22
Section 12.1	Notice to Stockholders	22
Section 12.2	Notice to Directors	22
Section 12.3	Address Unknown	23
Section 12.4	Affidavit of Mailing	23

TABLE OF CONTENTS
(Continued)

		Page
Section 12.5	Failure to Receive Notice	23
Section 12.6	Notice to Person with Whom Communication Is Unlawful	23
Section 12.7	Notice to Person with Undeliverable Address	23
ARTICLE XIII AMENDMENTS		24
Section 13.1	Amendments	24
Section 13.2	Application of Bylaws	24

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

ARTICLE I

OFFICES

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

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

ARTICLE II

CORPORATE SEAL

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

ARTICLE III

STOCKHOLDERS' MEETINGS

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

Section 3.2 **Annual Meeting**.

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

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

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

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

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

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

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

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

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

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

Section 3.3 **Special Meetings**.

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

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

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

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

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

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

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

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

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

Section 3.11 **Organization**.

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

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

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

ARTICLE IV

DIRECTORS

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

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

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

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

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

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

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

Section 4.6 Meetings.

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

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

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

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

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

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

Section 4.7 **Quorum and Voting**.

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

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

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

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

Section 4.10 **Committees**.

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

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

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

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

Section 4.11 Organization.

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

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

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

ARTICLE V

OFFICERS

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

Section 5.2 Tenure and Duties of Officers.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

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

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

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

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

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

ARTICLE VII

SHARES OF STOCK

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

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

Section 7.3 **Transfers**.

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

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

Section 7.4 **Fixing Record Dates**.

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

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

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

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

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

ARTICLE IX

DIVIDENDS

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

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

ARTICLE X

FISCAL YEAR

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

ARTICLE XI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

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

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

Section 11.3 **Good Faith**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XII

NOTICES

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

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

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

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

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

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

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

ARTICLE XIII

AMENDMENTS

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

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

AMENDMENT TO THE

SECOND AMENDED AND RESTATED BYLAWS

OF

ACTIVE POWER, INC.

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

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

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

" **Section 7.3 Transfers.**

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

AMENDMENT TO THE

SECOND AMENDED AND RESTATED BYLAWS

OF

ACTIVE POWER, INC.

Section 3.3(a) of Article III of the Second Amended and Restated Bylaws of Active Power, Inc. (the " Company"), was amended and restated in its entirety by the Company's Board of Directors on October 24, 2013 to read as follows:

" (a) Special meetings of the stockholders of the corporation may only be called, for any purpose or purposes, (i) by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized Directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption); or (ii) by the written request of one or more stockholders holding shares in the aggregate entitled to cast not less than 20% of the votes at that meeting.

If any person(s) other than the Board of Directors calls a special meeting, the written request shall specify the general nature of the business proposed to be transacted; and such request shall be delivered personally or sent by registered mail to the Chairperson of the Board, the Chief Executive Officer, the President (in the absence of a Chief Executive Officer) or the Secretary of the corporation."

Exhibit 10.1

SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release ("Agreement") is made by and between **Jeremiah Noel Foley** ("Employee") and **Active Power, Inc.** (the "Company") (collectively referred to as the "Parties" or individually referred to as a "Party").

RECITALS

WHEREAS, Employee and the Company entered into a Severance Benefits Agreement dated November 15, 2011 (the "Severance Agreement"), incorporated herein by this reference;

WHEREAS, Employee and the Company entered into an Employee Proprietary Information and Nondisclosure Agreement dated November 15, 2011 (the "Confidentiality Agreement"), incorporated herein by this reference;

WHEREAS, Employee has been granted certain stock options and/or restricted stock, subject to the terms and conditions of the Company's stock plan (the "Stock Plan"), incorporated herein by this reference;

WHEREAS, Employee is employed as the Vice President of Engineering and is separating from the Company as Vice President of Engineering effective as of January 3, 2014 and as an employee of the Company effective as of January 3, 2014 (the "Separation Date");

WHEREAS, the Parties agree that Employee's separation will be considered a "termination without Cause," as defined in the Severance Agreement;

WHEREAS, the Parties wish to resolve any and all disputes, claims, complaints, grievances, charges, actions, petitions, and demands that the Employee may have against the Company and any of the Releasees as defined below, including, but not limited to, any and all claims arising out of or in any way related to Employee's employment with or separation from the Company;

NOW, THEREFORE, in consideration of the mutual promises made herein, the Company and Employee hereby agree as follows:

COVENANTS

1. Consideration.

a. Payment. The Company agrees to provide the following to Employee in consideration for Employee entering into this Agreement:

(i) Following the Separation Date, provided that this Agreement is in effect and Employee is in compliance with this Agreement (and any agreements incorporated herein) the Company will provide Employee with the following benefits (the "Separation Benefits"):

a. Continuation of annualized base salary of $240,000.00, for six (6) months following the Separation Date (the "Salary Continuation Period"). All such payments will be less applicable withholding, and will be made in accordance with the Company's regular payroll practices and schedule.

b. Reimbursement of Employee for insurance continuation premiums made by Employee pursuant to COBRA for the shorter of (i) six (6) months after the Separation Date, (ii) the date Employee has secured other employment pursuant to which Employee is eligible for health insurance coverage, or (iii) the date Employee is no longer eligible to receive continuation coverage pursuant to COBRA, subject to Employee's providing evidence of payment to the Company within thirty (30) days of Employee making such payments to the applicable insurance carrier. Reimbursement to be issued by the Company no later than fifteen (15) days following its receipt of Employee's proof of payment.

c. All stock options and restricted stock held by Employee in which Employee would have vested if Employee had remained employed with the Company for a period of six (6) months following the date of termination shall immediately vest and, if applicable, become exercisable as of the date of termination. In addition, all stock options held by Employee on the date hereof shall be amended such that such options will remain exercisable for a period of 90 days following the Separation Date. Employee acknowledges that the foregoing amendment to his stock options will cause the options to be taxed as non-statutory options and not as incentive stock options.

d. Employee will remain eligible to receive compensation related to the Company's management incentive plan for 2013 subject to the terms and conditions set forth in section 2(d) of the Severance Agreement. Employee's receipt of any amounts pursuant to the Company's management incentive plan for 2013 will be determined according to the formula set forth in section 2(d) of the Severance Agreement. All determinations of the amount of the achievement of objectives and the amounts of such bonuses, if any, shall be made by the Board of Directors of the Company in its sole discretion.

(ii) In the event of Employee's death before all of the Separation Benefits described in Paragraph 1.a.(i)(a) and (i)(b) hereinabove have been paid, such unpaid amounts will be paid in a lump sum payment promptly following such event to Employee's designated beneficiary, if living, or otherwise to the personal representative of Employee's estate.

b. Payment in Full. Employee further specifically acknowledges and agrees that the consideration provided to him hereunder fully satisfies any obligation that the Company had to pay Employee wages or any other compensation for any of the services that Employee rendered to the Company, and any severance or other benefits pursuant to the Severance Agreement, including but not limited to any bonus entitlement or any severance due to Employee in accordance with his Severance Agreement.

1. Benefits. Except as otherwise specifically stated in this agreement in Section 1, Employee's participation in all benefits and incidents of employment, including, but not limited to, the accrual of vacation and paid time off, will cease as of the Separation Date.

2. Payment of Salary and Receipt of All Benefits. Employee acknowledges and represents that, other than the consideration set forth in this Agreement, the Company has paid or provided all salary, wages, bonuses, accrued vacation/paid time off, leave, housing allowances, relocation costs, interest, severance, outplacement costs, fees, reimbursable expenses, commissions, stock, stock options, vesting, and any and all other benefits and compensation due to Employee through the Effective Date.

3. Release of Claims. Employee agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to Employee by the Company and its current and former officers, directors, employees, agents, investors, attorneys, shareholders, administrators, affiliates, benefit plans, plan administrators, insurers, divisions, and subsidiaries, and predecessor and successor corporations and assigns (collectively, the "Releasees"). Employee, on his own behalf and on behalf of his respective heirs, family members, executors, agents, and assigns, hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Employee may possess against any of the Releasees arising from any omissions, acts, facts, or damages that have occurred up until and including the Effective Date of this Agreement, including, without limitation:

a. any and all claims relating to or arising from Employee's employment relationship with the Company and the decision to terminate that relationship;

b. any and all claims relating to, or arising from, Employee's right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;

c. any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; fraud; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; and conversion;

d. any and all claims for violation of any federal, state, or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Equal Pay Act; the Fair Labor Standards Act, except as prohibited by law; the Fair Credit Reporting Act; the Age Discrimination in Employment Act of 1967; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act of 1974, except as prohibited by law; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act, except as prohibited by law; the Sarbanes-Oxley Act of 2002; the Texas Payday Act; Texas Workers' Compensation Act; and Chapter 21 of the Texas Labor Code (also known as the Texas Commission on Human Rights Act); and any other laws of the states of Texas or any other state, except as prohibited by law;

e. any and all claims for violation of the federal or any state constitution;

f. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

g. any and all claims for attorneys' fees and costs.

Employee agrees that the release set forth in this section shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under this Agreement. This release does not release claims that cannot be released as a matter of law, including, but not limited to Employee's right to file a charge with or participate in a charge by the Equal Employment Opportunity Commission, or any other local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, against the Company (with the understanding that any such filing or participation does not give Employee the right to recover any monetary damages against the Company; Employee's release of claims herein bars Employee from recovering such monetary relief from the Company).

4. Acknowledgment of Waiver of Claims under ADEA. Employee acknowledges that he is waiving and releasing any rights he may have under the Age Discrimination in Employment Act of 1967 ("ADEA"), and that this waiver and release is knowing and voluntary. Employee agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. Employee acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Employee was already entitled. Employee further acknowledges that he has been advised by this writing that: (a) he should consult with an attorney prior to executing this Agreement; (b) he has twenty-one (21) days within which to consider this Agreement; (c) he has seven (7) days following his execution of this Agreement to revoke this Agreement; (d) this Agreement shall not be effective until after the revocation period has expired; and (e) nothing in this Agreement prevents or precludes Employee from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by federal law. In the event Employee signs this Agreement and returns it to the Company in less than the 21-day period identified above, Employee hereby acknowledges that he has freely and voluntarily chosen to waive the time period allotted for considering this Agreement.

Employee acknowledges and understands that revocation must be accomplished by a written notification to the Company's Chief Executive Officer that is received no later than seven (7) days following his execution of this Agreement. The Parties agree that any changes to this Agreement, whether material or immaterial, do not restart the running of the 21- day consideration period.

5. Unknown Claims. Employee acknowledges that he has been advised to consult with legal counsel and that he is familiar with the principle that a general release does not extend to claims which the releasor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the releasee. Employee, being aware of said principle, agrees to expressly waive any rights Employee may have to that effect, as well as under any other statute or common law principles of similar effect.

6. No Pending or Future Lawsuits. Employee represents that he has no lawsuits, claims, or actions pending in his name, or on behalf of any other person or entity, against the Company or any of the other Releasees. Employee also represents that he does not intend to bring any claims on his own behalf or on behalf of any other person or entity against the Company or any of the other Releasees.

7. Confidentiality. Employee agrees to maintain in complete confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as "Separation Information"). Except as required by law, Employee may disclose Separation Information only to his immediate family members, the Court in any proceedings to enforce the terms of this Agreement, Employee's counsel, and Employee's accountant and any professional tax advisor to the extent that they need to know the Separation Information in order to provide advice on tax treatment or to prepare tax returns, and must prevent disclosure of any Separation Information to all other third parties. Employee agrees that he will not publicize, directly or indirectly, any Separation Information. Notwithstanding the foregoing, Employee shall have no confidentiality obligations under this section 8 regarding any Separation Information that the Company makes public through SEC filings or otherwise.

8. Trade Secrets and Confidential Information/Noncompete/Company Property . Employee reaffirms and agrees to observe and abide by the surviving terms of the Confidentiality Agreement and the Severance Agreement, specifically including the provisions therein regarding returning Company property, non-competition, nondisclosure of the Company's trade secrets and confidential and proprietary information, and non-solicitation of Company employees.

9. No Cooperation. Employee agrees not to act in any manner that might reasonably cause damage to the business of the Company. Employee further agrees that he will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against any of the Releasees, unless under a subpoena or other court order to do so or as related directly to the ADEA waiver in this Agreement. Employee agrees both to immediately notify the Company upon receipt of any such subpoena or court order, and to furnish, within three (3) business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Releasees, Employee shall state no more than that he cannot provide counsel or assistance.

10. Cooperation with Company, Communications and Transition of Duties. Employee agrees to cooperate, at the request of the Company, in the defense and/or prosecution of any charges, claims, investigations (internal or external), administrative proceedings and/or lawsuits relating to matters occurring during or relating to Employee's period of employment about which Employee may have relevant information. Employee agrees to respond to reasonable requests for information from the Company in a timely manner. The Company agrees to pay Employee for his time in so cooperating at his then applicable consulting rate of pay, not to exceed $300.00 per hour, and to reimburse Employee for any and all reasonable expenses, including travel. The Parties agree to work together in good faith with regard to all communications made to customers, vendors, employees or other individuals or entities regarding Employee's separation from employment. Employee further agrees that any statement made by Employee to customers, vendors, employees or other individuals or entities regarding his separation from employment must be consistent in all respects with the terms of this Agreement. Employee further agrees to cooperate with the Company with regard to the transition of Employee's job duties and business relationships. Employee agrees to sign and return a resignation letter in the form attached as Exhibit A on the date hereof. Such resignation letter shall not be deemed in conflict with the parties' agreement hereunder that Employee's separation from employment constitutes a "termination without cause" as that term is defined in the Severance Agreement.

11. Non-Disparagement. Employee agrees to refrain from any disparaging statements about the Company or any of the other Releasees including, without limitation, the business, products, intellectual property, financial standing, future, or employment/compensation/benefit practices of the Company. The Company agrees to refrain from any disparaging statements about Employee; provided, however, that the Company's obligations in this regard extend only to its senior executives and directors, and only for so long as such individuals are employed by or are on the Board of Directors of the Company. The parties agree that statements made in good faith under oath during formal legal proceedings shall not be construed as disparaging statements under this Agreement.

12. Breach. Employee acknowledges and agrees that if the Company reasonably believes that Employee has materially breached this Agreement, unless such breach constitutes a legal action by Employee challenging or seeking a determination in good faith of the validity of the waiver herein under the ADEA, or of the Employment Agreement, the Company shall notify Employee in writing and provide Employee a five (5) day period to cure such material breach, if curable, as determined in the reasonable discretion of the Company. Any material breach of this Agreement by Employee that is not cured shall entitle the Company immediately to recover and/or cease providing the consideration provided to Employee under this Agreement, except as provided by law.

13. No Admission of Liability. Employee understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by Employee. No action taken by the Company hereto, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Employee or to any third party.

14. Costs. The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with the preparation of this Agreement.

15. ARBITRATION. THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, AND ANY OF THE MATTERS HEREIN RELEASED, SHALL BE SUBJECT TO ARBITRATION IN TRAVIS COUNTY, TEXAS BEFORE JAMS, THE RESOLUTION EXPERTS ("JAMS"), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES ("JAMS RULES"). THE ARBITRATOR MAY GRANT INJUNCTIONS AND OTHER RELIEF IN SUCH DISPUTES. THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH TEXAS LAW, AND THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL TEXAS LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO ANY CONFLICT-OF-LAW PROVISIONS OF ANY JURISDICTION. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH TEXAS LAW TEXAS LAW SHALL TAKE PRECEDENCE. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE, AND BINDING ON THE PARTIES TO THE ARBITRATION. THE PARTIES AGREE THAT THE PREVAILING PARTY IN ANY ARBITRATION SHALL BE ENTITLED TO INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT JURISDICTION TO ENFORCE THE ARBITRATION AWARD. THE PARTIES TO THE ARBITRATION SHALL EACH PAY AN EQUAL SHARE OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, AND EACH PARTY SHALL SEPARATELY PAY FOR ITS RESPECTIVE COUNSEL FEES AND EXPENSES; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHT TO HAVE ANY DISPUTE BETWEEN THEM RESOLVED IN A COURT OF LAW BY A JUDGE OR JURY. NOTWITHSTANDING THE FOREGOING, THIS SECTION WILL NOT PREVENT EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF (OR ANY OTHER PROVISIONAL REMEDY) FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THEIR DISPUTE RELATING TO THIS AGREEMENT AND THE AGREEMENTS INCORPORATED HEREIN BY REFERENCE. SHOULD ANY PART OF THE ARBITRATION AGREEMENT CONTAINED IN THIS PARAGRAPH CONFLICT WITH ANY OTHER ARBITRATION AGREEMENT BETWEEN THE PARTIES, THE PARTIES AGREE THAT THIS ARBITRATION AGREEMENT SHALL GOVERN.

16. Tax Consequences. The Company makes no representations or warranties with respect to the tax consequences of the payments and any other consideration provided to Employee or made on her behalf under the terms of this Agreement. Employee agrees and understands that he is responsible for payment, if any, of local, state, and/or federal taxes on the payments and any other consideration provided hereunder by the Company and any penalties or assessments thereon. Employee further agrees to indemnify and hold the Company harmless from any claims, demands, deficiencies, penalties, interest, assessments, executions, judgments, or recoveries by any government agency against the Company for any amounts claimed due on account of (a) Employee's failure to pay or the Company's failure to withhold, or Employee's delayed payment of, federal or state taxes, or (b) damages sustained by the Company by reason of any such claims, including attorneys' fees and costs.

17. Section 409(A). If the Company determines that any cash severance benefits, health continuation coverage, or additional benefits provided under this Agreement shall fail to satisfy the distribution requirement of Section 409A(a)(2)(A) or the Internal Revenue Code of 1986, as amended (the "Code") as result of Section 409A(a)(2)(B)(i) of the Code, the payment of such benefit shall be accelerated to the minimum extent necessary so that the benefit is not subject to the provisions of Section 409(a)(1) of the Code. (It is the intention of the preceding sentence to apply the short-term deferral provisions of Section 409A of the Code, and the regulations and other guidance thereunder, to such payments, and the payment schedule as revised after the application of the preceding sentence shall be referred to as the "Revised Payment Schedule.") However, if there is no Revised Payment Schedule that would avoid the application of Section 409A(a)(l) of the Code, the payment of such benefits shall not be paid pursuant to a Revised Payment Schedule and instead shall be delayed to the minimum extent necessary so that such benefits are not subject to the provisions of section 409A(a)(l) of the Code. The Company may attach conditions to or adjust the amounts paid pursuant to this paragraph to preserve, as closely as possible, the economic consequences that would have applied in the absence of this paragraph; *provided, however,* that no such condition or adjustment shall result in the payments being subject to Section 409A(a)(l) of the Code.

18. Successors and Assigns. Employee understands and acknowledges that this Agreement is personal in its nature and agrees that he shall not assign or transfer her rights under this Agreement. The provisions of this Agreement shall inure to the benefit of, and shall be binding on, each successor of the Company whether by merger, consolidation, transfer of all or substantially all assets, or otherwise, and the heirs and legal representatives of Employee.

19. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. Employee represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Agreement. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

20. No Representations. Employee represents that he has had an opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Employee has not relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

21. Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

22. Attorneys' Fees. Except with regard to a legal action challenging or seeking a determination in good faith of the validity of the waiver herein under the ADEA, in the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, and reasonable attorneys' fees incurred in connection with such an action.

23. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Employee concerning the subject matter of this Agreement and Employee's employment with and separation from the Company and the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement and Employee's relationship with the Company, with the exception of the surviving portions of the Severance Agreement, the Confidentiality Agreement and the Stock Plan.

24. No Oral Modification. This Agreement may only be amended in a writing signed by Employee and the Company's Chief Executive Officer.

25. Governing Law. This Agreement shall be governed by the laws of the State of Texas, without regard for choice-of-law provisions. Employee consents to personal and exclusive jurisdiction and venue in the State of Texas.

26. Revocation Period and Effective Date. Each Party has seven (7) days after that Party signs this Agreement to revoke it. If the Company revokes this Agreement, it must notify Employee in writing delivered to Employee's home address no later than seven (7) days from the date it signed this Agreement. Provided both parties have signed and not revoked this Agreement within such seven (7) days after executing this Agreement, this Agreement will become effective on January 14, 2014 (the "Effective Date").

27. Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

28. Voluntary Execution of Agreement. Employee understands and agrees that he executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of releasing all of his claims against the Company and any of the other Releasees. Employee acknowledges that:

(a) he has read this Agreement;

(b) he has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of his own choice or has elected not to retain legal counsel;

(c) he understands the terms and consequences of this Agreement and of the releases it contains; and

(d) he is fully aware of the legal and binding effect of this Agreement.

(Signature page follows)

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

Jeremiah Noel Foley, an individual

Dated: January 3, 2014

/s/ Jeremiah Noel Foley
Jeremiah Noel Foley

ACTIVE POWER, INC.

Dated: January 3, 2014

By: /s/ Mark A. Ascolese
Mark A. Ascolese
President & CEO

January 3, 2014

Mark A. Ascolese
Chief Executive Officer
Active Power, Inc.
2128 W. Braker Lane
Austin, TX 78758

Dear Mark-

This is to confirm that I hereby resign as Vice President Engineering of Active Power, Inc. (the "Company") effective January 3, 2014 and that I hereby resign as an employee of the Company effective January 3, 2014.

/s/ Jeremiah Noel Foley

Exhibit 31.1

CERTIFICATIONS

I, Mark A. Ascolese, certify that:

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

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

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

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

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

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

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

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

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

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

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

Date: May 1, 2014

/s/ Mark A. Ascolese
Mark A. Ascolese
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, James A. Powers, certify that:

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

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

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

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

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

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

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

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

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

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

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

Date: May 1, 2014

/s/ James A. Powers
James A. Powers
Chief Financial
Officer and Secretary
(Principal Financial and Accounting Officer)

Exhibit 32.1

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

In connection with the Quarterly Report on Form 10-Q of Active Power, Inc. (the "Company") for the period ending March 31, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark A. Ascolese, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

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

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

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

/s/ Mark A. Ascolese
Mark A. Ascolese
President and Chief Executive Officer
May 1, 2014

Exhibit 32.2

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

In connection with the Quarterly Report on Form 10-Q of Active Power, Inc. (the "Company") for the period ending March 31, 2014 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James A. Powers, Chief Financial Officer and Secretary of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

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

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

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

/s/ James A. Powers
James A. Powers
Chief Financial Officer and Secretary
May 1, 2014