



## **Filing Receipt**

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### THIRD AMENDED AND RESTATED SYSTEM UPGRADE AGREEMENT

This **Third Amended and Restated System Upgrade Agreement** (the “Agreement”) is entered into as of 10/9/2023 | 1:04 PM EDT (the “Execution Date”) between **AEP Texas Inc.**, a Delaware corporation (“TSP”) and **AP Sunray LLC**, a Delaware limited liability company (“Generator”). TSP and Generator may be referred to individually as a “Party” and collectively as the “Parties.”

#### RECITALS

A. TSP and Generator originally entered into a System Upgrade Agreement as of July 7, 2021 (the “Original Agreement”), amended and restated the Original Agreement dated July 5, 2022 (the “First Amended and Restated Agreement”), and amended and restated the First Amended and Restated Agreement dated June 1, 2023 (the “Second Amended and Restated Agreement”).

B. Generator is in the process of developing certain generation assets in Uvalde County, Texas with a proposed capacity of 204.4 MW (the “Project”). The Project will be interconnected to the transmission system through the facilities of another transmission service provider.

C. The Parties agree to amend and restate the Second Amended and Restated Agreement as set forth herein for the purpose of: 1) reducing the plant capacity from 208.8 to 204.4 MW; 2) updating the definition of Force Majeure; 3) making certain other conforming changes throughout the Agreement to accommodate these changes.

D. TSP has concluded or been advised that interconnection of the Project with the transmission grid requires certain analysis, engineering, procurement, and/or demolition, reconstruction, or construction activities to carry out changes, upgrades, retirements, or replacements of TSP’s existing transmission facilities or development of new transmission facilities to be owned by TSP. TSP is willing to perform such activities subject to the terms and conditions set forth herein.

#### AGREEMENTS

NOW, THEREFORE, the Parties hereby agree as follows:

#### 1. DEFINITIONS; RULES OF CONSTRUCTION

**1.1. Definitions.** As used in this Agreement, terms defined in Exhibit 1.1 have the meanings set forth therein.

**1.2. Rules of Construction.** Unless the context of this Agreement requires otherwise, the plural includes the singular, and the singular includes the plural. The words “include,” “includes” and “including” are not limiting and have the inclusive meaning of “including without limitation.” The words “hereof,” “herein,” “hereby,” “hereunder” and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the Person or Persons may require. Unless otherwise expressly provided, any agreement, instrument, or Applicable Law defined or referred to herein means such agreement or instrument or Applicable Law as from time to time amended,

modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Law) by succession of comparable successor law and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein. A reference to a Party includes its successors and permitted assigns. This Agreement is the result of negotiations between, and has been reviewed by, the Parties, and their respective counsel have had the opportunity to review this Agreement. Accordingly, this Agreement shall be deemed to be the product of all Parties hereto, and no ambiguity shall be construed in favor of or against any Party.

## **2. EFFECTIVE DATE; COMMENCEMENT DATE; TERMINATION**

**2.1. Commencement of Work.** TSP shall become obligated to commence the Work hereunder when both the Effective Date has occurred in accordance with Section 2.2 and the Commencement Date has occurred in accordance with Section 2.3.

**2.2. Effective Date.** TSP shall file this Agreement with FERC, and Generator agrees to cooperate with TSP and provide reasonable assistance to TSP in such filing and proceedings related thereto. This Agreement shall become effective on the date this Agreement has been accepted for filing and made effective by order of FERC under the Federal Power Act, in which case the effective date of this Agreement shall be as specified in the said FERC order (“Effective Date”). However, if FERC or any other Governmental Authority suspends this Agreement or any part thereof, institutes an investigation or proceeding with respect to this Agreement or any other agreement referred to or contemplated by this Agreement, or imposes any conditions, limitation or qualifications which individually or in the aggregate are determined by TSP or Generator to be adverse to it, then either TSP or Generator may terminate this Agreement upon written notice to the other Party.

**2.3. Commencement Date.** The commencement date shall be the date on which each of the following events shall have occurred or been waived by the Parties (“Commencement Date”):

- 2.3.1. Receipt by both Parties of all necessary Governmental Approvals (in form and substance reasonably satisfactory to each of the Parties) in addition to the Governmental Approval specified in Section 2.2 hereof.
- 2.3.2. TSP’s receipt of any Security described in Section 4.2 and any replacements or increases thereto.

If, at the request of Generator, TSP waives a condition specified in this Section 2.3 so that Work can proceed, TSP will be entitled to reimbursement of costs pursuant to this Agreement as if the Work had been performed only after satisfaction of the waived condition.

**2.4. Events of Termination.** This Agreement may be terminated by the Parties as follows:

- 2.4.1. This Agreement may be terminated by mutual written agreement of the Parties.
- 2.4.2. Either Party may terminate this Agreement as provided in Sections 2.2, 5.1, and 6.2.

- 2.4.3. Generator may terminate this Agreement as provided in Section 3.8.1.
- 2.4.4. This Agreement shall terminate automatically following a suspension of the Work by Generator under the circumstances specified in Section 3.8.1.
- 2.4.5. TSP may terminate this Agreement on written notice to Generator if the Project does not commence commercial operation by the first anniversary of the “Commercial Operation Date” set forth in Schedule 3.1.
- 2.4.6. Either Party may terminate this Agreement if any Governmental Authority denies approval of any necessary or appropriate approvals for the Work or the Project, or if any Governmental Authority shall have issued an order, decree, ruling, or other action restraining, enjoining, or otherwise prohibiting such Party’s performance of this Agreement or its contemplated ownership or operation of the Project or the Upgrade Facilities.

**2.5. Regulatory Approval of Termination.** Any termination of this Agreement provided for herein shall be subject to any necessary approval by FERC or any other Governmental Authority, as applicable.

**2.6. Equipment.** If a Party terminates this Agreement and TSP has received any equipment associated with the Work, TSP will make a reasonable effort to redirect such equipment to other TSP projects, and if it cannot be redirected without material incremental cost within ninety (90) Calendar Days through such efforts, it will be transferred to and become the property of Generator “AS-IS” and “WHERE-IS” and with all faults or other damages, provided such faults or other damages are not the result of the negligence or willful misconduct of TSP. Generator will not be obligated to reimburse TSP for equipment that TSP is able to redirect to other TSP projects.

**2.7. Survival of Rights.** Termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such termination, including, without limitation, payment obligations, remedies, indemnification obligations, confidentiality and any provisions of this Agreement that explicitly provide for survival after termination.

### **3. DEVELOPMENT OF THE UPGRADE FACILITIES**

**3.1. Scope of Work.** TSP will undertake, directly or through its affiliates or contractors (or any combination thereof), the performance of the work described in Schedule 3.1 and any attachments referenced therein (the “Work”).

**3.2. Ownership and Operation of the Upgrade Facilities.** TSP will own and operate any Upgrade Facilities.

**3.3. Generator’s Technical Information.** Generator will provide relevant information to TSP concerning the Project and the Work as requested by TSP from time to time. Generator covenants, warrants, and represents that any technical or engineering information, reports, drawings, data, specifications, analyses, and other similar materials previously or hereafter provided to TSP or to ERCOT by Generator or Generator’s contractors or consultants in connection with the Project or the Work has been and will be prepared in accordance with Good

Utility Practice and that Generator is not aware of any reason to distrust the accuracy and completeness of such information and materials.

**3.4. Disclaimer of Warranty.** TSP will perform the Work consistent with Applicable Law, applicable Governmental Approvals, and Good Utility Practice. Except for the foregoing, TSP HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE PERFORMANCE.

**3.5. Progress Reports.** From time to time as reasonably determined by TSP, TSP will report to Generator concerning the progress of the Work.

**3.6. Completion of the Work.** TSP will use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.4 to complete the elements of the Work by the “Projected Completion Dates” set out in Schedule 3.1 or any other dates to which the Parties may subsequently agree. TSP does not promise to complete the Work by the Projected Completion Dates. The Projected Completion Dates will be extended to reflect any delays as a result of a Force Majeure event and extended to reflect any suspension of the Work under this Agreement.

**3.7. Access and Land Rights.** If any part of the Upgrade Facilities are to be installed on property owned or under the control of third persons and if TSP requests that Generator do so, Generator will at its own expense use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.4 to procure from such persons property rights in form and substance reasonably acceptable to TSP necessary to vest in TSP appropriate land rights (including ingress and egress) to install, construct, own, operate, repair, maintain, and demolish any of the Upgrade Facilities, and to otherwise perform its obligations under this Agreement (and, with respect to the Upgrade Facilities, under Applicable Law).

Subject to any necessary Governmental Approvals and to the pre-existing superior real property rights and interests of third persons, Generator will furnish to TSP any rights of use, licenses, rights of way, and easements with respect to lands owned or controlled by Generator or any of its affiliates to the extent necessary to enable TSP to obtain appropriate land rights (including ingress and egress) to install, construct, own, operate, repair, maintain, and demolish any of the Upgrade Facilities, and to otherwise perform its obligations under this Agreement or Applicable Law. TSP is hereby given the contractual right to enter upon the lands owned or controlled by Generator or any of its affiliates on a temporary basis as necessary to enable TSP to perform its obligations under this Agreement.

**3.8. Suspension and Termination of Project Development.**

- 3.8.1. Generator may suspend or terminate the Work on written notice to TSP, provided that any suspension (and all suspensions in the aggregate) may not exceed one (1) year or such other period as may be agreed upon by the Parties in writing, after which this Agreement shall be deemed to terminate if the Work has not been resumed.

- 3.8.2. At any time during a suspension of the Work in accordance with Section 3.8.1, Generator may notify TSP in writing to resume the Work, in which case TSP may revise the Projected Completion Dates and the scope of Work and may increase or adjust the Security to accommodate the delay.
- 3.8.3. Generator will pay TSP, in accordance with the billing provisions of Section 4.1.4, TSP's incremental costs incurred as a result of any suspension or termination pursuant to Section 3.8.1, including demobilization and remobilization costs and suspension, termination, or cancellation costs payable to third parties. This Section 3.8.3 shall survive termination of this Agreement.

#### **4. COSTS**

##### **4.1. Responsibility for Costs.**

- 4.1.1. In Schedule 3.1, TSP has provided an estimate of the total cost of the Work and the allocation of responsibility for such costs between the Parties. Such estimate and allocations do not constitute a fixed price for or cap on any amounts that may become payable by Generator. Such estimate and allocations notwithstanding, TSP may allocate the actual costs of the Work between the Parties in its reasonable discretion.
- 4.1.2. Costs for the Work under this Agreement will include all costs, charges, and expenses incurred by TSP in connection with the Work, including the costs of materials, equipment, and supplies from third parties, the costs of materials and equipment withdrawn from TSP's internal inventories (or those of its affiliates), transportation and storage costs, internal payroll and payroll loading factors, travel expenses, overhead factors, other internal costs, the costs to acquire land rights, third party expenses, sales and use taxes, and fees and costs for Governmental Approvals.
- 4.1.3. If this Agreement is terminated before the Project is placed in commercial operation, then in addition to (but without duplication of) costs otherwise to be borne by Generator, Generator will bear all costs theretofore, thereby, or thereafter incurred by TSP with respect to the Work to the extent that TSP determines in its reasonable discretion that it will not seek Governmental Approval to put such costs into its transmission rate base. If a Governmental Authority disallows any portion of such costs from TSP's rates, Generator will bear all such disallowed costs. If this Agreement is not terminated before the Project is placed in commercial operation, Generator will not bear the costs incurred by TSP with respect to the Work other than the costs identified in Schedule 3.1 as costs to be direct billed to Generator. However, if TSP seeks to put costs into its transmission rate base and a Governmental Authority disallows any portion of costs from TSP's rates, Generator will bear all such disallowed costs.

- 4.1.4. TSP shall have no obligation to seek Governmental Approval to put any incremental costs incurred as a result of any suspension of the Work by Generator pursuant to Section 3.8.13.8.1, and that Generator has paid to TSP pursuant to Section 3.8.3, into its transmission rate base, even if this Agreement is not terminated before the Project is placed in commercial operation. However, in the event TSP elects to seek Governmental Approval of such costs, TSP will reimburse Generator for any such costs that are found to be includable in TSP transmission rate base in a full transmission-cost-of-service rates case with prudence review.
- 4.1.5. To the extent that Generator is to bear the cost of any portion of the Work, TSP may invoice Generator for such costs from time to time. All such invoices will be payable in full, without offset, abatement, or reduction for any reason, within thirty (30) Calendar Days of the date of invoice. If Generator in good faith disputes any portion of an invoice, Generator will (i) explain the basis for the dispute in writing to TSP within fifteen (15) Calendar Days of the date of the invoice and (ii) without prejudice to its claim for refund of any disputed amount, pay the entire portion of the invoiced amount on or before the due date stated on the invoice.

## 4.2. Security.

- 4.2.1. Generator will, at its own expense, provide to TSP security ("Security") to secure Generator's performance of its obligations under this Agreement and under Applicable Law in the form, amount and at the times set out in Schedule 4.2.1, to be held by TSP and applied as provided in this Section 4.2. The amount of the Security is not an estimate of the amounts that may be invoiced by TSP and does not constitute a fixed price for or cap on such amounts. TSP may commingle any cash held by TSP as part of the Security with any other funds under its custody or control and will have no obligation to invest funds of Generator. TSP may apply the Security to pay invoices rendered by it to Generator pursuant to this Agreement. TSP may by written notice to Generator require Generator to increase, replenish, or replace the Security from time to time (i) if TSP determines in its reasonable discretion that the remaining Security is not adequate to cover the costs that TSP then reasonably estimates could become payable pursuant to this Agreement, (ii) in the case of a letter of credit, if at any time the credit rating of the bank issuing the letter of credit no longer meets the criteria set forth in Item A of Schedule 4.2.1, or (iii) in the case of a guaranty, if at any time the creditworthiness of the guarantor is no longer reasonably acceptable to TSP. Generator will tender any such increase, replenishment, or replacement to TSP within three (3) Business Days of such notice. Any replacement Security shall meet the requirements set forth in Schedule 4.2.1. No forbearance or delay on the part of TSP in requiring an increase, replenishment, or replacement of the Security will be a waiver of its right to do so.
- 4.2.2. TSP will release or refund to Generator the Security on the earlier of (i) sixty (60) Calendar Days following the completion by TSP of its final cost

accounting for the Work following termination of the Agreement, and (ii) thirty (30) Calendar Days following the date on which TSP receives written notice and has verified that the Project has been placed in commercial operation. Notwithstanding the foregoing, TSP may retain such portions of the Security as necessary to pay any then unpaid invoices. Any refund of a cash deposit shall include interest computed at a rate applicable to customer deposits as established from time to time by the PUCT or other Governmental Authority.

**4.3. Information Concerning Costs.** On reasonable advance written notice, Generator will have the right to examine the pertinent records of TSP as reasonably necessary to verify that costs invoiced pursuant to this Agreement were incurred in accordance with this Agreement. Any such examination will be conducted during regular business hours at the TSP offices. Generator will not have the right to examine the records pertaining to a particular invoice more than once or to examine the records pertaining to an invoice unless written notice of the examination is given within twenty four (24) months of the date of such invoice. Information obtained by Generator from TSP pursuant to this section shall be considered Confidential Information of TSP subject to the confidentiality provisions of Article 8 hereof regardless of whether such information is marked as confidential.

**4.4. Tax Treatment of Costs.**

4.4.1. *Generator Payments Not Taxable.* The Parties intend that all payments or property transfers made by Generator to TSP for the installation of the Upgrade Facilities shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

4.4.2. *Representations and Covenants.* In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Generator represents and covenants that (i) ownership of the electricity generated at the Project will pass to another party prior to the transmission of the electricity on TSP's transmission system, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to TSP for the Upgrade Facilities will be capitalized by Generator as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Upgrade Facilities that is a "dual-use intertie" within the meaning of IRS Notice 88-129 is reasonably expected to carry only a *de minimis* amount of electricity in the direction of the Project. For this purpose, "*de minimis* amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At TSP's request, Generator shall provide TSP with a report from an independent engineer confirming its representation in clause (iii) above. TSP



represents and covenants that the cost of TSP's Upgrade Facilities paid for by Generator will have no net effect on the base upon which rates are determined.

- 4.4.3. *Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon TSP.* Section 4.4.1 notwithstanding, Generator shall protect, indemnify, and hold harmless TSP from the cost consequences of any current tax liability imposed against TSP as the result of payments or property transfers made by Generator to TSP under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by TSP.

TSP shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Generator under this Agreement unless (i) TSP has determined, in good faith, that the payments or property transfers made by Generator to TSP should be reported as income subject to taxation or (ii) any Governmental Authority directs TSP to report payments or property as income subject to taxation; provided, however, that TSP may require that the Security arrangements required by Section 4.2 include coverage of an amount equal to the cost consequences of any current tax liability under this Section 4.4. Generator shall reimburse TSP for such costs on a fully grossed-up basis, in accordance with Section 4.4.4, within thirty (30) days of receiving written notification from TSP of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (i) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by TSP upon request of the IRS to keep these years open for audit or adjustment, or (ii) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Section 4.4.

- 4.4.4. *Tax Gross-Up Amount.* Generator's liability for the cost consequences of any current tax liability under this Section 4.4 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the Parties, this means that Generator will pay TSP, in addition to the amount paid for the Work, an amount equal to (1) the current taxes imposed on TSP ("Current Taxes") on the excess of (A) the gross income realized by TSP as a result of payments or property transfers made by Generator to TSP under this Agreement (without regard to any payments under this Section 4.4.4) (the "Gross Income Amount") over (B) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit TSP to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (1) Current Taxes shall be computed based on TSP's composite federal and state tax rates at the time the payments or property transfers are received and TSP will be treated as being subject to tax at the

highest marginal rates in effect at that time (the “Current Tax Rate”), and (2) the Present Value Depreciation Amount shall be computed by discounting TSP’s anticipated tax depreciation deductions as a result of such payments or property transfers by TSP’s current weighted average cost of capital. Thus, the formula for calculating Generator’s liability to TSP pursuant to this Section 4.4.4 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$ .

- 4.4.5. *Private Letter Ruling or Change or Clarification of Law.* At Generator’s request and expense, TSP shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Generator to TSP under this Agreement are subject to federal income taxation. Generator will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Generator’s knowledge. TSP and Generator shall cooperate in good faith with respect to the submission of such request.

TSP shall keep Generator fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Generator to participate in all discussions with the IRS regarding such request for a private letter ruling. TSP shall allow Generator to attend all meetings with IRS officials about the request and shall permit Generator to prepare the initial drafts of any follow-up letters in connection with the request.

- 4.4.6. *Subsequent Taxable Events.* If, within 10 years from the date on which the relevant Upgrade Facilities are placed in service, (i) Generator breaches the covenants contained in Section 4.4.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and TSP retains ownership of the Upgrade Facilities, Generator shall pay a tax gross-up for the cost consequences of any current tax liability imposed on TSP, calculated using the methodology described in Section 4.4.4 and in accordance with IRS Notice 90-60.
- 4.4.7. *Contests.* In the event any Governmental Authority determines that TSP’s receipt of payments or property constitutes income that is subject to taxation, TSP shall notify Generator, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Generator and at Generator’s sole expense, TSP may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Generator’s written request and sole expense, TSP may file a claim for refund with respect to any taxes paid under this Section 4.4, whether or not it has received such a determination. TSP reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement, or other contest, including the selection of counsel and compromise or settlement of the claim, but TSP shall keep Generator informed, shall consider in good faith suggestions from Generator about the

conduct of the contest, and shall reasonably permit Generator or a Generator representative to attend contested proceedings.

Generator shall pay to TSP on a periodic basis, as invoiced by TSP, TSP's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. At any time during the contest, TSP may agree to a settlement either with Generator's consent or after obtaining written advice from nationally-recognized tax counsel, selected by TSP, but reasonably acceptable to Generator, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Generator's obligation shall be based on the amount of the settlement agreed to by Generator, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Generator's consent or such written advice will relieve Generator from any obligation to indemnify TSP for the tax at issue in the contest.

4.4.8. *Refund.* In the event that (a) a private letter ruling is issued to TSP which holds that any amount paid or the value of any property transferred by Generator to TSP under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling, or other determination makes it reasonably clear to TSP in good faith that any amount paid or the value of any property transferred by Generator to TSP under the terms of this Agreement is not taxable to TSP, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Generator to TSP are not subject to federal income tax, or (d) if TSP receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Generator to TSP pursuant to this Agreement, TSP shall promptly refund to Generator the following:

- (a) any payment made by Generator under this Section 4.4 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon, and

- (b) with respect to any such taxes paid by TSP, any refund or credit TSP receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (a) above) owed to TSP for such overpayment of taxes (including any reduction in interest otherwise payable by TSP to any Governmental Authority resulting from an offset or credit); provided, however, that TSP will remit such amount promptly to Generator only after and to the extent that TSP has received a tax refund, credit, or offset from any Governmental Authority for any applicable overpayment of income tax related to TSP's Upgrade Facilities.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that taxes are due with respect to any payment for Upgrade Facilities hereunder, in the same position they would have been in had no such tax payments been made.

- 4.4.9. *Taxes Other Than Income Taxes.* Upon the timely request by Generator, and at Generator's sole expense, TSP may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against TSP for which Generator may be required to reimburse TSP under the terms of this Agreement. Generator shall pay to TSP on a periodic basis, as invoiced by TSP, TSP's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Generator and TSP shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal, to the jurisdiction of adjudication designated by Generator, or abatement or cannot be deferred, no amount shall be payable by Generator to TSP for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Generator will be responsible for all taxes, interest, and penalties, other than penalties attributable to any delay caused by TSP.

4.5. Survival. The provisions of this Article 4 shall survive termination of this Agreement.

## 5. **FORCE MAJEURE**

5.1. Effect of Force Majeure. In the event that either Party is rendered unable by reason of an event of Force Majeure occurring or arising without the fault or negligence of such Party, to perform, wholly or in part, any obligation or commitment set forth in this Agreement, then the obligations of such Party (except for the obligation to pay sums of money owing hereunder for periods prior to the event of Force Majeure) shall be suspended to the extent of such Force Majeure condition, and such Party shall not be deemed to be in default of this Agreement, for the period of such Force Majeure condition. A Party's lack of funds shall not be an event of Force Majeure. An adjustment shall be made to the Projected Completion Dates as the result of an event of Force Majeure in accordance with Section 3.6 hereof. Either Party will have the right to terminate this Agreement if a Force Majeure event prevents performance for more than ninety (90) consecutive days.

5.2. Notification. In the event of the occurrence of an event of Force Majeure, which prevents a Party from performing its obligations hereunder, such Party shall notify the other Party of such Force Majeure, in writing or by telephone as soon as reasonably possible after the determination that event of Force Majeure has occurred, but in any event within seven (7) Calendar Days thereafter (telephone notices to be confirmed in writing as soon as reasonably possible).

5.3. Labor Disputes. Neither Party will be required by this Agreement to settle any strike, walkout, lockout, or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood that the settlement of strikes,

walkouts, lockouts, or other labor disputes will be at the sole discretion of the Party having the difficulty.

## **6. DEFAULT; REMEDIES**

### **6.1. Events of Default.** An “Event of Default” will exist:

- 6.1.1. As to Generator upon Generator’s failure to promptly pay any amount due hereunder (including a failure by Generator to provide Security when required or a failure to increase, replenish, or replace Security as required by Section 4.2.1) within ten (10) Calendar Days following written notice of delinquency;
- 6.1.2. As to a Party if that Party fails to commence the cure of its breach of any other obligation under this Agreement within sixty (60) Calendar Days following written notification of such breach; or
- 6.1.3. As to a Party if it becomes Insolvent.

**6.2. Termination.** If an Event of Default in any material respect occurs as to a Party, the other Party will have the right to terminate this Agreement on written notice to the defaulting Party.

### **6.3. Other remedies.**

- 6.3.1. If an Event of Default in any material respect occurs and while it persists with respect to a Party, the other Party may suspend performance of its obligations with respect to the Work under this Agreement (other than its obligations to pay money) without prejudice to any other remedy that it may have under this Agreement or Applicable Law.
- 6.3.2. Whether or not a Party suspends performance of its obligations under, or terminates, this Agreement as a result of an Event of Default, such Party will have the right to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity due to such Event of Default, subject to the limitations of Section 6.4.

**6.4. Limitations of Damages.** In no event will either Party be liable under any provision of this Agreement for any special, indirect, incidental, consequential, punitive, or exemplary damages (including loss of profit or revenue, loss of use of equipment, cost of capital, or damage to reputation or relations) whether based in contract, tort, strict liability, statutory liability, or any other theory of liability. The aggregate liability of TSP for damages based on any cause of action hereunder will not exceed the maximum amount of Security posted with TSP.

## **7. DISPUTES**

To the extent that Section 25.203 of the PUCT Substantive Rules or Section 20 of the ERCOT Protocols (each as amended from time to time) are applicable to disputes under this

Agreement, the Parties agree to attempt to resolve any dispute under this Agreement utilizing the Alternative Dispute Resolution provisions of such Sections.

## **8. CONFIDENTIALITY**

**8.1. Confidential Information.** For purposes of this Agreement, a Party's "Confidential Information" consists of information possessed by that Party which is confidential and commercially valuable and which is specifically identified to the other Party as "confidential". For purposes of this Agreement, a Party (the "Receiving Party") will be deemed to have received Confidential Information of the other Party (the "Disclosing Party") if such Confidential Information is by any means disclosed or delivered to the Receiving Party or any of its or its affiliates' equity owners, governing persons, officers, employees, advisors, attorneys, agents, or prospective or actual lenders or investors (its "Representatives"). Confidential Information will not include any information which the Receiving Party can demonstrate (a) has become available to the public through no breach of this Agreement; (b) was previously known by the Receiving Party without any obligation to hold it in confidence; (c) was received on a non-confidential basis from a third party free to disclose such information without restriction; or (d) was independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party.

**8.2. Disclosure.** Each Party hereto agrees that it shall hold in strict confidence and shall not disclose or use any Confidential Information belonging to the other Party hereto for the period ending eighteen (18) months after the date of disclosure of the Confidential Information. The Receiving Party may disclose Confidential Information to its Representatives for purposes of pursuing the Work and meeting its obligations and exercising its rights hereunder, provided that the Representatives shall be informed of the confidentiality obligations provided herein. Each Party agrees to be responsible for any breach of the confidentiality obligations under this Agreement by its Representatives.

**8.3. Required Disclosures.** If a Party is required pursuant to Applicable Law or otherwise becomes legally compelled to disclose any of the Confidential Information or the fact that the Confidential Information has been made available to it, such Party shall (unless prohibited by Applicable Law from doing so) promptly notify the Disclosing Party in order that the Disclosing Party may seek a protective order or such other remedy as the Disclosing Party may consider appropriate in the circumstances. In any event, the compelled Party may disclose only that portion of the Confidential Information which such Party is legally required to disclose in the judgment of the Party's legal counsel without any liability to the Disclosing Party hereunder and such disclosure shall not be a breach of this Article 8.

**8.4. Disclosure of Agreement.** Generator acknowledges and agrees that TSP will file this Agreement on a non-confidential basis with FERC and any other applicable Governmental Authority as required. This Agreement shall not be considered "Confidential Information" for purposes of this Article 8.

**8.5. Survival.** The provisions of this Article 8 shall survive a termination of this Agreement.

## 9. OTHER PROVISIONS

**9.1. Scope of Agreement.** This Agreement provides for TSP to perform certain activities related to transmission upgrades on TSP's transmission system. This Agreement does not provide for any other services and TSP does not agree hereunder to provide any other services. Nothing in this Agreement will establish any rights related to the interconnection of the Project to the transmission facilities of TSP or any other transmission service provider.

**9.2. Construction with Tariffs.** To the extent there is any conflict between the provisions of this Agreement and any tariff, the provisions of this Agreement shall be controlling.

**9.3. Notices.** Any notice that is required or permitted under this Agreement may be given by personal delivery to the Party entitled thereto, by e-mail (with confirmation of receipt), by any courier service which guarantees overnight, receipted delivery, or by U.S. Certified or Registered Mail, return receipt requested, addressed to the Party entitled thereto, at:

If to Generator:	AP SunRay LLC
	Omer Groman, Project Manager
	8 Hamada st.
	Herzlyia Israel 4673342
	Omerg@paz.co.il
with copy to:	Global Sun Israel, L.P
	Ilan Zidkony
	8 Hamada st.
	Herzlyia, Israel 4673342
	ilan@aravapower.com
with copy to:	Paz Oil Company Ltd.
	Hagai Miller
	Euro Park, Holand Building
	Kibbutz Yakum, Israel 60972
	hagaim@paz.co.il
with copy to:	Radian Generation LLC
	Zach Housel, Portfolio Manager
	5821 Fairview Road
	Charlotte, NC 28209
	sunraysolar.pm@radiangen.com
If to TSP:	American Electric Power Service Corporation
	Robert L. Pennybaker, PE
	Director, System Interconnections
	212 E. 6 <sup>th</sup> Street
	Tulsa, OK 74119
	rlpennybaker@aep.com <and>

	ERCOTrequest@aep.com
with copy to:	American Electric Power Service Corporation
	Director, Transmission Planning
	212 E. 6 <sup>th</sup> Street
	Tulsa, OK 74119
with copy to:	American Electric Power Service Corporation
	Assistant General Counsel - Transactions
	1 Riverside Plaza
	Columbus, OH 43215
	legalnotices@aep.com

Either Party may change its address or email for notice by written notice to the other Party in accordance with this Section 9.3. Any notice given (a) by personal delivery shall be deemed to be given upon such delivery, (b) by email shall be deemed given upon receipt, (c) by overnight courier service shall be deemed given on the date noted on the courier's receipt for delivery, or (d) by U.S. Certified or Registered Mail, return receipt requested, shall be deemed given upon the date noted on such return receipt, provided, however, that if in any case delivery is made on a day other than a Business Day or after 5:00 p.m. local time on a Business Day, delivery shall be deemed to be given upon the next Business Day.

**9.4. Interest on Overdue Amounts.** Except as otherwise provided in Section 4.2.2, any amount due to a Party under this Agreement will earn interest accruing daily from the deadline for payment thereof until paid at the lesser of (i) an annual rate equal to the Prime Rate from time to time plus 2 percentage points, or (ii) the maximum rate allowed by Applicable Law. This provision will not be interpreted to preclude TSP from also including in its reimbursable costs an amount to compensate TSP for the time value of advances made by it.

**9.5. Amendment.** No amendment to this Agreement will be valid or binding unless and until (a) reduced to writing and executed by each Party's authorized representative and (b) the requirements of Section 2.2 have been satisfied with respect to such amendment to the extent applicable. It is the intent of the Parties that, to the maximum extent permitted by law, the provisions of this Agreement shall not be subject to change under Sections 205 and 206 of the Federal Power Act absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party or FERC, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527, 128 S.Ct. 2733 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 130 S.Ct. 693 (2010).

**9.6. Assignment.** Except as otherwise provided in this Agreement, neither Party may assign any of its rights or delegate any of its duties under this Agreement to any person without the prior written consent of the other Party. Notwithstanding the foregoing, TSP may without the



prior consent of Generator assign this Agreement to any of its affiliates or to any transmission joint venture of which it is then a member, whereupon TSP will be released of all obligations hereunder.

**9.7. Merger and Integration; Binding on Successors; No Third Party Beneficiaries.** This Agreement sets out the entire understanding of the Parties with respect to the matters it purports to cover and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. No Party will be liable or bound to any Party in any manner by any warranties, representations, or covenants other than those set forth in or incorporated into this Agreement. The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**9.8. Forbearance and Waiver.** Except where a specific time period is provided hereunder for the exercise of a right or remedy, any Party's forbearance in the exercise or enforcement of any right or remedy under this Agreement will not constitute a waiver thereof, and a waiver under one circumstance will not constitute a waiver under any other circumstance.

**9.9. Partial Invalidity.** Any invalidity, illegality, or unenforceability of any provision of this Agreement in any jurisdiction will not invalidate or render illegal or unenforceable the remaining provisions hereof in such jurisdiction and will not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

**9.10. Governing Law.** **EXCEPT AS TO MATTERS PREEMPTED BY THE CONSTITUTION AND STATUTES OF THE UNITED STATES OF AMERICA OR REGULATIONS PROMULGATED THEREUNDER, THIS AGREEMENT WILL BE GOVERNED BY, INTERPRETED, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO ANY CONFLICT-OF-LAW PROVISIONS THAT MAY REFER TO THE LAWS OF ANY OTHER JURISDICTION.** After giving effect to the preceding sentence, this Agreement is subject to all valid applicable federal, state, and local laws, ordinances, rules, and regulations of duly constituted regulatory authorities having jurisdiction.

**9.11. Multiple Counterparts.** This Agreement may be executed by the Parties in multiple original counterparts, and each such counterpart will constitute an original hereof.

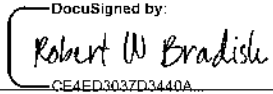
**9.12. No Partnership.** Nothing contained herein shall be deemed to create an association, joint venture, partnership, or principal/agent relationship between the Parties hereto or impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

**9.13. Headings.** The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

**[The next page of this document is S-1]**

Executed to be effective as provided above:


**AEP Texas Inc.**

By:  \_\_\_\_\_

Name: Robert W. Bradish  
Title: Vice President

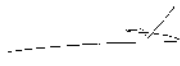
Date: 10/9/2023 | 1:04 PM EDT \_\_\_\_\_

**AP Sunray LLC**

By:  \_\_\_\_\_

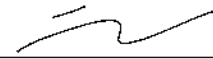
Name: Ilan Zidkony  
Title: Authorized Person

Date: \_\_\_\_\_

By:  \_\_\_\_\_

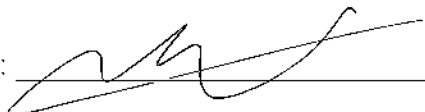
Name: Edan Kaplansky  
Title: Authorized Person

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Hagai Miller  
Title: Authorized Person

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Shlomi Fruhling  
Title: Authorized Person

Date: \_\_\_\_\_

**EXHIBIT 1.1**  
**DEFINITIONS**

Terms defined in this Exhibit 1.1 will have the meanings set forth in this Exhibit.

<b>TERM</b>	<b>DEFINITION</b>
1. Agreement	As defined in the first paragraph.
2. Applicable Law	Any statute, law, ordinance, executive order, rule, or regulation (including a regulation that has been formally promulgated in a rule making proceeding but, pending final adoption, is in proposed or temporary form having force of law); guideline, or notice having force of law; or approval, permit, license, franchise, judgment, order, decree, injunction, or writ of any Governmental Authority applicable to a specified Person or specified property, as in effect from time to time. Applicable Law will include the requirements of NERC and ERCOT.
3. Business Day	Any day other than a Saturday, a Sunday or a federal holiday.
4. Calendar Day	Any day whatsoever, including any weekday, Saturday, Sunday or holiday. However, should the last day of a period of time or number of Calendar Days computed as Calendar Days in accordance with this Agreement be a Saturday, Sunday or holiday, then the next day which is not a Saturday, Sunday or holiday is the last Calendar Day in such period.
5. Commencement Date	As defined in Section 2.3.
6. Commercial Operation Date	As defined in Section 2.4.5.
7. Confidential Information	As defined in Section 8.1.
8. Current Tax Rate	As defined in Section 4.4.4.
9. Current Taxes	As defined in Section 4.4.4.
10. Disclosing Party	As defined in Section 8.1.

11.	Effective Date	As defined in Section 2.2.
12.	ERCOT	The Electric Reliability Council of Texas or its successor.
13.	Event of Default	As defined in Section 6.
14.	Execution Date	As defined in the first paragraph.
15.	Federal Power Act	16 U.S.C. §791a <i>et. seq.</i>
16.	FERC	Federal Energy Regulatory Commission.
17.	Force Majeure	Any act or event beyond the reasonable control of the Party claiming Force Majeure, and occurring or arising without the fault of negligence of such Party, which materially prevents, delays, or impairs the performance of such Party's obligations under this Agreement, including storm, flood, lightning, earthquake, fire, explosion, failure or imminent failure of equipment or facilities, civil unrest, strike, boycott, or other labor disturbance, sabotage, terrorism, war, national emergency, pandemic, epidemic, or the operation of any Applicable Law that is not an adjudication against such Party for violation of Applicable Law.
18.	Generator	As defined in the first paragraph.
19.	Good Utility Practice	Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

20.	Governmental Approvals	Permits, consents, licenses, franchises, certificates, authorizations, registrations, or waivers, extensions, renewals, or variances relating thereto, in each case issued by any Governmental Authority, and filings with or notices to any Governmental Authority.
21.	Governmental Authority	Any federal, state, foreign, tribal, local, or municipal governmental body; and any governmental, regulatory, or administrative agency, commission, body, agency, instrumentality, or other authority exercising or entitled to exercise any executive, judicial, legislative, administrative, regulatory, or taxing authority or power, including any court or other tribunal. Governmental Authority includes NERC and ERCOT.
22.	Gross Income Amount	As defined in Section 4.4.4.
23.	Insolvent	A Person is "Insolvent" if such Person admits in writing its insolvency or bankruptcy, or commences a voluntary (or becomes subject to an involuntary) case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency, or other similar law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or other similar official) of such Person or of any substantial part of its property, or makes an assignment for the benefit of creditors, or fails generally to pay its debts as such debts become due, or takes corporate action in furtherance of any of the foregoing.
24.	NERC	North American Electric Reliability Corporation or its successor.
25.	Party or Parties	As defined in the first paragraph.
26.	Person	Any individual, corporation, partnership, limited liability company, other business organization of any kind, association, trust, or governmental entity, agency, or instrumentality.

27.	<b>Present Value Depreciation Amount</b>	As defined in Section 4.4.4.
28.	<b>Prime Rate</b>	A floating rate equal to the prime commercial lending rate from time to time as indicated in rates published in the <i>Wall Street Journal</i> or, if no such rate is published in the <i>Wall Street Journal</i> , in another public source reasonably designated by the creditor party.
29.	<b>Project</b>	As defined in Recital A.
30.	<b>Projected Completion Date</b>	As defined in Section 3.6.
31.	<b>PUCT</b>	Public Utility Commission of Texas.
32.	<b>Receiving Party</b>	As defined in Section 8.1.
33.	<b>Representatives</b>	As defined in Section 8.1.
34.	<b>Security</b>	As defined in Section 4.2.1.
35.	<b>TSP</b>	As defined in the first paragraph.
36.	<b>Upgrade Facilities</b>	All items of equipment and facilities to be constructed, reconstructed, installed, replaced, or upgraded under this Agreement.
37.	<b>Work</b>	As defined in Section 3.1.

**SCHEDULE 3.1**  
**SUNRAY SOLAR 204.4 MW PROJECT**

**1. Commercial Operation Date**

Twenty-six (26) months from the execution date of the Original Agreement

**2. Scope of Work**

<b>Line No.</b>	<b>Element of the Work</b>	<b>Estimate of Costs that will be put into TSP's Transmission Rate Base</b>	<b>Estimate of Costs that will be direct billed to Generator</b>	<b>Projected Completion Date</b>
1.	Relay and communication upgrades to the Uvalde station	\$100,000	\$0	Within twenty (20) months from the execution date of the Original Agreement

**SCHEDULE 4.2.1  
SECURITY**

Generator provided Security in the amount set forth in the following schedule:

<b>Line No.</b>	<b>Date</b>	<b>Amount</b>
1.	Generator provided Security on December 21, 2021	\$100,000

Such Security shall be in one or more of the following forms:

- A. One or more irrevocable, transferable standby letters of credit in the form and containing the provisions of the specimen attached as Exhibit A from U.S. commercial bank or a foreign bank with a U.S. branch that has and maintains a credit rating of at least A- from Standard and Poor's or an A3 credit rating from Moody's Investors Services. Each such letter of credit will state that it is issued in favor of TSP and specify as its expiry date the date that follows the Commercial Operation Date by one (1) year.
- B. Irrevocable guaranty in the form and containing the provisions of the specimen attached as Exhibit B from a guarantor whose creditworthiness is reasonably acceptable to TSP. If Generator desires to provide security in the form of a guaranty, Generator shall provide financial information as requested by TSP upon execution of this Agreement. Generator shall provide annual audited financial statements of the guarantor for so long as the guaranty is in effect. In addition, Generator agrees to provide financial information concerning the guarantor as may be requested from time to time by TSP.
- C. Cash deposit with TSP. Wire instructions for cash deposits:

Acct Name: AEP Texas Inc.  
Bank Name: Citibank, N. A.  
Address: 111 Wall Street  
City, State: New York, NY 10043  
ABA No.: 021000089  
Account No.: 30484552



**EXHIBIT A**  
**FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT**

DATE OF ISSUANCE: \_\_\_\_\_

[Address]

RE: Credit No. \_\_\_\_\_

We hereby establish our Irrevocable Standby Letter of Credit in your favor for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_), available to you for payment at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of the following document, dated and signed by a representative of the beneficiary:

"The Account Party has become obligated to pay to the Beneficiary or its assigns an amount equal to or exceeding \$[\_\_\_\_\_] USD. Wherefore, the undersigned does hereby demand payment of such dollar amount."

Partial and multiple drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the Beneficiary thereof accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for one (1) year from the expiration date hereof, or any future expiration date, unless at least ninety (90) days prior to any expiration date we notify you at the above address by

registered mail or hand delivered courier that we elect not to consider this Letter of Credit renewed for any such period.

All commissions, expenses and charges incurred with this Letter of Credit are for the account of the Account Party.

{Note: Must note the Expiry Date in the format}

[BANK SIGNATURE]

**EXHIBIT B**  
**FORM OF CORPORATE GUARANTY**

**GUARANTY**

TO: **AEP Texas Inc.** and its successors and assigns (collectively "Beneficiary")

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to induce Beneficiary to enter into a System Upgrade Agreement dated as of \_\_\_\_\_, as the same may be amended from time to time (the "Agreement"), with [Generator name], a \_\_\_\_\_ ("Debtor"), the undersigned \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), hereby irrevocably and unconditionally guarantees the due punctual and full payment of any and all obligations of the Debtor to the Beneficiary now or hereafter due pursuant to the Agreement or pursuant to Applicable Law (as defined in the Agreement) in connection with the activities of the parties under the Agreement (the "Guaranteed Obligations"). Upon any failure by the Debtor to pay any of the Guaranteed Obligations, the Guarantor agrees that it will forthwith on demand pay any amounts which the Debtor has failed to pay the Beneficiary, at the place and in the manner specified in the Agreement. This Guaranty is a guaranty of payment and not merely a guaranty of collection. The Guarantor agrees that the Beneficiary may resort to the Guarantor for payment of any of the Guaranteed Obligations, whether or not the Beneficiary shall have resorted to any collateral security, or shall have proceeded against any other obligor principally or secondarily obligated with respect to any of the Guaranteed Obligations. Guarantor reserves the right to assert defenses which the Debtor may have to payment of any Guaranteed Obligations other than defenses based on lack of capacity, lack of authorization, lack of due execution, illegality, or limitations of actions, or arising from the bankruptcy, insolvency, or similar proceeding of the Debtor and other defenses expressly waived hereby.

The Guarantor agrees that, in the event of the dissolution or bankruptcy of the Debtor, if such event shall occur at a time when any of the Guaranteed Obligations may not then be due and payable, the Guarantor will pay the Beneficiary forthwith the full amount which would be payable hereunder by the Guarantor if all such Guaranteed Obligations were then due and payable and in default.

The obligations of the Guarantor hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(A) any extension, renewal, settlement, compromise, waiver, discharge, or release in respect of any Guaranteed Obligations of the Debtor;

(B) the existence, or extent of, any release, exchange, surrender, non-perfection, or invalidity of any direct or indirect security for any of the Guaranteed Obligations;

(C) any modification, amendment, waiver, extension of or supplement to the Agreement or any of the Guaranteed Obligations agreed to from time to time by the Debtor and the Beneficiary;

(D) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Debtor or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Debtor or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations;

(E) the existence of any claim, set-off, or other rights which the Guarantor may have at any time against the Debtor, the Beneficiary, or any other corporation or person, whether in connection herewith or in connection with any related or unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim if such claim, set off, or other right arose in connection with the Guaranteed Obligations.

(F) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by Beneficiary to exercise, in whole or in part, any right or remedy held by Beneficiary with respect to the Agreement or any transaction under the Agreement; or

(G) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Debtor or any other individual, partnership, joint venture, corporation, association, trust or other enterprise that is a party to the Agreement, or any other agreement or instrument (including any guarantor) in respect of the Guaranteed Obligations, other than payment in full of the Guaranteed Obligations.

This Guaranty shall remain in full force and effect until the date on which the Debtor is entitled by the Agreement to a release of its Security provided thereunder. Such termination shall not release Guarantor from liability for any Guaranteed Obligations arising prior to the effective date of such termination (even if the amount of such Guaranteed Obligations is not then fully determined). If at any time any payment of any of the Guaranteed Obligations is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy, or reorganization of the Debtor, the Guarantor's obligations hereunder with respect to such payment shall be reinstated at such time as though such payment had not been made. If Debtor's assets or a major portion thereof are transferred to any other party or parties otherwise than by operation of law, and if Beneficiary enters into any transaction whereby such transferee or transferees become indebted to Beneficiary, this Guaranty, subject to all the other terms hereof, shall apply to any Guaranteed Obligations or balance of Guaranteed Obligations of such other transferee or transferees to Beneficiary.

The Guarantor irrevocably waives acceptance hereof, diligence, presentment, demand, protest, notice of dishonor, notice of any sale of collateral and any notice not provided for herein, and any requirement that at any time any person exhaust any right to take any action against the Debtor or its assets or any other guarantor or person. Guarantor further waives notice of the transactions between Beneficiary and Debtor, notice of the execution and delivery, amendment, extension, or renewal of any present or future instrument pertaining to the Guaranteed Obligations, notice of default by Debtor, and any other notice not expressly required by this Guaranty. Guarantor further consents, without further notice, to any extension or extensions of the time or

times of payment of said Guaranteed Obligations, or any portion thereof, and to any change in form or amount, or renewal at any time, of such Guaranteed Obligations, or any portion thereof, in each case up to an aggregate amount set forth below. Should any present or future Guaranteed Obligations incurred by Debtor not be paid when due or at the time to which the same may be extended, Beneficiary may proceed against Guarantor for such Obligations at any time, without notice and without any proceeding or action against Debtor.

Guarantor shall not exercise any rights which it may have or acquire by way of subrogation until all of the Guaranteed Obligations are paid in full to Beneficiary. Guarantor shall not enforce any right or receive any payment by way of subrogation until all of the Guaranteed Obligations then due shall have been paid in full and Beneficiary agrees to take at Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation. If any amounts are paid to Guarantor in violation of the foregoing limitations, then such amounts shall be held in trust for the benefit of Beneficiary and shall forthwith be paid to Beneficiary by Guarantor to reduce the amount of outstanding Obligations, whether matured or unmatured.

In the event that acceleration of the time for payment of any amount payable by the Debtor under the Agreement is stayed upon the insolvency, bankruptcy or reorganization of the Debtor, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the Agreement shall nonetheless be payable by the Guarantor hereunder forthwith on demand by the Beneficiary.

The Guaranty shall be binding upon and inure to the benefit of the Beneficiary and its successors and assigns. Beneficiary may assign this Guaranty in its sole discretion. Guarantor may not assign its rights and obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the Beneficiary which consent may be arbitrarily withheld, and any such purported assignment without such written consent will be void.

Except for increases in the aggregate amount of Guaranteed Obligations, no other provision of this Guaranty may be amended, supplemented, or modified, nor any of the terms and conditions hereof waived, except by a written instrument executed by the Guarantor and an authorized representative of the Beneficiary.

The rights, powers, remedies, and privileges provided in this Guaranty are cumulative and not exclusive of any rights, powers, remedies, and privileges provided by law and any other agreement.

Notwithstanding anything in this Guaranty to the contrary, Guarantor's liability under this Guaranty and the Beneficiary's right of recovery under the same shall be limited to an aggregate amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). In the event Beneficiary engages in litigation to enforce this Guaranty, Guarantor agrees to pay, in addition to any amounts of Debtor which Guarantor has otherwise guaranteed to pay hereunder, any and all costs and expenses incurred by Beneficiary (including reasonable attorney's fees) in enforcing this Guaranty provided Beneficiary is successful in such litigation.

Guarantor represents and warrants that:

(A) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.

(B) The execution, delivery, and performance of the Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene any provision of law or of the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.

(C) All consents, authorizations and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery and performance of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with, any governmental authority is required in connection with the execution, delivery, or performance of this Guaranty.

(D) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

All notices or communications to the other party may be emailed and shall be followed in writing by registered or certified mail, or overnight delivery service to:

**To Guarantor:**

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: ( )

**To Beneficiary:**

AEP Texas Inc.  
c/o American Electric Power Service Corporation  
Attn: Director, Credit Risk Management  
1 Riverside Plaza, 27<sup>th</sup> Floor  
Columbus, OH 43215  
Email: credit\_interconnection@aep.com

or such other address as each party shall from time to time specify.

If any provision of this Guaranty is found by a court of competent jurisdiction to be void, illegal or otherwise unenforceable in that jurisdiction, such provision, to the extent of its invalidity, shall be severed from this Guaranty and be ineffective in that jurisdiction; provided, however, that such finding shall not affect the validity, legality or enforceability of such provision in any other

jurisdiction or the validity, legality or enforceability of any other provision of this Guaranty. THIS GUARANTY WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. Guarantor waives any right to trial by jury with respect to this Guaranty.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed as of the date set forth below.

( \_\_\_\_\_ )

By: \_\_\_\_\_

Name:

Title:

Date: