



Control Number: 35077



Item Number: 245

Addendum StartPage: 0

PUBLIC UTILITY COMMISSION OF TEXAS
Substantive Rule 25.195(e)

Project No. 35077

**TRANSMISSION ENGINEERING, DESIGN, PROCUREMENT AND
CONSTRUCTION SERVICES AGREEMENT AND AMENDMENT NO. 1**

DATED AS OF NOVEMBER 4, 2008

**BETWEEN
AEP TEXAS NORTH COMPANY
AND
SHERBINO I WIND FARM LLC**

JULY 29, 2011

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AMENDED AND RESTATED AGREEMENT FOR TRANSMISSION ENGINEERING,
DESIGN, PROCUREMENT AND CONSTRUCTION SERVICES FOR TRANSMISSION
UPGRADES TO THE AEP TEXAS SYSTEM

January 15, 2008

A. This agreement ("Agreement") amends and restates in its entirety the Agreement for Transmission Engineering, Design, Procurement and Construction Services for Transmission Upgrades to the AEP Texas System, dated as of July 17, 2007 (the "Original Agreement") among AEP Texas North Company ("AEP Texas"), American Electric Power Service Corporation ("AEPSC"), individually and as agent for AEP Texas, and Orion Energy L.L.C. ("Orion"), to, among other things, remove AEPSC as a party, and to replace Orion with Orion's affiliate, Sherbino I Wind Farm LLC ("Sherbino"), as a party to this Agreement.

B. The purpose of this Agreement (including Appendices A and B hereinafter referred to as this "Agreement") is to provide for the performance of certain engineering, design, procurement and construction activities by AEP Texas, and the securitizing for such activities by Sherbino or its affiliate ("Generator"). Such engineering, design, procurement and construction activities are related to the proposed interconnection (the "Interconnection") of up to 300 MW of the Sherbino Mesa Wind Farm generation project ("Project") to be owned and constructed by Generator in Pecos County, Texas, to the 138 kV transmission system owned by Texas-New Mexico Power Company ("Transmission Service Provider" or "TSP") in the same county. The Project is expected to be constructed in two, stand-alone phases of approximately 150 MW each, with the first 150 MW phase to be owned by Sherbino and the second 150 MW phase expected to be owned by an affiliate of Sherbino. Within this Agreement, AEP Texas, on the one hand, and Generator, on the other, may be referred to individually as a "Party" or collectively as "Parties"

C. AEPSC and TSP have concluded an interconnection study in response to Generator's Generation Interconnection Request # 06INR0012 to the Electric Reliability Council of Texas, Inc. ("ERCOT") to interconnect up to 300 MW of generation to the TSP system near McCamey, Texas. That study identifies the transmission facilities that are required by TSP at the location of the Interconnection and the transmission facilities required elsewhere on the TSP and AEP Texas systems to deliver the total generation capacity of the Project.

D. Generator expects to enter into a generation interconnection agreement with TSP to define the rights and responsibilities of each of those parties regarding the transmission facilities required on the TSP system. This Agreement provides for the engineering, design, procurement and construction of the transmission facilities ("System Upgrades") required on the AEP Texas system.

E. The engineering, design, procurement of equipment and right of way, and construction of facilities for the System Upgrades shall be collectively referred to in this Agreement as the "Work". The major components of the Work are listed in Appendix A.

The Parties hereby agree as follows:

1. The Interconnection.

Nothing in this Agreement shall establish any rights related to the interconnection of the transmission facilities of Generator and TSP.

2. Authorization to Proceed.

(a) Generator hereby authorizes AEP Texas to perform the Work, including all design, engineering, design and engineering related field work, equipment specification and equipment procurement, including procurement of equipment and right of way, and construction of facilities necessary for the Work. Generator understands that, until AEP Texas completes the interconnection study in response to Generator's Generation Interconnection Request # 06INR0012, the Work described in Appendix A may change and an amendment to this Agreement, mutually acceptable to the Parties, may be required. If this Agreement, as amended from time to time, is executed at Generator's request prior to approval of the System Upgrades by ERCOT and ERCOT does not ultimately approve the System Upgrades, Generator will terminate this Agreement in accordance with Section 8(b)(i) below.

(b) AEP Texas agrees to perform the Work in accordance with this Agreement and in a prudent manner according to Good Utility Practice (as defined in the Open Access Transmission Service Tariff of the American Electric Power System). AEP Texas will use Reasonable Efforts (as used in this Agreement, the term "Reasonable Efforts" has the meaning set forth in the ERCOT Standard Generation Interconnection Agreement approved by the Public Utility Commission of Texas) to complete the Work consistent with the estimated time to complete the Work ("Target Completion Dates") set forth in Appendix A. AEP Texas shall begin the Work after all of the following conditions are satisfied:

- (i) Generator has signed this Agreement; and
- (ii) Generator has provided financial security ("Security") to AEP Texas in accordance with Section 5 of this Agreement.

3. Engineering, Design, Procurement and Construction.

(a) AEP Texas agrees to use its Reasonable Efforts to perform the Work in a prudent manner according to Good Utility Practice (as defined in the Open Access Transmission Service Tariff of the American Electric Power System) and to use its Reasonable Efforts to complete the Work by the Target Completion Dates. The Work will begin as soon as practical after this Agreement is executed and the Security required by Section 5 below is provided by Generator. AEP Texas will utilize its own resources and will contract for additional resources, as reasonably necessary, to meet the Target Completion Dates. Such resources shall include, as AEP Texas believes is reasonable, use of other contractors, other equipment suppliers, other material suppliers, additional contract personnel, additional payments to contractors for expedited work, and premiums paid to equipment and material suppliers for expedited delivery. AEP Texas shall not be required to undertake any initiative which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, applicable laws and regulations, and requirements of ERCOT. In the event AEP

Texas reasonably expects that it will not be able to complete the System Upgrades by the Target Completion Dates, it will promptly provide written notice to Generator and will undertake Reasonable Efforts to meet the earliest date thereafter.

(b) AEP Texas shall not be responsible for AEP Texas' vendors' failure to deliver equipment as scheduled unless such failure was caused by AEP Texas' gross negligence or intentional wrongdoing. AEP Texas shall allow for adequate lead time when ordering equipment and shall include commercially reasonable provisions in its arrangements with vendors to assure their delivery of the equipment in time to meet the Target Completion Dates. AEP Texas shall provide notice to Generator as soon as it reasonably believes any equipment is delayed or might be delayed.

(c) AEP Texas shall procure equipment in the most time efficient manner. Should Generator procure equipment on behalf of AEP Texas, such equipment will be either specified by AEP Texas or approved by AEP Texas prior to procurement.

(d) If this Agreement is terminated and AEP Texas has received any equipment associated with the Work, AEP Texas will make a Reasonable Effort to redirect such equipment to other AEP Texas internal projects, subject to Section 3(e) below. Equipment that is no longer compatible with AEP Texas standards or that would have to be stored for more than three (3) months will be disposed of according to Section 3(e) below. Generator shall not be obligated to reimburse AEP Texas for such equipment that AEP Texas is able to redirect to other AEP Texas internal projects.

(e) Upon the termination of this Agreement, Generator shall reimburse AEP Texas for reasonable and necessary costs (including but not limited to cancellation fees, transportation and overhead costs) incurred prior to or by reason of termination of this Agreement, provided that AEP Texas provides reasonable supporting documentation to confirm such costs and provided that AEP Texas is ultimately unable to recover such costs from AEP Texas's rate base. AEP Texas shall use Reasonable Efforts to minimize any costs associated with cancellation and termination of the Work. Any equipment ordered pursuant to the Work that has been paid for by Generator, which orders AEP Texas was not able to cancel and which equipment has been delivered to AEP Texas or AEP Texas otherwise has rights to, shall be transferred to and become the property of Generator "as 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 AEP Texas. Generator shall be responsible for any costs of transporting any such equipment to another location.

4. Technical Specifications. Any technical or engineering information, reports, drawings, data, specifications, analyses and other similar materials provided to AEP Texas by Generator in connection with this Agreement will be prepared in accordance with Good Utility Practices. Generator is not aware of any reason to distrust the accuracy and completeness of such information and materials furnished by Generator to AEP Texas.

5. Security Arrangements.

(a) Generator agrees to provide Security to AEP Texas for all reasonable and necessary costs incurred by AEP Texas in performing the Work. Generator shall make such Security arrangements in accordance with Appendix B.

(b) Within thirty (30) days after commercial operation of the Project, AEP Texas will return to Generator all Security AEP Texas has received in connection with this Agreement. Within thirty (30) days following the termination of this Agreement and after payment of all amounts owed to AEP Texas under this Agreement, AEP Texas will return to Generator all Security AEP Texas has received in connection with this Agreement. In connection with any such Security to be returned, if the Security that was provided is a guaranty, AEP Texas agrees to execute a writing in favor of the guarantor confirming that the guaranty is terminated. This Section 5(b) will survive termination of this Agreement.

6. Progress Reports. Upon Generator request, AEP Texas shall provide to Generator progress reports on the status of the Work. AEP Texas shall be available for status meetings with Generator and its designees, which meetings will provide a detailed description of the progress of the Work, identify any problems and a plan to solve the problems and provide such other information as is reasonably requested by Generator. Such meetings shall take place at the offices of AEP Texas in Tulsa, Oklahoma, at the offices of Generator in Houston, Texas, at the Project site, or at other mutually agreeable locations.

7. Requested Delays and Suspension. Generator shall have the right to notify AEP Texas in writing of its desire to delay or suspend any or all of the Work at any time. AEP Texas shall promptly comply with such a request. If Generator requests that AEP Texas delay or suspend any part or all of the Work, then the Target Completion Dates could be subject to change. After Generator notifies AEP Texas in writing to resume the Work, AEP Texas shall notify Generator of any reasonably necessary revisions of the Target Completion Dates. Generator acknowledges that the change in such dates may be longer than the length of the delay due to the possible loss of vendors' production slots, coordination of outages around the peak-loading season on the AEP Texas system and other factors that are outside of AEP Texas's control. AEP Texas shall use Reasonable Efforts to minimize any such extension of the Target Completion Dates.

8. Term and Termination.

(a) Unless earlier terminated as provided herein, this Agreement will become effective on the last date of execution by the Parties and will remain in effect until commercial operation of the entire Project.

(b) This Agreement may be terminated as follows:

(i) Generator may terminate this Agreement at any time by giving written notice to AEP Texas, delivered to the individual at the address shown in Section 17 below;

(ii) This Agreement will immediately terminate (1) upon written notification from Generator to AEP Texas that the Project is cancelled or abandoned, or (2) if Generator has requested that AEP Texas delay or suspend any part of the Work and has not requested AEP Texas to recommence the Work on or before one hundred twenty (120) days after such requested suspension; or

(iii) AEP Texas may terminate this Agreement at any time by giving at least fifteen (15) days' prior written notice to Generator, delivered to the individual at the address shown in Section 17 below, if Generator fails to provide any Security by the time specified in Appendix B and Generator does not provide such Security to AEP Texas within such fifteen (15) day period following Generator's receipt of such written notice of termination.

(iv) Either Party may terminate this Agreement in accordance with Section 11.

9. Assignment. This Agreement may not be transferred or assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld; provided, however, that (a) any Party may assign this Agreement, or delegate its obligations under this Agreement, in whole or in part, to one or more of its affiliates without the prior written consent of the other Party, and (b) Generator may assign this Agreement, or delegate its obligations under this Agreement, in whole or in part, to its lender or lenders or to a purchaser or owner of the Project or any Phase thereof, but in the case of clauses (a) and (b) above, such assignment or delegation by a Party shall not relieve such Party of responsibility for the full and complete performance of its obligations under this Agreement by such affiliate(s), lender, purchaser or owner, as applicable (unless the assigning Party is able to demonstrate to the reasonable satisfaction of the other Party that the assignee is sufficiently creditworthy or otherwise is providing credit support that meets the requirements of Appendix B with respect to the liability of the assignee under this Agreement). This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but nothing in this Agreement shall be deemed to confer upon any other person or persons any rights, remedies, obligations or liabilities under or by reason of this Agreement. Any assignment in violation of this Section 9 will be void and of no force or effect.

10. Amendment.

This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties.

11. Default.

(a) The term "Default" shall mean the failure of either Party to perform any obligation in the time or manner provided in this Agreement. No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Party, to the extent of such act or omission. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Section 11(b), the defaulting Party shall

have thirty (30) days from receipt of the Default notice within which to cure such Default; and, if cured within such time, the Default specified in such notice shall cease to exist.

(b) If a Default is not cured as provided in Section 11(a), or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, 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. The provisions of this Section 11(b) will survive termination of this Agreement.

12. Force Majeure.

(a) The term "Force Majeure" as used herein shall mean any cause beyond the reasonable control of the Party claiming Force Majeure, and without the fault or negligence of such Party, which materially prevents or impairs the performance of such Party's obligations hereunder. To the extent that the following fall within the foregoing limitations, they will fall within the definition of "Force Majeure": storm, flood, lightning, earthquake, fire, explosion, civil disturbance, strike or other labor disturbance, sabotage, war, national emergency, or restraint by any governmental authority.

(b) Neither Party shall be considered to be in Default with respect to any obligation hereunder, other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Section shall be confirmed in writing as soon as reasonably possible, and all written notices shall specifically state the full particulars of the Force Majeure, the time and date when the Force Majeure occurred, the plan for mitigating or terminating the effects of the Force Majeure and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

13. Confidentiality. To the extent permitted by applicable law, the Parties will keep all information about the Project and the Interconnection confidential and will not disclose information about same to any third parties for a period of eighteen (18) months from the date of termination or expiration of this Agreement (except Generator will have the right to disclose such information as required in connection with the development, financing, construction, start-up, commissioning, testing, operation, maintenance, expansion, ownership and sale of the Project), unless otherwise agreed in writing by the other Party prior to such disclosure or unless such information was obtained from a public source provided it did not become part of the public source through the fault of the disclosing Party. Nothing in this Agreement is intended to supersede or replace any existing obligations of confidentiality that a Party may have regarding the matters that are the subject of this Agreement.

To the extent that AEP Texas' legal counsel determines that this Agreement is required to be filed with the Federal Energy Regulatory Commission ("FERC"), AEP Texas shall have the right to file this Agreement with the FERC, and Generator agrees to cooperate with AEP Texas and provide reasonable assistance to AEP Texas in such filing. Prior to filing this Agreement with the FERC, and prior to submitting to the FERC any other filing related to this Agreement, AEP Texas shall provide Generator a draft of all documents AEP Texas intends to file with the FERC and shall provide Generator an opportunity to submit comments on and revisions to such drafts, which comments and revisions AEP Texas will incorporate to the extent they are reasonable. Generator also shall have the right to participate in all communications with the FERC regarding this Agreement. Further, AEP Texas agrees to file only that portion of this Agreement recommended by AEP Texas' legal counsel to be filed and to seek confidential treatment by the FERC of any portion of this Agreement that Generator reasonably demonstrates is exempt from the mandatory disclosure requirements of the Freedom of Information Act, or is otherwise exempt by law from public disclosure pursuant to 18 C.F.R. Section 385.1112. If the FERC determines that any portion of the Agreement for which confidential treatment is sought is nonetheless subject to disclosure, AEP Texas, as its sole obligations, agrees to: (i) promptly notify Generator of such determination, and (ii) cooperate with Generator and provide reasonable assistance to Generator, at Generator's request and expense, to respond, and reasonably oppose, such determination before the information is disclosed.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law rules that would otherwise require the application of laws of another jurisdiction.

15. Disputes. The Parties shall exercise Reasonable Efforts to resolve any dispute that may arise between them in relation to this Agreement through amicable discussions between their respective representatives. If a dispute cannot be resolved through discussions, the Parties agree that the dispute shall be referred to arbitration, which shall be conducted in Houston, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules"). This Section 15 shall prevail if it conflicts with the Rules. The arbitration shall be presided over by one arbitrator, the arbitrator shall use Reasonable Efforts to conclude the proceedings and come to a decision within one month of commencement of the proceedings. Further, the arbitrator must render its decisions in writing, and the written decisions and conclusions regarding the disputes so settled shall be final and binding on the Parties to the arbitration proceeding. Judgments upon arbitral awards may be entered in any court having jurisdiction.

16. Reimbursement for Taxes.

(a) In the event Federal or state income taxes are imposed upon AEP Texas with respect to any reimbursement paid by Generator under Section 3(e) for AEP Texas' costs for the Work, Generator agrees to reimburse AEP Texas for the effect of such taxes (excluding penalties and interest), including any appropriate gross up for income tax, computed in accordance with the following formula as set forth in the FERC Standard Large Generator Interconnection Agreement: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$, using a discount rate equal to 9.33%.

(b) Generator has the right to require AEP Texas, at Generator's reasonable expense, to contest, appeal, or seek abatement of any taxes asserted or assessed against AEP Texas for which Generator may be required to reimburse AEP Texas under this Agreement. AEP Texas will promptly notify Generator, in writing, of any assertion of or proposal to assess such taxes. No payment shall be payable by Generator to AEP Texas for such taxes until such taxes are assessed by a final, non-appealable order by a court or agency of competent jurisdiction, unless such payment is a prerequisite to an appeal or abatement. Generator shall be responsible for any interest and penalty charged to AEP Texas by the IRS or a state, as a result of such contest, appeal or request for abatement, except where such interest or penalty is incurred as a result of AEP Texas's gross negligence or willful misconduct. Upon the conclusion of any such proceeding, Generator shall be entitled to receive any reimbursement.

17. Notices

(a) Any notice given pursuant to this Agreement shall be in writing delivered by mail to the following:

If to AEP Texas:

American Electric Power Service Corporation
Attn: Manager, Transmission and Interconnection Services
P.O. Box 201, Tulsa, OK 74102
212 E. Sixth St., Tulsa, OK 74119
Phone: 918-599-2723
E-mail: rlpennybaker@aep.com

If to Generator:

Sherbino I Wind Farm LLC
Attn: David Jones, Transmission Manager
700 Louisiana St., 33rd Floor
Houston, TX 77002
Phone: (713) 354-2182
Fax: (713) 354-2120

18. Consequential Damages. Except for a breach by a Party of the Party's obligations under Section 13, in no event, whether as a result of breach of contract, breach of warranty, tort liability (including negligence or strict liability), or otherwise, will either Party (or its affiliates or its or their officers, directors, managers, employees, agents and representatives) be liable to the other Party under or in connection with this Agreement for special, indirect, punitive or consequential damages of any nature whatsoever, including loss of use, loss of anticipated profits or revenue, or inventory or use charges.

19. Limitation on Liability. Notwithstanding any other provision of this Agreement to the contrary, Generator's maximum aggregate liability in respect to this Agreement will not exceed \$22.4 million.

20. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the matters contained in this Agreement.

21. No Liens. AEP Texas will not create, permit or suffer to exist by, through or under AEP Texas (including through any subcontractors) and hereby waives for itself (and will cause its subcontractors to waive), any liens on the Project or Project site.

22. Counterparts. This Agreement may be executed in two or more counterparts (and by different Parties on different counterparts), each of which will be deemed an original, but all of which together will constitute one and the same instrument.

23. Financing Assistance. AEP Texas will provide such assistance as Generator may reasonably request in connection with obtaining financing for the Project. AEP Texas agrees that it will make available to Generator and Generator's lenders information relating to the status of the Work, including information relating to the design, engineering and construction, estoppel certificates, and such other matters as Generator may reasonably request. AEP Texas will furnish such consents to assignment, certifications and representations and opinions of counsel addressed to Generator and Generator's lenders, as may be reasonably requested by Generator or the lenders. At Generator's request, AEP Texas will cooperate with the independent engineer and technical advisors, if any, of the lenders.

[Signature page follows]

By execution of this Agreement in the spaces provided below, the Parties have caused this Agreement to be duly executed by their authorized representatives as of the date first set forth above.

Sherbino I Wind Farm LLC

By: _____/s/_____
Printed Name: R. L. Lukefahr
Title: Authorized Representative
Date: _____1/15/08_____

AEP Texas North Company

By: _____/s/_____
Printed Name: Michael Heyeck
Title: Vice President
Date: _____1/15/08_____

The undersigned, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby execute this Agreement solely for the purpose of acknowledging and agreeing that they are no longer a party to this Agreement and hereby release each other, AEP Texas and Sherbino from any and all liability relating to this Agreement or the Original Agreement. Further, AEP Texas, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby releases each of the undersigned from any and all liability relating to this Agreement or the Original Agreement; and Sherbino, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby releases each of the undersigned from any and all liability relating to this Agreement or the Original Agreement.

**American Electric Power
Service Corporation**

By: _____/s/_____
Printed Name: Michael Heyeck
Title: Sr. Vice President
Date: _____1/15/08_____

Orion Energy L.L.C.

By: _____/s/_____
Printed Name: R. L. Lukefahr
Title: President
Date: _____1/15/08_____

**AMENDMENT NO. 1 TO
AMENDED AND RESTATED AGREEMENT FOR TRANSMISSION ENGINEERING,
DESIGN, PROCUREMENT AND CONSTRUCTION SERVICES FOR TRANSMISSION
UPGRADES TO THE AEP TEXAS SYSTEM**

This AMENDMENT NO. 1 TO AMENDED AND RESTATED AGREEMENT FOR TRANSMISSION ENGINEERING, DESIGN, PROCUREMENT AND CONSTRUCTION SERVICES FOR TRANSMISSION UPGRADES TO THE AEP TEXAS SYSTEM, dated as of November 4, 2008 (this "Amendment"), is by and between SHERBINO I WIND FARM LLC, a Delaware limited liability company ("Sherbino") and AEP TEXAS NORTH COMPANY ("AEP Texas") and, together with Sherbino, the "Parties").

RECITALS

A. The Parties entered into the Amended and Restated Agreement for Transmission Engineering, Design, Procurement and Construction Services for Transmission Upgrades to the AEP Texas System, dated January 15, 2008 (the "Agreement"; capitalized terms used but not defined in this Amendment have the meanings ascribed to them in the Agreement).

B. Sherbino has achieved commercial operation with regard to the first nameplate 150MW phase of the Project ("Phase I").

C. In accordance with Appendix B of the Agreement, AEP Texas has determined that certain costs incurred by AEP Texas under the Agreement through the commercial operation date of Phase I are eligible for cost recovery by AEP Texas and accordingly will permit Sherbino to reduce the Security required under the Agreement to \$5,800,000.00.

D. The Parties wish to make certain amendments to the Agreement to reflect the above, subject to and on the terms and conditions of this Amendment.

NOW, THEREFORE, in consideration of the premises set forth above, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. AMENDMENTS TO THE AGREEMENT.

The Parties hereby agree to amend the Agreement as follows:

1.1 The first paragraph of Appendix B to the Agreement is hereby deleted in its entirety and replaced with the following:

AMENDMENT NO. 1 TO AEP AGREEMENT
(SHERBINO I)

"As a condition of AEP Texas providing the Work described in Appendix A, Generator will provide Security either in the form of 1) a corporate guaranty or 2) letter(s) of credit acceptable to AEP Texas in the amount of \$5,800,000.00. Upon receipt of such Security, AEP Texas will promptly proceed with the Work required to meet the Target Completion Dates."

1.2 The phrase "\$22.4 million (or such other aggregate amount of Security as required in the first paragraph of this Appendix B)" in the fifth paragraph of Appendix B to the Agreement is hereby deleted in its entirety and replaced with "\$5,800,000.00".

1.3 The phrase "22,400,000 (TWENTY TWO MILLION FOUR HUNDRED THOUSAND U.S. DOLLARS)" on Appendix B-1 to the Agreement is hereby deleted in its entirety and replaced with "5,800,000.00 (FIVE MILLION EIGHT HUNDRED SIX THOUSAND TWO HUNDRED DOLLARS)".

2. MISCELLANEOUS

2.1 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law rules that would otherwise require the application of laws of another jurisdiction.

2.2 Effect of Amendment. The Agreement, as modified by this Amendment, is hereby ratified and confirmed by Sherbino and AEP Texas in all respects and constitutes the legal, valid and binding obligation of the Parties, enforceable against the Parties in accordance with its terms.

2.3 Headings. Titles, captions and headings in this Amendment are inserted for convenience only and will not be used for the purposes of construing or interpreting this Agreement.

2.4 Counterparts. This Amendment may be executed by the Parties in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts shall together constitute but one and the same instrument.

[signature pages follow]

AMENDMENT NO. 1 TO AEP AGREEMENT
(SHERBINO I)

IN WITNESS WHEREOF, each of the Parties to this Amendment have caused this Amendment to be executed by its respective duly authorized officers or authorized representatives as of the day and year first above written.

"Sherbino"

SHERBINO I WIND FARM LLC

By: _____

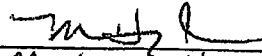
Name: James C. Holly

Title: President and Secretary

AMENDMENT NO. 1 TO AEP AGREEMENT
(SHERBINO I)

"AEP Texas"

AEP TEXAS NORTH COMPANY

By: 
Name: Michael Hayeck
Title: VP

AMENDMENT NO. 1 TO AEP AGREEMENT
(SHERBINO I)