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

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (date of earliest event reported): September 4, 2026

SUNation Energy, Inc.
(Exact name of Registrant as Specified in its Charter)

Delaware
(State Or Other Jurisdiction Of Incorporation)

001-31588	**41-0957999**
(Commission File Number)	(I.R.S. Employer Identification No.)
171 Remington Boulevard Ronkonkoma, NY	**11779**
(Address of Principal Executive Offices)	(Zip Code)

(631) 750-9454
Registrant's Telephone Number, Including Area Code

Securities registered pursuant to Section 12(b) of the Act

Title of Each Class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value, $.05 per share	SUNE	The Nasdaq Stock Market, LLC

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☒ Written communications pursuant to Rule 425 under the Securities Act

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01. Entry into a Material Definitive Agreement.

First Amendment to Merger Agreement

On September 4, 2026, SUNation Energy, Inc., a Delaware corporation ("SUNation"), SUNation Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of SUNation ("Merger Sub"), and Suniva, Inc., a Delaware corporation ("Suniva"), entered into a First Amendment to Agreement and Plan of Merger (the "Merger Amendment") which amends that certain Agreement and Plan of Merger dated June 5, 2026 among SUNation, Suniva and Merger Sub (the "Merger Agreement"), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Suniva, with Suniva continuing as a wholly owned subsidiary of SUNation and the surviving corporation of the merger (the "Merger").

Under the terms of the Merger Amendment, the parties amended the Merger Agreement as follows:

(a) permitting certain Suniva warrants or other derivative securities to be exchanged for identical SUNation securities;

(b) clarifying the required vote for matters being submitted for approval to SUNation stockholders in connection with the Merger;

(c) introducing new matters for approval at the SUNation stockholders meeting each of which would be conditions to closing the Merger—an authorized share increase amendment to SUNation's certificate of incorporation from 1 billion shares to 1.5 billion shares, and the approval of the issuance of SUNation securities in exchange for certain securities issued to Suniva lenders;

(d) removing the approval of other charter amendments (that is, other than the authorized share increase described above) from being a condition to closing the Merger;

(e) changing SUNation's closing net cash requirement from negative $1.5 million to negative $2.5 million, subject to adjustment for potential capital raises; and

(f) amending the SUNation directors and officers "tail" insurance policy provision to permit SUNation to establish an escrow account to hold a $500,000 retention deposit.

In addition, pursuant to certain changes to definitions applicable to SUNation insider indebtedness and its contemplated conversion to SUNation equity, SUNation will use reasonable best efforts to repay or convert to equity up to $2,608,303 in related party loans, with a fixed conversion price of $2.26 per share, with any conversion subject to the approval of SUNation stockholders. In the event that SUNation stockholders do not approve the conversion, Suniva agrees to repay the outstanding loans and accrued interest within 10 calendar days of the closing of the Merger. Additionally, as set forth in the Merger Amendment and Merger Agreement, Suniva agrees to repay other remaining outstanding related party loans and accrued interest upon the closing of the Merger.

Consent Letter

Concurrently with the execution of the Merger Amendment, SUNation and Suniva entered into a consent letter whereby, the parties consented, pursuant to Section 5.01 of the Merger Agreement, to certain actions by Suniva related to financings it has completed, including securities issuances, subject to a limitation that further issuances or committed issuances in excess of 5% of Suniva's fully-diluted shares on a pro-forma basis after the transactions that are consented to, are subject to further SUNation written consent.

The preceding summary of the Merger Amendment does not purport to be complete and is qualified in its entirety by reference to the Merger Amendment, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and which is incorporated herein by reference. The Merger Amendment has been attached as an exhibit to this Current Report on Form 8-K to provide investors and securityholders with information regarding its terms. It is not intended to provide any other factual information about SUNation or Suniva or to modify or supplement any factual disclosures about SUNation in its public reports filed with the SEC. The Merger Amendment may include representations, warranties and covenants of SUNation, Suniva and Merger Sub made solely for the purpose of the Merger Agreement and solely for the benefit of the parties thereto in connection with the negotiated terms of the Merger Agreement. Investors should not rely on the representations, warranties and covenants in the Merger Amendment or any descriptions thereof as characterizations of the actual state of facts or conditions of SUNation, Suniva or any of their respective affiliates. Moreover, certain of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to SEC filings or may have been used for purposes of allocating risk among the parties to the Merger Agreement, rather than establishing matters of fact.

Forward-Looking Statements

This Current Report on Form 8-K and the exhibits filed or furnished herewith contain forward-looking statements (including within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act) concerning Suniva, SUNation, the proposed transactions and other matters. These statements may discuss goals, intentions and expectations as to future plans, trends, events, results of operations or financial condition, or otherwise, based on current expectations and beliefs of the management of SUNation and Suniva, as well as assumptions made by, and information currently available to, management of SUNation and Suniva. Forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as "may," "will," "should," "would," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," and other similar expressions or the negative or plural of these words, or other similar expressions that are predictions or indicate future events or prospects, although not all forward-looking statements contain these words. Statements that are not historical facts are forward-looking statements.

Forward-looking statements in this report include, but are not limited to, expectations regarding the proposed Merger; the potential benefits and results of the Merger and transactions contemplated thereby; the sufficiency of the combined company's capital resources; the expected timing of the closing of the proposed transactions, including any financing and/or capital transactions as may be necessary to fund operational expansion and consummation of material operational matters; statements regarding the potential and timing of, and expectations regarding, Suniva's energy development, solar cell technology, manufacturing capabilities, production or capacity, ability to continue its resurgence and maintenance of its manufacturing facilities, as well as the consummation of Suniva's intended facility expansion and anticipated revenue opportunities; and any statements by SUNation's Chief Executive Officer. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties and are not guarantees of future performance.

Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation: the risk that the proposed Merger may not be completed on the anticipated timeline or at all; the failure to obtain required stockholder approvals, SEC effectiveness of the Form S-4 registration statement, or Nasdaq listing approval; the parties' ability to satisfy the conditions to closing and to close expected financing; risks relating to constructing, equipping, permitting and ramping up the Laurens County, South Carolina facility on time and on budget; the ability to convert offtake agreements into realized revenue; competition, tariffs, trade actions and changes in tax incentives, including the Section 45X advanced manufacturing production credit; technology, supply-chain and execution risks; the accuracy of third-party market data and forecasts; the operating history of Suniva; potential net losses incurred as a result of the current expansion-stage nature of Suniva, as well as net losses carried forward from SUNation's longstanding business operations; the ability to raise additional capital; the ability of Suniva to execute on its business plans and for the combined companies to integrate SUNation's solar installation systems into Suniva's solar cell manufacturing operations; the effects of the One Big Beautiful Act of 2025 on the residential solar industry, which has had a material negative impact on residential solar installations since the January 2026 effectiveness thereof; Suniva's limited experience in operating a public company; the substantial competition Suniva faces in developing and selling its solar cell development products; the ability to attract, hire, and retain skilled executive officers and employees; the ability of SUNation or Suniva to protect their respective intellectual property and proprietary technologies; reliance on third parties, contract manufacturers, and contract research organizations; uncertainties as to the timing of the consummation of the proposed transactions and the ability of each of the parties to consummate the proposed transactions; risks related to SUNation's continued listing on Nasdaq until the closing of the proposed transactions; risks related to SUNation's and Suniva's ability to correctly estimate their respective operating expenses and expenses associated with the proposed transactions, as well as uncertainties regarding the impact any delay in the closing would have on the anticipated cash resources of the combined company upon closing and other events and unanticipated spending and costs that could reduce the combined company's cash resources; the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the Merger Agreement; competitive responses to the proposed transactions; unexpected costs, charges or expenses resulting from the proposed transactions; the outcome of any legal proceedings that may be instituted against SUNation, Suniva or any of their respective directors or officers related to the Merger or the proposed transactions contemplated thereby; potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed transactions; the effect of the announcement or pendency of the transactions on SUNation's or Suniva's business relationships, operating results and business generally; compliance with and qualification for initial listing on Nasdaq related to the expected trading of the combined company's stock on Nasdaq and the combined company's ability to remain listed following the proposed transactions; the risk that, as a result of adjustments to the Exchange Ratio as set forth in the Merger Agreement, as amended, SUNation's stockholders and Suniva's stockholders could own more or less of the combined company than is currently anticipated; risks related to the market price of SUNation common stock relative to the Exchange Ratio; legislative, regulatory, political and economic developments and general market conditions, including those surrounding the viability of residential solar businesses following the loss of federal tax credits beginning in January 2026; and the other risks described in SUNation's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the SEC, the registration statement on Form S-4 to be filed with the SEC by SUNation, as well as risk factors associated with companies, such as Suniva, that operate in the energy and manufacturing industry.

Nothing in this Current Report on Form 8-K should be regarded as a representation by any person that the forward-looking statements set forth herein will be achieved or that the contemplated results of any such forward-looking statements will be achieved. Forward-looking statements in this Current Report on Form 8-K speak only as of the day they are made and are qualified in their entirety by reference to the cautionary statements herein. Except as required by applicable law, SUNation and Suniva undertake no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise. This

Current Report on Form 8-K does not purport to summarize all of the conditions, risks and other attributes of an investment in SUNation or Suniva.

No Offer or Solicitation

This Current Report on Form 8-K and the exhibits filed or furnished herewith are not intended to and do not constitute (i) a solicitation of a proxy, consent or approval with respect to any securities or in respect of the proposed transaction or (ii) an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities pursuant to the proposed transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of the Securities Act or an exemption therefrom. Subject to certain exceptions to be approved by the relevant regulators or certain facts to be ascertained, the public offer will not be made directly or indirectly, in or into any jurisdiction where to do so would constitute a violation of the laws of such jurisdiction, or by use of the mails or by any means or instrumentality (including without limitation, facsimile transmission, telephone and the internet) of interstate or foreign commerce, or any facility of a national securities exchange, of any such jurisdiction.

NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THE SECURITIES OR DETERMINED IF THIS CURRENT REPORT ON FORM 8-K AND THE EXHIBITS FILED OR FURNISHED HEREWITH ARE TRUTHFUL OR COMPLETE.

Important Additional Information About the Proposed Transaction Will be Filed with the SEC

This Current Report on Form 8-K and the exhibits filed or furnished herewith are not substitutes for the registration statement or for any other document that SUNation may file with the SEC in connection with the proposed transaction. In connection with the proposed transaction between SUNation and Suniva, SUNation intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a proxy statement/prospectus of SUNation. SUNATION URGES INVESTORS AND STOCKHOLDERS TO READ THE REGISTRATION STATEMENT, PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS THAT MAY BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS, SUPPLEMENTS OR DOCUMENTS INCORPORATED BY REFERENCE IN OR TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT SUNATION, SUNIVA, THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and stockholders will be able to obtain free copies of the proxy statement/prospectus and other documents filed by SUNation with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. In addition, investors and stockholders should note that SUNation communicates with investors and the public using its website (www.sunation.com) and the investor relations website (ir.sunation.com) where anyone will be able to obtain free copies of the proxy statement/prospectus and other documents filed by SUNation with the SEC and stockholders are urged to read the proxy statement/prospectus and the other relevant materials when they become available before making any voting or investment decision with respect to the proposed transaction.

Participants in the Solicitation

SUNation, Suniva and their respective directors and executive officers may be considered participants in the solicitation of proxies in connection with the proposed transaction. Information about SUNation's directors and executive officers is included in SUNation's most recent Annual Report on Form 10-K, including any information incorporated therein by reference, as filed with the SEC. Additional information regarding the persons who may be deemed participants in the solicitation of proxies will be included in the proxy statement/prospectus relating to the proposed transaction when it is filed with the SEC. These documents can be obtained free of charge from the sources indicated above.

Item 9.01. Financial Statements and Exhibits.

Exhibit No.	Description
2.1	First Amendment to Agreement and Plan of Merger dated as of September 4, 2026, by and among SUNation Energy, Inc., SUNation Merger Sub, Inc. and Suniva, Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

SUNATION ENERGY, INC.

By: /s/ James Brennan
James Brennan
Chief Financial Officer

Date: September 8, 2026

Exhibit 2.1

EXECUTION COPY

FIRST AMENDMENT
TO
AGREEMENT AND PLAN OF MERGER

This First Amendment to Agreement and Plan of Merger (this **"Amendment"**), dated as of September 4, 2026, is entered into by and among **SUNation Energy, Inc.**, a Delaware corporation (**"Parent"**), **SUNation Merger Sub, Inc.**, a Delaware corporation and a wholly owned subsidiary of Parent (**"Merger Sub"**), and **Suniva, Inc.**, a Delaware corporation (the **"Company"**).

RECITALS

WHEREAS, Parent, Merger Sub and the Company are parties to that certain Agreement and Plan of Merger, dated as of June 5, 2026 (the **"Merger Agreement"**); and

WHEREAS, pursuant to Section 7.07 of the Merger Agreement, the Merger Agreement may be amended by the parties thereto by an instrument in writing signed on behalf of each of the parties thereto; and

WHEREAS, the parties hereto desire to amend the Merger Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms used but not defined in this Amendment shall have the meanings assigned to such terms in the Merger Agreement.

Section 2. Amendments to the Merger Agreement.

(a) Amendment to Parent Charter Amendment Filing. The proviso at the end of Section 1.05(c) is hereby amended and restated in its entirety to read as follows:

"*provided, however,* that, if the Parent Charter Amendment is approved at the Parent Stockholders Meeting, at or immediately prior to the Effective Time, Parent shall file the Parent Charter Amendment."

(b) Amendment to Treatment of Warrants. Section 2.02(a) of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"(a) Company Warrants. At the Effective Time, each outstanding Warrant that has not been exercised prior to the Effective Time will, unless such Warrant is designated on the Allocation Statement as a "**Rollover Warrant**," be cancelled automatically as of the Effective Time, and thereafter each holder of such Warrant (each, a "**Warrantholder**") will be entitled to receive, upon delivery of such duly executed and completed agreement or instrument with respect to the cancellation of the Warrant as the Company in its discretion may require (each, a "**Warrant Cancellation Agreement**") an amount equal to the Closing Per Warrant Consideration for each Warrant that is exercisable in accordance with the Allocation Statement and as provided in Section 2.03. The amounts described in the preceding sentence shall be deemed to have been paid in full satisfaction of all rights pertaining to such Warrants. Each outstanding Warrant that is designated on the Allocation Statement as a "Rollover Warrant" shall, at the Effective Time, be converted into a warrant (or other derivative security, as applicable) of Parent on substantially the same terms and conditions as were applicable to such Warrant immediately prior to the Effective Time, except that such Rollover Warrant shall relate to shares of Parent Common Stock determined based on the Exchange Ratio, as set forth on the Allocation Statement (each, a "**Replacement Warrant**"). No fractional shares of Parent Common Stock shall be subject to any Replacement Warrant, and in lieu thereof, the holder of such Replacement Warrant shall receive cash in accordance with Section 2.01(f)."

(c) Amendment to Definition of Parent Equity Value. The definition of "Parent Equity Value" in Article VIII is hereby amended and restated in its entirety to read as follows:

"**Parent Equity Value**" means the sum of (a) $14,719,624 *plus* (b) the Debt Conversion Amount *plus* (c) the net proceeds of the Parent financing(s) after the date of the Merger Agreement and at or prior to the Closing Date."

(d) Amendment to Definition of "Requisite Parent Vote." The definition of "Requisite Parent Vote" in Section 4.03(a) of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"the need to obtain the minimum number of affirmative votes required to approve each of the Parent Stockholder Matters under applicable Law and the applicable listing standards of the Nasdaq Stock Market (which, for the avoidance of doubt, may be different levels depending on the applicable Parent Stockholder Matter) (the **"Requisite Parent Vote"**)"

(e) Amendment to Directors' and Officers' Indemnification and Insurance. Section 5.10(b) is hereby amended and restated in its entirety to read as follows:

"(b) Insurance. Parent shall, at the expense of the Surviving Corporation, obtain as of the Effective Time directors and officers "tail" insurance policies ("**D&O Tail Policy**") with a claims period of six years from the Effective Time with at least the same coverage and amounts and containing terms and conditions that are not less advantageous to the Indemnified Parties, with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the transactions contemplated by this Agreement); provided, however, that in no event will the Surviving Corporation be required to expend an aggregate premium for such coverage over the term of the policy in excess of $650,000 (the "**Maximum Premium**"). If such insurance coverage cannot be obtained at an annual premium equal to or less than the Maximum Premium, Parent will obtain the greatest coverage available for a cost not exceeding an annual premium equal to the Maximum Premium. In regard to any retention amount payable on a covered claim under the D&O Tail Policy, the Surviving Corporation shall maintain the escrow account of Parent, whether now in existence or which shall be opened for this purpose by Parent prior to the Closing of the Merger (the "**Escrow Account**") containing the D&O Tail Policy "retention" amount of not less than $500,000 ("**Escrowed Funds**"), which Escrow Account shall be transferred or assigned by Parent at or immediately following the Closing of the Merger to the Surviving Corporation. The Surviving Corporation shall maintain and not terminate or dissolve the Escrow Account or reduce the Escrowed Funds in the Escrow Account at any time below the retention amount necessary thereunder during the duration of the required D&O Tail Policy for the purposes of ensuring the D&O Tail Policy retention amount is available in full in the event of any applicable claim thereunder. In the event that at the expiration of such D&O Tail Policy any such Escrowed Funds are not utilized, then the Escrow Account may be terminated, and any remaining Escrowed Funds shall thereafter be retained or utilized in the discretion of the Surviving Corporation."

(f) Amendment to Parent Indebtedness. Section 5.21 of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"**Section 5.21 Parent Indebtedness**. Prior to the Effective Time, Parent shall use reasonable best efforts to repay or convert into Parent Common Stock (in its sole discretion and on terms reasonably acceptable to Parent, and as permissible in accordance with applicable Laws) an amount up to $2,608,303. In no event shall Parent incur any additional indebtedness with Affiliates or other related parties following the date hereof, without the prior written consent of the Company (which shall not be unreasonably withheld, delayed or conditioned). In connection with the conversion of Converted Debt into Parent Common Stock, which conversion terms shall be put to a vote of the Parent stockholders (the "**Parent Indebtedness Vote**") (among other proposals related to the Merger), should the necessary vote to approve the conversion of the Converted Debt not be obtained at the Parent Stockholders Meeting, then the Converted Debt holders of Parent shall be paid by the Company in cash and/or stock, in the Converted Debt holders' discretion, within ten (10) calendar days following the Closing of the Merger in an amount equal to the aggregate balance of such remaining Converted Debt. To the extent any indebtedness (principal plus accrued and unpaid interest as of the Closing Date) (i) set forth on Schedule 5.21 of the Parent Disclosure Letter, excluding any Converted Debt, and (ii) any unpaid and outstanding indebtedness on Parent's secured revolving line of credit agreement with MBB Energy, LLC, the Company shall pay such indebtedness in cash at Closing.

(g) Other Amendments to Definitions in Merger Agreement.

(i) The following new definitions are added to Section 8.01 of the Merger Agreement in the appropriate alphabetical order:

""D&O Tail Policy" has the meaning set forth inSection 5.10(b)."

""**Escrow Account**" has the meaning set forth inSection 5.10(b)."

""**Escrowed Funds**" has the meaning set forth inSection 5.10(b)."

""**Replacement Warrant**" has the meaning set forthSection 2.02(a)."

""**Rollover Warrant**" has the meaning set forthSection 2.02(a)."

(ii) The following definitions shall replace in their entirety the existing definitions in Section 8.01 of the Merger Agreement

- "**Converted Debt**" means not greater than $2,608,303 of the dollar amount of Debt set forth inSection 5.21 of the Parent Disclosure Letter, which shall be converted into Parent Common Stock as described therein from time to time after the date hereof but prior to filing of the Form S-4."
- "**Debt Conversion Shares**" means the quotient, rounded down to the nearest whole number, of (a) the Converted Debt divided by (b) $2.26."
- "**Parent Target Net Cash**" means negative two million five hundred thousand dollars ($(2,500,000)); provided, in the event that Parent consummates an equity financing prior to the Closing in an aggregate net amount of $2,100,000 or greater, then the Parent Target Net Cash number will be increased accordingly on a dollar for dollar basis for any amount raised above $2,100,000; provided further, that Parent Target Net Cash shall not increase above a negative net cash in the amount of one million five hundred thousand dollars ($1,500,000).

(iii) The definition of "Warrants" in Section 8.01 of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"**"Warrants"** means warrants to purchase shares of Company Common Stock and other derivative securities convertible into or exchangeable for shares of Company Common Stock, including convertible notes, in each case that are outstanding immediately prior to the Effective Time."

(iv) The definition of "Parent Stock Issuance" in Section 8.01 of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

""**Parent Stock Issuance**" means the issuance of shares of Parent Common Stock and other Parent securities to be issued in the Merger, including without limitation warrants, convertible notes and other securities issued to Company lenders in connection with the exchange of their Company securities, in connection with the Merger on the terms and conditions set forth in this Agreement."

(v) The definition of "Parent Stockholder Matters" in Section 8.01 of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

""**Parent Stockholder Matters**" means the Parent Stock Issuance, the Parent Charter Amendment (if applicable), the Reverse Stock Split (if applicable), the Parent Stock Plan Pool Increase, the Parent Indebtedness Vote, the Second Lien Approval, the Adjournment Proposal, and such other matters as Parent and the Company may mutually and reasonably agree. The Parent Stockholder Matters may be submitted in such number of discrete voting items in the Form S-4 as Parent and Company may decide, subject to applicable Laws, including any SEC rules related to the bundling of voting items."

(vi) The following definition of "Second Lien Approval" is hereby added to Section 8.01 of the Merger Agreement as follows:

""**Second Lien Approval**" shall mean the Stockholder Approval (as defined in that certain Second Lien Credit and Guaranty Agreement, by and between Suniva, Inc., certain of its subsidiaries, HBC Financing Partners Blocker LLC, as administrative agent and collateral agent (in such capacity, the "**Second Lien Agent**"), and certain lenders party thereto (the "**Second Lien Lenders**")."

(h) Amendment to Conditions to Closing. Section 6.01(b) of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"(b) Parent Stockholder Approval. The Parent Stockholder Matters (other than the Parent Charter Amendment) will each have been approved by the Requisite Parent Vote. For the avoidance of doubt, (x) the approval of the Parent Charter Amendment shall not be a condition to the obligation of any party to consummate the Merger or the other transactions contemplated by this Agreement and (y) the requirement to obtain the Second Lien Approval by the Requisite Parent Vote shall not be subject to any amendment or waiver by the parties thereto and the Second Lien Agent and Second Lien Lenders shall be third party beneficiaries of this Section 6.01(b)."

Section 3. **Reaffirmation**. Except as expressly amended by this Amendment, the Merger Agreement shall remain in full force and effect and is hereby ratified and confirmed in all respects. In the event of any conflict between this Amendment and the Merger Agreement, this Amendment shall control.

Section 4. **Miscellaneous**. The provisions of Article VIII of the Merger Agreement (including, without limitation, Section 8.04 (Governing Law), Section 8.05 (Submission to Jurisdiction), Section 8.06 (Waiver of Jury Trial), Section 8.07 (Notices), Section 8.14 (Counterparts; Effectiveness), and Section 8.15 (Expenses)) are hereby incorporated into this Amendment by reference, mutatis mutandis.

Section 5. **Entire Amendment**. This Amendment, together with the Merger Agreement (as amended hereby), constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Amendment.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

SUNIVA, INC.

By ____________________
Name: Matt Card
Title: President

SUNATION ENERGY, INC.

By ____________________
Name: Scott Maskin
Title: Chief Executive Officer

SUNATION MERGER SUB, INC.

By ____________________
Name: Scott Maskin
Title: Chief Executive Officer

[Signature Page to First Amendment to Agreement and Plan of Merger]