

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**SunPower Corporation**

)

**Docket No. ER13-958-000**

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO ANSWER OF SUNPOWER CORPORATION**

The California Independent System Operator Corporation (“ISO”) submits this answer<sup>1</sup> to the answer filed by SunPower Corporation (“SunPower”) in response to the ISO’s protest of SunPower’s February 19, 2013 petition for tariff waiver. This response is limited to clarifying two arguments raised in SunPower’s answer.<sup>2</sup>

First, SunPower incorrectly asserts that it did not have sufficient information to raise its concerns regarding the deadline for withdrawing downsizing requests during the process for the downsizing tariff amendment – either in the pre-filing stakeholder process or in comments filed in response to the tariff amendment filing. The issues SunPower identifies were, however, known and had been part of public discussions and filings since as early as December 2010. Second, SunPower contends, without any support, that if granted, its waiver request would not delay the ISO’s downsizing study. In response, the ISO provides a declaration from its Lead Transmission Engineer Dr. Songzhe Zhu explaining why studying SunPower’s Antelope Valley Solar Project 3 phase on a “provisional” basis in the downsizing study would significantly delay the completion of the downsizing study. The ISO also clarifies why

---

<sup>1</sup> The ISO submits this filing pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2012).

<sup>2</sup> The ISO is not responding to arguments that it has already addressed in its previously filed protest.

conducting this “provisional” study would increase the study costs of other downsizing customers in order to provide SunPower with an exclusive withdrawal right.

Because these clarifications will help the Commission to better understand the factual background and the consequences of granting SunPower’s waiver petition, the ISO respectfully requests that the Commission grant waiver of Rule 213 and accept this answer.<sup>3</sup>

## I. DISCUSSION

### A. The framework of accountability for constructing projects under LGIAs is well known.

In its answer, SunPower claims that it could not have raised the issue of the deadline for withdrawing a downsizing request during the process on the downsizing amendment because it only recently learned of the ISO’s announced “firm position” regarding the right to terminate an interconnection agreement when a project fails to construct its full capacity.<sup>4</sup> SunPower also states that the timing of its petition was due to the ISO being “unwilling to engage in discussions regarding alternate solutions (e.g., issuance of non-material modification findings and/or agreement to partial termination as a non-conforming LGIA provision).”<sup>5</sup> First, in referencing the announced “firm position” on termination, SunPower appears to be alluding to the concern expressed by other interconnection customers regarding the potential risk of

---

<sup>3</sup> Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure generally prohibits answers to answers, however, the Commission has accepted answers that are otherwise prohibited if they clarify the issues in dispute and when the information assists the Commission in making a decision. See *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (1999); *El Paso Electric Co., et al. v. Southwestern Pub. Serv. Co.*, 72 FERC ¶ 61,292 at 62,256 (1995).

<sup>4</sup> SunPower Answer at 4.

<sup>5</sup> *Id.*

termination of the entirety of a customer's interconnection agreement where a customer develops and brings online some, but not all, of the capacity indicated in its interconnection agreement. This concern was identified as early as December 2010, when the ISO explained this issue in the first of several filings seeking approval of provisions allowing for the partial termination of a customer's LGIA in order to address this potential risk.<sup>6</sup> The ISO also explicitly addressed this issue in its downsizing amendment filing, which was filed on October 29, 2012, as well as at a December 14, 2012 Board of Governors meeting in which the ISO's Vice President for Market and Infrastructure Development, Dr. Keith Casey, responded to comments made by a SunPower representative. In these statements, the ISO indicated that it views making a request for the Commission to terminate an interconnection agreement under these circumstances as a hypothetical last-resort option and that it would do everything possible to avoid such an outcome.<sup>7</sup> Thus, the issue of potential termination risk was raised in a number of public forums dating back to over two years ago, and well in advance of the completion of the generator downsizing tariff amendment proceeding.

---

<sup>6</sup> The ISO explained that this risk was one of the reasons that the interconnection customers had requested inclusion of partial termination provisions in their interconnection agreements, and the Commission acknowledged this concern in its decision approving the agreements. See, *Southern Cal. Edison Co.*, 134 FERC ¶ 61,087 at PP 8-13 (2011), (describing the non-conforming partial termination provisions and the reasons for their inclusion in the LGIA).

<sup>7</sup> See Tariff Amendment to Implement Downsizing Opportunity for Interconnecting Generator Projects, Docket No. ER13-218-000, Transmittal Letter at 7 (filed October 29, 2012) (explaining that "[i]n the worst potential case, inability to complete the project or meet milestones could be a breach of the customer's generator interconnection agreement"); Partial Transcript of Public Comments, December 14, 2012 ISO Board of Governors meeting at 8:8-20, included as Attachment A to the ISO's Answer to Comments on Complaint, Docket No. EL13-37-000 (filed February 6, 2013) (stating that the ISO "would never want to be in a situation where we have, due to a contractual breach, have to disconnect an existing renewable project for failure of that project to do its full build-out. We would do everything we could to avoid that type of situation").

Moreover, SunPower never had more than an arguably hypothetical termination risk because none of the Antelope Valley Solar Project has been placed into service. At this point, even the hypothetical risk is no longer present due to the decision to downsize the 49 MW SunPower portion of the project.

The issue before the Commission in this proceeding is not the merits of other downsizing options offered under the ISO tariff, or the consequences of downsizing versus not downsizing. Rather, the question raised by SunPower's petition is solely whether it is reasonable for SunPower, having voluntarily entered the downsizing queue, to have the option to withdraw based on a deadline that is derived from different criteria and is substantially more permissive than the one applicable to all other customers.

**B. Studying SunPower's project provisionally will delay the completion of the downsizing study and increase other customers' costs.**

In its protest, the ISO explained that including the Antelope Valley Solar Project 3 phase in the downsizing study on a "provisional" basis until the RFO short lists are released would delay the study by an estimated four weeks, thereby undermining the ISO's ability to complete the downsizing study during the scheduled window.<sup>8</sup> In its answer, SunPower alleges, without any analysis or support, that the ISO's estimate is "unreliable."<sup>9</sup> SunPower simply asserts that the ISO must be wrong because, in its opinion, the network upgrades required to interconnect the Antelope Valley Solar Project 3 phase are "minor in comparison to the vast majority of studied

---

<sup>8</sup> ISO Protest at 15-16.

<sup>9</sup> SunPower Answer at 7.

upgrades.”<sup>10</sup> Even if the ISO only were to study the Antelope Valley Solar Project 3 phase on a provisional basis, it would significantly delay the downsizing study results. As explained in the attached declaration by the ISO’s lead transmission engineer, Dr. Songzhe Zhu, because of the electrical location of the Antelope Valley Solar project the short circuit duty analysis would need to be performed twice to reflect both downsizing and non-downsizing scenarios.<sup>11</sup> The short circuit duty analysis includes a short circuit duty contribution evaluation, an engineering review of the facility’s capability and an engineering evaluation of the upgrades. Based on her experience performing these types of analyses, Dr. Zhu estimates that these additional short circuit activities would add four weeks to the downsizing schedule.<sup>12</sup> This delay would almost certainly prevent the ISO from completing the downsizing study during the scheduled window, thus undermining the efforts to establish a stable baseline for upcoming interconnection studies.<sup>13</sup> Moreover, this would open the door to providing all downsizing customers a similar right to extend the withdrawal deadline. If this were to occur, the study combinations would increase exponentially, which would result in even greater delays to the downsizing process and no certainty concerning the cost of downsizing.

SunPower also argues that the ISO fails to explain how including the Antelope Valley Solar Project 3 in the downsizing study on a provisional basis would increase costs to other customers.<sup>14</sup> SunPower asserts that because its facilities are minor

---

<sup>10</sup> *Id.*

<sup>11</sup> Declaration of Dr. Songzhe Zhu, Attachment A at P 4.

<sup>12</sup> *Id.* at P 5.

<sup>13</sup> *Id.* at P 6.

<sup>14</sup> SunPower Answer at 7-8.

relative to the other facilities to be covered in the downsizing study, any increase in study costs should also be minor.<sup>15</sup> However, even a minor increase in study costs is an increase that will be borne by generators in the downsizing study process in order to provide a benefit solely applicable to SunPower. SunPower seems to misunderstand this point entirely, suggesting that these study costs would be “socialized across the CAISO footprint.”<sup>16</sup> However, as both the tariff and the ISO’s protest make clear, the downsizing study costs are *not* allocated on a market-wide basis, but rather are the sole responsibility of downsizing customers.<sup>17</sup>

SunPower provides no rationale as to why other downsizing customers should bear any increased costs given that the outcome that SunPower seeks would actually put these other customers at a competitive disadvantage relative to SunPower. In fact, increasing the costs to other downsizing customers at this stage would undermine the structure of the downsizing process because it was designed so that customers would be provided their cost information *before* the study process began and then have the opportunity to withdraw from the downsizing request based on an assessment of those costs.

Finally, SunPower fails to meaningfully address the other significant harms that the ISO pointed out in its protest, namely, the risk of discrimination against other interconnection customers as well as the adverse precedent that would be created by granting a waiver of generally applicable tariff rules solely to allow a customer to pursue a commercial opportunity. SunPower’s sole response to these very real risks

---

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.*

<sup>17</sup> See ISO Protest at 17; ISO Tariff, Appendix GG at 2.7

is a conclusory reiteration of its original claim that its situation is somehow significantly unique among interconnection customers.<sup>18</sup> However, the ISO effectively rebutted this claim in its protest, and SunPower provides no new information to support it.

## II. CONCLUSION

The ISO respectfully requests that the Commission consider these comments in its decision and, and for the reasons stated in its protest as well as herein, deny SunPower's petition.

Respectfully submitted,

Nancy J. Saracino  
General Counsel  
Roger E. Collanton  
Deputy General Counsel  
Sidney M. Davies  
Assistant General Counsel  
California Independent System  
Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630

/s/ Michael Kunselman  
Michael Kunselman  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004

Counsel for the  
California Independent System  
Operator Corporation

---

<sup>18</sup> SunPower Answer at 9.

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2012)).

Dated at Washington, D.C. this 27th day of March, 2013.

/s/ Michael Kunselman

Michael Kunselman  
Alston & Bird LLP

# **ATTACHMENT A**

**DECLARATION OF SONGZHE ZHU**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**SunPower Corporation**

)

**Docket No. ER13-958-000**

**DECLARATION OF SONGZHE ZHU**

I, Songzhe Zhu, hereby declare as follows:

1. I am employed by the California Independent System Operator Corporation (“ISO”) as a Lead Regional Transmission Engineer. I have held this position from February 2012 to the present time. Prior to that, I was a Senior Regional Transmission Engineer at the ISO from September 2006 to February 2012. My job responsibilities in this position include performing complex engineering studies to anticipate, identify and resolve problems or potential problems with the southern California power grid, conducting planning studies and overseeing and approving transmission projects proposed for the CAISO Controlled Grid, and performing interconnection studies for generation interconnection projects.

2. I have the primary responsibility at the ISO for performing the study that will examine the impacts on the overall interconnection plan of service by those generators that have chosen to utilize the option to reduce the capacity of (“downsize”) their projects, pursuant to the tariff amendment filed by the ISO in Docket No. ER13-218-000, and approved by the Commission. I refer to this study herein as the “downsizing study.”

3. The purpose of this declaration is to explain the impact on the timing of the downsizing study if the ISO were to include the Antelope Valley Solar Project 3 phase in the downsizing study on a “provisional” basis, meaning that the ISO would model the capacity of the Antelope Valley Solar Project 3 phase as both included in and excluded from the downsizing study.

4. Based on my five-plus years of experience performing interconnection studies, I estimate that treating the Antelope Valley Solar Project 3 phase in this manner will significantly delay the completion of the downsizing study. The primary reason for this delay is because the short-circuit duty analysis, which is a standard feature of all interconnection impact studies, would need to be performed twice to reflect both downsizing and non-downsizing scenarios. Short circuit duty mitigation has previously been required in the electrical vicinity of where the Antelope Valley Solar Project 3 phase is being interconnected to the ISO controlled grid. The upgrade needed to mitigate the short circuit duty in this area is being reviewed in the downsizing study. Due to the electrical closeness of the Antelope Valley Solar Project 3 phase, it has sufficient impact on this upgrade such that the short circuit duty analysis must be performed twice in order to evaluate the impact of having the Antelope Valley Solar Project 3 either continue in the ISO’s interconnection queue at its original capacity or downsize by 49 MW.

5. A short circuit duty analysis consists of a short circuit duty contribution evaluation, an engineering review of the facility's capability and an engineering evaluation of the upgrades. Under these circumstances, I estimate it will require four weeks to perform an additional short circuit duty analysis if the ISO is required to study the Antelope Valley Solar Project 3 phase on a provisional basis.

6. This four-week delay would almost certainly prevent the ISO from completing the downsizing study within the scheduled window. As a result, the ISO would not have a stable baseline in order to conduct subsequent interconnection studies as part of its normal cluster study process. The first of these studies, the Phase 2 interconnection study for projects in the ISO's queue cluster five, is scheduled to begin in May of this year.

I declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed this 26<sup>th</sup> day of March, 2013, in Folsom, California.

  
\_\_\_\_\_  
Songzhe Zhu