

142 FERC ¶ 61,251  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

SunPower Corporation

Docket No. ER13-958-000

ORDER ON PETITION FOR WAIVER

(Issued March 29, 2013)

1. On February 19, 2013, SunPower Corporation (SunPower) filed a petition for limited waiver (Petition) of certain requirements in Appendix GG of the California Independent System Operator Corporation's (CAISO) Open Access Transmission Tariff (tariff).<sup>1</sup> Specifically, SunPower seeks waiver of its February 19, 2013 deadline to withdraw SunPower's request to downsize the second phase of the Solar Star XX, LLC (Solar Star) 325 MW photovoltaic solar power project (Solar Star Project). SunPower also requests that the waiver remain in effect until a date that is ten business days after the posting of short lists under pending Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) Request for Offers (RFO). If its Petition is granted, SunPower further requests the Commission to confirm that Solar Star has the continuing right to withdraw the downsizing confirmation and downsizing agreement that it submitted prior to February 19, 2013, so that the Solar Star Project may preserve its interconnection rights. This order denies the Petition.

**I. Background**

2. On December 20, 2012, the Commission approved CAISO's tariff revision to add Appendix GG (One-Time Interconnecting Generator Downsizing Opportunity), in order to allow an additional downsizing opportunity for interconnection customers that submitted interconnection requests to CAISO prior to queue cluster five.<sup>2</sup> The

downsizing opportunity provided certain customers (including SunPower) in the CAISO interconnection queue with a one-time opportunity to downsize the capacity specified in

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<sup>1</sup> Downsizing refers to a generation developer constructing less than the full megawatt (MW) capacity of a project as specified in its interconnection agreement.

<sup>2</sup> *Calif. Independent Sys. Operator Corp.*, 141 FERC ¶ 61,219 (2012).

their interconnection requests with no limitation on the MW generating capacity of the downsizing request, provided that such requests were submitted to CAISO by January 4, 2013.<sup>3</sup> A timely request was submitted to the CAISO for the second phase of the Solar Star Project on January 3, 2013.<sup>4</sup>

3. SunPower states that it has conditional rights to develop the Antelope Valley Solar Project 3, a 49 MW solar photovoltaic project and the second phase of the 325 MW Solar Star Project, along with conditional rights to obtain a proportional share of the rights and obligations under the Large Generator Interconnection Agreement (LGIA).<sup>5</sup> The first phase of the Solar Star Project, Antelope Valley Solar Project 2, is currently under construction through an Engineering, Procurement and Construction contract, and the 276 MW output is fully subscribed pursuant to a long-term power purchase agreement (PPA).<sup>6</sup>

4. SunPower states that the second phase of the Solar Star Project is currently in an advanced stage of development: SunPower has executed an interconnection agreement, obtained the requisite land rights and use permits, and the project is in an advanced engineering stage.<sup>7</sup> Additionally, SunPower is marketing the second phase of the project to California investor-owned utilities and municipal utilities that are in the market for long-term PPAs of renewable energy, in an effort to meet the California Renewable Portfolio Standards (RPS) goals. SunPower states that PG&E's and SDG&E's pending RFOs for renewable energy are anticipated to close in early April 2013. Thus, absent a

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<sup>3</sup> CAISO explained in its Tariff Amendment Filing, Docket ER13-218-000 (Oct. 29, 2012), that the one-time downsizing opportunity was for customers that entered the interconnection queue prior to cluster five and were facing economic and contractual challenges within the California electricity market.

<sup>4</sup> Petition at 7 & Attachment 2.

<sup>5</sup> MidAmerican Solar, LLC acquired the Solar Star Project from SunPower on December 28, 2012. As a result of that acquisition, SunPower obtained the conditional rights for the second phase of the Solar Star project as referenced above.

<sup>6</sup> Petition at 5 n.3. According to SunPower, CAISO Queue Position 408 has been assigned for the entire 325 MW Solar Star Project, and the LGIA governing the project expressly acknowledges that the facility will be developed and constructed in two separate phases.

<sup>7</sup> Petition at 5.

waiver, SunPower claims it would have to remove the second phase of the Solar Star Project from consideration in these RFOs and abandon its plans for development.<sup>8</sup>

5. The impetus for this filing, in SunPower's view, is CAISO's failure to provide assurance that an interconnection request will not be terminated in its entirety for failure to develop one phase under a multi-phased LGIA.<sup>9</sup> Thus, SunPower states that the risk that CAISO could potentially terminate the entire LGIA serving the 325 MW Solar Star Project for failing to develop the second phase, 49 MW project is too great. Therefore, following CAISO's denial to provide downsizing through a Material Modification review, a downsizing request for the second phase was submitted to CAISO prior to the January 4, 2013 deadline, proposing to eliminate the 49 MW project from the Solar Star Project LGIA, pursuant to the terms of the one-time downsizing opportunity.<sup>10</sup>

6. Under Appendix GG to the CAISO tariff, two opportunities are provided to interconnection customers wishing to withdraw their downsizing requests as part of the downsizing opportunity. The first opportunity to withdraw was available to all participants starting on February 11, 2013, following CAISO's publication of a market notice of those customers who submitted a valid generator downsizing request and an estimate of the costs to perform a generator downsizing study. The deadline for withdrawal under this latest opportunity expired on February 19, 2013. SunPower notes that a customer who withdraws during the first window is substantially refunded the deposit that accompanied its generator downsizing request.<sup>11</sup> A second window for withdrawal occurs after CAISO determines the preliminary results of the generator downsizing study. However, the second window is available only to those customers whose interconnection costs are materially increased by their requested downsizing, and

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<sup>8</sup> Petition at 1-2.

<sup>9</sup> CSOLAR Complaint, Docket No. EL13-37-000 (filed Jan. 3, 2013). *See also* Petition at 7-8. SunPower claims that statements made by CAISO in the CSOLAR proceeding indicate their position that a downsizing request for a later phase of a project may constitute a material modification for which an LGIA is subject to termination, even if an earlier phase of the same project is already under construction or in operation.

<sup>10</sup> Petition at 7 & Attachment 2.

<sup>11</sup> *Id.* at 8.

that limited subset of customers must forfeit their downsizing deposit in order to withdraw from the process.<sup>12</sup>

7. On February 14, 2013, SunPower states it sent a letter to CAISO requesting an extension to the deadline of the first window to withdraw. In the letter, SunPower asked to be allowed to delay confirming or withdrawing its downsizing request under the downsizing opportunity until ten business days following the release of the short lists posted by PG&E and SDG&E as part of the RFO processes, which SunPower expects to occur on April 1, 2013 and April 5, 2013, respectively. SunPower stated that allowing the extension would enable them to continue to develop what SunPower considers a viable project despite the inopportune timing of the CAISO downsizing opportunity and the planned conclusion of the aforementioned utilities' procurement processes.<sup>13</sup> CAISO responded to the request on February 15, 2013, denying SunPower the extension.<sup>14</sup> SunPower states that CAISO's response prompted Solar Star to submit the required downsizing confirmation and executed agreement on February 15, 2013, requesting that it be granted the right to withdraw its downsizing request if the Commission grants an extension of the February 19, 2013 deadline.<sup>15</sup>

## II. SunPower's Petition for Waiver

8. SunPower requests that the Commission waive Appendix GG, Section 5.1(i) of the CAISO tariff with respect to the Solar Star LGIA and permit Solar Star to remain in the CAISO downsizing process but have the continuing right to withdraw its downsizing request with CAISO up until the date that is ten business days after the day that short lists are posted.<sup>16</sup> SunPower claims that granting such a waiver would enable the second phase of the Solar Star Project to remain viable under the California utilities' RFO processes without jeopardizing the interconnection rights of the 276 MW first phase of the Solar Star Project. SunPower asserts that the Commission should grant the waiver of tariff requirements because there is good cause for the requested waiver, it is of limited scope, it will result in no undesirable consequences, and it will benefit customers by

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<sup>12</sup> See CAISO, Tariff Amendment Filing, Docket No. ER13-218-000, at 9 (filed Jan. 22, 2013). CAISO considers the likelihood of offering a second opportunity to withdraw under the downsizing opportunity as being a rare circumstance.

<sup>13</sup> Petition at 9.

<sup>14</sup> See *id.* at 9 & Attachment 4.

<sup>15</sup> Petition at 10 & Attachment 5.

<sup>16</sup> *Id.* at 10.

permitting the development of additional renewable resource capacity needed to meet California's RPS targets.<sup>17</sup>

9. SunPower considers the petition for waiver to be of a limited scope based on three unique circumstances surrounding its efforts to develop the second phase, 49 MW project: (1) the second phase of the Solar Star Project is in an advanced stage of development, having executed an LGIA, obtained the requisite use permits and land rights, and entered into the advanced engineering stage; (2) the second phase is a viable project currently participating in pending, competitive solicitations from utilities pursuing fulfillment of RPS requirements; and (3) it shares an LGIA with a project that has already obtained a PPA for the non-downsized portion of the interconnection request and whose LGIA may be terminated if the second phase attempts to exit the queue.<sup>18</sup> SunPower notes that given the small number of projects with valid downsizing requests under the downsizing opportunity, it is highly unlikely that other project developers are similarly-situated.<sup>19</sup>

10. SunPower also contends good cause exists for the waiver because there is adequate market feedback to determine whether to continue developing the second phase. SunPower claims that having the project incorporated within short lists during the referenced RFO processes will enhance the prospect of an executed PPA, thus increasing the likelihood that the second phase of the Solar Star Project will be commercially viable. According to SunPower, the requested waiver is essential for resolving the timing discrepancy between the deadline for CAISO's downsizing opportunity on February 19, 2013, and the expected posting of short lists in early April 2013 under the pending PG&E and SDG&E renewable procurement processes. Furthermore, SunPower asserts the importance of the second phase of the Solar Star Project in providing renewable energy to load-serving utilities in California who rely on integration of such renewable projects to meet California's RPS goals. If the Commission denies its request, SunPower states it will be required to abandon the development rights for the second phase of the Solar Star Project because the inability to develop and construct the projects separately creates undue liability and risk.

11. SunPower further claims that its requested waiver will not negatively impact other interconnection customers, including those who are participating in the downsizing

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<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 12 n.23 (citing CAISO Market Notice, *Posted: List of Generator Downsizing Requests and Preliminary Estimate of Study Costs* (issued Feb. 8, 2013)).

opportunity.<sup>20</sup> According to SunPower, the need for network upgrades identified in the interconnection studies that modeled the transition cluster in which the Solar Star Project was studied will not be reduced if the total project's output is decreased by 49 MW.<sup>21</sup> Also, SunPower states there is no basis for an argument that the 49 MW of capacity released by the withdrawal of the second phase of the Solar Star Project would be underutilized as there are a significant number of MWs behind the second phase in the queue.<sup>22</sup> Therefore, SunPower claims that the small size of the downsizing request, i.e., 49 MW, justifies a situation where the second phase of the Solar Star Project could remain in the generator downsizing study under the existing timeline without delaying the CAISO study process, but would still be able to withdraw from the downsizing opportunity and develop the first phase of the project without causing other customers to be allocated any upgrade costs they would have otherwise avoided. SunPower further contends that, should it finalize its downsizing request, in the event it is not shortlisted by PG&E or SDG&E, network upgrades will be reduced as interconnection customers decrease the MW flowing over their interconnection, and that this reduction could free up capacity to be allocated to lower-queued generators.<sup>23</sup>

12. SunPower also makes the argument that the requested waiver will result in benefits to customers, specifically by delivering renewable energy to California utilities looking to meet the State's ambitious RPS targets. SunPower cites previous CAISO and Commission support for granting tariff waivers of a limited scope that furthered the ability of utilities to meet RPS goals.<sup>24</sup>

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<sup>20</sup> *Id.* at 13. SunPower states that protections under the CAISO tariff, Appendix GG, ensure that downsizing generators will not shift costs to non-downsizing customers.

<sup>21</sup> *Id.* SunPower states that the 49 MW attributable to the second phase project under the Solar Star LGIA represents 15 percent of the LGIA's interconnection capacity and 2 percent of the Southern California Edison Northern Area Transition Cluster.

<sup>22</sup> *Id.* at 13. SunPower notes that projects behind its project in the queue equal 1,100 MW at Whirlwind and 4,200 MW in the Tehachapi renewable resource area.

<sup>23</sup> Petition at 14.

<sup>24</sup> *Id.* at 15.

### **III. Notice of Filing and Responsive Pleadings**

13. Notice of SunPower's Petition was published in the *Federal Register*, 78 Fed. Reg. 13,335 (2013), with interventions, comments, and protests due on or before March 8, 2013.<sup>25</sup>

14. On March 8, 2013, MidAmerican Solar, LLC filed a motion to intervene. CAISO filed a motion to intervene and protest. On March 15, 2013, SunPower filed a motion to answer and answer.

### **IV. Discussion**

#### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept SunPower's answer and will, therefore, reject it.

#### **B. CAISO's Motion to Intervene and Protest**

##### **1. Procedural Objections**

17. In its protest, CAISO asserts that the Commission should deny the requested waiver on several grounds. First, CAISO objects to the waiver on procedural grounds, characterizing the Petition as an attempt to modify the CAISO tariff.<sup>26</sup> CAISO asserts that the SunPower filing is seeking the creation of a new rule by extending the original generator downsizing deadline by nearly two months, and that a waiver request is not the proper means by which to achieve this result. CAISO asserts that SunPower should have raised its concerns or proposed an alternative during the Commission proceeding on the downsizing opportunity, or at least, filed a request for rehearing of the Commission's Order. CAISO also notes that a more appropriate procedure at this juncture would have

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<sup>25</sup> SunPower also requests expedited consideration in order to ensure clarity regarding the interconnection status of the second phase of the Solar Star Project during the RFO processes. SunPower's request for a shortened notice period was granted by the Commission in an Errata Notice on February 28, 2013 (unpublished). SunPower requested a rule on the Petition by March 29, 2013.

<sup>26</sup> CAISO Protest at 6.

been to file a Section 206 complaint demonstrating that changed circumstances have rendered the downsizing opportunity unjust and unreasonable since the Commission's approval. CAISO stresses that the deadlines established for the downsizing process were designed to coordinate with the CAISO cluster study process, and not to accommodate the timing of RFOs. Moreover, CAISO alleges that SunPower had sufficient knowledge as to the timing of the RFOs prior to the filing of the downsizing amendment. CAISO claims that allowing the misuse of the tariff waiver mechanism would be equivalent to permitting a collateral attack on the Commission's order, undermining a process the Commission found to be just and reasonable.<sup>27</sup>

## 2. Substantive Objections

18. CAISO notes that, even if the Commission decided to consider SunPower's Petition as a feasible process to reach a resolution, the request should still be denied on substantive grounds, particularly because it fails to meet the Commission's standards for approval of tariff waivers. CAISO asserts that SunPower does not demonstrate good cause in its argument that the timing of the one-time downsizing opportunity prevents SunPower from "realizing a commercial opportunity."<sup>28</sup> CAISO emphasizes that both the downsizing request and withdrawal opportunity were voluntary. CAISO states that its tariff amendment does not in any way prevent SunPower from competing with other generators for an RFO award. It also notes that justifying a waiver could lead to many other customers requesting waiver of CAISO's tariff provisions on the basis of enhancing commercial viability which may harm CAISO's ability to fairly and effectively administer its tariff.

19. CAISO also claims that SunPower's requested waiver is not limited in scope as SunPower characterizes it. CAISO states that SunPower has provided no substantial evidence proving it is uniquely situated among other developers in the downsizing process. Specifically, CAISO notes SunPower's argument fails in three ways: (1) the "advanced" development status of the second phase of the Solar Star Project has been achieved by a number of other customers in the interconnection queue; (2) SunPower cannot substantiate its claim that other projects are not participating in the PG&E and SDG&E RFO processes as well; and (3) SunPower fails to demonstrate how its situation under a multi-phase LGIA is different from other downsizing customers.<sup>29</sup>

20. CAISO also believes that granting enhanced rights to withdraw a downsizing application to a single customer would give that customer an unfair commercial

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<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.* at 10.

<sup>29</sup> *Id.* at 13.

advantage over other downsizing customers, and therefore, similar rights would have to be afforded to other customers to avoid discrimination. According to CAISO, affording similar treatments to all downsizing customers would be problematic for two reasons: (1) it would necessitate the development of criteria to determine who is qualified to defer their decision on withdrawal, and (2) it would require CAISO to re-establish the downsizing application window in order to allow another downsizing opportunity to customers that otherwise might have originally downsized their projects if the terms of the withdrawal rights requested by SunPower had been available.<sup>30</sup> CAISO notes that the timing required to accomplish such tasks would make it “impossible to complete the necessary downsizing assessments prior to beginning the next queue cluster study.”<sup>31</sup>

21. CAISO also states that the uncertainty as to how long the requested extension would last is not clearly defined in SunPower’s Petition or in the RFO timelines by SDG&E and PG&E as the utilities state in their RFO materials that such timelines are subject to change.<sup>32</sup> CAISO cannot foresee deferring the downsizing study for an indefinite time should the utilities be required to adjust the timeline for issuing the short lists for the RFOs. CAISO notes that such an instance would jeopardize the timing of their next cluster study as they rely on baseline information from downsizing to commence that process.<sup>33</sup>

22. CAISO argues that granting SunPower’s waiver request may undermine CAISO’s interconnection process and harm other customers in CAISO’s queue. In order to satisfy SunPower’s waiver request, CAISO states that it would be forced to effectively conduct two studies, one that included the second phase of the Solar Star Project and one that excluded it, which would require an estimated four extra weeks to complete. In addition, CAISO argues that the work load and associated delays could increase even more significantly if all downsizing customers are permitted the option to also withdraw from the studies at a later date.<sup>34</sup> CAISO states that these potential delays may also hurt CAISO’s ability to integrate the results of the one-time downsizing opportunity into its ongoing cluster study process with the next cluster study scheduled to begin in May 2013.<sup>35</sup> In addition, CAISO asserts that granting SunPower’s waiver request will

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<sup>30</sup> *Id.* at 14-15.

<sup>31</sup> *Id.* at 15.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 16-17.

<sup>35</sup> *Id.* at 17.

financially disadvantage other downsizing customers as the overall cost of performing the generator downsizing studies, which is spread equally amongst all downsizing customers, will increase from the additional required sensitivity studies that it would have to conduct.<sup>36</sup>

23. Finally, CAISO argues that SunPower fails to demonstrate benefits from granting the waiver to any other entities aside from itself. CAISO asserts downsizing the second phase of the Solar Star Project will not affect California's ability to achieve its RPS goals as there is far more renewable capacity in CAISO's interconnection queue than is necessary to meet California's renewable energy standards. CAISO states that it is much more effective to achieve California RPS goals through its tariff, wherein an open, non-discriminatory, and efficient process to select resources to interconnect to the CAISO grid is provided, rather than promoting the commercial viability of one customer at the expense of other customers. Therefore, CAISO states that the disadvantages of granting SunPower's Petition outweigh its purported benefits and it should therefore be denied.<sup>37</sup>

### C. Commission Determination

24. We do not find that SunPower has satisfied the requirements for limited waiver, and thus, for the reasons discussed below, we deny SunPower's Petition for waiver of section 5.1(i) of Appendix GG to the CAISO tariff. By contrast, when good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, we have found that a one-time waiver may be appropriate.<sup>38</sup>

25. SunPower's justification fails to satisfy the Commission's good cause requirement for granting a waiver. SunPower suggests that the commercial viability for the second phase of the Solar Star Project is constrained by the terms and conditions of the one-time downsizing opportunity. The one-time downsizing opportunity, however, was a measure that provided certain interconnecting generators with the voluntary option, not a requirement, to downsize their generating project capacity beyond the options that were

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<sup>36</sup> *Id.* at 17 (citing CAISO Tariff, Appendix GG at 2.7).

<sup>37</sup> *Id.* at 19-20.

<sup>38</sup> *See Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226, at 24 (2007); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008) (granting waivers of the CAISO's Large Generator Interconnection Procedures (LGIP) to allow CAISO to create three study groups in order to streamline interconnection requests). *See also Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010) (granting limited waiver of the LGIP for projects in the transition cluster when a participating transmission owner has committed to up-front fund all or a portion of the customer's share of network upgrades).

previously available to them under the CAISO tariff. Similarly, the deadline to withdraw the downsizing requests was also voluntary and at the discretion of the interconnection customer as long as the decision was made by February 19, 2013. To provide SunPower with a waiver on such grounds would suggest that its rights under the CAISO tariff and the LGIA allow it to circumvent the business risks it willingly accepted under the terms of the conforming LGIA with CAISO. Such a decision would establish a precedent to allow other interconnection customers to argue that good cause exists to waive a tariff if it may lead to commercial benefits. The Commission agrees with CAISO that such a determination would undermine the ability of CAISO to fairly and efficiently administer its tariff and conduct the interconnection process on a nondiscriminatory basis.

26. Also, the benefit SunPower seeks through the CAISO tariff waiver is speculative because it is contingent on the outcome of future events.<sup>39</sup> Through its request of a deadline extension in order to learn of the outcomes of the RFOs, SunPower implicitly seeks protection from CAISO potentially terminating its LGIA if SunPower withdrew its downsizing opportunity and found it unable to complete the second phase of the Solar Star Project. This issue was outside the scope of the Order granting the one-time generator downsizing opportunity and is also not within the scope of this Petition because of its speculative nature. The Commission agrees with CAISO that the one-time downsizing opportunity is providing an additional path for the first phase of the Solar Star Project (the 276 MW facility) to attain commercial operation.<sup>40</sup> Absent the downsizing opportunity, SunPower would be afforded less commercial flexibility. Therefore, the Commission finds that SunPower lacks the good cause required to grant its waiver request.

27. We also find SunPower's claims that the requested waiver is of a limited scope to be unpersuasive. Although the waiver only applies to the deadline set forth in section

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<sup>39</sup> See *Seneca Power Partners, L.P. v. New Independent System Operator, Inc.*, 138 FERC ¶ 61,207 (2012) (dismissing complaint alleging the NYISO improperly determined a minimum run time for a 58 MW gas-fired generation facility as premature when evidence showed that NYISO had discussed a reduction in the minimum run time, but had not yet changed the minimum run time); *Chevron Products Company v. SFPP, L.P.*, 138 FERC ¶ 61,115 (2012) (dismissing complaint requesting that the Commission investigate the possibility that SFPP could increase its rates as premature, holding that the justness and reasonableness of a possible, future index-based rate increase is not ripe for Commission review until SFPP submits a tariff filing proposing to charge such rates) (emphasis added); *Louisiana Public Service Commission v. Entergy Corp. et al.*, 132 FERC ¶ 61,104 (2010) (dismissing complaint seeking to challenge the inclusion of costs associated with the cancellation of a repowering project in rates as premature when a final decision on the cancellation of the project had yet to be approved).

<sup>40</sup> CAISO Protest at 13.

5.1(i) of Appendix GG of the CAISO tariff, the waiver does not solely reflect specific and unique facts and could constitute precedent that would allow market participants to avoid these or any other requirements set forth in the tariff agreement. Specifically, if the Commission were to grant the requested waiver, it may establish a precedent for other downsizing customers in similar circumstances to apply for a waiver in order to mitigate the business risks associated with project development. Moreover, SunPower does not provide compelling or sufficient evidence that it is uniquely situated among other developers who have submitted downsizing requests. CAISO notes that many other interconnection customers have reached the “advanced” status claimed by SunPower.<sup>41</sup> The petitioner provides no substantive proof that other generators with valid downsizing requests are not also downsizing a single phase project within a multi-phase LGIA. In addition, SunPower fails to substantiate that it is uniquely situated based on its participation in pending competitive solicitations. SunPower cannot verify whether other downsizing customers are involved in the upcoming RFOs as these competitive solicitations are deemed by both SDG&E and PG&E as confidential information.<sup>42</sup>

28. The Commission also finds that granting the requested waiver would result in undesirable consequences such as delaying the results of the downsizing study and allocating additional costs to interconnection customers that submitted downsizing interconnection requests. The additional time needed to conduct two interconnection studies, one with the second phase of the Solar Star Project and one without, would postpone the results to other downsizing customers and alter the timeline CAISO outlined, and the Commission approved, for implementing the downsizing opportunity. Moreover, we find that a delayed outcome would be harmful to other market participants within CAISO’s ongoing cluster study process as the technical assessments provided under downsizing will be used as a baseline for the May 2013 cluster study.

29. Granting SunPower’s request could be deemed unduly discriminatory or preferential because it would provide SunPower with a competitive advantage, especially over other interconnection customers facing business uncertainty that applied for the one-time downsizing opportunity. The Commission also rejects SunPower’s claim that granting the waiver will result in market-wide benefits because it furthers California’s ability to meet its RPS goals. The Commission agrees with CAISO’s assertion that offering non-discriminatory interconnection is the more effective practice for meeting RPS goals.

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<sup>41</sup> *Id.*

<sup>42</sup> Pacific Gas and Electric Company, “Renewable Portfolio Standards 2012 Solicitation Protocol: Attachment G Confidentiality Agreement” (December 10, 2012); San Diego Gas and Electric Company, “2012 Request for Offers: Eligible Renewable Resources” (December 10, 2012).

The Commission orders:

For the reasons discussed in the body of this order, SunPower's Petition is hereby denied.

By the Commission. Commissioner Wellinghoff is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.