

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

**SunPower Corporation**

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

**MOTION TO INTERVENE AND PROTEST OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
IN RESPONSE TO SUNPOWER'S PETITION FOR WAIVER**

The California Independent System Operator Corporation ("ISO") submits this protest<sup>1</sup> to the petition for waiver of tariff provisions filed by SunPower Corporation ("SunPower") on February 19, 2013. SunPower asks the Commission to waive the February 19 deadline for withdrawing its request to downsize the MW capacity of the requested interconnection for its Antelope Valley Solar Project 3 pursuant to Appendix GG of the ISO tariff.

The Commission should reject SunPower's waiver request on both procedural and substantive grounds. First, SunPower is not actually seeking a tariff waiver but rather seeks to establish new criteria for withdrawing from the ISO's generator downsizing process, resulting in a new deadline applicable only to SunPower. Not only is this a procedurally improper challenge to the ISO's downsizing tariff amendment, but it would undermine the ability of the ISO to implement the downsizing option for other interconnection customers. The schedule for the downsizing process was carefully and deliberately crafted to

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<sup>1</sup> The ISO submits this filing pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.214 (2012).

utilize a window between the ISO's normal cluster study process and allow the ISO to complete the downsizing study without any negative repercussions to the ISO's ongoing cluster study process.

Second, SunPower's petition should be denied because it fails to meet the Commission's standards for granting a tariff waiver. SunPower has not demonstrated good cause for waiving the application of the deadline for withdrawing its downsizing request. As Commission precedent shows, the fact that SunPower may not ultimately be able to realize a potential commercial opportunity because of a voluntarily exercised downsizing option does not present a compelling justification for a tariff waiver of the deadline for withdrawing the downsizing request.

SunPower also fails to establish that the waiver will not have undesirable consequences and that the waiver is of limited scope. Granting SunPower's waiver would have several negative repercussions, including: (i) delaying the downsizing study, thereby undermining the ISO's efforts to integrate the downsizing process into the ISO's regular cluster study process; (ii) increasing study costs for other downsizing customers; (iii) unfairly discriminating against other interconnection customers; and (iv) undermining the ISO's efforts to enforce rules of general applicability necessary for a fair and efficient interconnection process. SunPower's waiver is also ambiguous in scope because there is no date certain by which SunPower would be required to decide whether to remain in the downsizing study or withdraw.

Lastly, the purported benefits of the requested waiver, which would accrue only to SunPower, do not outweigh the harm caused if the waiver were to be granted. The only benefit SunPower posits is its own potential commercial advantage. This “benefit” does not justify the harm, in that SunPower would gain an unjustified commercial advantage relative to other generation developers for whom the tariff rules have been uniformly applied.

## **I. BACKGROUND**

SunPower’s Antelope Valley Solar Project 3 is a 49 MW phase of the larger 325 MW Solar Star XX planned solar photovoltaic generating facility, which entered the ISO’s interconnection queue on May 30, 2008. Solar Star California XX, LLC, which is the ISO interconnection customer for the entire Solar Star XX project,<sup>2</sup> submitted a downsizing request pursuant to the ISO’s recently-approved downsizing tariff amendment, exercising its voluntary option to remove the 49 MW Antelope Valley Solar Project 3 phase.<sup>3</sup> The downsizing tariff amendment provides interconnection customers with a one-time option to reduce the size of their interconnection requests in the ISO’s queue.<sup>4</sup>

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<sup>2</sup> SunPower sold Solar Star XX to MidAmerican Solar, LLC on December 28, 2012, but retained the rights to develop the 49 MW AVSP3 phase of the Solar Star XX facility. SunPower is thus the real party in interest with respect to the downsizing request, although Solar Star XX, LLC, as the ISO interconnection customer, submitted the request. See SunPower Petition at 4-5.

<sup>3</sup> *California Indep. Sys. Op. Corp.*, 141 FERC ¶ 61,219 (2012). The tariff provisions relating to this downsizing opportunity are set forth in Appendix GG to the ISO tariff.

<sup>4</sup> As the ISO explained in its downsizing amendment filing, as part of the stakeholder process in 2013, the ISO will be considering whether and when to offer additional downsizing opportunities. Tariff Amendment to Implement Downsizing Opportunity for Interconnecting Generator Projects, Docket No. ER13-218-000, Transmittal Letter at 29-30 (filed October 26, 2012) (“Downsizing Amendment”).

The ISO proposed this tariff amendment to facilitate the completion and commercial operation of projects that would be viable *but for* an inability to construct the full MW generating capacity specified in the customers' interconnection requests.<sup>5</sup> In designing the downsizing option, the ISO balanced this goal with the need to minimize interference with its ongoing interconnection process pursuant to which interconnection requests are studied on a clustered basis in successive study cycles.

Ensuring that the downsizing process meshes with the ISO's ongoing study process is important to avoid the demonstrated burdens and inefficiencies of the older serial study process. Accordingly, the ISO downsizing tariff amendment: (1) allows for interested customers to submit downsizing requests of specific MW amounts; (2) provides that the total proposed MWs to be downsized are studied together; (3) allows customers an unrestricted right to withdraw from the downsizing option prior to the beginning of the downsizing study; and (4) provides for the technical assessment portion of the downsizing study process to be completed in April 2013, so that any revised transmission plans of service can be incorporated into the base cases used in the next interconnection cluster study, which the ISO expects to begin in May 2013.<sup>6</sup>

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<sup>5</sup> Downsizing Amendment Transmittal Letter at 2. The opportunity to downsize such projects will help to ensure that more projects can achieve commercial operation, even if with less capacity than originally planned, thereby helping to meet California's renewable energy goals and advancing the ISO's efforts to reduce non-viable capacity from its interconnection queue, which contains in excess of three hundred interconnection requests.

<sup>6</sup> Fourteen interconnection customers took advantage of the downsizing opportunity, one of which withdrew prior to the close of the first withdrawal deadline.

The deadline for exercising the unrestricted right of withdrawal from the downsizing process was February 19, 2013.<sup>7</sup> SunPower requests that the Commission permit an alternate withdrawal deadline for the Antelope Valley Solar Project 3 (“AVSP3”) phase based upon different considerations, outside the purpose of the downsizing process. SunPower requests that its withdrawal deadline be ten business days after the posting of “short lists” results in response to requests for offers (“RFOs”) for renewable capacity currently pending with Pacific Gas and Electric Company (“PG&E”) and San Diego Gas & Electric Company (“SDG&E”).<sup>8</sup> While the timing is not certain, and subject to change, the ISO understands that the utilities’ short list decisions are currently scheduled for early to mid-April.

The ISO opposes SunPower’s request on two principal grounds. First, because the request is deficient procedurally as SunPower does not actually seek a waiver of a tariff requirement, but rather seeks an entirely different rule—applicable only to it—that would effectively modify the existing tariff provisions. Second, SunPower’s request fails to meet the Commission’s criteria for a tariff waiver, and would be detrimental to the interconnection process.

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<sup>7</sup> A customer submitting a downsizing request also has the option to withdraw the request if the preliminary results of the downsizing study show that the customer’s estimated responsibility for network upgrades is expected to increase by more than five percent. The ISO does not expect costs to increase as a result of downsizing, and therefore, the second withdrawal option is anticipated to be rarely, if ever, utilized. ISO Tariff, Appendix GG at Section 5.1.

<sup>8</sup> SunPower Petition at 3.

## **II. MOTION TO INTERVENE**

The ISO is a non-profit public benefit corporation organized under the laws of the State of California, with a principal place of business at 250 Outcropping Way, Folsom, California. The ISO is an independent transmission system operator operating the transmission systems of its participating transmission owners. The ISO is a balancing authority and coordinates the ancillary services and electricity markets within its balancing authority area.

The ISO operates under the terms of the ISO tariff, which is on file with the Commission. The ISO is responsible for administering a generator interconnection process in accordance with its Commission-approved tariff. SunPower's February 19 filing proposes to alter the terms and conditions of the ISO tariff with respect to the deadline for withdrawing the AVSP3 phase of the Solar Star XX facility from the ISO's generator downsizing process. Accordingly, the ISO has a direct and substantial interest in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the ISO's interests in this proceeding, the ISO's intervention is in the public interest and should be granted.

## **III. PROTEST**

### **A. SunPower's Petition for Tariff Waiver Should be Dismissed as an Inappropriate Attempt to Modify the ISO's Tariff**

Although styled as a request for a waiver of the ISO tariff's first deadline for withdrawing a downsizing request, SunPower's filing actually seeks the creation of a new rule. A waiver request is not the proper means for doing so.

The ISO tariff provides that all interconnection customers applying to downsize their interconnection requests have the unrestricted right to withdraw up to five business days after the ISO has processed all the downsizing applications and posted a preliminary estimate of downsizing study cost obligations.<sup>9</sup> The ISO added this withdrawal opportunity so that generators would not have to make their downsizing decisions without understanding their ultimate responsibility for downsizing study costs, which would not be known until after all downsizing applications had been processed.<sup>10</sup> The deadline for exercising this withdrawal opportunity was deliberately established based on two criteria: (1) providing generators a reasonable amount of time to make their final downsizing commitments after receiving an estimate of the costs associated with their request; and (2) limiting the time period for withdrawal in order to ensure that the ISO could complete the downsizing study in the time allotted, so as to avoid any negative repercussions to the ISO's ongoing cluster study process.

SunPower does not claim that it needs more time to evaluate the costs of downsizing attributable to the Antelope Valley Solar Project 3 phase. Rather, SunPower proposes that the deadline for withdrawing the downsizing request for this phase be based on a different consideration, unrelated to the purpose of the downsizing process: the timing of the pending RFO short list decisions. By extending the original deadline by a minimum of nearly two months, SunPower's proposal would jeopardize the ISO's ability to complete the downsizing study in

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<sup>9</sup> ISO Tariff, Appendix GG, Section 5.1.

<sup>10</sup> See Downsizing Amendment, Transmittal Letter at 18.

the planned timeframe, which in turn would make it more difficult for the ISO to account for the impacts of downsizing and establish a stable baseline prior to commencing its next queue cluster study.<sup>11</sup> In other words, SunPower's requested relief would not simply waive the application of the existing deadline, but rather, institute a new deadline solely for SunPower.<sup>12</sup>

Given that SunPower, in effect, seeks an entirely different tariff rule, a tariff waiver petition is not the proper mechanism for SunPower's claim.<sup>13</sup> Rather, SunPower should have raised these concerns or proposed its preferred alternative during the recent Commission proceeding on the downsizing amendment, or at a minimum, filed a request for rehearing of the Commission's order. However, because SunPower is proposing to modify the ISO tariff after the Commission has already approved the downsizing process, the proper means for doing so is a Section 206 complaint, which would require that

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<sup>11</sup> The ISO discusses the timing elements of SunPower's request in more detail in Section III.B.3 below.

<sup>12</sup> SunPower's intended goal of utilizing the downsizing request as a placeholder to prolong its attempt to find a purchaser for the 49 MW AVSP3 phase of the Solar Star XX generating facility is also inconsistent with the overall purpose of the downsizing amendment: to provide generators who would be viable at a lower capacity level a one-time opportunity to "right-size" their projects. See Downsizing Amendment, Transmittal Letter at 2. The downsizing provisions of the tariff were not intended as a means to allow generators to defer making such decisions in the ongoing hopes of finding a purchaser for the entirety of their planned output.

<sup>13</sup> SunPower cites to the ISO's request for waiver in Docket No. ER10-1656-000, however, that case aptly illustrates the difference between proposing a waiver of existing tariff provisions and proposing new or modified tariff provisions. In that proceeding, the ISO requested waiver of certain financial security obligations relating to network upgrades that were being up-front financed by the applicable transmission owner. The ISO explained that waiving the requirement that customers provide financial security for these upgrades was reasonable because the underlying purposes of financial security postings were satisfied by having the transmission owner up-front fund the upgrades, and therefore, requiring postings under these circumstances was unnecessary. *California Indep. Sys. Op. Corp.*, 132 FERC ¶ 61,132 at PP 47-50 (2010). In contrast, SunPower proposes a new tariff rule that has no relation to the underlying purpose of the original provision.

SunPower demonstrate that changed circumstances subsequent to Commission approval have caused the ISO's downsizing process to become unjust and unreasonable. SunPower cannot support such an argument. While the deadlines for the downsizing process were not designed to accommodate the timing of the RFOs, and were based upon the timing for the cluster study process, even if the RFO timing was relevant, there was sufficient information available as to the existence and timing of the RFOs well before the ISO even filed its downsizing amendment.<sup>14</sup> Had it believed it was a pertinent issue, SunPower could have raised this issue in the downsizing amendment proceeding.

It would be a misuse of the tariff waiver mechanism, as well as permitting what is essentially a collateral attack on the Commission's order approving the downsizing amendment, to allow SunPower now, after the Commission's approval of the ISO's tariff amendment is final, and after the ISO has already begun implementation, to obtain the benefit of a new rule that would undermine the process the Commission found just and reasonable. For this reason, the Commission should deny SunPower's request.

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<sup>14</sup> Both PG&E and SDG&E had, as of May 2012, filed public reports with the California Public Utilities Commission indicating that they planned to issue the RFOs in the fourth-quarter of 2012, and that short-list decisions would not be made until at least sixteen weeks after issuance of the RFOs. See San Diego Gas & Electric Company's 2012 Draft Renewable Procurement Plan, CPUC Proceeding R.11-05-005 at Appendix A, p 8 (filed May 23, 2012); Pacific Gas and Electric Company 2012 Renewable Energy Procurement Plan (Draft Version), CPUC Proceeding R.11-05-005 at Appendix 7, p 10 (filed May 23, 2012).

## **B. SunPower Does Not Meet the Commission's Standards for Tariff Waiver**

Even if the Commission is inclined to consider SunPower's filing as a cognizable petition for tariff waiver, it should nevertheless deny the request because it fails to meet the Commission's standards for approving tariff waivers. The Commission has granted one-time waivers upon a showing that good cause exists to grant the waiver, the waiver is of limited scope, there are no undesirable consequences, and the resultant benefits to customers are evident.<sup>15</sup> SunPower does not meet any of these criteria.

### **1. SunPower Does Not Demonstrate Good Cause**

SunPower fails to demonstrate that good cause exists for granting the requested waiver because it presents no compelling case that it should be exempted from the existing deadlines for withdrawing downsizing requests. SunPower claims that, without an extension, it may not be able to "resurrect" the 49 MW AVSP3 phase of the Solar Star XX facility if it is ultimately shortlisted as part of the current PG&E or SDG&E RFOs.<sup>16</sup> This argument confuses cause and effect, to the extent SunPower suggests that it is the ISO tariff that is preventing it from realizing a commercial opportunity. The downsizing tariff amendment provides interconnection customers an *option, not an obligation*, to reduce the size of their planned facilities. Likewise, the first withdrawal opportunity is entirely voluntary. Thus, all decisions to participate in the ISO's

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<sup>15</sup> See, e.g., *Coso Energy Developers*, 134 FERC ¶ 61,088 at P 8 (2011).

<sup>16</sup> SunPower Petition at 11.

downsizing process, and to remain in the process after the first withdrawal deadline passed, were voluntary and entirely within the discretion of interconnection customers. Accordingly, it is inaccurate to characterize the ISO tariff as in any way preventing SunPower from competing with other generators for an RFO award.

Even if the ISO tariff had prevented SunPower from pursuing a commercial opportunity, which it did not, this alone would not justify a tariff waiver. Otherwise, there would be little limitation on the ability of interconnection customers to obtain waivers from tariff obligations, risking an inundation of waiver requests whenever a customer could make a reasonable claim that waiving the tariff (or in this case creating completely different rules) might prove commercially beneficial. This would seriously undermine the ability of the ISO and all public utilities to fairly and efficiently administer their tariffs.

The Commission has made clear that waiver is not appropriate under these types of circumstances. For example, in *Coso Energy Developers*,<sup>17</sup> the Commission denied an ISO interconnection customer's request to waive a deadline for posting financial security. In that case, the interconnection customer, Coso, argued that the funds required to make the posting would be better used to support the development of its other renewable projects in California. The Commission disagreed that this constituted sufficient good cause for tariff waiver, pointing out that it had previously found the ISO's financial security posting requirements just and reasonable, and that there was

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<sup>17</sup> 134 FERC ¶ 61,088 (2011).

no compelling rationale for not applying them to Coso.<sup>18</sup> That SunPower may ultimately not be in a position to realize a commercial opportunity because of a voluntary choice to take advantage of the downsizing opportunity does not present compelling justification for waiving the tariff rules for SunPower, any more than Coso's desire to use funds required for the financial security posting for other commercial opportunities.

SunPower cites to *Hydrogen Energy California*,<sup>19</sup> in which the Commission granted an interconnection customer a temporary waiver of one of the ISO's financial security posting deadlines. This case is distinguishable from SunPower, however, because the Commission found that the unique attributes associated with the Hydrogen Energy project provided good cause to justify a temporary tariff waiver. Specifically, the generator was a first-of-its-kind facility that would demonstrate the viability of carbon capture and sequestration technology.<sup>20</sup> The Commission also stated that a customers' need for additional capital, in and of itself, does not provide a sufficient basis for granting "even a brief waiver from making timely interconnection financial security postings as required by CAISO's tariff."<sup>21</sup>

There is no evidence to suggest that the Antelope Valley Solar Project 3 phase possesses any of the unique characteristics presented by the Hydrogen

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<sup>18</sup> *Id.* at PP 18-21.

<sup>19</sup> 135 FERC ¶ 61,068 (2011).

<sup>20</sup> *Id.* at P 28.

<sup>21</sup> *Hydrogen Energy California* at P 31. In that proceeding, the ISO did not oppose Hydrogen Energy's requested waiver because there was public interest in the generation project, as demonstrated by support from the Department of Energy and the California Public Utilities Commission. *Id.* at P 20.

Energy facility. To the contrary, the inability of SunPower to find a purchaser for the entire planned capacity of the Solar Star XX facility is a situation faced by a number of other interconnection customers. By providing a path for the vast majority of the Solar Star XX facility that is already covered under a power purchase agreement (276 MW) to attain commercial operation, the downsizing amendment is achieving the primary benefit for which it was intended.<sup>22</sup>

## **2. The Requested Waiver is not Limited in Scope**

SunPower claims that its request for wavier is limited in scope because it is “highly unlikely” that other project developers are similarly situated to SunPower.<sup>23</sup> This claim is at best speculative. The milestones that SunPower points to demonstrate its “advanced” status have been achieved by a number of other customers in the ISO’s interconnection queue. SunPower also points to its participation in the PG&E and SDG&E RFOs, but SunPower has no way of knowing which other projects have submitted bids in these RFOs. Finally, SunPower states that it shares an interconnection agreement with the first phase of the Solar Star XX project, which is covered under a power purchase

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<sup>22</sup> SunPower suggests that the ISO’s downsizing process was not timed to coincide with the RFO process. This argument is beside the point because the ISO’s downsizing process was never intended to provide a placeholder for generators that had been unable to find a commercial outlet for their capacity to continue to speculate while retaining their queue position, but rather, to provide customers an opportunity to shed the capacity for which they had been unable to find a buyer. The schedule for the downsizing process was chosen deliberately to utilize a window between the ISO’s normal cluster study process.

<sup>23</sup> SunPower Petition at 12.

agreement. SunPower fails to demonstrate, however, that other customers, particularly downsizing customers, are not similarly situated.<sup>24</sup>

Because SunPower has not made a convincing case that the Antelope Valley Solar Project 3 phase of the Solar Star XX facility possesses unique characteristics, granting the tariff waiver that SunPower requests, which would apply only to SunPower, would raise discrimination concerns. Providing a single customer with greater rights to withdraw a downsizing application would give that customer a significant commercial advantage over other interconnection customers, particularly other downsizing customers. Moreover, it is possible that other generation developers might have chosen to downsize their projects if they knew they would have the flexibility to withdraw their downsizing application contingent on the outcome of future commercial ventures.

For these reasons, the ISO does not see how withdrawal rights requested by SunPower could fairly be limited just to the Solar Star XX facility, thus requiring an increase in the scope of the requested waiver to avoid discrimination. However, such an expansion is also problematic because it would delay the downsizing process in two ways: (1) the ISO would need to determine what circumstances qualified to defer a decision on withdrawal (e.g. would it only be available to RFO participants, or would other commercial opportunities also qualify); and (2) the ISO would also need to re-open the downsizing application window to allow interconnection customers that

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<sup>24</sup> Indeed, it is reasonable to suppose that many of the other customers that have exercised the downsizing option would also have one or more phases of their projects covered under a power purchase agreement.

otherwise might have originally chosen to downsize if the withdrawal rights requested by SunPower had been available. The time required to accomplish these tasks would almost certainly make it impossible for the ISO to complete the necessary downsizing assessments prior to beginning the next queue cluster study.

SunPower's request is also problematic because there is no certainty as to when SunPower's requested extension would end. Currently, PG&E intends to post its short list by April 1, 2013, and SDG&E intends to post its short list by April 5. However, as noted in the RFO materials, these timelines are subject to change.<sup>25</sup> As such, there is no guarantee that SunPower will know whether it has been shortlisted for either of these RFOs by any time certain. Because the ISO cannot complete the downsizing studies until it knows for certain which customers will downsize, the ISO would need to defer providing the results of its downsizing study for an unknown time period. This will also jeopardize the ISO's ability to complete the downsizing study in time to establish a baseline on which to begin its next cluster study process, as well as to provide cost certainty to current customers within a reasonable timeframe.

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<sup>25</sup> Pacific Gas and Electric Company, Renewables Portfolio Standard 2012 Solicitation Protocol at 6, available at <http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/renewables2012/index.shtml> ("PG&E may change this schedule at any time for any reason subject to CPUC concurrence, if PG&E determines that such concurrence is necessary."); San Diego Gas & Electric Company, Request for Offers, 2012 Eligible Renewable Resources at 8, available at <http://www.sdge.com/renewable-portfolio-standard-rfo-december-2012> ("SDG&E reserves the right to revise this schedule at any time and at SDG&E's sole discretion.").

### **3. SunPower’s Waiver Request Will Likely Undermine the ISO’s Interconnection Process and Harm Other Customers in the Queue**

SunPower asserts that granting its requested waiver will not result in harm because there will be no delays or cost increases to any other interconnection customers.<sup>26</sup> SunPower is incorrect in both respects. In addition, there are significant concerns associated with unfair discrimination and adverse impacts on the interconnection process that SunPower overlooks.

SunPower claims that, given the small size of its downsizing request, the ISO should be able to include the Antelope Valley Solar Project 3 phase in the downsizing study on a “provisional” basis until the RFO short lists are released.<sup>27</sup> Although the ISO could study the Antelope Valley Solar Project 3 phase in this manner, it would almost certainly not avoid a delay in completing the downsizing study because the ISO would, in effect, need to conduct two studies – one with the Antelope Valley Solar Project 3 phase included, and one without it. The ISO estimates that this would require another four weeks. As a result, the ISO would be unable to complete the studies and provide results to downsizing customers and other customers affected by downsizing pursuant to the intended timeline.<sup>28</sup> This work load and associated delays could increase significantly if all downsizing customers were afforded the same opportunity to

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<sup>26</sup> SunPower Petition at 13-14.

<sup>27</sup> SunPower Petition at 14.

<sup>28</sup> See Downsizing Amendment, Attachment A at 2. In addition, this schedule assumes that the RFO short lists will be issued in early April. As explained above, if either PDG&E or SDG&E are unable to provide their short lists as currently planned, such a delay would cause an even greater delay in the ISO’s ability to release the results of its downsizing study.

withdraw to reflect consideration of all the possible combination of resources in and out of the studies.

A broader group of ISO customers would also be harmed. Any delay in completing the downsizing study risks jeopardizing the ISO's ability to integrate the results of downsizing into its ongoing cluster study process. The longer the delay in completing the downsizing studies, particularly the technical assessment targeted for completion in April, the less likely it is that the ISO will have a stable baseline when it begins its next cluster study, which is scheduled to begin in May of this year.

SunPower's assertion that other customers will not be financially disadvantaged is also incorrect. Although the downsizing amendment insulates non-downsizing customers from any cost-shifts that could occur as a result of downsizing, the need to conduct multiple sensitivity studies due to the unknown status of the Antelope Valley Solar Project 3 phase, and potentially, the unknown status of other downsizing requests, will increase the overall costs of performing the downsizing study. Under the downsizing process, study costs are spread equally amongst all downsizing customers,<sup>29</sup> meaning that all downsizing customers would incur greater costs as a result of allowing SunPower or other customers to remain in the downsizing study on a "provisional" basis.

SunPower also overlooks two other significant harms that would result from granting its waiver. First, as explained above, SunPower has not

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<sup>29</sup> ISO Tariff, Appendix GG at 2.7.

meaningfully distinguished itself from other generation facilities in the ISO's queue, and therefore, it would be discriminatory to apply this tariff waiver to SunPower alone. Granting SunPower the benefits of a more flexible rule that other interconnection customers are denied for no reason other than to assist SunPower in realizing a commercial opportunity (especially one that other customers are competing with SunPower to obtain) would constitute a very real harm to those other customers.

Moreover, as in *Coso*, the ISO is also concerned with the precedent that a waiver in this case could create, and the impacts that it may have on the ISO's ability to administer its interconnection process and its tariff more generally. Even if the Commission were to limit approval of the present waiver request to SunPower, it could create a precedent that future customers may rely on to argue that they should be relieved from having to comply with ISO tariff obligations upon showing that they might miss out on a commercial opportunity as a result. This potential expansion in waiver requests could significantly impede the ISO's ability to create and enforce meaningful tariff rules, and thereby conduct a fair and efficient interconnection process.<sup>30</sup>

#### **4. SunPower Demonstrates No Benefit from the Waiver Other than its Own Commercial Advantage**

SunPower fails to show that the requested waiver will provide any discrete benefit to entities other than itself. SunPower unconvincingly argues

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<sup>30</sup> See *Coso Energy Developers* at P 18 (noting that because *Coso* had not demonstrated that its circumstances were sufficiently unique "granting *Coso*'s waiver could serve as precedent for existing projects in future clusters, potentially leading to adverse impacts on the interconnection process").

that granting this waiver will benefit California energy customers because the Antelope Valley Solar Project 3 phase will be more likely to achieve commercial operation as a result, thereby facilitating achievement of California's renewables portfolio standard ("RPS") goals.<sup>31</sup> Given that there is far more capacity in the ISO's interconnection queue than is needed to meet California's RPS goals, many of the facilities in the ISO's queue will not ultimately achieve commercial operation, particularly at the capacity levels originally planned. Therefore, there is no reason to believe that downsizing the 49 MW phase of the Solar Star XX facility will have any negative repercussions on California's ability to meet its RPS goals. The ISO believes that the most effective way that it can promote the achievement of California's RPS goals is to ensure that its tariff provides an open, non-discriminatory, and efficient process for resources to interconnect to the ISO controlled grid,<sup>32</sup> rather than picking individual winners and losers. Granting SunPower's request for waiver clearly falls into the latter category because it would promote the commercial viability of one customer at the expense of other customers as well as undermining the fairness and efficiency of the ISO's interconnection process.<sup>33</sup> Any purported benefits of the requested

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<sup>31</sup> SunPower Petition at 15-16.

<sup>32</sup> This includes providing reasonable downsizing opportunities under rules applicable to all customers and that can be accommodated without compromising the ISO's ability to conduct its ongoing cluster study process.

<sup>33</sup> SunPower also suggests that granting this waiver will benefit other interconnection customers due to the associated costs savings if SunPower ultimately downsizes. This is of course a non-sequitur because SunPower has already voluntarily committed to downsizing, and therefore any benefits associated with its downsizing already adhere to those other customers. Granting the requested waiver would only create uncertainty as to that outcome.

waiver clearly do not outweigh the disadvantages. SunPower's request should therefore be denied.

#### **IV. COMMUNICATIONS**

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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**V. CONCLUSION**

For the reasons explained above, the ISO respectfully requests that the Commission deny SunPower's petition.

Respectfully submitted,

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## 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 8th day of March, 2013.

/s/ Michael Kunselman

Michael Kunselman  
Alston & Bird LLP