
**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): May 31, 2022

SunPower Corporation
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34166
(Commission File Number)

94-3008969
(I.R.S. Employer
Identification No.)

51 Rio Robles, San Jose, California 95134
(Address of principal executive offices, with zip code)

(408) 240-5500
(Registrant's telephone number, including area code)

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 (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol	Name of exchange on which registered
Common Stock, \$0.001 par value per share	SPWR	The Nasdaq Stock Market LLC

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

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.

As previously announced, on February 6, 2022, SunPower Corporation, Systems, a Delaware corporation (“Seller”) and wholly owned subsidiary of SunPower Corporation, a Delaware corporation (the “Company”), entered into an equity purchase agreement (the “Equity Purchase Agreement”) with TotalEnergies Renewables USA, LLC, a Delaware limited liability company (“Buyer”) and wholly owned subsidiary of TotalEnergies SE, pursuant to which, upon the terms and subject to the conditions set forth in the Equity Purchase Agreement, Buyer agreed to acquire the Company’s Commercial & Industrial Solutions business (the “Business”) by acquiring all of the issued and outstanding equity securities of TotalEnergies Distributed Generation USA, LLC, a Delaware limited liability company and a newly formed, wholly owned subsidiary of Seller (“HoldCo”). The Company is a majority-owned subsidiary of affiliates of TotalEnergies SE.

In connection with the consummation of the transactions contemplated by the Equity Purchase Agreement, on May 31, 2022, the Company, Seller, Buyer and HoldCo entered into a letter agreement (the “Letter Agreement”), pursuant to which, among other matters, (i) Buyer agreed to waive the closing condition relating to certain representations and warranties of Seller under the Equity Purchase Agreement, (ii) Seller agreed to retain certain Business assets and employees until certain transitional matters have been resolved and (iii) the Company agreed to provide to Buyer a guaranty of Seller’s compliance with all of its obligations under the Equity Purchase Agreement and the other agreements contemplated thereby.

The foregoing description of the Letter Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the full text of the Letter Agreement, which is attached hereto as Exhibit 2.1 and incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information in Item 1.01 is incorporated herein by reference.

On May 31, 2022, the Company completed the previously announced sale transaction pursuant to the terms of the Equity Purchase Agreement for aggregate cash consideration of approximately \$190 million, which was adjusted for, among other matters, cash, indebtedness, working capital surplus/shortfall and transaction expenses.

The foregoing description of the Equity Purchase Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the full text of the Equity Purchase Agreement filed as Exhibit 2.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on February 10, 2022, which is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

The following exhibits are furnished as part of the Current Report on Form 8-K:

- | | |
|-------------|--|
| Exhibit 2.1 | Letter Agreement, dated as of May 31, 2022, by and among SunPower Corporation, SunPower Corporation, Systems, TotalEnergies Renewables USA, LLC and TotalEnergies Distributed Generation USA, LLC. |
| Exhibit 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document). |

SIGNATURE

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 hereunto duly authorized.

SUNPOWER CORPORATION

Date: May 31, 2022

By: /S/ MANAVENDRA S. SIAL

Name: **Manavendra S. Sial**

Title: **Executive Vice President and Chief Financial Officer**

SunPower Corporation, Systems
51 Rio Robles
San Jose, California 95134

May 31, 2022

TotalEnergies Renewables USA, LLC
1201 Louisiana St.
Suite 1800
Houston, Texas 77002
Attention: Marc-Antoine Pignon, CEO
With a copy to: Legal
Email: Marc-Antoine.Pignon@totalenergies.com
Cynthia-R.Martinez@totalenergies.com

Re: Letter Agreement

Reference is hereby made to (i) the Equity Purchase Agreement, dated as of February 6, 2022 (as may be amended, restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), by and between SunPower Corporation, Systems, a Delaware corporation ("Seller"), and TotalEnergies Renewables USA, LLC, a Delaware limited liability company ("Buyer"), and (ii) the Reorganization Agreement, dated as of February 6, 2022 (as may be amended, restated, supplemented or otherwise modified from time to time, the "Reorganization Agreement"), by and between SunPower Corporation, a Delaware Corporation ("Seller Parent"), and TotalEnergies Distributed Generation USA, LLC, a Delaware limited liability company ("TEDGUS" or the "Company" and, together with Buyer, Seller and Parent, the "Parties"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement or the Reorganization Agreement, as applicable.

In consideration of and reliance upon 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 hereby agree as follows:

1. Waiver. Pursuant to Section 11.02 of the Purchase Agreement, Buyer hereby irrevocably waives the condition to Closing contained in Section 8.02(a)(i) and the covenant contained in Section 9.01(a) under the Purchase Agreement solely with respect to the representation and warranty set forth on Exhibit A attached hereto, and Buyer shall not have, and shall not assert, any right or claim in respect of a breach or inaccuracy of such representation or warranty under the Purchase Agreement; provided, however, such waiver in this Section 1 is, in all instances, conditioned upon and subject to Seller Parent delivering the Seller guaranty as set forth in Section 2 of this letter agreement (the "Seller Guaranty").

2. Seller Guaranty. To induce Buyer to consummate the transactions contemplated by this letter agreement, the Purchase Agreement and the other Transaction Documents, Seller Parent shall provide the Seller Guaranty in the form attached hereto as Exhibit B. In accordance with and subject to the terms therein, the Seller hereby acknowledges and agrees that when duly executed and delivered by Seller Parent, the Seller Guaranty will constitute a legal, valid and binding obligation of Seller Parent enforceable against Seller Parent in accordance with its terms.

3. Transfer of Certain Assets. Each party hereby acknowledges and agrees that, notwithstanding anything to the contrary set forth in the Purchase Agreement or the Reorganization Agreement:

a) the Group Company Interests of each of the Remaining Entities (as defined in the TSLTA) will not be transferred to TEDGUS or any of its Affiliates at the Closing and will instead be retained by Seller or its applicable Subsidiaries (other than the Group Companies) until they are conveyed, transferred and delivered to TEDGUS pursuant to the terms of the Technical Services and License Transition Agreement to be entered into by Seller and TEDGUS at the Closing substantially in the form attached hereto as Exhibit C (the "TSLTA");

b) the Technical Services Employees (as defined in the TSLTA) will remain employees of Seller until such time as they commence employment with TEDGUS or an affiliate thereof in accordance with the TSLTA; and

c) the Remaining Contracts (as defined in the Remaining Contracts Agreement) will not be transferred to TEDGUS or any of its Affiliates at the Closing and will instead be retained by Seller or its applicable Subsidiaries (other than the Group Companies) until they are conveyed, transferred, assigned and delivered to the applicable Group Company pursuant to the terms of the Agreement for the Maintenance of Remaining Contracts to be entered into by Seller and TEDGUS at the Closing substantially in the form attached hereto as Exhibit D (the "Remaining Contracts Agreement").

Conditioned upon the due execution and delivery of the TSLTA and the Remaining Contracts Agreement, solely to the extent the matters referred to in clauses (a), (b) and (c) of this Section 3 would cause Seller to fail to satisfy or fulfill the condition to Closing set forth in Section 8.02(a) or Section 8.02(b) of the Purchase Agreement, Buyer hereby irrevocably waives such failure to satisfy or fulfill at or prior to the Closing Date.

4. Buyer Indemnification Rights. Each Party acknowledges and agrees that, notwithstanding anything to the contrary in the Purchase Agreement, that:

a) Seller's and TEDGUS's entry into and delivery of the TSLTA and the Remaining Contracts Agreement shall not (i) in any manner adversely affect Buyer's right to be indemnified by Seller in accordance with Section 9.02(e) of the Purchase Agreement or (ii) in any instance constitute the entry into a "mutually agreeable arrangement" for any purposes under Section 5.03 or 9.02(e) or any other provision of the Purchase Agreement;

b) for the avoidance of doubt, Section 9.02(e) of the Purchase Agreement, including Buyer's indemnification rights thereunder, shall survive and be in full force and effect until such time as the TSLTA and Remaining Contracts Agreement are no longer in full force and effect, at which time Buyer shall have the right to be indemnified and held harmless pursuant to Section 9.02(e); and

c) for the avoidance of doubt, Buyer shall have the right to be indemnified and held harmless under Section 9.02(e) of the Purchase Agreement only to the extent that the termination, cancellation or voiding of such Material Contract was not caused, requested or directed by Buyer.

5. Required Third Party Consents. Each Party acknowledges and agrees that, notwithstanding anything to the contrary in the Purchase Agreement, including Section 5.03(b) of the Purchase Agreement, or any other Transaction Document, with respect to any Material Contract, Seller's covenants set forth Section 5.03(b)(i) of the Purchase Agreement shall continue until the earlier to occur of (x) such Material Contract having been transferred, assigned and conveyed to TEDGUS or another Group Company designated by Buyer and (y) Seller and Buyer having entered into a mutually agreeable arrangement for such Material Contract pursuant to Section 5.03(b)(iii) of the Purchase Agreement.

6. Philippines Business Employees.

a) Notwithstanding anything to the contrary in the Purchase Agreement or the Reorganization Agreement, the employment of the Business Employees whose principal place of employment is in the Philippines (the "Philippines Business Employees") will not be transferred to TotalEnergies Distributed Generation Philippines, Inc. ("Philippines HoldCo") at Closing, but instead will be transferred within ten (10) days following the date Philippines HoldCo has obtained all government registrations required to conduct business and hire employees (the "Philippines Transfer Date").

b) Prior to the Philippines Transfer Date, Sections 3.4 (except for the second sentence of Section 3.4.3), 3.6 through 3.10, 5.1.1, 5.2 (other than Section 5.2.2), 5.4.1, 5.4.2, 7.3.2 and, to the extent applicable, 11.1 and 11.2 of the TSLTA shall apply to the Philippines Business Employees, except that all references to (i) "Systems" shall be deemed references to "SunPower Philippines Ltd.", (ii) "TSEs" shall be deemed references to "Philippines Business Employees", (iii) "Transition Period" shall be deemed to end on the Philippines Transfer Date and (iv) "TEDGUS" shall be deemed references to "TotalEnergies Distributed Generation Philippines, Inc."

7. Philippines Pension Plan Account. Notwithstanding anything to the contrary in Section 7.04 of the Purchase Agreement or the Reorganization Agreement, the Philippines Pension Plan Account, which is set forth as item 5 on Schedule 1.01(c), shall not transfer to Buyer and its Affiliates effective as of the Closing, and, instead, Seller shall, and Seller shall cause its Affiliates to, transfer the Philippines Pension Plan Account to Philippines HoldCo as promptly as reasonably practicable after all Philippines Business Employees and their respective employment have been transferred to Philippines HoldCo.

8. Insurance Policy. Notwithstanding anything to the contrary in Section 5.08(a) of the Purchase Agreement, each Party acknowledges and agrees that the Insurance Policy set forth as item 1 of Schedule 3.21(a) will not transfer to Buyer.

9. Amendments to Exhibits to Purchase Agreement. The Exhibits to the Purchase Agreement are hereby amended as follows:

a) The Parent Company Guaranty Report attached to Schedule 1.01(b) as Annex 1.01(b)-1 is hereby deleted in its entirety and replaced with the Parent Company Guarantee Report attached hereto as Exhibit E.

b) The Restructuring Steps Plan attached to the Purchase Agreement as Exhibit H is hereby deleted in its entirety and replaced with the Restructuring Steps Plan attached hereto as Exhibit F.

10. Amendments to Disclosure Schedules. Schedule 5.04(a) of the Disclosure Schedules is hereby deleted in its entirety and replaced with the Schedule 5.04(a) attached hereto as Exhibit G.

11. Sublease Agreement. TEDGUS and Seller shall enter into a sublease agreement substantially in the form attached hereto as Exhibit H.

12. Reorganization Agreement.

a) Each Party acknowledges and agrees that Exhibit I hereto will be added to Schedule 5.1(b)(i) of the Reorganization Agreement and shall be deemed to be a part of such Schedule 5.1(b)(i) to the Reorganization Agreement as if they had been fully set forth therein.

b) References to “Schedule 5(b)(i)” and “Schedule 5(b)(ii)” in Section 5.1(b) of the Reorganization Agreement shall hereby be replaced with “Schedule 5.1(b)(i)” and “Schedule 5.1(b)(ii)”, respectively.

13. Miscellaneous. Each Party acknowledges and agrees that this letter agreement shall be deemed to be part of the Purchase Agreement. Each Party further acknowledges and agrees that (i) the TSLTA, (ii) the Remaining Contracts Agreement and (iii) the Seller Guaranty shall each constitute a Transaction Document for all purposes of the Purchase Agreement and the other Transaction Documents. Except as expressly modified by this letter agreement, the Purchase Agreement and each other Transaction Document and all of the terms, conditions and covenants contained herein and therein are valid and shall remain in full force and effect.

14. In the event that any terms or conditions of this Agreement conflict or are otherwise inconsistent with any terms or conditions of the Purchase Agreement or any other Transaction Agreement, the terms and conditions of this Agreement shall govern. The terms and provisions of Article XI of the Purchase Agreement shall apply to this letter *mutatis mutandis* as if set forth herein.

[Remainder of page intentionally left blank]

