SUNPOWER CORP
Form PRE 14A
September 12, 2011
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities

Exchange Act of 1934

(Amendment No.)

Filed by the Registrant x Filed by a Party other than the Registrant ¨

Check the appropriate box:

x Preliminary Proxy Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

¨ Definitive Proxy Statement

¨ Definitive Additional Materials

¨ Soliciting Material Pursuant to §240.14a-12

SunPower Corporation

(Name of Registrant as Specified In Its Charter)

n/a

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x No fee required.

¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

¨ Fee paid previously with preliminary materials.

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount previously paid with preliminary materials:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO ALL SUNPOWER STOCKHOLDERS:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders (the Special Meeting) of SunPower Corporation, a Delaware corporation (SunPower), will be held on:

Date:	Tuesday, November 15, 2011
Time:	Noon Pacific Time
Place:	SunPower Corporation, 77 Rio Robles, San Jose, California 95134
Items of Business:	1. The proposal to amend SunPower s Certificate of Incorporation to (a) reclassify all outstanding shares of SunPower Class A common stock and SunPower Class B common stock into a single class of common stock named common stock, which shall have the same voting powers, preferences, rights and qualifications, limitations and restrictions as the current SunPower Class A common stock (the Reclassification); and (b) eliminate obsolete provisions relating to our current dual-class common stock structure and certain other historical matters; 2. The proposal to amend SunPower s Certificate of Incorporation to permit action by written consent of the stockholders without a meeting for any action required to be taken at any annual or special meeting; and 3. Approval of the Third Amended and Restated SunPower Corporation 2005 Stock Incentive Plan that, if approved, would (a) increase the number of shares of common stock reserved for issuance under the stock plan by 2,500,000; (b) remove obsolete provisions for automatic stock grants to outside directors; (c) amend the definition of Change in Control to reflect the recent tender offer for shares of our common stock by Total Gas & Power USA, SAS; (d) clarify that after the Reclassification, Class A common stock awards granted under the stock plan would be for an equal number of shares of our common stock; and (e) make certain other conforming amendments to the stock plan.

The foregoing items of business are more fully described in the proxy statement accompanying this Notice. On October [ ], 2011 we began mailing to stockholders either a Notice of Internet Availability of Proxy Materials or this notice of the Special Meeting, the proxy statement and the form of proxy.

All stockholders are cordially invited to attend the Special Meeting in person. Only stockholders of record at the close of business on September 19, 2011 (the Record Date) are entitled to receive notice of, and to vote at, the Special Meeting or any adjournment or postponement of the Special Meeting. Any registered stockholder in attendance at the Special Meeting and entitled to vote may do so in person even if such stockholder returned a proxy.

San Jose, California

October [ ], 2011

FOR THE BOARD OF DIRECTORS

[ ]
Bruce R. Ledesma
Corporate Secretary

IMPORTANT: WHETHER OR NOT YOU EXPECT TO ATTEND THE SPECIAL MEETING, PLEASE COMPLETE, DATE AND SIGN THE PROXY CARD AND MAIL IT PROMPTLY, OR YOU MAY VOTE BY TELEPHONE OR VIA THE INTERNET BY FOLLOWING THE DIRECTIONS ON THE PROXY CARD. ANY ONE OF THESE METHODS WILL ENSURE REPRESENTATION OF YOUR SHARES AT THE SPECIAL MEETING. NO POSTAGE NEED BE AFFIXED TO THE COMPANY-PROVIDED PROXY CARD ENVELOPE IF MAILED IN THE UNITED STATES.

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PROXY STATEMENT FOR

SUNPOWER CORPORATION SPECIAL MEETING OF STOCKHOLDERS

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SUNPOWER CORPORATION

77 Rio Robles

San Jose, California 95134

PROXY STATEMENT FOR

SPECIAL MEETING OF STOCKHOLDERS

INFORMATION CONCERNING SOLICITATION AND VOTING

General

The Board of Directors (the Board) of SunPower Corporation, a Delaware corporation, is furnishing this proxy statement and proxy card to you in connection with its solicitation of proxies to be used at SunPower Corporation s Special Meeting of Stockholders to be held on November 15, 2011 at noon Pacific Time at SunPower Corporation, 77 Rio Robles, San Jose, California, or at any adjournment(s), continuation(s) or postponement(s) of the meeting (the Special Meeting).

We use a number of abbreviations in this proxy statement. We refer to SunPower Corporation as SunPower, the Company, or we, us or our. term proxy solicitation materials includes this proxy statement, the notice of the Special Meeting, the Notice of Internet Availability of Proxy Materials (the Notice of Internet Availability), and the proxy card. References to fiscal 2010 mean our 2010 fiscal year, which began on January 4, 2010 and ended on January 2, 2011.

Our principal executive offices are currently located at 77 Rio Robles, San Jose, California 95134, and our telephone number is (408) 240-5500.

Important Notice Regarding the Availability of Proxy Materials

We have elected to comply with the Securities and Exchange Commission (the SEC) Notice and Access rules, which allow us to make our proxy solicitation materials available to our stockholders over the Internet. Under these rules, on or about October [ ], 2011, we started mailing to certain of our stockholders a Notice of Internet Availability. The Notice of Internet Availability contains instructions on how our stockholders can both access the proxy solicitation materials online and vote online. By sending the Notice of Internet Availability instead of paper copies of the proxy materials, we expect to lower the costs and reduce the environmental impact of our Special Meeting.

Our proxy solicitation materials are available at www.proxyvote.com.

Stockholders receiving the Notice of Internet Availability may request a paper or electronic copy of our proxy solicitation materials by following the instructions set forth on the Notice of Internet Availability. Stockholders who did not receive the Notice of Internet Availability will continue to receive a paper or electronic copy of our proxy solicitation materials, which were first mailed to stockholders and made public on or about October [ ], 2011.

Delivery of Voting Materials

If you would like to further reduce our costs in mailing proxy materials, you can consent to receiving all future proxy statements, proxy cards and annual reports electronically via e-mail or the Internet. To sign up for electronic delivery, please follow the instructions provided for voting via www.proxyvote.com and, when prompted, indicate that you agree to receive or access proxy materials electronically in future years.

To reduce the expenses of delivering duplicate materials to our stockholders, we are taking advantage of householding rules that permit us to deliver only one set of proxy solicitation materials, proxy card, or one copy of the Notice of Internet Availability, to stockholders who share the same address, unless otherwise requested. Each stockholder retains a separate right to vote on all matters presented at the Special Meeting.

If you share an address with another stockholder and have received only one set of materials, you may write or call us to request a separate copy of these materials at no cost to you. For future annual or special meetings, you may request separate materials or request that we only send one set of materials to you if you are receiving multiple copies by writing to us at SunPower Corporation, 77 Rio Robles, San Jose, California 95134, Attention: Corporate Secretary, or calling us at (408) 240-5500.

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Record Date and Shares Outstanding

Stockholders who owned shares of our common stock, par value $0.001 per share, at the close of business on September 19, 2011, which we refer to as the Record Date, are entitled to notice of, and to vote at, the Special Meeting. Our shares of common stock are divided into Class A common stock and Class B common stock. On the Record Date, we had [ ] shares of Class A common stock outstanding and [ ] shares of Class B common stock outstanding. For more information about beneficial ownership of our issued and outstanding common stock, please see *Security Ownership of Management and Certain Beneficial Owners*.

We refer to our Class A common stock and our Class B common stock collectively as our common stock or stock. As of the Record Date, holders of Class A common stock are eligible to cast one vote per share, for an aggregate of [ ] votes at the Special Meeting and holders of Class B common stock are eligible to cast eight votes per share, for an aggregate of [ ] votes at the Special Meeting.

Board Recommendations

Our Board recommends that you vote:

FOR Proposal One: amendment of our Certificate of Incorporation to reclassify all outstanding shares of Class A common stock and Class B common stock into a single class of common stock and eliminate obsolete provisions of the Certificate of Incorporation;

FOR Proposal Two: amendment of our Certificate of Incorporation to provide for stockholders action by written consent; and

FOR Proposal Three: the approval of our Third Amended and Restated SunPower Corporation 2005 Stock Incentive Plan.

Voting

Each holder of shares of Class A common stock is entitled to one vote for each share of Class A common stock held as of the Record Date, and each holder of shares of Class B common stock is entitled to eight votes for each share of Class B common stock held as of the Record Date. The Class A common stock and Class B common stock are voting together as a single class on all matters described in this proxy statement, except that for Proposal One, in addition to the vote of Class A common stock and Class B common stock voting together as a single class, Class B common stock is also voting as a separate class. Cumulating votes is not permitted under our By-laws.

On August 12, 2008, we entered into a rights agreement with Computershare Trust Company, N.A., as rights agent. The rights agreement became effective on September 29, 2008 and was amended on April 28, 2011 and June 14, 2011. The rights agreement contains specific features designed to address the potential for an acquirer or significant investor to take advantage of our capital structure and unfairly discriminate between classes of our common stock. Specifically, the rights agreement is designed to address the inequities that could result if an investor, by acquiring 20% or more of the outstanding shares of Class B common stock, were able to gain significant voting influence over our corporate affairs without making a correspondingly significant economic investment. The rights agreement, commonly referred to as a poison pill, could delay or discourage takeover attempts that stockholders may consider favorable. In connection with the Reclassification described in Proposal One, the rights agreement will be amended and restated, to eliminate certain obsolete provisions relating to our dual-class common stock structure, effective immediately upon the filing of the Proposed Restated Certificate of Incorporation (as defined in Proposal One) with the State of Delaware.

Many of our stockholders hold their shares through a stockbroker, bank or other nominee, rather than directly in their own name. As summarized below, there are distinctions between shares held of record and those beneficially owned.

Stockholder of Record. If your shares are registered directly in your name with our transfer agent, Computershare Trust Company N.A., you are considered, with respect to those shares, the stockholder of record and these proxy solicitation materials are being furnished to you directly by us.

Beneficial Owner. If your shares are held in a stock brokerage account, or by a bank or other nominee (also known as shares registered in street name), you are considered the beneficial owner of such shares held in street name, and these proxy solicitation materials are being furnished to you by your broker, bank or other nominee, who is considered, with respect to those shares, the stockholder of record. As the beneficial owner,

you have the right to direct your broker, bank or other nominee as to how to vote your shares. You are also invited to attend the Special Meeting. However, since you are not the stockholder of record, you may not automatically vote your shares in person at the Special Meeting.

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How To Vote. If you hold shares directly as a stockholder of record, you can vote in one of the following three ways, in addition to attending the Special Meeting:

(1) Vote via the Internet at www.proxyvote.com. Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 p.m. Eastern Time on November 14, 2011. Have your Notice of Internet Availability or proxy card in hand when you access the website and then follow the instructions.

(2) Vote by Telephone at 1-800-690-6903. Use a touch-tone telephone to transmit your voting instructions up until 11:59 p.m. Eastern Time on November 14, 2011. Have your Notice of Internet Availability or proxy card in hand when you call and then follow the instructions. This number is toll free in the U.S. and Canada.

(3) Vote by Mail. Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided with any paper copy of the proxy statement, or return the proxy card to SunPower Corporation, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

If you hold shares beneficially in street name, you may submit your voting instructions in the manner prescribed by your broker, bank or other nominee by following the instructions provided by your broker, bank or other nominee. Shares registered in street name may be voted in person by you at the Special Meeting only if you obtain a signed proxy from the broker, bank or other nominee who holds your shares, giving you the right to vote the shares.

Even if you plan to attend the Special Meeting, we recommend that you vote your shares in advance as described above so that your vote will be counted if you later decide not to attend the Special Meeting.

Quorum. A quorum, which is the holders of at least a majority of shares of our stock issued and outstanding and entitled to vote as of the Record Date, is required to be present in person or by proxy at the Special Meeting in order to hold the Special Meeting and to conduct business. For purposes of Proposal One, where there is a separate vote of the Class B common stock, the holders of at least a majority of shares of Class B common stock issued and outstanding and entitled to vote as of the Record Date is required to be present in person or by proxy at the Special Meeting in order to take action on Proposal One. Your shares will be counted as being present at the Special Meeting if you appear in person at the Special Meeting (and are the stockholder of record for your shares), if you vote your shares by telephone or over the Internet, or if you submit a properly executed proxy card. Abstentions and broker non-votes are counted as present and entitled to vote for purposes of determining a quorum. Votes against a particular proposal will also be counted both to determine the presence or absence of a quorum and to determine whether the requisite number of voting shares has been obtained.

Explanation of Broker Non-Votes and Abstentions. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that item and has not received instructions from the beneficial owner. NYSE rules (which also apply to companies listed on The Nasdsaq Stock Exchange) prohibit brokers from voting in their discretion on any of our proposals without instructions from the beneficial owners. If you do not instruct your broker how to vote on the proposals, your broker will not vote for you. Abstentions are deemed to be entitled to vote for purposes of determining whether stockholder approval of that matter has been obtained, and they would be included in the tabulation of voting results as votes against the proposal.

Votes Required/Treatment of Broker Non-Votes and Abstentions.

Proposal One Amendment of Certificate of Incorporation to Reclassify All Outstanding Shares of Class A Common Stock and Class B Common Stock into a Single Class of Common Stock and Eliminate Obsolete Provisions of the Certificate of Incorporation. This amendment and restatement of our Certificate of Incorporation requires the affirmative vote of (i) the holders of a majority of the voting power of our outstanding shares of Class A common stock and Class B common stock, voting together as a single class, and (ii) the holders of a majority of our outstanding shares of Class B common stock, voting as a separate class. Broker non-votes and abstentions will not count as votes in favor of the proposed amendment and restatement of our current Certificate of Incorporation and such votes will have the effect of votes against Proposal One.

Proposal Two Amendment of Certificate of Incorporation to Permit Action by Written Consent of the Stockholders Without a Meeting. This amendment of our Certificate of Incorporation requires the affirmative vote of the holders of a majority of the voting power of our outstanding shares of Class A common stock and Class B common stock, voting together as a single class. Broker non-votes and abstentions will not count as votes in favor of the proposed amendment of our current Certificate of Incorporation and such votes will have the effect of votes against Proposal Two.

Proposal Three The Approval of Our Third Amended and Restated SunPower Corporation 2005 Stock Incentive Plan. The approval of our Third Amended and Restated SunPower Corporation 2005 Stock Incentive Plan requires the affirmative vote of the holders of a majority of our stock having voting power and present in person or represented by proxy

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at the Special Meeting. Broker non-votes and abstentions will not count as votes in favor of the proposed amendment and restatement of our 2005 Stock Incentive Plan and, abstentions, but not broker non-votes, will have the effect of votes against Proposal Three.

How Your Proxy Will Be Voted

If you complete and submit your proxy card or vote via the Internet or by telephone, the shares represented by your proxy will be voted at the Special Meeting in accordance with your instructions. If you submit your proxy card by mail, but do not fill out the voting instructions on the proxy card, the shares represented by your proxy will be voted in favor of Proposals One, Two and Three.

Revoking Your Proxy

You may revoke your proxy at any time prior to the date of the Special Meeting by: (1) submitting a later-dated vote in person at the Special Meeting, via the Internet, by telephone or by mail; or (2) delivering instructions to us at 77 Rio Robles, San Jose, California 95134 to the attention of our Corporate Secretary. Any notice of revocation sent to us must include the stockholder s name and must be actually received by us prior to the Special Meeting to be effective. Your attendance at the Special Meeting after having executed and delivered a valid proxy card or vote via the Internet or by telephone will not in and of itself constitute a revocation of your proxy. If you intend to revoke your proxy by voting in person at the Special Meeting, you will be required to give oral notice of your intention to do so to the Inspector of Elections at the Special Meeting. If your shares are held in street name, you should follow the directions provided by your broker, bank or other nominee regarding how to revoke your proxy.

Solicitation of Proxies

We will pay for the cost of this proxy solicitation. We may reimburse brokerage firms and other persons representing beneficial owners of shares for their expenses in forwarding or furnishing proxy solicitation materials to such beneficial owners. Proxies may also be solicited personally or by telephone, telegram, or facsimile by certain of our directors, officers, and regular employees, without additional compensation.

Voting Results

We will announce preliminary voting results at the Special Meeting and publish final results pursuant to a Current Report on Form 8-K which we intend to file with the SEC within four business days following the Special Meeting.

Submission of Stockholder Proposal for the 2012 Annual Meeting

As a SunPower stockholder, you may submit a proposal, including director nominations, for consideration at future annual meetings of stockholders.

Only stockholders meeting certain criteria outlined in our By-Laws are eligible to submit nominations for election to the Board of Directors or to propose other proper business for consideration by stockholders at an annual meeting. Under the By-laws, stockholders who wish to nominate persons for election to the Board of Directors or propose other proper business for consideration by stockholders at an annual meeting must give proper written notice to us not earlier than the 120th day and not later than the 90th day prior to the first anniversary of the preceding year s annual meeting, provided that in the event that our 2012 annual meeting is called for a date that is not within 25 days before or after such anniversary date, notice by the stockholder in order to be timely must be received not later than the close of business on the 10th day following the day on which we mail or publicly announce our notice of the date of the annual meeting, whichever occurs first. Therefore, notices regarding nominations of persons for election to the Board of Directors and proposals of other proper business for consideration at the 2012 annual meeting of stockholders must be submitted to us no earlier than January 4, 2012 and no later than February 3, 2012. If the date of the 2012 annual meeting is moved more than 25 days before or after the anniversary date of the 2011 annual meeting, the deadline will instead be the close of business on the 10th day following notice of the date of the 2012 annual meeting of stockholders or public disclosure of such date, whichever occurs first. We have discretionary power, but are not obligated, to consider stockholder proposals submitted after February 3, 2012.

Stockholder proposals will also need to comply with SEC regulations, such as Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the Exchange Act) regarding the inclusion of stockholder proposals in any Company-sponsored proxy material. The submission deadline for stockholder proposals to be included in our proxy materials for the 2012 annual meeting of stockholders pursuant to Rule 14a-8 of the Exchange Act is November 24, 2011. All written proposals must be received by our Corporate Secretary, at our corporate offices at 77 Rio Robles, San Jose, California 95134 by the close of business on the required deadline in order to be considered for inclusion in our proxy materials for the 2012 annual meeting of stockholders.

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Note Concerning Forward-Looking Statements

Certain of the statements contained in this proxy statement are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and the assumptions underlying such statements. We use words such as anticipate, believe, continue could, estimate, expect, intend, may, potential, should, will, would and similar expressions to identify forward-looking statements. These statements include, but are not limited to, statements about our plans and expectations regarding the Reclassification of our Class A common stock and Class B common stock into a single class of common stock, the likely outcome of the vote on the proposals, the tax consequences of the proposals, any indemnification obligations towards Cypress Semiconductor Corporation, management s plans and objectives for future operations, expectations and intentions, actions to be taken by us and other statements that are not historical facts. These forward-looking statements are based on information available to us as of the date of this proxy statement and our current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements, such as how Total Gas & Power USA, SAS will vote its shares of SunPower stock. Such risks and uncertainties include a variety of factors, some of which are beyond our control. All of the forward-looking statements are qualified in their entirety by reference to the factors discussed in Part I, Item 1A, Risk Factors and elsewhere in our Annual Report on Form 10-K for the year ended January 2, 2011 and Part II, Item 1A, Risk Factors and elsewhere in our Quarterly Report on Form 10-Q for the quarter ended July 3, 2011. There may be other factors of which we are not currently aware that may affect matters discussed in the forward-looking statements and may also cause actual results to differ materially from those discussed. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

WHETHER OR NOT YOU EXPECT TO ATTEND THE SPECIAL MEETING IN PERSON, YOU ARE REQUESTED TO COMPLETE, DATE, AND SIGN THE PROXY CARD AND RETURN IT PROMPTLY, OR VOTE BY TELEPHONE OR VIA THE INTERNET BY FOLLOWING THE DIRECTIONS ON THE PROXY CARD. BY RETURNING YOUR PROXY CARD OR VOTING BY PHONE OR INTERNET PROMPTLY, YOU CAN HELP US AVOID THE EXPENSE OF FOLLOW-UP MAILINGS TO ENSURE A QUORUM IS PRESENT AT THE SPECIAL MEETING. STOCKHOLDERS WHO ATTEND THE SPECIAL MEETING MAY REVOKE A PRIOR PROXY VOTE AND VOTE THEIR SHARES IN PERSON AS SET FORTH IN THIS PROXY STATEMENT.

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PROPOSAL ONE

AMENDMENT OF SUNPOWER S CERTIFICATE OF INCORPORATION TO RECLASSIFY ALL OUTSTANDING SHARES OF CLASS A COMMON STOCK AND CLASS B COMMON STOCK INTO A SINGLE CLASS OF COMMON STOCK AND ELIMINATE OBSOLETE PROVISIONS OF THE CERTIFICATE OF INCORPORATION

Our Board has approved and determined to be advisable a restated Certificate of Incorporation that would, if approved at the Special Meeting and filed with the Secretary of State of the State of Delaware, reclassify all outstanding shares of Class A common stock and Class B common stock on a share-for-share basis into shares of a single class of common stock named common stock and eliminate provisions of our existing Certificate of Incorporation relating to our dual-class common stock structure and certain other historical matters. In accordance with the Delaware General Corporation Law, our Board is submitting the proposed restated Certificate of Incorporation to our stockholders for their approval, as described in more detail below.

The primary purpose for this proposal is to eliminate our current dual-class common stock structure by reclassifying our Class A common stock and Class B common stock into a single class of common stock that has the same voting powers, preferences, rights and qualifications, limitations and restrictions as our current Class A common stock, which we refer to as the Reclassification.

The text of the proposed restated Certificate of Incorporation, marked to show changes to our current Certificate of Incorporation, is included as Appendix A to this proxy statement. We refer to the proposed restated Certificate of Incorporation throughout this proxy statement as the Proposed Restated Certificate of Incorporation.

Background of Our Dual-Class Common Stock Structure

We currently have two classes of common stock outstanding: Class A common stock and Class B common stock. The preferences, rights and qualifications, limitations and restrictions of the Class A common stock and Class B common stock are identical except that each holder of Class A common stock is entitled to one vote per share and each holder of Class B common stock is entitled to eight votes per share on any matter subject to a vote of our stockholders, subject to certain exceptions.

As of September 19, 2011, the Record Date, there were [ ] shares of Class A common stock outstanding held by [ ] holders of record and [ ] shares of Class B common stock outstanding held by [ ] holders of record. As of that date, the outstanding Class A common stock represented approximately [ ]% of our shares, and approximately [ ]% of the total voting power, of our outstanding common stock; and the outstanding Class B common stock represented approximately [ ]% of our shares, and approximately [ ]% of the total voting power, of our outstanding common stock.

Our dual-class common stock structure was created concurrently with the initial public offering of our Class A common stock in November 2005. Prior to our IPO, our former parent, Cypress Semiconductor Corporation (Cypress), held approximately 100% of our outstanding capital stock. After completion of our IPO, Cypress held all the outstanding shares of our Class B common stock. As a result, Cypress maintained greater than 80% voting control of the Company after the IPO.

In September 2008, Cypress distributed all of the shares of Class B common stock it held at the time to its stockholders in the form of a pro rata dividend intended to be tax-free. We refer to this distribution as the spin-off. Concurrently with the spin-off, our Class B common stock was listed on the Nasdaq Global Select Market under the symbol SPWRB. Our Class A common stock was already listed under the symbol SPWR and, concurrently with the spin-off, we changed this symbol to SPWRA.

We are party to a tax sharing agreement with Cypress providing for each party s obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress would pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis while we were a member of Cypress s consolidated or combined group for federal, state, local and foreign tax purposes. In connection with Cypress s spin-off of our Class B common stock, we entered into an amendment to the tax sharing agreement with Cypress on August 12, 2008, to address certain transactions that may affect the tax treatment of the spin-off and certain other matters (Amended Tax Sharing Agreement). We are obligated under the Amended Tax Sharing Agreement to indemnify Cypress for taxes and related losses resulting from certain actions that could result in the spin-off being deemed to be taxable.

On April 28, 2011, we and Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France (Total Gas & Power USA) entered into a Tender Offer Agreement (the Tender Offer Agreement),

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pursuant to which, on May 3, 2011, Total Gas & Power USA commenced a cash tender offer to acquire up to 60% of our outstanding shares of Class A common stock and up to 60% of our outstanding shares of Class B common stock (the Tender Offer) at a price of $23.25 per share for each class. The Tender Offer expired on June 14, 2011 and Total Gas & Power USA accepted for payment on June 21, 2011 a total of 34,756,682 shares of our Class A common stock and 25,220,000 shares of our Class B common stock, representing 60% of each class of the then outstanding common stock. Total Gas & Power USA is a wholly owned indirect subsidiary of Total S.A., a société anonyme organized under the laws of the Republic of France (Total). Pursuant to the terms of the Tender Offer Agreement, we are obligated to obtain a tax opinion (a Tax Opinion) of Jones Day, or Skadden, Arps, Slate, Meagher & Flom LLP (Skadden, Arps) or other outside legal counsel to SunPower reasonably acceptable to Total Gas & Power USA, regarding the effect of implementing the Reclassification. The Tax Opinion must be reasonably satisfactory to Total Gas & Power USA. We have provided Total Gas & Power USA with a draft opinion of Skadden, Arps dated July 27, 2011, to the effect that, based upon certain facts, representations and assumptions set forth therein, the Reclassification, taken together with all relevant pre-spin-off and post-spin-off transactions, will not cause Section 355(e) of the Internal Revenue Code of 1986, as amended (the Code) to apply to the spin-off. Total Gas & Power USA has confirmed that the draft opinion is satisfactory to it. We expect Skadden, Arps to deliver the tax opinion reasonably satisfactory to Total Gas & Power USA immediately prior to the Reclassification.

In addition, we agreed in the Tender Offer Agreement to establish a record date for, call, give notice of, convene and hold a meeting of stockholders within six months of obtaining the EU Clearance (described below) for the Tender Offer, for the purpose of voting upon the Reclassification as set forth in the Proposed Restated Certificate of Incorporation. On June 28, 2011, the European Commission granted clearance (the EU Clearance) under Council Regulation (EC) No. 139/2004 of 20 January 2004 of the Council of the European Union to the acquisition by Total Gas & Power USA, of up to 60% of our outstanding shares of Class A common stock and 60% of our outstanding shares of the Class B common stock in connection with the Tender Offer. Total has agreed in the Tender Offer Agreement to vote all shares acquired in the Tender Offer in favor of the Reclassification as set forth in the Proposed Restated Certificate of Incorporation.

Trading History and Disadvantages of the Dual-Class Structure

Since the spin-off from Cypress in September 2008, the price of our Class B common stock has generally been below the price of our Class A common stock, despite the greater voting powers of the Class B common stock and the otherwise identical rights of both classes of stock. From the date of the spin-off through September 9, 2011, the discount has ranged from a low of approximately 0% to a high of approximately 37%, with an average discount over the past two years of approximately 8%. As of September 9, 2011, the discount was approximately 15%.

In addition, the average daily trading volume of the Class B common stock since the spin-off has generally been significantly lower than that of the Class A common stock. We believe that the resulting lower liquidity of the Class B common stock plays a role in the price disparity between the two classes.

We also believe that a significant amount of confusion has arisen among stockholders, potential stockholders, the financial media and other members of the financial community with respect to our dual-class common stock structure. The use of similar trading symbols for the two classes of common stock (SPWRA and SPWRB) has contributed to the confusion, given that these trading symbols have been reproduced, recorded or described in different ways by various sources. Some stockholders have reported an inability to use certain reporting services to find trading prices for the Class B common stock. As a result, the public may have obtained conflicting and confusing financial information from various third-party sources, and management has been required to spend time and resources correcting flawed information and educating existing and potential investors. In addition, management has fielded extensive questions from stockholders and analysts regarding why the discount exists.

In connection with the spin-off, we entered into a stockholders rights agreement (the Rights Agreement), commonly known as a poison pill, in part to mitigate the potential of an acquiror or significant investor gaining significant voting influence over our corporate affairs through the purchase of shares of Class B common stock without making a correspondingly significant economic investment in the Company. In connection with the Reclassification, the Rights Agreement will be amended and restated, to eliminate certain obsolete provisions relating to the dual-class structure, effective immediately upon the filing of the Proposed Restated Certificate of Incorporation with the State of Delaware.

In summary, we believe that the collapse of our dual-class common stock structure into a single new class of common stock is in the best interests of the Company and the holders of both the Class A and the Class B common stock. The Reclassification will eliminate the disparity in trading prices between our two classes of common stock, and we expect that it

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will also improve the liquidity of our common stock overall, allow for easier analysis and valuation of the new single class of common stock, and eliminate confusion within the financial community regarding the current dual-class common stock structure. In addition, we are required under the Tender Offer Agreement to propose the Reclassification to our stockholders. However, we cannot guarantee that the benefits of a simplified capital structure will be accomplished to the extent and in the manner we currently expect, if at all.

Considerations Involving the Reclassification

In light of the trading price disparity that followed the spin-off and the resulting questions from current and potential stockholders, analysts and others, SunPower s management held discussions with outside legal counsel and with the Board, and determined that it would be appropriate to engage special tax counsel to prepare the Tax Opinion.

We retained Skadden, Arps as special tax counsel to render the Tax Opinion. Skadden, Arps prepared a draft opinion letter dated July 27, 2011 that was reviewed and discussed internally with our management, as well as with Total Gas & Power USA and its outside tax counsel.

Concurrently with the work to deliver the Tax Opinion, our Board also conducted a more detailed review of the Reclassification. After careful consideration of the issues and factors and consultation with our senior management and financial and legal advisors, our Board determined on July 28, 2011 that the Reclassification and the Proposed Restated Certificate of Incorporation are fair, advisable and in the best interests of the Company and its stockholders, and our Board directed that the Proposed Restated Certificate of Incorporation be considered at the Special Meeting and recommended that our stockholders vote for its approval. Total Gas & Power USA has confirmed that the draft opinion of Skadden, Arps is satisfactory in form and substance to Total Gas & Power USA.

In determining that the Proposed Restated Certificate of Incorporation is advisable, directing that it be considered at the Special Meeting and recommending that our stockholders vote for its approval, our Board considered a number of factors, including the possible benefits that the Company and our stockholders may derive from each of the following:

- Creation of a single class of common stock having a greater public float and potentially having greater liquidity than either of the two existing classes;
- Likely reduction in investor confusion resulting from the dual-class common stock structure;
- Our being able to use a single class of common stock as acquisition currency;
- Reduced complexity in evaluating and implementing stock repurchase programs and equity incentive programs;
- Elimination of administrative expenses resulting from the dual-class common stock structure;
- The expected benefits of eliminating investor confusion and the resulting management distraction regarding the dual-class common stock structure and the trading price disparity between the two classes of common stock; and
- Alignment of voting rights with the economic risks of ownership of our common stock.

The Board also considered the following additional factors:

The holders of our Class A common stock and holders of our Class B common stock currently have the same economic rights, and the only material difference between the two classes is the difference in voting rights;

The lower trading price and trading volume of the Class B common stock as compared to the Class A common stock in light of the superior voting rights of the Class B common stock;

The historical trading price and trading volume differentials between the two classes of publicly traded stock of certain other companies with dual-class capital structures;

The increase in the relative voting rights of the holders of the Class A common stock that would result from the elimination of the superior voting rights of the Class B common stock in the Reclassification;

That the Company has not issued any Class B common stock since the spin-off, and participants in our equity incentive plans who have the right to receive or acquire equity of the Company have the right to receive or acquire shares of Class A common stock; and

That the Reclassification is not expected to affect the tax treatment of the spin-off or the indemnification obligations of the Company (as described further below).

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The foregoing discussion of information considered by the Board in determining to declare advisable, and recommend that our stockholders approve, the Proposed Restated Certificate of Incorporation is not intended to be exhaustive, but includes the material factors considered by the Board in making its decision. In view of the wide variety of factors considered by the Board and the complexity of these matters, the Board did not consider it practicable to nor did it attempt to quantify, rank or otherwise assign relative weights to the specific factors it considered in reaching its decision. In considering the factors described above, individual members of the Board may have given different weight to different factors. Although one of the potential benefits the Board considered was the elimination of administrative expenses resulting from the dual-class structure, we do not expect that any cost savings resulting from the Reclassification will be material. We cannot assure you when or if any specific potential benefits considered by the Board will be realized.

As noted above, under the Amended Tax Sharing Agreement we entered into with Cypress, we agreed to indemnify Cypress for taxes and related losses if the spin-off were deemed to be taxable due to, among other things, any recapitalization involving our Class B common stock, including the Reclassification that would be effected by the Proposed Restated Certificate of Incorporation. Although we believe, based in part on the draft tax opinion, that the Reclassification will not have any effect on the treatment for tax purposes of our spin-off from Cypress, in the event the Reclassification does result in the spin-off being treated as taxable, we could face substantial material liabilities as a result of our obligations under the Amended Tax Sharing Agreement.

Other Proposed Amendments

Our Board believes that upon completion of the Reclassification, retention of provisions in our current Certificate of Incorporation relating to our dual-class common stock structure and the ownership interest Cypress formerly held in us may confuse stockholders. The amendments described below would eliminate such references and may serve to avoid any such confusion.

The provisions proposed to be eliminated include, among others:

- References to the common stock of the Company consisting of, and the authorization of shares of, Class A common stock and Class B common stock;
- Provisions defining the rights of holders of shares of Class A common stock and Class B common stock, including provisions regarding voting rights, dividends and distributions, conversion of shares of Class B common stock to Class A common stock upon certain transfers, and the convertibility of shares of Class B common stock into shares of Class A common stock;
- References to the spin-off and the ownership interest Cypress formerly held in the Company, including obsolete provisions regarding rights granted to Cypress in connection with its historical ownership interest; and
- Obsolete provisions allocating corporate opportunities among the Company and Cypress.

Adoption of the Proposed Restated Certificate of Incorporation will have no effect upon our future operations or on the substantive rights of holders of shares of Class A common stock or Class B common stock, except for the elimination of the different voting powers of the two classes of stock.

Certain Effects of the Amendments

If the Proposed Restated Certificate of Incorporation becomes effective, each share of our outstanding Class A common stock and Class B common stock will automatically be reclassified as, and become one share of, a new single class of common stock named common stock that has the same voting powers, preferences, rights and qualifications, limitations and restrictions as the current Class A common stock. The proposed Reclassification will have the following effects, among others, on the holders of our Class A common stock and Class B common stock:

Voting Power. Holders of shares of Class B common stock are currently entitled to cast eight votes per share on any matters subject to a stockholder vote, and holders of shares of Class A common stock are entitled to cast one vote per share. Following the Reclassification, all stockholders will have only one vote per share on all matters subject to a stockholder vote. As of September 19, 2011, holders of outstanding

shares of Class A common stock are entitled to cast approximately [ ]% of the vote and holders of outstanding shares of Class B common stock are entitled to cast approximately [ ]% of the vote. After the Reclassification, assuming the same number of outstanding shares as on September 19, 2011, the holders of formerly outstanding shares of Class A common stock will be entitled to cast approximately [ ]% of the vote and the holders of formerly outstanding shares of Class B common stock will be entitled to cast approximately [ ]% of the vote. In addition, Delaware law requires a separate class voting right by each of the holders of Class A common stock and Class B common

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stock if an amendment to our current Certificate of Incorporation would alter the powers, preferences or special rights of such class of common stock so as to affect the rights of such class of common stock adversely. Upon the effectiveness of the Reclassification, these provisions under Delaware law regarding separate class votes will no longer be applicable since we will only have a single class of common stock outstanding.

Economic Interests. The Reclassification will have no impact on the economic interest of holders of our Class A common stock and Class B common stock, including with regard to dividends, liquidation rights or redemption. As of September 19, 2011, the shares held by the holders of our Class A common stock represented [ ]% of the total outstanding shares of common stock (each such share represented [ ]% of economic interest) and the shares held by the holders of our Class B common stock represented [ ]% of the total outstanding shares of common stock (each such share represented [ ]% of economic interest). Immediately after the Reclassification, the shares of common stock held by current holders of our Class A common stock and Class B common stock will represent the same proportions of the total outstanding shares, and each share of common stock would represent [ ]% of economic interest (assuming the same number of shares outstanding as on September 19, 2011).

Capitalization. The Reclassification will have no impact on the total number of issued and outstanding shares of our common stock. As of September 19, 2011, there were [ ] shares of common stock issued and outstanding, consisting of [ ] shares of Class A common stock and [ ] shares of Class B common stock. If the Reclassification occurred on that date, there would still be [ ] shares of common stock outstanding. In addition, the Reclassification will not increase our total number of authorized shares of common stock, which is and will remain 367,500,000 shares. The Proposed Restated Certificate of Incorporation also will change our total number of authorized shares of preferred stock from 10,042,490 to 10,000,000. No shares of our preferred stock are currently outstanding or will be outstanding immediately following the Reclassification. Under our current Certificate of Incorporation, Class B common stock is only issuable to Cypress, or a Successor in Interest or Subsidiary of Cypress (as each term is defined therein), or in certain cases to former Cypress stockholders who acquired and continue to hold shares of Class B common stock from the spin-off, and therefore only our Class A common stock has been generally issuable. After the effectiveness of the Reclassification, this limitation will no longer be in effect and all of our authorized and unissued common stock will be issuable to any person.

NASDAQ Listing. Following effectiveness of the Proposed Restated Certificate of Incorporation, our new single class of common stock will trade on the Nasdaq Global Select Market under the new symbol SPWR. Our Class A common stock and Class B common stock, traded under the symbols SPWRA and SPWRB, respectively, will be de-listed from the Nasdaq and will no longer be traded.

Operations. The Reclassification will have no impact on our operations, except to the limited extent that we are able to realize some or all of the potential benefits from the Reclassification which are described above.

Resale of Common Stock. Shares of our common stock may be sold in the same manner as our Class A common stock and our Class B common stock may currently be sold. Our affiliates and holders of any shares that constitute restricted securities will continue to be subject to the restrictions specified in Rule 144 under the Securities Act of 1933.

Equity Incentive Plans. Upon the Reclassification, outstanding options, stock appreciation rights, restricted shares and restricted stock units denominated in shares of Class A common stock issued under any of our equity incentive plans will remain unchanged, except that they will represent the right to receive shares of the new single class of common stock rather than Class A common stock.

Amendment of Our By-laws. In connection with the Reclassification, our By-laws will be amended to, among other things, eliminate obsolete provisions relating to the spin-off and the existing dual-class common stock structure. Our amended and restated By-laws will become effective immediately following the filing of the Proposed Restated Certificate of Incorporation with the State of Delaware.

Amendment and Restatement of Our Stockholder Rights Agreement. In connection with the Reclassification, the Rights Agreement we entered into with Computershare Trust Company, will be amended and restated to, among other things, eliminate obsolete provisions relating to the existing dual-class common stock structure. Under the current Rights Agreement,