

MEMORANDUM: APPROVAL TO MODIFY ADVANCE WAIVER OF PATENT RIGHTS W(A)
2009-047 GRANTED FOR US SOLAR HOLDINGS LLC UNDER
AGREEMENT NO. DE-FC36-08GO18155

US Solar Holdings LLC ("US Solar") has requested that the Department of Energy ("DOE") modify or clarify the cost share requirements set forth in the statement of considerations for the granted advance patent waiver W(A) 2009-047. Specifically, the statement of considerations, as originally granted, states the following:

The total cost of the award is approximately \$4 million with the Petitioner providing about 50% cost sharing. This waiver is contingent upon the Petitioner maintaining, in aggregate, the above cost sharing percentage over the course of the agreement.

Rather than just provide an aggregate cost share requirement of 50% for the agreement, US Solar wants the statement of considerations to reflect the cost share requirements according to the different phases of the agreement. The agreement has three phases. Phases I and II are directed to research and development activities and have a statutory minimum cost share requirement of 20%. Phase III is directed to demonstration activities and has a statutory minimum cost share requirement of 50%. However, despite the statutory minimum cost share requirements, US Solar is committed to the following cost share requirement by phase: 40% for Phase I; 30.8% for Phase II; and 55.4% for Phase III. Due to the size of Phase III, with respect to Phases I and II, if all three phases are completed the total aggregate cost share over the entire agreement would be about 50%. There are go/no-go decision points between each phase. US Solar's concern is if it does not get the approval to proceed with Phase III or the scope of Phase III is reduced then the total aggregated cost may not reach 50%.

In order to alleviate US Solar's concern and to align the cost share requirement in the statement of considerations with the cost share requirement in the agreement, the statement of considerations shall be modified as following:

The total cost of the award is approximately \$4 million, with the The Petitioner is providing about 40% cost share for Phase I of the award, 30.8% for Phase II of the award, and 55.4% for Phase III of the award ~~50% cost sharing~~. This waiver is contingent upon the Petitioner maintaining at least, in aggregate, the above foregoing cost sharing percentages per phase over the course of the agreement.

(underlined text indicates added text; crossed-out text indicates deleted text)


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Date: 1/6/11

Concurrence:

Approval:

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