

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: SUNWAVE USA HOLDINGS, INC. :
NON-COMPLIANCE WITH THE RHODE :
ISLAND RENEWABLE ENERGY STANDARD : **DOCKET NO. 22-32-RES**
FOR COMPLIANCE YEAR 2021 :

**ORDER ON FINDING OF NON-COMPLIANCE
WITH RENEWABLE ENERGY STANDARD AND
TO DRAW ON SUNWAVE USA HOLDINGS, INC.'S SURETY BOND**

R.I. Gen. Laws § 39-26-6 vests the Rhode Island Public Utilities Commission (Commission) with enforcing the Renewable Energy Standard (RES).¹ The Commission has adopted rules governing the Implementation of a Renewable Energy Standard which includes compliance reporting and enforcement procedures.²

Sunwave USA Holdings, Inc. (Sunwave) is an Obligated Entity under R.I. Gen. Laws § 39-26-2(16) and was required to obtain certain percentages of electricity sold in Rhode Island from eligible renewable energy sources.³ Sunwave was also required to provide financial security pursuant to regulations adopted by the Rhode Island Division of Public Utilities and Carriers (Division) in the minimum amount of \$250,000, naming the Commission and Division as obliges.⁴ Sunwave posted a License or Permit Bond (Bond), issued by The Ohio Casualty Insurance Company, as surety, in the amount of \$250,000 as financial security, as required by the Division's *Rules Applicable to Nonregulated Power Producers* (815-RICR-30-05-01).⁵

¹ Rhode Island Renewable Energy Standard, R.I. Gen. Laws § 39-26-1 et seq.

² Public Utilities Commission, *Implementation of a Renewable Energy Standard*, 810-RICR-40-05-2.

³ Sunwave USA Holdings, Inc. was a registered Nonregulated Power Producer authorized to sell electric energy to end-use customers. In compliance year 2021, each Obligated Entity was required to obtain at least 17.5% of the electricity they sell at retail from eligible renewable energy resources. R.I. Gen. Laws § 39-26-4(a)(4).

⁴ See Division of Public Utilities and Carriers *Rules Applicable to Nonregulated Power Producers*, 815-RICR-30-05-1.

⁵ The License or Permit Bond was dated September 25, 2019. Pursuant to the terms of the Bond, the Bond continues in effect "until terminated by the Obligee or Surety upon thirty (30) days prior written notice to the non-terminating party." The Ohio Casualty Insurance Company sent correspondence to the Commission, dated

Sunwave, as an Obligated Entity, was required to file an annual Compliance Filing with the Commission demonstrating that it had complied with the RES by either having settled sufficient Rhode Island-eligible renewable energy certificates or made Alternative Compliance Payments to the Rhode Island Renewable Energy Development Fund administered by the Rhode Island Commerce Corporation. Sunwave has failed to show that that it had settled sufficient Rhode Island-eligible renewable energy certificates or made Alternative Compliance Payments to the Rhode Island Renewable Energy Development Fund administered by the Rhode Island Commerce Corporation, leaving an outstanding obligation for Compliance Year 2021.

On July 18, 2022, the Commission provided electronic notification to Sunwave's regulatory contact of Sunwave's failure to file the 2021 Renewable Energy Standard compliance filing. On September 26, 2022 and September 27, 2022, the Commission informed Sunwave's regulatory contact that no eligible renewable energy certificates (RECs) were listed as having been retired in a Sunwave's RI settlement account, nor was any evidence of the required Alternative Compliance Payment presented. Based on Narragansett Electric's Load Data, Sunwave's total 2021 REC obligation was 646 RECs and it's required Alternative Compliance Payment was \$46,841.46 (646 x \$72.51).

The Commission provided Sunwave an opportunity to provide evidence of compliance by 4:00 p.m. on September 28, 2022, prior to its Open Meeting scheduled for September 29, 2022. The Commission also informed Sunwave that, pursuant to R.I. Gen Laws § 39-26-6(b) and § 39-1-27.1(c)(9), should the Commission find that Sunwave failed to comply with the RES for Compliance Year 2021, the Commission may approve liquidation of Sunwave's financial assurance held jointly by the PUC and Division as a sanction or penalty. Additionally, the

September 2, 2022, providing notice that it was canceling the Bond in accordance with the cancellation provisions contained in the Bond.

Commission informed Sunwave that should the Commission make such finding, the Commission intends to make immediate demand on the financial assurance. Sunwave has not provided evidence that it either settled the requisite number of Rhode Island-eligible renewable energy certificates or made ACP payment to the Renewable Energy Development Fund.

R.I. Gen. Laws § 39-1-27.1(c)(9) provides that financial security shall be available to satisfy penalties for failure to comply with the provisions of R.I. Gen. Laws Chapter 39-26 as determined by the Commission and that payments made pursuant to this subsection shall be forfeited and shall be remitted to the Renewable Energy Development Fund established by R.I. Gen. Laws § 39-26-7.⁶ The Division has established *Rules Applicable to Nonregulated Power Producers*, 815-RICR-30-05-1, and has established the amount of financial security at not less than \$250,000 (see 815-RICR-30-05-1.3A(9)(b)).

At an Open Meeting on September 29, 2022, the Commission considered this matter and found that Sunwave failed to comply with the Renewable Energy Standard for Compliance Year 2021 and that Sunwave has an unsettled 2021 REC obligation of 646 RECs. Sunwave has provided no additional evidence that the company has eligible RECs to meet its obligation for 2021, and Commission staff has confirmed that Sunwave's NEPOOL-GIS account has no remaining eligible RECs. Sunwave has also not made a required Alternative Compliance Payments of \$46,841.46 to the Renewable Energy Development Fund to settle the outstanding obligation.

Based on the circumstances of this matter, including Sunwave's failure to make any effort to comply with its obligations, the policy of the State of Rhode Island in support of renewable energy, and the negative effects on the REC market and Rhode Island ratepayers, the Commission penalizes Sunwave pursuant to R.I. Gen. Laws § 39-26-4 and § 39-1-27.1(c)(9) and 815-RICR-

⁶ R.I. Gen. Laws § 39-1-27.1(c)(9) provides that the Division may set the amount of financial security at an amount not less than twenty-five thousand dollars (\$25,000), nor more than five hundred thousand dollars (\$500,000).

30-05-1.3A(9)(b), in the amount of double the amount of ACPs owed, \$93,682.00, for violating the provisions of R.I. Gen. Laws § 39-26-1 et seq.

The Commission has designated the Commission Chairman to demand release of the full amount of the penalty from the Surety Bond dated September 25, 2019. Remittance of the funds available under the Surety Bond does not in any way relieve Sunwave from its remaining obligation to the Renewable Energy Development Fund.⁷ The Commission directs the Clerk to transmit this Order to the Division of Public Utilities and Carriers for enforcement action under its Rules Applicable to Nonregulated Power Producers as it deems necessary.

Accordingly, it is hereby,

(24499) ORDERED:

1. Sunwave USA Holdings, Inc. has failed to comply with the 2021 Renewable Energy Standard.
2. The Commission penalizes Sunwave USA Holdings, Inc. in the amount of \$93,682.00.
3. The Chairperson of the Rhode Island Public Utilities Commission has been designated to claim release of the full amount of the penalty from the License or Permit Bond.
4. This Order does not relieve Sunwave USA Holdings, Inc. from its 2021 Renewable Energy Standard obligation.
5. The Clerk shall transmit a copy of this Order to the Division of Public Utilities and Carriers for enforcement action under its Rules Applicable to Nonregulated Power Producers.

⁷ 810-RICR-40-05-2.10(B).

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON SEPTEMBER 29, 2022, PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED SEPTEMBER 29, 2022.

PUBLIC UTILITIES COMMISSION



Ronald T. Gerwatowski, Chairman



Abigail Anthony, Commissioner



John C. Revens, Jr., Commissioner

NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven days from the date of the order, petition the Rhode Island Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.