

VIA ELECTRONIC MAIL ONLY

January 20, 2023

Luly E. Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket No. 22-32-RES – In Re Sunwave USA Holdings Inc.’s Non-Compliance with the Rhode Island Renewable Energy Standard for Compliance Year 2021
Sunwave USA Holdings Inc.’s Motion to Reopen the Proceeding and Request a Reduction to the Penalty Imposed
Request to Replace Exhibit with Redacted Copy

Dear Ms. Massaro:

I represent Sunwave USA Holdings Inc. (“Sunwave”) in this matter. In the motion filed yesterday, the exhibit showing evidence of an Alternative Compliance Payment inadvertently contained privileged information. As such, I am writing today to request that the exhibit be replaced with the enclosed redacted version. This request is made pursuant to 810-RICR-00-00-1-1.3(H)(3) and R.I. Gen. Laws § 38-2-2(4)(B). Specifically, Sunwave seeks protection from public disclosure of bank account numbers, its ACH Company ID number, and the RI Commerce Corporation’s Bank ID number. This information constitutes commercial or financial information obtained from Sunwave that is of a privileged or confidential nature. Disclosure of this information is not the type of information typically made available to the public and its release could result in harm to Sunwave’s or RI Commerce Corporation’s financial position by exposing their banking information to the public.

Enclosed are both a redacted and unredacted version of the document. The unredacted version is labeled “Contains Privileged Information - Do Not Release.” Also enclosed is a copy of the motion filed yesterday with the redacted exhibit rather than the unredacted exhibit.

Robinson+Cole

Luly E. Massaro, Clerk
Rhode Island Public Utilities Commission
January 20, 2023
Page 2

Thank you for your attention to this matter. If you have any questions, please contact me at (860) 275-8359.

Sincerely,

A handwritten signature in blue ink that reads "John P. Casey". The signature is written in a cursive style with a large initial "J" and a distinct "P" and "C".

John P. Casey

Enclosure

cc: Docket 22-32-RES Service List

STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION

IN RE: SUNWAVE USA HOLDINGS INC.’S :
NON-COMPLIANCE WITH THE :
RHODE ISLAND RENEWABLE : Docket No. 22-32-RES
ENERGY STANDARD FOR :
COMPLIANCE YEAR 2021 :

**SUNWAVE USA HOLDINGS INC.’S
MOTION TO REOPEN THE PROCEEDING AND
REQUEST FOR A REDUCTION TO THE PENALTY IMPOSED**

INTRODUCTION

Sunwave USA Holdings Inc. (“Sunwave”), pursuant to 810-RICR-00-00-1.29, respectfully moves for relief from the Rhode Island Public Utilities Commission’s (“Commission”) Order No. 24499 (“Order”) so that it may present evidence to the Commission of its submission of the Alternative Compliance Payment (“ACP”) for Compliance Years 2021 and 2022, and, having done so, request a reduction in the \$93,628.00 penalty imposed by the Commission in its Order.

BACKGROUND

On September 29, 2022, the Commission issued the Order finding that Sunwave failed to show that it had settled sufficient Rhode Island Renewable Energy Certificates (“RECs”) or made an ACP to the Rhode Island Renewable Energy Development Fund, leaving an outstanding balance for Compliance Year 2021 in the amount of \$46,841.46. *See* Order, at 2. The Commission then imposed a penalty on Sunwave at a rate of twice the amount of the outstanding obligation, or \$93,682.00. *Id.* at 4.

On October 6, 2022, Sunwave filed a timely appeal of the Order to the Rhode Island Supreme Court (Docket # SUU-2022-0289-MP). By agreement of the parties to the appeal, the deadline for filing the record of the Order has been continued and is currently due February 6,

2023. As such, the appeal has not yet been docketed with the Supreme Court and this Commission retains jurisdiction to grant the requested relief. *See* 810-RICR-00-00-1.29(C).

BASIS FOR MOTION

Sunwave makes this motion pursuant to 810-RICR-00-00-1.29(B), which provides in relevant part, “On motion and upon such terms as are just, the Commission may grant relief for the following reasons: 1. Mistake, inadvertence, surprise, or excusable neglect; ... or 6. Any other reason justifying relief from the operation of the order.” Pursuant to 810-RICR-00-00-1.29(D), this motion is timely in that it has been submitted within a reasonable time, and not more than one year from the date of the Order.

ARGUMENT

The basis for the penalty in the Order was that Sunwave failed to make an ACP for Compliance Year 2021 in the amount of \$46,841.46. As of the date of this motion, that payment has been mailed to the Renewable Energy Development Fund. Proof of payment will be submitted when it is available. Sunwave has also paid the ACP for Compliance Year 2022 by making a payment for \$3,088.94 (the equivalent of 41 RECs). *See* Payment Receipt (Ex. A).

Sunwave’s failure to timely pay the ACP for Compliance Year 2021 when originally due was caused by the severe and ongoing negative effects of COVID-19, which ultimately led to Sunwave’s default at ISO New England (“ISO-NE”), along with increased volatility in the wholesale energy markets. The default at ISO-NE caused Sunwave’s customers in the ISO-NE service area to be dropped back to default supply service, which further increased the financial stress Sunwave was facing at the time. As a result, Sunwave determined there was no way to continue as a retail electricity provider and began the process of relinquishing its licenses to act in that capacity, dropping its remaining customers, and attempting to sell what was left of the

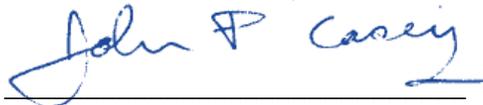
business. Those efforts failed to shore up the business and, as a result, Sunwave moved to dramatically cut costs by taking other actions, such as letting go of 85% of its workforce and dropping its remaining customers to the utility. The combination of financial stress caused by the pandemic along with a significantly reduced staffing level led to Sunwave being delinquent in satisfying its Rhode Island obligation for Compliance Year 2021.

For the reasons stated above, we ask the Commission to find that Sunwave's failure to make its 2021 ACP in a timely manner was the result of excusable neglect and, now that the ACP has been made, along with the ACP for 2022, there is good reason to justify granting relief from the Order. Sunwave's compliance with the Renewable Energy Standard ("RES"), albeit untimely, exhibits its acknowledgement of the importance of the program and the need for all Obligated Entities to comply with the standards to support Rhode Island's renewable energy goals. The need to impose the penalty has, therefore, lessened greatly now that Sunwave is in compliance with the RES. While Sunwave appreciates the Commission's need to maintain the integrity of its regulatory program, requiring the full penalty at this point would be excessive and unnecessary to fulfill that purpose. As such, Sunwave requests that the penalty contained in the Order be reduced from \$93,682.00 to \$10,000.00, which is an appropriate amount to sanction Sunwave for its late compliance and put other Obligated Entities on notice that failure to comply with the RES on time will result in significant, yet fair, consequences.

Thank you for your consideration of this motion.

Respectfully submitted,
SUNWAVE USA HOLDINGS INC.
By its Attorneys,

ROBINSON & COLE, LLP

A handwritten signature in blue ink that reads "John P Casey". The signature is written in a cursive style with a horizontal line underneath it.

John P. Casey, Esq.
One Financial Plaza
14th Floor
Providence, RI 02903
Main (401) 709-3300
Direct (860) 275-8359
jcasey@rc.com
RI Bar #6424

Exhibit A

ACH Detail Report: RI Commerce - SUNWAVE USA HOLDINGS INC

Batch Name:RI RENEWAB Payment Number:34398849

Originating Acct Number:	██████████	Frequency:	One Time Only
Originating Acct Nickname:	SUNWAVE USA HOLDINGS INC	Status:	Completed
ACH Company ID:	██████████	Create Date:	01/10/2023
ACH Company Name:	SUNWAVEUSAHOLDIN	Effective Date:	01/11/2023
Company Entry Description:	RI RENEWAB	Scheduled Send Date:	01/10/2023
Payment Type:	CCD - Corporate Credit or Debit	CR-DR-Mixed:	Credits
Offset Creation Level:	No Offset	Confidential Batch:	Non-Confidential

Recipient Name	Recipient ID	Bank ID	Bank Name	Account No.	Type	Disc. Data	Status	Add. Fee	Org. Amount
RI COMMERCE CORP	RI COMMERCE CO	██████████	SANTANDER	██████████	C		Active		\$3,088.94

Addenda: 2022 ACP ISO-NE ASSET ID#124090

Recipient Status	CR Items	Amount	DR Items	Amount
Active	1	\$3,088.94	0	\$0.00

User ID	Activity	Date/Time
molowin@sunwaveu	create	01/10/2023 14:14
molowin@sunwaveu	modify	01/10/2023 14:17
slaker@sunwaveu	approve	01/10/2023 15:00

Report Totals

Payment Type Totals: Credits / Debits

CCD - Corporate Credit or Debit:	\$3,088.94	\$0.00
---	-------------------	---------------

ACH Company ID Totals: Credits / Debits

1900786420:	\$3,088.94	\$0.00
--------------------	-------------------	---------------

Credits / Debits

Grand Totals:	\$3,088.94	\$0.00
----------------------	-------------------	---------------

End Of Report

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

The paper copies of this filing are being sent via hand delivery to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.



John P. Casey

January 19, 2023

Date

Docket No. 22-32-RES – In Re Sunwave USA Holdings Inc.’s Non-Compliance with the Rhode Island Renewable Energy Standard for Compliance Year 2021 Service List as of 1/19/23

Name/Address	E-mail	Phone
Sunwave USA Holdings Inc.	jcasey@rc.com	401-709-3300
John P. Casey, Esq. Robinson & Cole LLP One Financial Plaza, 14th Floor Providence, RI 02903	dhorton@rc.com	
Division of Public Utilities & Carriers on behalf of the Public Utilities Commission	gschultz@riag.ri.gov	401-274-4400 x 2400
Gregory S. Schultz, Esq. Dept. of Attorney General 150 South Main Street Providence, RI 02903		
File an original & two (2) copies:	Luly.massaro@puc.ri.gov	401-780-2107
Luly E. Massaro, Commission Clerk Public Utilities Commission Division of Public Utilities and Carriers 89 Jefferson Blvd. Warwick, RI 02888	John.Harrington@puc.ri.gov	
	Todd.bianco@puc.ri.gov	
	Christy.Hetherington@dpuc.ri.gov	
	Mark.A.Simpkins@dpuc.ri.gov	
	Machaela.Seaton@dpuc.ri.gov	

ACH Detail Report: RI Commerce - SUNWAVE USA HOLDINGS INC

Batch Name:RI RENEWAB Payment Number:34398849

Originating Acct Number:	██████████	Frequency:	One Time Only
Originating Acct Nickname:	SUNWAVE USA HOLDINGS INC	Status:	Completed
ACH Company ID:	██████████	Create Date:	01/10/2023
ACH Company Name:	SUNWAVEUSAHOLDIN	Effective Date:	01/11/2023
Company Entry Description:	RI RENEWAB	Scheduled Send Date:	01/10/2023
Payment Type:	CCD - Corporate Credit or Debit	CR-DR-Mixed:	Credits
Offset Creation Level:	No Offset	Confidential Batch:	Non-Confidential

Recipient Name	Recipient ID	Bank ID	Bank Name	Account No.	Type	Disc. Data	Status	Add. Fee	Org. Amount
RI COMMERCE CORP	RI COMMERCE CO	██████████	SANTANDER	██████████	C		Active		\$3,088.94

Addenda: 2022 ACP ISO-NE ASSET ID#124090

Recipient Status	CR Items	Amount	DR Items	Amount
Active	1	\$3,088.94	0	\$0.00

User ID	Activity	Date/Time
molowin@sunwaveu	create	01/10/2023 14:14
molowin@sunwaveu	modify	01/10/2023 14:17
slaker@sunwaveu	approve	01/10/2023 15:00

Report Totals

Payment Type Totals: Credits / Debits

CCD - Corporate Credit or Debit:	\$3,088.94	\$0.00
---	-------------------	---------------

ACH Company ID Totals: Credits / Debits

1900786420:	\$3,088.94	\$0.00
--------------------	-------------------	---------------

Credits / Debits

Grand Totals:	\$3,088.94	\$0.00
----------------------	-------------------	---------------

End Of Report