

**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 SUNWAVE USA HOLDINGS, INC.’S MOTION FOR RELIEF FROM
ORDER**

On January 20, 2023, Sunwave USA Holdings, Inc. (Sunwave) filed a Motion requesting that the Rhode Island Public Utilities Commission (Commission) reduce the penalty imposed upon Sunwave for its failure to comply with Rhode Island’s Renewable Energy Standard (RES) for Compliance Year 2021.¹ Sunwave is an Obligated Entity under the RES and was required to obtain certain percentages of electricity sold in Rhode Island from eligible renewable energy sources.² Sunwave could have demonstrated compliance with its obligations by either having settled sufficient Rhode Island-eligible renewable energy certificates (RECs) or made Alternative Compliance Payments (ACP) to the Rhode Island Renewable Energy Development Fund administered by the Rhode Island Commerce Corporation. On September 29, 2022, the Commission issued an Order finding that Sunwave failed to show that it had settled sufficient RECs or made the required ACP to the Renewable Energy Development Fund.³ The Commission penalized Sunwave in the amount of \$93,682.00, or twice the amount of the required ACP.⁴

¹ While titled *Motion to Reopen Proceedings and Request a Reduction to the Penalty Imposed*, Sunwave’s motion sought relief from the Commission’s September 29, 2023 written Order pursuant to Commission Rule 1.29 (Motion for Relief from Order) and will be treated as such.

² See R.I. Gen. Laws § 39-26-2(16).

³ See Order No. 24499 located at <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-10/2223-Sunwave%20Order%209-29-22.pdf>.

⁴ Sunwave’s total 2021 REC obligation was 646 RECs and it’s required Alternative Compliance Payment was \$46,841.46 (646 x \$72.51).

Sunwave now seeks relief from that Order and a reduction in the imposed penalty.⁵ In support of its Motion, Sunwave states that it has now paid the ACP for Compliance Year 2021 and has also paid the ACP for Compliance Year 2022.⁶ Sunwave asserts that its late payment and compliance with the RES was due to excusable neglect or reasons otherwise justifying relief from the Order under the Commission’s Rules.⁷

Sunwave asserts that 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 to be dropped back to default supply service, which further increased the financial stress Sunwave was facing at the time. As a result, Sunwave ceased operations as a retail electricity provider and began relinquishing its licenses to act in that capacity, dropping its remaining customers, and attempting to sell what was left of the business. Sunwave also let go of 85% of its workforce. Sunwave avers that the combination of financial stress caused by the pandemic along with a significantly reduced staffing level led to Sunwave being delinquent in satisfying its obligation for Compliance Year 2021. Therefore, Sunwave requests that the Commission 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 by reducing the penalty.

⁵ On October 6, 2022, Sunwave filed an appeal of the Order to the Rhode Island Supreme Court (Docket # SUU-2022-0289-MP).

⁶ Sunwave has also paid the ACP for Compliance Year 2022 by making a payment for \$3,088.94 (the equivalent of 41 RECs).

⁷ Commission Rule 1.29(B) provides in relevant part, “On motion and upon such terms as are just, the Commission may grant relief for the following reasons: 1. [m]istake, inadvertence, surprise, or excusable neglect; ... or 6. [a]ny other reason justifying relief from the operation of the order.” 810-RICR-00-00-1.29(B). Pursuant to Rule 1.29(D), a motion is timely if submitted within a reasonable time, and not more than one year from the date of the Order. 810-RICR-00-00-1.29(D).

At an Open Meeting on January 31, 2023, the Commission considered this matter and granted the Motion for Relief.⁸ The Commission found that, based on the circumstances in this matter, including the negative effects of COVID-19 that led, in part, to Sunwave's default at ISO-NE and other negative effects on Sunwave's business, and Sunwave's late compliance with its obligations for Compliance Year 2021 and its early compliance with its obligations under Compliance Year 2022, and the policy of the State of Rhode Island in support of renewable energy, there was excusable neglect and other reasons justifying relief from its prior Order. The Commission finds that Sunwave's compliance with the RES, albeit untimely, exhibits its acknowledgement of the importance of the RES and the need for all Obligated Entities to comply with the standard to support Rhode Island's renewable energy goals. The need to impose the penalty has, therefore, lessened now that Sunwave is in compliance with the RES. Still, the Commission needs to maintain the integrity of its RES program, and a penalty for late compliance is appropriate and necessary. The Commission therefore reduces the penalty to \$10,000.00.⁹

Accordingly, it is hereby,

(24582) ORDERED:

1. Sunwave USA Holdings, Inc.'s *Motion for Protective Treatment* is granted.
2. Sunwave USA Holdings, Inc.'s *Motion for Relief from Order* is granted
3. The Commission reduces the penalty imposed on Sunwave USA Holdings, Inc. to \$10,000.00.

⁸ The Commission also granted Sunwave's *Motion for Protective Treatment* of certain bank account information of itself and RI Commerce Corporation, finding that disclosure of this information is not the type of information typically made available to the public and that its release could result in harm to Sunwave's or RI Commerce Corporation's financial position.

⁹ The Commission penalizes Sunwave pursuant to R.I. Gen. Laws § 39-26-1 *et seq.* and § 39-1-27.1(c)(9) and 815-RICR-30-05-1.3A(9)(b).

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 31, 2023, PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED FEBRUARY 8, 2023.

PUBLIC UTILITIES COMMISSION



Ronald T. Gerwatowski, Chairman

Abigail Anthony, Commissioner

John C. Revens, Jr., Commissioner*

*Commissioner John C. Revens, Jr. did not participate in this decision.

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.