

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Settlement Agreement in the Pennsylvania
Commonwealth Court matter of *Pennsylvania Public
Utility Commission v. the Delaware Valley Regional
Economic Development Fund*, No. 491 MD 2018

Docket Nos. M-2022-3033879,
M-2010-2176183, R-00973953,
P-00971265

TENTATIVE ORDER

BY THE COMMISSION:

On July 16, 2018, the Pennsylvania Public Utility Commission (Commission) filed a Complaint¹ in the Commonwealth Court's original jurisdiction against the Delaware Valley Regional Economic Development Fund (DVREDF) and its Board of Directors alleging, *inter alia*, breach of contract with respect to a prior Commission order and prior settlement agreement.² On December 8, 2021, the Commission and DVREDF entered

¹ The Commonwealth Court noted that while the Commission labeled its action as a Complaint, it should have been labeled as a Petition for Review pursuant to Chapter 15 of the Pennsylvania Rules of Appellate Procedure because this was an action initiated by a Commonwealth agency, not the Commonwealth of Pennsylvania. *See Pa. Pub. Util. Comm'n v. Delaware Valley Regional Economic Development Fund*, 255 A.3d 602 at n. 2 (Pa. Cmwlth. 2021). However, the Commonwealth Court continued to refer to the Commission's action in this matter as a Complaint but applied the Rules of Appellate Procedure as they apply to a Petition for Review because the Court did not properly recognize the Commission as the Commonwealth government. *See* 42 Pa.C.S. §§ 102 and 761.

² *See Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.* at Docket Nos. R-00973953 and P-00971265, 1998 Pa. PUC LEXIS 116 (Order entered May 14, 1998) and *Agreement between DVREDF and the Commission*, Docket No. M-2010-2176183, May 20, 2010.

into Court mediation to resolve this matter. On June 22, 2022, the Commission and DVREDF reached a settlement agreement in principle which the Commission now considers in its entirety for approval.

BACKGROUND

DVREDF is an incorporated domestic nonprofit corporation. As a result of the Pennsylvania electric market restructuring pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801–2815. (Electric Choice Act) and, as will be explained in detail, DVREDF received approximately \$21 million in funding from PECO ratepayers for the purpose of making loans and grants for economic development with job impact in the PECO service territory.

As a result of the Electric Choice Act, on April 1, 1997, PECO submitted a comprehensive Restructuring Plan to the Commission wherein it requested the Commission approve, *inter alia*, the recovery of \$6.8 billion of transition and stranded costs. *Joint Petition for Full Settlement of PECO Energy Company's Restructuring Plan and Related Appeals and Application for a Qualified Rate Order and Application for Transfer of Generation Assets*, Docket Nos. R-00973953 and P-00971265 (Petition filed April 29, 1998) (*Joint Petition*).

The *Joint Petition, inter alia*, established a sustainable energy and economic development fund, which was funded from a 2.98 cent per kWh transmission and distribution rate at .01 cents per kWh for all customers beginning on January 1, 1999, and ending on June 30, 2005. The ratepayer funding was directed to two separate entities that were funded equally. Fifty percent of the funds are administered through a sustainable energy development fund (SDF) overseen by the Delaware Valley Reinvestment Fund (RF). The other fifty percent of the funding was directed to DVREDF for the purpose of economic development with job impact. On May 14, 1998, the Commission approved the *Joint Petition at Application of PECO Energy Company for Approval of its*

Restructuring Plan Under Section 2806 of the Public Utility Code, et al., Docket Nos. R-00973953 and P-00971265, 1998 Pa. PUC LEXIS 116 (Order entered May 14, 1998) (*1998 PECO Restructuring Settlement Order*).

The Commission subsequently ordered DVREDF to file with the Commission's Bureau of Audits semi-annual reports regarding its activities, with applicable statements of accounts for the next two fiscal years. *Delaware Valley Sustainable Development Fund: Delaware Valley Regional Economic Development Corporation Order*, Docket No. M-00991254 (Order entered July 21, 1999) (*Semi-annual Report Order*). In the *Semi-annual Report Order*, the Commission noted that these filings will permit not only the Commission, but also the public to monitor the fund's activities to ensure that the PECO ratepayer funds were being used prudently and for the purpose provided for in the Commission's order.

In the same *Semi-annual Report Order*, the Commission recognized the broad purpose given to DVREDF and noted that DVREDF has enormous discretion in how these monies are utilized and that no provision had been made for outside oversight of DVREDF by an independent board, as is the case with the RF. Therefore, the Commission directed that, "under these circumstances, the Commission, pursuant to its duty to protect the public from unreasonable rates, must be assured that these funds are being expended prudently for the intended purpose for which the fund was created." *Semi-annual Report Order* at 2-3.

In the *Semi-annual Report Order*, the Commission directed that at the end of the two-year period, the Commission will revisit this matter to determine whether this reporting requirement should be continued. *Semi-annual Report Order* at 4. The semi-annual reporting to audits by DVREDF was extended through December 31, 2006, by Commission Secretarial Letter dated May 24, 2001, at Docket No. M-00991254. The Commission issued another Secretarial Letter dated March 8, 2007, extending the terms of the semi-annual reporting by DVREDF to the Commission's Bureau of Audits to a date

coincident with the Commission's approval of any new transmission and distribution rates for PECO.

Subsequently, due to the Commission's concerns with DVREDF's lack of activity in making loans and grants as required by the *1998 PECO Restructuring Settlement Order*, the Commission and DVREDF met to discuss these concerns and a remedy going forward. DVREDF agreed to a settlement on May 21, 2010, approved at the May 20, 2010 Public Meeting, in which it agreed to submit quarterly reports, to update its loan and grant guidelines and, most importantly, to "maximize fund use" for the purposes set forth in the *1998 PECO Restructuring Settlement Order*. See *Agreement between DVREDF and the Commission*, Docket No. M-2010-2176183, (Order entered May 20, 2010)³ (*2010 Settlement Agreement*).

Again, in 2017, the Commission became concerned over media reports that DVREDF was not maximizing its PECO ratepayer fund use in accordance with the *1998 PECO Restructuring Settlement Order* and the *2010 Settlement Agreement*. Accordingly, the Commission requested records from DVREDF showing its current loan and grant activity as well as all of the years after 2013. DVREDF took the position that the Commission's oversight of PECO ratepayer funds it received had ended on December 31, 2012 when the *2010 Settlement Agreement* term regarding DVREDF's quarterly loan and grant reporting requirements ended. DVREDF continued to refuse to provide complete records to the Commission and instead provided very minimal information. Pursuant to the terms of the *2010 Settlement Agreement*, the Commission advised DVREDF if it did not respond to the requests for additional information that the Commission would seek to enforce its Commission Orders in court.

³ Approved at the May 20, 2010 Public Meeting pursuant to the Sunshine Act.

The Commission filed a civil complaint against DVREDF in the Commonwealth Court's original jurisdiction pursuant to Sections 501(a), 501(c), 502 and 503 of the Public Utility Code, 66 Pa.C.S. §§ 501(a),(c), 502, 503, on July 16, 2018, alleging, *inter alia*, that DVREDF had breached the terms of the *1998 PECO Restructuring Settlement Order* and the *2010 Settlement Agreement* on the basis that DVREDF was not maximizing its use of PECO ratepayer funds for economic development with job impact. In the Commission's civil complaint in Commonwealth Court, remedy language was included wherein the Commission sought return of the PECO ratepayer funds to be distributed to one or more of the following remedies:

1. PECO's hardship fund,
2. Universal Service Programs,
3. PECO customer rate relief,
4. Transfer the funds to the Sustainable Development Fund.

Litigation of this matter commenced. Both parties filed Preliminary Objections. Most of the Preliminary Objections were ultimately resolved with the Commission's breach-of-contract claim still intact. The litigation in this matter reached an impasse when discovery was halted to address DVREDF's statute-of-limitations defense in an Application for Summary Relief before the Commonwealth Court. DVREDF's Application asserted that the statute of limitations had expired against the Commission's breach-of-contract claim based upon the *2010 Settlement Agreement*. However, the Commonwealth Court held that the Commission is exempt from the statute of limitations with respect to breach-of-contract claims⁴ because the Commission is a Commonwealth party that can assert the doctrine of *nullum tempus*. *Pa. Pub. Util. Comm'n. v. Delaware Valley Regional Economic Development Fund, et al.*, 255 A.3d 602 (Pa. Cmwlth. 2021).

⁴ See 42 Pa.C.S. § 5525.

Accordingly, the Commission’s breach-of-contract claim withstood DVREDF’s Application for Summary Relief, and the parties moved on to discovery.

SETTLEMENT

During discovery the parties determined that settlement was in both parties’ interests. Thereafter, the parties agreed to submit a Joint Petition with the Commonwealth Court seeking entrance into Mediation with the Commonwealth Court on December 8, 2021. On the same day, the Commonwealth Court granted the parties’ Joint Petition, and subsequently, the parties entered Mediation with the Court, while continuing settlement negotiations outside of Court.

On June 22, 2022, the Commission and DVREDF met with the Commonwealth Court for mediation, and the parties agreed to a “Settlement in Principle” in which DVREDF agreed to pay a total settlement amount of \$6 million, to be distributed to one or more of the following:

1. PECO’s hardship fund,
2. Universal Service Programs,
3. PECO customer rate relief,
4. Transfer the funds to the Sustainable Development Fund.

As discussed above, these were the same remedies reflected in the Commission’s original Complaint filed in Commonwealth Court. The terms from the “Settlement in Principle” have been reduced to a formal Settlement Agreement which is attached to this order as Appendix A, and which the Commission hereby authorizes its Chief Counsel to execute on the Commission’s behalf. Upon DVREDF’s final distribution of this settlement amount of \$6 million to the enumerated entities, as will be determined after receipt of comments and consideration by the Commission in a subsequent Final Order at this docket, the Commission agrees that it will discontinue its litigation in *Pa. Pub. Util. Comm’n*

v. Delaware Valley Regional Economic Development Fund, 491 MD 2018 and oversight of DVREDF's fund use going forward.

While it is agreed in principle that DVREDF will pay \$6 million to the above enumerated remedies, it has not yet been determined precisely how DVREDF's \$6 million settlement funds will be distributed among the four above-listed remedies. With the issuance of this Tentative Order, the Commission seeks public input on how the \$6 million settlement payment should be distributed among these four enumerated remedies.

DISCUSSION

It was the Commission's intent in 1998, for the SDF and DVREDF to provide funding for sustainable energy projects in the PECO service territory and, in the case of DVREDF, specifically for economic development projects. *See 1998 PECO Restructuring Settlement Order and Joint Petition*, paragraph 40a. However, in the case of DVREDF, this economic development project goal has proven difficult to attain. As discussed *supra*, in mediation, the parties entered into a Settlement in Principle in which the parties agreed that funds will be provided for the proposed remedies from the Complaint.

Under the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 101–3316, the Commission may amend a prior order. Specifically, the Public Utility Code provides:

Rescission and amendment of orders.--The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa.C.S. § 703(g).

The Commonwealth Court has recognized that the Commission may exercise its discretion to amend or rescind a prior order, in whole or in part, under Section 703(g). The Court has opined that since rescission or amendment of a prior final Commission order is left to administrative discretion, the Court's scope of review is limited to determining whether the agency abused its discretion. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 659 A.2d 1055 (Pa. Cmwlth. 1995). The Court has determined that an agency commits an abuse of discretion "only where the agency's decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power." *Id.* at 1065.

The Settlement in Principle between the Commission and DVREDF requires the Commission to amend its *1998 PECO Restructuring Settlement Order* to reflect the settlement of the Commonwealth Court matter as discussed herein.

In the *1998 PECO Restructuring Settlement Order*, the Commission approved PECO's *Joint Petition*, which provided in relevant part:

PECO will also establish a sustainable energy and economic development fund which shall be funded from the 2.98 cents per kWh transmission and distribution rate at .01 cents per kWh (less applicable gross receipts tax) on all power sold for all customers beginning on January 1, 1999 ending on June 30, 2005 or until the Commission establishes new distribution rates, whichever is later. The .01 cent per kWh shall not automatically be considered a cost of service element upon expiration of the transmission and distribution rate cap on June 30, 2005.

50% of these funds shall be administered by the Delaware Valley Community Reinvestment Fund overseen by a seven-member board of directors to be nominated by the Joint Petitioners and approved by the Commission. This portion of the funds shall be used to promote the development and use of renewable energy and clean energy technologies, energy conservation and efficiency, and economic developments projects which promote clean energy.

The remaining 50% of these funds shall be allocated to the [DVREDF]. *This portion of the funds shall be used for economic development projects which have a job impact.*

Joint Petition at 41 (emphasis added).

Given the current Settlement in Principle in this matter as discussed above, it is necessary for the Commission to amend the *1998 PECO Restructuring Settlement Order* to reflect the intended use of the settlement funds. Accordingly, the Commission seeks comments from interested parties concerning this proposed amendment to the *1998 PECO Restructuring Settlement Order* pursuant to Section 703(g) of the Public Utility Code. 66 Pa.C.S. § 703(g). The Commission will further order that all parties served with the *1998 PECO Restructuring Settlement Order* are included on the service of this Tentative Order so that they have proper notice of the Commission's proposed amendments. **THEREFORE,**

IT IS ORDERED:

1. That the Commission authorizes its Chief Counsel to enter into the Settlement Agreement, attached to this Order as Appendix A, on the Commission's behalf.
2. That the Office of Consumer Advocate, PECO, SDF, and all parties of record at docket numbers R-00973953, P-00971265, and M-2010-2176183, and all other interested parties are encouraged to submit comments on the Commission's proposed amendment to the order entered at *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et at Docket Nos. R-00973953 and P-00971265, 1998 Pa. PUC LEXIS 116* (Order entered May 14, 1998) within 20 days after the publication of this Tentative Order in the Pennsylvania Bulletin.

3. That the Office of Consumer Advocate, PECO, SDF, all parties of record at docket numbers R-00973953, P-00971265, and M-2010-2176183, and all other interested parties are encouraged to submit comments providing specific recommendations as to how the settlement amount in *Pa. Pub. Util. Comm'n, v. Delaware Valley Regional Economic Development Fund*, 491 MD 2018, should be distributed among PECO's hardship fund, Universal Service Programs, PECO customer rate relief, and the Sustainable Development Fund for review and consideration by the Commission within 20 days after the publication of this Tentative Order in the Pennsylvania Bulletin.

4. That if no comments are filed, this order will become final and (a) the Amendments to *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket Nos. R-00973953 and P-00971265, 1998 Pa. PUC LEXIS 116 (Order entered May 14, 1998) (*1998 PECO Restructuring Settlement Order*) will be made pursuant to the amendment detailed in this Tentative Order; and (b) the Commission will distribute the settlement amount among the four remedies listed herein according to its judgment.

5. Upon review and consideration of any comments received in this matter, or the expiration of the comment period without any comments filed, the Commission shall issue a Final Order in this matter detailing its review and consideration of any such comments and announcing the recipients of settlement funds determined by the Commission.

6. That the Secretary serve a copy of this Tentative Order upon all parties of record at docket numbers R-00973953, P-00971265, and M-2010-2176183, the Office of Consumer Advocate, PECO, SDF, Bureau of Investigation & Enforcement (BI&E), the Bureau of Technical Utility Services (TUS), the Bureau of Administration (BAS),

Department of Revenue – Bureau of Corporation Taxes. The Tentative Order shall be filed at PECO’s docket.

7. That the Law Bureau shall publish a copy of this Tentative Order in the *Pennsylvania Bulletin*.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022

Appendix A

entered into an agreement on May 21, 2010, approved by the Commission at its May 20, 2010 Public Meeting, in which DVREDF agreed to submit quarterly reports and update its loan and grant guidelines. *See Agreement between DVREDF and the Commission*, Docket No. M-2010-2176183 (*2010 Settlement Agreement*); and

WHEREAS, the Commission filed a civil complaint on July 14, 2018 (the Complaint) against DVREDF in the Commonwealth Court’s original jurisdiction alleging a breach-of-fiduciary duty claim against officers and directors of DVREDF, and a breach-of-contract claim based upon the Commission’s allegation that DVREDF failed to maximize its Fund Use pursuant to the *1998 PECO Restructuring Settlement Order* and the *2010 Settlement Agreement*. The Complaint is docketed in the Commonwealth Court as PENNSYLVANIA PUBLIC UTILITY COMMISSION, Petitioner, v. DELAWARE VALLEY REGIONAL ECONOMIC DEVELOPMENT FUND, et al., Respondents, No. 491 M.D. 2018 (ORIGINAL JURISDICTION).

WHEREAS, by Order filed June 27, 2019, the Commonwealth Court dismissed the breach-of-fiduciary duty claim against officers and directors of DVREDF;

WHEREAS, the Settling Parties have determined that it is in their mutual interests to avoid further cost of litigation and enter into this Settlement Agreement.

WHEREAS, the Commission will seek to amend the *1998 PECO Restructuring Settlement Order* Docket Nos. M-2022-3033879, R-00973953 and P-00971265 to account for the remedies that will receive settlement proceeds from DVREDF as well as the final distribution allocation to the enumerated remedies in the Complaint.

NOW, THEREFORE, in consideration of the promises herein contained, it is agreed as follows:

1. PAYMENT

DVREDF shall pay the sum of \$6,000,000 (the “Settlement Payment”) in consideration for this Settlement Agreement. DVREDF shall pay the Settlement Payment via [*direct deposit, wire transfer, etc.*] in accordance with the Commission’s Final Order to be entered at Docket Nos. M-2022-3033879, M-2010-2176183, R-00973953 and P-00971265. On the date that the Commission enters its Final Order at Docket Nos. M-2022-3033879, M-2010-2176183, R-00973953 and P-00971265, DVREDF shall distribute the Settlement Payment in accordance with the Final Order within twenty-one calendar days of the Final Order’s entry date. DVREDF shall submit to the Commission’s Secretary at Docket Nos. M-2022-3033879, M-2010-2176183, R-00973953 and P-00971265 proof of the Settlement Payment transfer in accordance with the distribution enumerated in the Final Order at Docket Nos. M-2022-3033879, M-2010-2176183, R-00973953 and P-00971265 no later than one week after DVREDF completes the transfer of the Settlement Payment. The Settling Parties further agree that the

Settlement Payment, to the maximum extent possible, shall be deemed to be funded from restricted funds held by DVREDF that are currently designated to be disbursed for the purposes set forth in the *1998 PECO Restructuring Settlement Order* and the *2010 Settlement Agreement*.

2. NO FURTHER OVERSIGHT

After DVREDF completes the transfer of the Settlement Payment, the Commission will no longer monitor DVREDF's fund use. DVREDF shall not be subject to any further supervision, oversight, or litigation by the Commission for any and all matters described in the Commission's Commonwealth Court Complaint at Docket No. 491 M.D. 2018.

3. TERMINATION OF COMPLAINT

After DVREDF completes the transfer of the Settlement Payment, the Commission, with DVREDF's assistance, shall promptly take all steps reasonably necessary to terminate the proceeding at Commonwealth Court of Pennsylvania Docket No. 491 M.D. 2018, including making all necessary filings to provide notice to the Commonwealth Court that the Complaint has been resolved by mutual agreement of the Settling Parties as set forth in this Settlement Agreement.

4. TERMINATION OF DVREDF'S DUTIES AND OBLIGATIONS UNDER PRIOR AGREEMENTS

The Commission and DVREDF hereby agree that after DVREDF completes the transfer of the Settlement Payment, all duties and obligations of DVREDF, and all duties and obligations of its officers, directors, and employees, under the *1998 PECO Restructuring Settlement Order*, under the *2010 Settlement Agreement*, and under any other agreement, order, or other undertaking relating in any way to the subject matter of the *1998 PECO Restructuring Settlement Order*, the *2010 Settlement Agreement*, or DVREDF's receipt, use, or distribution of funds received from PECO shall be terminated and that DVREDF its officers, directors, and employees shall no longer have any such duties or obligations.

5. GENERAL RELEASE OF ALL CLAIMS

In consideration of the benefits provided under this Settlement Agreement, and subject to full satisfaction of the terms of this Settlement Agreement:

- a) The Commission, for itself and on behalf of its employees, agents, Commissioners, officers (in their individual and representative capacities), predecessors, successors, assigns, executors, administrators and trustees ("Commission Releasers"), hereby fully release and forever discharge DVREDF and its past and present employees, agents, shareholders, officers, attorneys, directors (in their individual and representative capacities), subsidiaries, predecessors, affiliates, parent corporations, if

any, joint ventures, successors, assigns, heirs, executors, administrators, and trustees (“DVREDF Releasees”) from any and all rights, claims, actions, causes of action, damages, obligations, losses and expenses of whatsoever kind or nature arising out of the matters alleged and any matters related thereto, whether or not now known or suspected or claimed, whether in law, admiralty, arbitration, administrative, equity or otherwise, and whether accrued or hereafter maturing and arising prior to the Effective Date.

- b) DVREDF, for themselves and on behalf of their employees, agents, shareholders, officers, directors (in their individual and representative capacities), subsidiaries, predecessors, affiliates, parent corporations, if any, joint ventures, successors, assigns, heirs, executors, administrators and trustees (“DVREDF Releasors”), hereby fully release and forever discharge the Commission and its past and present Commissioners (in their personal and representative capacities), employees, agents, officers, attorneys, predecessors, successors, assigns, executors, administrators, and trustees (“Commission Releasees”) from any and all rights, claims, actions, causes of action, damages, obligations, losses and expenses of whatsoever kind or nature arising out of the matters alleged and any matters related thereto, whether or not now known or suspected or claimed, whether in law, admiralty, arbitration, administrative, equity or otherwise, and whether accrued or hereafter maturing and arising prior to the Effective Date.

6. COVENANT NOT TO SUE

Except as may be necessary to enforce the terms of this Settlement Agreement, the Settling Parties, the Commission Releasors and DVREDF Releasors warrant that at no time in the future will any of them sue, bring or join in any type of claim, adversary action, proceeding or investigation concerning any matter raised in the proceedings at Docket No. 491 M.D. 2018 against any Settling Party, DVREDF Releasees or Commission Releasee concerning any acts, events, or omissions alleged to have occurred prior to the date of the Effective Date of this Settlement Agreement, unless otherwise permitted by law or this Settlement Agreement.

7. PUBLICITY

The Settling Parties agree that the Commission shall not issue a press release that discusses or implicates the DVREDF Releasees or any of the matters set forth in the Tentative Order or the Final Order at any time prior to or after the entry of the Tentative Order at Docket Nos. M-2022-3033879, M 2010-2176183, R-00973953 and P-00971265, and the subsequent entry of a Final Order amending the *1998 PECO Restructuring Settlement Order*.

8. NO ADMISSION OF WRONGDOING

The Settling Parties hereby acknowledge and agree that they have entered into this Settlement Agreement solely to avoid the expense and burden of time-consuming litigation. The Settling Parties hereby acknowledge and agree this Settlement Agreement: (a) is a compromise of disputed claims; (b) shall not be deemed to be or construed as an admission of any fact or act whatsoever or of any liability or wrongdoing of any kind whatsoever by either Party; and (c) that the Settling Parties shall not hereafter assert that this Settlement Agreement, the fact of this Settlement Agreement, or any provision herein is an admission by any Party as to any wrongful conduct, liability, or as to the merits of any claim or dispute settled herein, or otherwise.

9. NO INDUCEMENT AND ADEQUATE REVIEW

Each Settling Party warrants that, except as expressly set forth herein, no representations of any kind or character have been made to induce that Party to execute this Settlement Agreement. Each Settling Party hereby acknowledges that it (a) has had an adequate opportunity to have this Settlement Agreement reviewed by counsel, and (b) fully understands the contents of this Settlement Agreement.

10. ENTIRE AGREEMENT OF THE SETTLING PARTIES

This Settlement Agreement, constitutes the entire agreement with respect to the subject matter contained herein and supersedes the *2010 Settlement Agreement* entered into between the Settling Parties on May 20, 2010 at the Commission's Docket No. M-2010-2176183, as well as any and all other prior agreements and documents regarding this subject matter. No terms or conditions of this Settlement Agreement may be modified or waived except by an instrument in writing duly signed by or on behalf of each of the Settling Parties hereto.

11. CONTINGENCY

The obligations of the Settling Parties' performance in this Settlement Agreement are contingent upon the Commission entering a Tentative Order at Docket Nos. M-2022-3033879, M-2010-2176183, R-00973953 and P-00971265, and the subsequent entry of a Final Order amending the *1998 PECO Restructuring Settlement Order* directing the Settlement Payment in the proceeding at Docket No. 491 M.D. 2018. DVREDF Releasees are not obligated to perform under this Settlement Agreement until the Commission has entered the Final Order at Docket Nos. M-2022-3033879, M-2010-2176183, R-00973953 and P-00971265.

12. MISCELLANEOUS

- (a) Each Party acknowledges that such Party has participated in the negotiation of this Settlement Agreement and the drafting and preparation of this

Settlement Agreement, and that no provision of this Settlement Agreement shall be interpreted against any Party by reason of the fact that any particular Party or its counsel purportedly drafted or prepared such provision. The Settling Parties represent and warrant that they have not been coerced into entering into this Settlement Agreement, nor has any person or entity exercised any pressure or undue influence on such Party to enter into this Settlement Agreement.

- (b) Each Party agrees this Settlement Agreement is entered into under, and shall be construed under and governed by, the procedural and substantive laws of the Commonwealth of Pennsylvania without reference to its conflicts of law provisions.
- (c) The titles of the various paragraphs are intended solely for convenience of reference and are not intended and shall not be deemed for any purpose whatsoever to modify, explain or place any construction upon any of the provisions of this Settlement Agreement and shall not affect the meaning or interpretation of this Settlement Agreement.
- (d) This Settlement Agreement may be modified, or parts thereof waived or discharged, only by agreement in writing specifically referencing this Settlement Agreement and signed by the Party against whom enforcement of the purported modification, waiver, or discharge is sought.
- (e) Without limiting the generality of the foregoing, in the event that either Party should bring any action, suit, or other proceeding against any other Party or its related individuals or entities concerning any matter referred to herein contesting the validity of this Settlement Agreement, or attempting to rescind, negate, or reform this Settlement Agreement or any of the terms or provisions thereof, or to remedy, prevent, or obtain relief from a breach of this Settlement Agreement, the prevailing Party shall recover its reasonable attorneys' fees and costs (including, without limitation, the costs of expert consultants and expert witnesses) incurred in such action, suit, or other proceeding, including any and all appeals or petitions therefrom.
- (f) The provisions of this Settlement Agreement are severable. If any provision of this Settlement Agreement, other than paragraph 2, is adjudged by any court to be void or unenforceable, in whole or in part, such adjudication shall not affect the validity of the releases in this Settlement Agreement.

IN WITNESS THEREOF, the Pennsylvania Public Utility Commission and the Delaware Valley Regional Economic Development Fund have executed this Settlement

Agreement by their duly authorized representatives in duplicate originals, each of which shall be deemed an original on the dates set forth below.

The Pennsylvania Public Utility Commission

The Delaware Valley Regional Economic Development Fund

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____