

January 13, 2023



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Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission

**Re: Clean Air Council Comments on Tentative Order on the 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; Doc. Nos. M-2022-3033879, M-2010-2176183, R-00973953, P-00971265**

Dear Secretary Chiavetta:

Thank you for receiving these public comments from Clean Air Council. The Council submits these comments in response to the comment period announced in the December 24, 2022 *Pennsylvania Bulletin* regarding the Tentative Order the Pennsylvania Public Utility Commission issued resulting from the 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. 52 Pa.B. 8031.

Clean Air Council is a non-profit environmental organization headquartered at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania 19103, with thousands of members in Pennsylvania. For more than 50 years, the Council has fought to improve the quality of the environment across Pennsylvania. The Council works to protect everyone's right to a healthy environment.

While the Council is disappointed that the Commission has recovered only \$6 million out of the tens of millions of dollars of ratepayer money the Delaware Valley Regional Economic Development Fund has hoarded or misspent, this is still a significant trove that the Commission should dedicate to its original purpose: cleaner energy. In contrast to DVREDF, the Reinvestment Fund has responsibly shepherded its portion of the 1998 settlement funds for sustainability, and that is where the current settlement money should go.

### Comments

26 years ago, Clean Air Council participated in proceedings before the Commission as part of a coalition simply termed "the Environmentalists."<sup>1</sup> Aiming to ensure that electricity deregulation benefited rather than harmed the move toward clean and renewable energy, the Environmentalists submitted direct testimony from experts and participated in various stages of the deregulation process. What ultimately resulted from the Environmentalists' participation was

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<sup>1</sup> This coalition also included the Sierra Club, the Philadelphia Solar Energy Society, the Energy Coordinating Agency, the Grass Roots Alliance for a Solar Pennsylvania and the Nonprofits Energy Savings Investment Program.

a settlement with environmental benefits. As Commissioner Hanger's statement noted in the May 14, 1998 settlement approval Final Order:

Another striking aspect of this settlement is the numerous provisions that are designed to benefit the environment. A sustainable development fund to promote energy conservation is created; the CDS service must obtain 2% of its energy from renewable sources; increased funding for the low-income usage reduction program, a proven, cost-effective energy conservation program, is included; a renewable energy pilot program is created; and improvements to net metering are going to be implemented that will allow more residential customers to generate their own electricity with solar and other technologies.

1998 Pa. PUC LEXIS 116, \*33.

At first, the full amount of a fund of tens of millions of dollars was earmarked for the Sustainable Development Fund (SDF). At the last minute, now-disgraced former State Senator Vincent Fumo forced that money to be split 50-50 between the SDF (administered by the Reinvestment Fund) and his pet nonprofit, DVREDF.

Without repeating the story that the Commission already knows—and has just litigated—DVREDF bristled at Commission oversight and did not reliably use the ratepayer money it was granted to benefit public, rather than private, interests.<sup>2</sup> The Commission sued DVREDF, resulting in the latest settlement.

In contrast, the Reinvestment Fund's record is golden. The Reinvestment Fund grew the SDF to a total of \$32 million, and has used that money to extend more than \$49 million in financial assistance for clean energy through more than 400 projects in the last thirteen years.<sup>3</sup> The Reinvestment Fund remains overseen by the Commission. According to the most recently available annual report, the Reinvestment Fund took roughly \$57,000 in annual management fees for managing the more than ten million dollars remaining in the SDF.

The Reinvestment Fund has properly spent down most of the initial funds placed in the SDF, but it remains a good tool to promote clean energy in Pennsylvania, and it would be an excellent use of the \$6 million that the Commission has recovered from DRVEDF. It bears repeating that the SDF was the initial intended vehicle to receive *all* of the money which was ultimately split with DVREDF.

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<sup>2</sup> See *Fumo-connected nonprofit hoards millions it skimmed from PECO customers*, City & State Pennsylvania, September 12, 2017, <https://www.cityandstatepa.com/politics/2017/09/fumo-connected-nonprofit-hoards-millions-skimmed-peco-customers/364932/>.

<sup>3</sup> See Sustainable Development Fund 2019 Annual Report, <https://www.reinvestment.com/wp-content/uploads/2021/01/SDF-annual-report-2019.pdf>.

The Council recognizes that this public money could go to other important uses, including rate relief, PECO's hardship fund, and Universal Service Programs. In deciding where to direct the money, the Commission should pause to reflect upon the big picture of where these funds came from. The Pennsylvania electrical sector today, and even more so in 1998, overwhelmingly produces electricity by burning fossil fuels. Fossil fuel combustion is the number one driver of the climate crisis that is increasingly destabilizing our society and taking the lives of our friends and neighbors. Soot, primarily from burning fossil fuels, causes one in five deaths worldwide.<sup>4</sup> Pennsylvania alone contributes roughly half of one percent of all of humanity's greenhouse gas emissions despite having only one-sixth of one percent of the world's population. That is in large part due to the emissions of the energy sector that the Commission has a role in overseeing.

The Council's achievement in 1998, as a member of the Environmentalists, was to take a tenth of a percent of money that would be spent in large part on dirty fossil fuel plants, and dedicate it to cleaning up Pennsylvania's polluting and deadly energy sector. Mr. Fumo managed to cut that achievement in half in order to promote his personal interests. But the money still has made a sizable impact lessening the environmental and public health harm from Pennsylvania industry.

Because the money was intended to lessen the harm from a dirty industry, and because the DVREDF portion of the 1998 funds was originally intended for the SDF, it is only right and just that the Commission direct it to replenish the coffers of the SDF.

The Commission is bound to act in accordance with the Pennsylvania Constitution's Environmental Rights Amendment, Article 1, Section 27:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The Commission, as a trustee of Pennsylvania's natural resources, needs to ensure that in every action it takes, it is conserving and maintaining that trust. \$6 million is a modest portion of what recently amounted to a \$27 million fund.<sup>5</sup> Most of that money, provided by the public, is now irrevocably in private hands. To the extent there remains any discretion on the Commission's part at this stage to seek to recover a larger portion of DVREDF's funds, the Council urges the Commission to do so. Broadly speaking, the Commonwealth, including the Commission, should not allow public resources—be they natural resources, fiscal resources, or others—to be diverted to private interests outside of Commonwealth oversight. This sets a bad precedent encouraging

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<sup>4</sup> *Study: Fossil fuel air pollution linked to 1 in 5 deaths worldwide*, February 9, 2021, The Hill, <https://thehill.com/policy/energy-environment/537978-study-fossil-fuel-air-pollution-linked-to-1-in-5-deaths-worldwide/>.

<sup>5</sup> See 2017 DVREDF IRS Form 990, [https://filing-service.s3-us-west-2.amazonaws.com/scanned-pdfs/201806/232801099/7518422/232801099\\_201806\\_990O\\_2019060416376501.pdf](https://filing-service.s3-us-west-2.amazonaws.com/scanned-pdfs/201806/232801099/7518422/232801099_201806_990O_2019060416376501.pdf).

parties to litigate rather than comply with their obligations, and use funds illegally while they still can hold onto them. Even if DCREDF is able to hold onto some of the millions of public dollars it now has, the Commission should still exercise oversight of those funds.

Regardless, the Commission should seek to use the public money it recovered to build back protections for the public trust through the SDF's clean energy funding mechanisms.

Despite the increasing focus on environmental protection and climate mitigation in recent years, in response to climate-linked disasters such as Hurricanes Maria and Harvey, we are not remotely on track to meet the climate targets we need to meet to prevent the worst climate nightmare scenarios.<sup>6</sup> The Commission can make a small but positive move in the right direction by dedicating these \$6 million in recovered funds to mitigating climate disaster and saving lives.

### **Conclusion**

In summary, the Council urges the Commission to direct the funds from this Settlement Agreement to the Reinvestment Fund, to be placed in the Sustainable Development Fund.

Thank you for considering these comments.

Sincerely,

s/ Joseph Otis Minott, Esq.  
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<sup>6</sup> *Global climate goal 'gasping for breath,' UN chief says*, December 20, 2022, The Hill, <https://thehill.com/policy/energy-environment/3782631-global-climate-goal-gasping-for-breath-un-chief-says/>.