

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

Public Meeting held March 2, 2023

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

FINAL ORDER

BY THE COMMISSION:

On December 8, 2022, the Pennsylvania Public Utility Commission (Commission) entered a Tentative Order in the above-captioned matter which approved a Settlement Agreement between the Commission and the Delaware Valley Regional Economic Development Fund (DVREDF) in the case of *Pa. Pub. Util. Comm'n v. Delaware Valley Reg. Econ. Dev. Fund*, 491 MD 2018. (Settlement Agreement). *See 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 (December 24, 2022) (*Tentative Order*). The Settlement Agreement obligates DVREDF to distribute \$6 million of its PECO ratepayer funds (Settlement Proceeds or Settlement Amount), which it received from the PECO market restructuring as a result of the Electricity Generation Customer Choice and Competition Act (Electric Choice Act), 66 Pa.C.S. §§ 2801-2815, among the following remedies provided in the Commission's complaint in this matter: PECO's hardship fund,

Universal Service Programs, PECO customer rate relief, and/or the Sustainable Development Fund (SDF).

BACKGROUND

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*¹ 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 the matter continued from the filing of the Complaint on July 16, 2018, until December 8, 2021, when the parties agreed to submit a Joint Petition with the Commonwealth Court seeking entrance into Mediation with the 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.

¹ *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*).

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.

These were the same remedies reflected in the Commission’s original Complaint filed in Commonwealth Court. The terms from the “Settlement in Principle” were reduced to the Settlement Agreement which was attached to the *Tentative Order* as Appendix A, and which the Commission authorized its Chief Counsel to execute on the Commission’s behalf. *Tentative Order* page 6, and page 9 at Ordering Paragraph 1.

The *Tentative Order* opened a comment period for the public to submit recommendations as to how the Settlement Proceeds should be distributed among the four enumerated remedies. *Tentative Order*, 52 Pa.B. at 8033-34 and Ordering Paragraphs 2 and 3. The comment period following the *Tentative Order* closed on January 13, 2023, and the Commission received comments from the following: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Roger E. Clark; the Clean Air Council; the Office of Consumer Advocate (OCA); the Environmental and Clean Energy Organizations (PennFuture); the Philadelphia Solar Energy Association (PSEA); and the Reinvestment Fund. In this

Final Order, the Commission addresses these comments and arrives at a final disposition for the Settlement Amount.²

A. Comments

1. Distributing Settlement to the Sustainable Development Fund

Out of the seven entities that submitted comments, five commenters recommended that all of the Settlement Proceeds go to the SDF: Mr. Clark, the Clean Air Council, PennFuture, PSEA, and the Reinvestment Fund. In support of their position, these commenters generally contend that: it is consistent with the *1998 PECO Restructuring Settlement Order*, SDF has successfully managed ratepayer money, and that funding SDF has long-term benefits of funding clean energy. Conversely, CAUSE-PA expressly recommended against distribution to SDF.

a. Transferring the Settlement Proceeds to SDF Is Consistent with the *1998 PECO Restructuring Settlement Order*

Mr. Clark, the Clean Air Council, PennFuture, PSEA, and the Reinvestment Fund all contend that directing the money to SDF is the proper remedy because it is consistent with the legal requirements that were set forth in the *1998 PECO Restructuring Settlement Order*. PennFuture argues that since four of the five restructuring plans approved by the Commission following the passage of the Electric Choice Act resulted in funding sustainable energy funds at a level of 0.01 cents per kilowatt hour, this strongly

² The Commission notes that some comments addressed the Settlement Agreement itself. As the Commission directed in the *Tentative Order* that comments should address the distribution of the settlement among the four enumerated remedies and given that the Commission approved and entered into the Settlement Agreement as of this same *Tentative Order*, the Commission will only address the comments pertaining to distribution of the Settlement Agreement. That the Commission is not required to consider expressly or at length each and every contention or argument by the parties is well settled. See *Consolidated Rail Corp. v. Pa. Pa. Pub. Util. Comm'n*, 625 A.2d (Pa. Cmwh. 1993). See also generally, *University of Pennsylvania v. Pa. Pa. Pub. Util. Comm'n*, 485 A.2d 1217 (Pa. Cmwh. 1984).

supports directing the Settlement Proceeds to SDF since it would be consistent with the legislature's intent in passing the Electric Choice Act. PennFuture Comments at 2-3. PennFuture points to the lack of any rationale why the SDF did not receive the full 0.01 cents per kilowatt hour and why DVREDF received half of the funding as further support for why the SDF should receive all of the Settlement Proceeds now. *Id.* at 3.

Mr. Clark and the Clean Air Council submit that in addition to SDF being the original intended recipient in the *1998 PECO Restructuring Settlement Order* that the other three alternatives had already received their funding in full and that only the SDF was short-changed as a result of the PECO rate structuring proceeding. Clark Comments at 4; Clean Air Council Comments at 3.

b. SDF Management of Funds

The Clean Air Council, PennFuture, PSEA, and the Reinvestment Fund submit that the SDF has a successful record in using its funds for clean-energy development in the PECO service territory. PSEA Comments at 2; Clean Air Council Comments at 2. PSEA submits that the SDF has made sound decisions and investments in clean-energy industries such as developing solar, wind and energy efficiency industries in the Commonwealth. PSEA Comments at 2. PennFuture and the Clean Air Council note that SDF initially received approximately \$13.3 million from distribution charges and accelerated payments. With additional funding from the PECO/Unicom merger, the SDF received a total of \$31.8 million. PennFuture Comments at 2; Clean Air Council Comments at 2. As of 2019, the SDF reports that it has deployed all of the ratepayer money it received as intended and has a revolving loan amount of over \$49 million deployed and \$10 million of net assets remaining. PennFuture Comments at 2; Clean Air Council Comments at 2.

The Reinvestment Fund, which administers the SDF, provides data to support its contention that it has successfully handled PECO ratepayer proceeds from the Electric Choice Act. The Reinvestment Fund submits that during the SDF's 23-year history, it

has made \$55.8 million of investments in clean energy, including 377 grants totaling \$21.3 million, 50 loans totaling \$28.8 million and six equity investments totaling \$3.8 million. Reinvestment Fund Comments at 1. This exceeds the total PECO investment of \$31.8 million since SDF's loan funds revolve and allow for ongoing deployment into new projects. Reinvestment Fund contends that the SDF has not had any loan losses since its inception and currently manages \$3.5 million in loans. *Id.* at 1. Further, Reinvestment Fund asserts that SDF could absorb the full \$6 million as it is a full-service Community Development Financial Institution, is regularly engaged in lending and grant making activities in underserved communities and is sufficiently staffed to deploy additional SDF capital. *Id.* at 1. Reinvestment Fund also could target its deployment strategy if the Commission would want to prioritize specific types of projects. *Id.* at 1.

c. Long-Term Benefits for Transferring to SDF

Mr. Clark, the Clean Air Council, and PennFuture placed a heavy emphasis on the long-term environmental benefits derived from transferring the Settlement Proceeds to the SDF. Mr. Clark and PennFuture argue that the Pennsylvania Constitution recognizes that clean air, among other environmental attributes, is “the common property of all the people” and that the Commonwealth has a trust responsibility to protect it. Clark Comments at 4; Clean Air Council Comments at 3; and PennFuture Comments at 3. They contend that the Pennsylvania Supreme Court holding in *Robinson Twp v. Pa. Pub. Util. Comm’n*, 83 A.3d 901 (Pa. 2013), requires any government action to reasonably account for environmental features of the affected locale if it is to pass constitutional muster. Clark Comments at 4; Clean Air Council at 3; and PennFuture Comments at 3. PennFuture and the Clean Air Council argue that the Commission has not considered the environmental impact of diverting this funding in the PECO territory and that the Commission needs to ensure that in every action it takes it is conserving and maintaining its trust duties. Clean Air Council Comments at 3; PennFuture Comments at 3.

d. Recommendation Against Distribution to the SDF

CAUSE-PA expressly recommends against distributing funds to the SDF. CAUSE-PA Comments at 4. It contends that as of December 31, 2021, the SDF held \$3.4 million in its cash account available for lending and the year-end fund balance (net assets) was \$11.3 million. *Id.* As such, CAUSE-PA does not recommend distributing additional funds to the SDF. PSEA noted in its comments that if the Commission is inclined to distribute the Settlement Proceeds to directly benefit lower income households, it recommends requiring the SDF to use the Settlement Proceeds to directly benefit low-income households and communities to permanently reduce the energy burden on low-income households. PSEA Comments at 2. PSEA notes the existence of several low-income solar programs in Pennsylvania that are very small and need funding to gain scale. *Id.*

2. Transfer to Universal Service Programming and PECO Hardship Fund

CAUSE-PA recommends that 70% of the Settlement Proceeds (\$4.2 million) should go to Universal Service Programming and the other 30% (\$1.8 million) should be distributed to the PECO Hardship Fund. However, PennFuture and PSEA recommended against any of the other enumerated remedies receiving the Settlement Proceeds. PennFuture Comments at 4; PSEA Comments at 1-2.

a. Comments in Favor of Universal Service Programming and PECO Hardship Fund

CAUSE-PA recommends directing most of the funding to expanding PECO's low-income energy reduction programs, and, more specifically, recommends directing funding to programs that are not supported by general Low Income Usage Reduction Program measures. It supports additional funding directed to remediating health and safety repairs in a home necessary to prevent the home from being deferred for weatherization and usage reduction programming. CAUSE-PA Comments at 2. Further,

CAUSE-PA recommends using the funds to support PECO's pilot *de facto* heating program and, in appropriate cases, permit PECO to replace inefficient or broken fossil fuel furnaces with high-efficiency heat pumps. *Id.* In accomplishing these goals, CAUSE-PA recommends that PECO work with members of its Universal Service Advisory Committee to develop parameters for expanding its health and safety and *de facto* heating remediation programs.

CAUSE-PA contends that funding for these purposes would help address and alleviate energy insecurity for families with poor quality housing and inoperable heating systems. Additional funding to health and safety and *de facto* heating remediation would help reduce excessive energy use and consequently high energy bills, benefiting the public. *Id.* at 3. Further, remediation of the *de facto* heating coupled with home electrification in appropriate cases could provide more efficient and affordable heat and energy-efficient cooling. *Id.* at 3.

With respect to the PECO Hardship Fund (Matching Energy Assistance Fund or MEAF), CAUSE-PA recommends that this distribution should go to support energy-and-usage reduction programs. *Id.* at 3. CAUSE-PA notes that in the Commission's Final Order for PECO's 2019-2024 USECP, PECO was directed to make permanent the expansion of eligibility criteria for PECO's MEAF program. *Id.* CAUSE-PA notes that there are more PECO customers in need of MEAF grants due to the expansion from raising the annual income limit from 145% to 200% of the Federal Poverty Income Guidelines. *Id.* CAUSE-PA asserts that as of December 31, 2021, PECO had over 6,000 payment troubled customers.

Finally, CAUSE-PA notes that the total settlement would not provide consequential rate relief to the entire PECO residential customer base. It notes that PECO has nearly 2 million residential customers and that if the entire settlement were divided among all residential customers, each customer would receive a \$0.33 discount on one bill. As such, CAUSE-PA submits that directing the settlement funds in the

manner it recommends, *supra*, could provide significant relief to low-income customers and would result in more energy savings. *Id.*

b. Comments Against Distributing Settlement to the Universal Service Fund and PECO Hardship Fund

PennFuture argues against distributing to any proposed remedies other than SDF and cites to PECO's annual report on its Act 129 energy-efficiency program which shows only \$1.05 in benefits being returned over 13 years for each dollar invested. PennFuture Comments at 4. PennFuture also notes that Act 129 has an investment cap and PECO has not been required to implement all the technically and economically available energy efficiency investments.

While arguing against distributing the Settlement Proceeds to any other remedy, PSEA suggests that the Commission could recommend or even require that the SDF use the Settlement Proceeds to directly benefit low-income households and communities to permanently reduce the energy burden on low-income households. PSEA Comments at 2.

3. Distribution to Customer Rate Relief

The Commission also received one recommendation to distribute the Settlement Proceeds to customer rate relief. The OCA submitted a letter in lieu of comments recommending that the Settlement Proceeds be returned to ratepayers as PECO customer rate relief. The OCA contends that since the original use of the PECO ratepayer funds that DVREDF collected will not be fulfilled, it recommends that the appropriate course of action is to return the Settlement Proceeds to all PECO ratepayers. OCA Letter Dated January 13, 2023.

B. Disposition

After careful consideration of the comments received, the Commission will direct DVREDF to submit the entire \$6 million Settlement Amount to the SDF. The Commission agrees with the commenters that, since SDF was originally intended to have all of the 0.01 cents per kilowatt hour in the PECO service territory, it is proper to distribute the Settlement Amount to the SDF now. The Commission notes that transferring the Settlement Amount to the SDF will also be in keeping with the directive of the *1998 PECO Restructuring Settlement Order*, and which will not require the Commission to reconsider its order to accommodate a different purpose for the Settlement Amount.

The Commission considered the remedies of PECO's hardship fund, Universal Service Programs, and PECO customer rate relief. While these are all worthwhile causes, the Commission did not choose these remedies because they lack long-term benefits to the PECO service territory that the SDF has long demonstrated it can provide to this region. Providing the Settlement Amount to PECO's hardship fund, Universal Hardship Fund, Universal Service Programs, PECO customer rate relief could have assisted PECO ratepayers in a single year, the transfer to the SDF will see years of benefit to the PECO service territory, which has always been the Commission's intent with the ratepayer money that was collected as a result of the *1998 PECO Restructuring Settlement Order*. As such, the Commission directs DVREDF to transfer the entire \$6 million Settlement to the SDF within twenty-one (21) days of this order. **THEREFORE,**

IT IS ORDERED:

1. The Delaware Valley Regional Economic Development Fund shall distribute the total \$6 million Settlement Amount that the parties agreed to in their

Settlement Agreement to the Sustainable Development Fund within twenty-one (21) days of entry of this order.

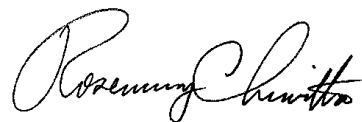
2. The Delaware Valley Regional Economic Development Fund shall submit proof of remittance of the Settlement Amount paid to the Sustainable Development Fund to the Commission within seven (7) days of the transfer of the Settlement Amount to the Sustainable Development Fund.

3. That the Secretary serve a copy of this Final Order upon all parties of record at docket numbers R-00973953, P-00971265, and M-2010-2176183, the OCA, PECO, SDF, Bureau of Investigation & Enforcement (BI&E), the Bureau of Technical Utility Services (TUS), the Bureau of Administration (BAS) and the Department of Revenue – Bureau of Corporation Taxes, and all parties that filed comments to the *Tentative Order* at M-2022-3033879.

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

5. That upon the confirmation of DVREDF's distribution of the Settlement Amount to the Sustainable Development Fund, and receipt of the filing of DVREDF's proof of remittance required in Ordering Paragraphs 1 and 2, the proceeding at Docket No. M-2022-3033879 shall be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", is written over a horizontal line.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 2, 2023

ORDER ENTERED: March 2, 2023