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## **By-Laws of the Sustainable Development Fund of the PECO Energy Service Territory <sup>1</sup>**

### **I. INTRODUCTION**

The Sustainable Development Fund (the “**Fund**”) was created by the parties to the PECO Energy Company (“**PECO Energy**”) restructuring proceeding and approved by the Pennsylvania Public Utility Commission (the “**Commission**”) in an Order entered on May 23, 1998 in Docket No. R-00973953. These by-laws shall control the operation of the Fund.

### **II. MISSION AND APPROACH**

#### **A. Mission**

The three elements of the Fund’s mission are:

1. To promote the use of renewable energy and clean energy among commercial, industrial, institutional and residential customers in the PECO Energy service territory. Renewable energy includes energy produced from solar, wind, low-impact hydro, sustainable biomass, ocean power and geothermal. Clean energy refers to advanced technologies (such as fuel cells) which use fossil fuels but which have significantly lower emissions and wastes than currently-commercialized technologies.
2. To promote energy conservation and energy efficiency among commercial, industrial, institutional and residential customers in the PECO Energy service territory.
3. To promote the start-up, attraction, expansion and retention of sustainable energy businesses in the PECO Energy service territory. Job creation and other local economic development impacts are an important component of this element of the mission. A sustainable energy business is a business which designs, develops, manufactures, sells, installs or otherwise derives income from energy conservation, energy efficiency, renewable energy or clean energy.

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<sup>1</sup> These Bylaws include all amendments approved by the Pennsylvania Public Utility Commission through January 15, 2015.

## **B. Approach**

1. The Fund shall be operated in a business-like and entrepreneurial manner to be a continuing provider of financial assistance for energy conservation, energy efficiency, renewable energy, clean energy and sustainable energy businesses.
2. The Fund shall be guided by a Board of Directors (see section III) and operated as a restricted fund of The Reinvestment Fund (formerly the Delaware Valley Community Reinvestment Fund) (see section IV).
3. The Fund shall operate cooperatively with other sustainable energy funds and the statewide oversight board established by the Commission.
4. In fulfilling its mission, the Fund shall utilize the financial tools of loans, equity and near-equity investments, and grants. (see section V).

## **III. BOARD OF DIRECTORS**

### **A. Composition of the SDF Board of Directors**

1. The Board of Directors of SDF is to have a minimum of seven members.
2. SDF Directors are to be representative of a broad range of ratepayer and other constituencies, experiences, skills and perspectives other interests that would expand the ability of SDF to meet its mission.
3. No organization or party to the restructuring agreements has a “seat” on the board. No organization or party to the restructuring agreements has the exclusive right to nominate a Director for a particular “seat.”

### **B. Terms of SDF Directors**

1. The term of a Director will be for a period of two years.
2. An individual may not serve as a Director for more than two consecutive terms.
3. The terms of the Directors will be staggered so that the terms of an approximately equal number of Directors end each year.
4. The term of a Director will begin upon approval of the Director by the Commission.
5. A Director whose term has expired may continue to serve on the SDF board until the Commission has approved his or her successor.

### **C. Resignation of a SDF Director**

1. A Director may resign from the SDF board by submitting a written letter of resignation to the President of SDF board, with copies to the Commission and to SDF staff.
2. Upon receipt of a resignation letter, the SDF President will notify the SDF Nominations Committee (see section III.E.1) and direct them to begin the nominations process for a new Director.

### **D. Removal of a SDF Director**

1. The Commission may remove a Director for cause on its own motion or upon a motion from SDF that is subsequently approved by the Commission.
2. The causes for removal of a Director include:
  - a) a violation of SDF's Code of Conduct or of Commission Orders, regulations or rules;
  - b) the failure of the Director to attend or participate in SDF board meetings for more than three consecutive board meetings absent extenuating circumstances satisfactory to the SDF board.
  - c) any other action or inaction warranting removal to protect the public interest.
3. SDF motion for removal of a Director must clearly identify the cause for the request for removal and must be approved at a SDF board meeting with a quorum of at least two-thirds of the sitting board and the affirmative vote of at least two-thirds of the Directors attending the board meeting.
4. Upon receipt of the Commission Order approving the removal of a Director, SDF President will notify the Nominations Committee and direct them to begin the nominations process for a new Director.

### **E. Nomination of SDF Directors**

1. SDF will establish and utilize a Nominations Committee. The Nominations Committee will consist of members of SDF staff and SDF board, as determined by SDF board. The responsibilities of the Nominations Committee are:
  - a) to establish selection objectives and criteria;
  - b) to provide public notice of the vacancy and to request nominations;
  - c) to receive nominations for new Directors
  - d) to review the qualifications of the candidates in light of the selection objectives and criteria; and,

- e) to recommend a candidate for the vacancy.
2. Whenever there is a vacancy on the board, whether by expiration of a term (including a term of an incumbent Director interested in continuing on the board for a second term), resignation or removal, the Nominations Committee will develop selection objectives and criteria for adding a new board member. The SDF board will have the opportunity to review and approve the selection objectives and criteria prior to their public release.
  3. Whenever there is a vacancy on the board, whether by expiration of a term (including a term of an incumbent Director interested in continuing on the board for another term), resignation or removal, the Nominations Committee will provide public notice of the vacancy and a call for nominations by the following means:
    - a) a written notice to the Commission;
    - b) an electronic mail notice to the SEF's e-mailing list if available; and,
    - c) a notice on the SEF's website.
  4. The notice of the vacancy will include the Nomination Committee's statement of selection objectives and criteria (see section III.E.3) and will invite interested persons to submit nominations to the SEF Nominations Committee.
  5. Nominations may be submitted by any person interested in Pennsylvania's electric utility industry or clean energy technologies.
  6. Nominations will be accepted for a period not less than four weeks following the issuance of the notice required in section III.E.4.
  7. Nominees must certify in writing that they do not have any criminal convictions, including felonies and misdemeanors, or that they are not the subject of any current criminal investigations
  8. The Nominations Committee will review the nominations, review the qualifications of the candidates and conduct whatever interviews it sees fit.
  9. The Nominations Committee will make a written nominations report to SDF board. The nominations report will provide information about:
    - a) the key dates and events in the nomination process;
    - b) the list of individuals who were nominated for the position and identifying information about who nominated each candidate;
    - c) the evaluation of the candidates: and,
    - d) the individual recommended by the Nominations Committee.

## **F. Election of SDF Directors**

1. New Directors will be elected at a meeting of the SDF Board. The quorum for the election of Directors will be at least two-thirds of the sitting board.
2. SDF board has the responsibility to review the nominations and the recommendation of the Nominations Committee and to select the candidate they believe best able to satisfy the needs of SDF to fulfill its mission, represent its various ratepayer and other constituencies, and to comply with the terms of the original settlement agreement and SDF bylaws. An individual is elected to SDF board upon the affirmative vote of a majority of the Directors attending the board meeting.

## **G. Submission of the Name of the Elected Director to the Commission**

1. Following the election of a new Director by SDF board, SDF staff will prepare and submit a letter to the Commission's Secretary's Bureau at the appropriate docket number, with a copy to the Law Bureau, requesting approval of the elected Director.
2. This request will include a copy of the nominations report prepared under section III.E.8 and a biographical statement of the elected Director.

## **H. Review and approval of the Elected Directors by the Commission**

1. The Commission will review the qualifications of the elected Director and approve or disapprove the candidate.
2. Upon approval of the elected Director, SDF will publicize the approval as follows:
  - a) an electronic mail notice to SDF's e-mailing lists;
  - b) a written notice to those who nominated someone for SDF Director position; and,
  - c) a notice on SDF's website.

## **I. Organization of the Board**

The Board shall have a Board President, a Board Vice President and a Secretary. The Board President shall run the Board meetings and shall be the point person for communications with the Board. The Board Vice President shall perform the duties of the Board President when the Board President is unavailable or absent. The Secretary shall keep the record of all Board activities. The term of all officers shall be one year. Officers shall be elected at the first meeting in each calendar year.

## **J. Responsibilities of the Board**

The Board shall have the following responsibilities and tasks:

1. Input and Oversight. The function of the Board is to provide input to and oversight of the Fund's activities.

2. Publicity and marketing. Board members are asked to help The Reinvestment Fund attract and identify good projects and partners for Fund activities.
3. Input, review and approval of the annual program plan and annual operating budget. The annual program plan directs the Funds activities for each coming year. As described in section IV.A.1, The Reinvestment Fund shall prepare the annual program plan and annual operating budget. The Board shall provide input and review. Board approval by majority vote is required of the annual program plan and annual operating budget prior to the start of each calendar year.
4. Review of loans and investments for adherence to mission.
5. Review and approval of grant requests when Board approval is required by the Annual Program Plan.

#### **K. Meetings**

The Board shall hold a minimum of two meetings a year. Additional meetings shall be held as necessary. Telephonic meetings of the board and participation in board meetings by telephone by individual board members are both allowed.

#### **L. Quorum and Vote**

A simple majority of the Board members, present in person or by telephone at a duly convened meeting of the Board shall constitute a quorum for the transaction of business. The acts of a simple majority of the members present at a meeting at which a quorum is present shall be the acts of the Board. Each member shall have one vote.

#### **M. Compensation of Directors**

1. Upon the presentation of proper receipts, SDF may reimburse Directors for reasonable expenses they have incurred to participate in board meetings and other SDF business events and for other incidental SDF business expenses.
2. No Director will receive a stipend or any other compensation from SDF for serving on SDF board, other than the reimbursement of travel expenses or other incidental SDF expenses as provided for in section III.M. No Director will receive compensation from SDF for any other service to SDF outside of the duties of a Director, whether under contract or otherwise.

### **IV. THE REINVESTMENT FUND**

#### **A. Responsibilities of The Reinvestment Fund**

The responsibilities of The Reinvestment Fund include:

1. Development of the annual program plan and annual operating budget. Prior to the start of each calendar year, The Reinvestment Fund shall draft an annual program plan to identify the priorities and specific financial assistance initiatives and programs that the Fund will offer for the following calendar year. No funds may be disbursed for loans, equity and near-equity investments, and grants except through a program approved in the annual program plan.
2. Marketing the programs and soliciting applicants. Upon approval of the annual program plan by the Board, The Reinvestment Fund shall market the Fund's programs and solicit applicants. The Reinvestment Fund shall also work with PECO Energy and others to inform all ratepayers in the PECO Energy service territory about the Fund's activities.
3. Reviewing and approving requests for loans and investments. The Reinvestment Fund shall review and rule upon all requests for loans and investments. The Reinvestment Fund shall provide the Board with information for reviewing the adherence to mission of the loans and investments.
4. Preparation of grant application summaries for Board review and approval when Board approval is required by the Annual Program Plan.
5. Monitoring and managing all financial assistance. The Reinvestment Fund shall monitor and manage all financial assistance provided by the Fund to ensure that the Fund's assistance is properly and effectively spent.
6. The Reinvestment Fund shall prepare an annual public report to the Commission on both financial and program accomplishments and issues facing the Fund.

#### **B. The Reinvestment Fund Operating Grant**

The Reinvestment Fund shall receive an annual grant to cover its costs for performing its responsibilities to the Fund listed in Section IV.A of these bylaws. This operating grant shall be negotiated and approved by the Board on an annual basis. This operating grant shall be charged against the Fund's receipts (see Section V).

#### **C. Replacement of The Reinvestment Fund**

If the Board determines that The Reinvestment Fund has breached its fiduciary responsibility, The Reinvestment Fund may be removed as fund administrator by a two-thirds (2/3) majority vote of the Board and approved by the Commission.

#### **D. Board Activities**

The Reinvestment Fund shall cover the expenses of the activities of the Board, including meeting expenses and Director's liability insurance.

## **V. FINANCIAL MATTERS.**

### **A. Fund Receipts**

All Fund receipts will be maintained in a separate restricted fund of The Reinvestment Fund. The Fund is authorized to receive the following types of receipts:

1. Money paid by PECO Energy to The Reinvestment Fund.
2. Money collected by The Reinvestment Fund as payment of principal and interest on loans made by the Fund.
3. Money collected by The Reinvestment Fund as return on equity and near-equity investments made by the Fund.
4. Money collected by The Reinvestment Fund as interest on funds it has placed in interest-bearing accounts.

In addition to these primary receipts, the Fund may also receive secondary receipts from:

5. Money received by The Reinvestment Fund as grants and investments from government, foundations and others.
6. Money received by The Reinvestment Fund as grants and investments from private and institutional investors.

### **B. Fund Disbursements**

All Fund disbursements are to be made under programs contained in the annual program plan or approved in the annual operating budget. The Reinvestment Fund shall use its best efforts to make expenditures that comply with the annual program plan and annual operating budget. The Reinvestment Fund shall not expend more money than is available in the Fund's account. The Fund is authorized to make the following types of disbursements:

1. Loans (at various below-market and at-market interest rates).
2. Equity and near-equity investments.
3. Grants (including recoverable grants).
4. The Reinvestment Fund's operating grant to fund the Fund's approved annual operating budget.

### **C. Audit**

The Reinvestment Fund shall obtain the services of an independent auditor to perform an annual audit on all Fund operations. This audit may be conducted as part of The Reinvestment Fund audit, provided the Fund's finances are reported separately within the audit. This audit shall be a public document and shall be shared with the members of the Board and the Commission.

#### **D. Recovery of Fund Monies**

This section governs the recovery of Fund monies in the event The Reinvestment Fund is removed as manager of the Fund by action of the Board and the Commission or elects to cease all operations or the operations of the Fund.

The Reinvestment Fund shall notify the Board of Directors, PECO Energy and the Commission in writing sixty (60) days prior to ceasing operation as the fund administrator. Upon ceasing operation, The Reinvestment Fund shall promptly return to PECO Energy all unexpended funds that had been collected by PECO Energy and transferred to The Reinvestment Fund less any reduction as set forth below:

- (1) If repayment to PECO Energy Company shall be necessary, The Reinvestment Fund will pro-rate the Fund's net losses, if any, among the Fund's grantors, including PECO Energy and other contributors, according to the portion of such losses to each funder. The Reinvestment Fund shall then reduce the amount of its repayment to PECO Energy by the amount of such losses as are properly allocable to other contributors.
- (2) Unexpended funds shall be reduced by unfunded commitments, loan and other commitments not fully disbursed, and contingent liabilities and other encumbered funds.

If repayment to PECO Energy is required at the time when the Fund has loans or investments outstanding, The Reinvestment Fund will pro-rate the outstanding loans and investments among the contributors according to their level of contribution and allocate accordingly a portion of the principal repayments on the outstanding loans or investments to PECO Energy, as such repayments are received. If The Reinvestment Fund is then still in existence, it will continue to be responsible for such loans or investments, until a new administrator is selected by the Board and will promptly upon receipt of any payments forward PECO Energy's share of such payments to PECO Energy. If The Reinvestment Fund has decided to cease all operations, it will first designate a qualified organization acceptable to the Board to service The Reinvestment Fund's outstanding loans or investments and to forward PECO Energy's share of any payments to PECO Energy promptly upon receipt.

### **VI. CODE OF CONDUCT, CONFLICT OF INTEREST AND CONFIDENTIALITY POLICY**

#### **A. Introduction**

As a holder of public trust, SDF must strive to ensure that its activities, as well as those of its Directors, officers, employees, consultants and independent contractors, are conducted in compliance with appropriate standards of ethics, loyalty, honesty, integrity, fair dealing and independence.

#### **B. Policy Statement**

The Directors, officers, employees, consultants and independent contractors of SDF, in all transactions related to their duties on behalf of SDF, or on behalf of those entities served by

SDF, shall adhere to the standards of ethics, care, loyalty, honesty, integrity and fair dealing described herein and shall at all times act in the best interests of SDF.

### **C. Definitions**

1. *Adverse Interest* shall mean when a Covered Person, or a Family Member of a Covered Person, has a Financial Interest in an entity that (a) is receiving financial support from SDF; (b) is currently seeking financial support from SDF; or (c) is likely to seek financial support from SDF in the coming twelve months.
2. *Compensation* shall mean direct or indirect remuneration, as well as gifts, loans, gratuity, favor or service that are substantial in nature. The acceptance of food and refreshment of nominal value on infrequent occasions in the ordinary course of a lunch or dinner meeting or other meeting shall not be deemed “compensation” for purposes of this definition.
3. *Confidential Information* shall mean all documents, records, files, contracts, communications, conversations, prospective or actual equity or borrower information, trade secrets, data, or other information that the owner has expressly and unequivocally states to SDF to be confidential or proprietary.
4. *Covered Person* shall mean any SDF Director, SDF employee and SDF contractor who performs program or administrative tasks for SDF. The term does not include persons whose only connection to SDF is that they are grantees or recipients of financial support from SDF. For purposes of the Confidentiality rules (section VIII) only, employees of the Commission will be included in the definition of covered person.
5. *Duty of Care* is the requirement that a Director fulfill his or her responsibilities responsibly, thoroughly and in good faith. It means committing the necessary time to prepare for and attend board meetings and other SDF business and to participate in SDF business in an informed basis.
6. *Family Member* shall mean the Covered Person’s spouse, child, parent, brother, sister, or any other person living in the home of the Covered Person.
7. *Financial Interest* shall mean (a) an ownership or investment interest in, or (b) a compensation arrangement with an entity. Voluntary, unpaid board membership in a nonprofit organization does not constitute a financial interest with that organization.

### **D. Disclosure and Finding of Adverse Interest**

1. A Covered Person who has an Adverse Interest with respect to an entity that is seeking financial support from SDF must disclose in writing to the SDF Board the nature and extent of the interest.

2. If a Covered Person fails to disclose an Adverse Interest, it is appropriate for another SDF Director, SDF staff person or other interested persons to bring the possibility of an Adverse Interest to the attention of the Board.
3. After providing the involved person an opportunity to address the Board, the Board will make a finding of whether an Adverse Interest exists or does not exist with respect to a specific entity.

#### **E. Actions Upon Finding of Adverse Interest**

1. If a Covered Person is found to have an Adverse Interest:
  - a) The Covered Person may not be allowed to participate in any Board or staff discussions about the specifics of a Request for Proposals or similar competitive documents prior to their public issuance. This is to ensure that the Covered Person does not get advance notice of the details of the Request for Proposals and thus gains a competitive advantage over other applicants. This section does not prevent SDF staff from meeting with Directors or persons connected with Directors to develop program or project ideas. If any such programs or projects are taken to the board for approval, SDF staff and the involved Director must disclose the planning work as required by section 4.0 and take the actions listed in section E.
  - b) The Covered Person is to be excused from all Board deliberations with respect to the entity that gave rise to the Adverse Interest and must continue to be absent during the Board vote on the financial request. This will include not only the deliberations about the entity itself, but also the deliberations involving entities that are in competition for financial support, such as the applicants responding to a Request for Proposals. The Covered Person may, at the discretion of the Chairperson, make a statement about the entity or the financial request at the beginning of the Board consideration, but at the conclusion of the statement, the Covered Person must leave the room so that the Board's discussion can continue without the Covered Person being present.
  - c) The Board shall take such action, which is necessary in light of the facts revealed by the disclosure, to avoid a conflict of interest or impropriety with regard to a project. The Board must use its independent judgment to determine if the transaction is fair to the Fund and in the Fund's best interests.
2. The minutes of the Board meetings shall contain:
  - a) The names of the Covered Persons who disclosed or otherwise were found to have an Adverse Interest and the nature of the Adverse Interest.
  - b) The names of the persons who were present for discussions and Board decisions relating to the transaction or arrangement.

## **F. Prohibited Activities**

1. No Covered Person may solicit, accept or receive from a person, firm, corporation or other business or professional entity or organization a gift, loan, gratuity, favor or service that might influence his or her position in the discharge of his or her official duties concerning a project or any other activities of SDF.
2. No Covered Person may directly or indirectly use for personal gain any information not available to the public concerning a project or company, nor may a Covered Person provide that information to others.

## **G. Confidentiality**

1. From time to time during the course of their service to SDF, Covered Persons will be given Confidential Information. Maintaining the confidentiality of this information is vital to the functioning of SDF. No Covered Person shall disclose any Confidential Information, directly or indirectly, nor use it in any manner.
2. A Covered Person will protect the confidentiality of Confidential Information they receive in the course of their work with SDF as follows:
  - a) They will not disclose the Confidential Information to any third party.
  - b) They will safely maintain and store all Confidential Information documents and other materials that they receive from SDF.
  - c) They will not copy or reproduce any part of the Confidential Information documents that they receive from SDF.
  - d) They will return the Confidential Information documents to SDF upon completion of their review.
3. Each Covered Person's obligations under section VI.G shall not apply to Confidential Information which:
  - a) was in the public domain at the time it was communicated to the Covered Person;
  - b) entered the public domain subsequent to the time it was communicated to the Covered Person through no fault of the Covered Person;
  - c) was rightfully communicated to the Covered Person free of any obligation of confidence;
  - d) was free of any obligation of confidence subsequent to the time it was communicated to the Covered Person;
  - e) was developed by the Covered Person independently of and without reference to any information communicated to the Covered Person;

- f) was communicated in response to a valid order by a court or other governmental body, or otherwise required by law.

#### **H. Communication and Affirmation of Policy**

1. SDF shall deliver a copy of this policy to each of its officers, Directors, employees, consultants and independent contractors and post it on SDF website.
2. To ensure compliance with this policy, all Covered Persons shall be required to execute an “Acknowledgment and Acceptance / Financial Interest Disclosure Statement.” All covered persons will be given this form each year. Although such information will be made available to the members of the Board, it will otherwise be treated as confidential.
3. Any candidate for election to the Board shall be given a copy of this policy in advance of the election and shall affirm his or her support of it prior to election.
4. Any newly-elected officers, newly-hired employees or newly-retained consultants or independent contractors shall be advised, prior to election, hiring or retention, of this policy and each shall affirm his or her support of it prior to their election, hiring or retention.

#### **I. Remedies**

The failure to make any required disclosure under this policy or any other breach of this policy is grounds for disciplinary action by SDF against the Covered Person. This disciplinary action may include removal from the Board or termination of the individual’s employment, consulting or other contract or arrangement, and is possible grounds for disapproval of an application or rescission of a project by SDF. The remedies provided herein shall be in addition to any other legal remedies available to SDF.

### **VII. AMENDMENT OF BY-LAWS**

These by-laws may be amended by a majority vote of the Board members. Notice that amendments to the bylaws will be considered must be provided to all Board members two weeks before the meeting at which the amendments will be considered. The Commission must approve all amendments to these by-laws.