

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into on October 8, 2015, by and between FuelCell Energy, Inc. ("FuelCell"), a corporation with its principal place of business in Connecticut, Governor Jack Markell, in his official capacity as the Governor of Delaware and binding on any and all persons acting by, through, under, or on his behalf in his official capacity, whether current or future ("Governor Markell"), William O'Brien, in his official capacity as former Executive Director of the Delaware Public Service Commission (the "PSC") and binding on any and all other persons acting by, through, under, or on his behalf in his official capacity, whether current or future ("O'Brien"), and Jaymes B. Lester ("Lester"), Joann Conaway ("Conaway"), Dallas Winslow ("Winslow"), and Jeffrey Clark ("Clark"), in their official capacities as Commissioners of the PSC and binding on any and all other persons acting by, through, under, or on their behalves in their official capacities, whether current or future (and, collectively with Governor Markell, O'Brien, Lester, Conaway, and Winslow, "Defendants"). In this Agreement, FuelCell and Defendants collectively will be referred to as the "Parties" and each as a "Party."

RECITALS

WHEREAS, on June 20, 2012, Plaintiffs John A. Nichols ("Nichols") and FuelCell filed a complaint (the "Complaint") in the United States District Court for the District of Delaware (the "District Court"), styled *Nichols et al. v. Markell et al.*, C.A. No. 12-777-CJB (the "Litigation"), against Governor Markell, in his official capacity as the Governor of Delaware, O'Brien, in his official capacity as Executive Director of the PSC, and Lester, Conaway, Winslow, and Clark, in their official capacities as Commissioners of the PSC;

WHEREAS, the Complaint alleged that the 2011 amendments to the Renewable Energy Portfolio Standards Act ("REPSA"), 26 *Del. C.* §§ 351, *et seq.*, facially, and as applied, violate the dormant commerce clause and the equal protection clause of the United States Constitution;

WHEREAS, on April 17, 2014, the District Court denied Defendants' motion to dismiss with respect to FuelCell, permitting FuelCell to proceed with its dormant commerce clause claim;

WHEREAS, on April 17, 2014, the District Court granted Defendants' motion to dismiss with respect to Nichols, holding that Nichols did not have standing to bring a dormant clause claim, and did not state an equal protection clause claim;

WHEREAS, Defendants have denied and continue to deny that there is any merit to the dormant commerce clause claim and/or that FuelCell has standing to assert it;

NOW, THEREFORE, in consideration of the mutual promises, agreements, covenants, and representations contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

1. Interpretation and Enforcement of REPSA.
 - (a) For the purpose of any deliberation, decision, and/or action requiring or relating to the interpretation or application of REPSA in their official capacities, Defendants shall consider any manufacturer of fuel cells that are capable of being powered by renewable fuels as a “qualified fuel cell provider” without regard to (i) whether the fuel cells are manufactured in the State of Delaware, or (ii) whether the manufacturer of such fuel cells or any qualified fuel cell provider project proposed by such manufacturer is designated by the Director of the Delaware Economic Development Office and/or the Secretary of the Delaware Department of Natural Resources and Environmental Conservation as an economic development opportunity;
 - (b) In considering and determining, in accordance with REPSA, whether to approve or deny a tariff that is proposed jointly by Delmarva Power & Light (“Delmarva”), the sole PSC-regulated electric utility (or any future PSC-regulated electric utility), and any qualified fuel cell provider in connection with a qualified fuel cell provider project, the PSC shall not give consideration to (i) whether the fuel cells were manufactured in the State of Delaware, or (ii) whether the qualified fuel cell provider project promotes economic development in the State of Delaware;
 - (c) The obligations set forth in this paragraph 1 shall continue to be binding and enforceable on Defendants in their official capacities, notwithstanding any amendment to REPSA or any other statute providing for additional fuel cell provider projects.

2. Consent Order: Within five business days of the execution of this Agreement, the Parties shall execute and Defendants shall submit to the District Court for approval a stipulated proposed order substantially and materially in the same form as Exhibit A hereto (the “Order”). If the District Court does not enter the Order within sixty days of its submission, this Agreement shall be considered null and void and of no effect. Upon entry of the Consent Order, Defendants shall provide to Delmarva (or any future PSC-regulated electric utility) copies of the Order, this Agreement, and REPSA § 364, which statute provides, in part, that

Before a commission-regulated electric company [e.g., Delmarva (or any future PSC-regulated electric utility)] may collect any charges on behalf of a qualified fuel cell provider project . . . , the [PSC] must adopt tariff provisions applicable to such project. . . . Tariff provisions . . . shall, at a minimum, provide for the following. . . . A project of 30 MW nominal nameplate, and future potential additions of up to an additional 20MW nominal nameplate The total allowable 50 MW of nominal nameplate shall be reduced by any customer sited installations referred to in § 353(d)(2) of this title or additional installations of qualified fuel cell provider fuel cells. Any additional MW beyond the 30MW . . . must be reviewed and approved by the [PSC].

26 Del. C. § 364(d).

3. Attorneys' Fees: Within five business days of the District Court's entry of the Order, Defendants shall pay to FuelCell attorneys' fees in the amount of \$45,000.

4. Dismissal of the Delaware Action: Following the entry of the Order, and within five business days of Defendants' payment to FuelCell of attorneys' fees in the amount set forth in paragraph 3, FuelCell and Defendants agree to take all actions necessary to dismiss with prejudice the Litigation. This provision shall not affect any Party's right to initiate any future action to enforce the terms of this Agreement and/or the Order.

5. Releases:

(a) FuelCell's Release. Immediately following (1) the entry of the Order, and (2) Defendants' payment to FuelCell of attorneys' fees in the amount set forth in paragraph 3, FuelCell, on its own behalf and on behalf of its present, former, and future parent entities, divisions, direct and indirect subsidiaries, companies, partnerships, affiliates, predecessors, successors, owners, and assigns, and their respective present, former or future officers, directors, principals, employees, attorneys, consultants, agents, and all persons acting by, through, under, or on their behalf (individually and collectively, the "FuelCell Parties"), hereby fully and completely release, acquit and discharge each and all of the Defendants and their present, former and future agencies, bureaus, commissions, committees, councils, departments, and units, and their respective staff, employees, directors, commissioners, attorneys, consultants, agents, representatives, successors, assigns and any and all other persons acting by, through, under, or on their behalves (individually and collectively, the "State Parties"), of and from any and all claims, counterclaims, actions, causes of action, suits, debts, obligations, promises, expenses, bills, liens, liabilities, dues, accounts, bonds, covenants, contracts, agreements, costs, judgments, or demands whatsoever, in law and/or in equity, whether known or unknown, accrued or unaccrued, which the FuelCell Parties ever had, now have, or can, shall or may in the future have against the State Parties, from the beginning of time to the date of this Agreement (the "FuelCell Released Claims").

(b) Defendants' Release. Immediately following the entry of the Order in accordance with paragraph 2 of this Agreement, Defendants, on their own behalf and on behalf of the State Parties, solely in their official capacities, and not in their personal capacities, hereby fully and completely release, acquit and discharge the FuelCell Parties of and from any and all claims, counterclaims, actions, causes of action, suits, debts, obligations, promises, expenses, bills, liens, liabilities, dues, accounts, bonds, covenants, contracts, agreements, costs, judgments, or demands, in law and/or in equity, whether known or unknown, accrued or unaccrued, which the State Parties, in their official capacities, and not in their personal capacities, ever had, now have, or can, shall or may in the future have against the FuelCell Parties, from the beginning of time to the date of this Agreement (the "State Released Claims" and, collectively with the FuelCell Released Claims, the "Settled Claims").

- (c) Each Party knows that it, he, or she may have serious damages or losses about which it, he, or she knows nothing concerning the Settled Claims which are the subject of the release, but nonetheless releases all claims and causes of action against the other Parties, which may relate to or arise from those Settled Claims. Each Party understands that the other Parties would not have agreed to the terms of this Agreement if it, he, or she did not release all losses and damages which may be presently unknown to them and unanticipated by them. Each Party understands that it, he, or she is giving up not only its, his, or her present claims and rights concerning the Settled Claims, but also all claims that it, he, or she may discover or learn of in the future arising from acts or omissions prior to the effective date of this Agreement.
- (d) Each Party acknowledges that it, he or she may hereafter discover facts different from or in addition to those now known or believed to be true with respect to the Settled Claims, and each Party agrees that the releases and agreements contained herein shall be and will remain effective in all respects notwithstanding such different or additional facts. Each Party intends hereby fully and forever to settle and release the Settled Claims in the manner provided in this Agreement.

6. No Admission of Liability. It is understood and agreed that this Agreement is being made in connection with the settlement, compromise and release of disputed allegations and potential claims and that any actions taken pursuant to this Agreement are not to be construed as an admission or concession of liability by any Party on account of the disputed claims, and that each Party expressly and absolutely denies any wrongdoing or liability whatsoever.

7. Entire Agreement and Approvals. This Agreement (with the accompanying proposed Order) constitutes the sole and entire agreement between the Parties, and supersedes all prior agreements, negotiations, and discussions between the Parties, with respect to the subject matter covered hereby. The Parties acknowledge that, in entering into this Agreement, they are not relying upon any representations or warranties made by anyone other than those terms and provisions expressly set forth in this Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, waived, modified or otherwise changed in any respect whatsoever except by a writing that specifically refers to this Agreement. The Parties further acknowledge and agree that they will make no claim at any time or place that this Agreement has been orally supplemented, modified, or altered in any respect whatsoever.

8. Construction. It is understood and agreed that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing the document to be drafted. Each Party enters into this Agreement voluntarily, without duress, with the consultation and advice of its legal counsel, and with full understanding of its terms.

9. Choice of Law and Forum. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware without giving effect to the provisions, policies, or principles thereof relating to choice of law or conflict of laws. Each Party consents to the District Court as the sole and exclusive forum for the resolution of any dispute relating to or arising out of this Agreement.

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10. Attorneys' Fees. In any action to enforce the terms of this Agreement, including any action to recover damages for any violations herein, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and disbursements in addition to costs of suit.

11. Obligation to Defend. Defendants agree to defend the validity of the Order and this incorporated Agreement against any challenge by any third party. Defendants agree to notify FuelCell of any court or administrative challenge to the Order and this incorporated Agreement. Defendants agree to require compliance with the validity of the Order by any and all persons acting by, through, under, or on their behalves in their official capacities, whether current or future. Nothing in this provision shall require any Defendant to act outside of his or her official capacity.

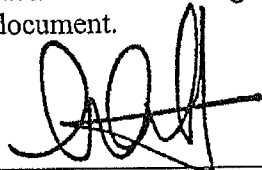
12. Severability. Should any provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

13. Authority. Each Party represents and warrants that it is authorized to enter into this Agreement. Each Party further represents and warrants that each individual signing this Agreement on its behalf has the legal capacity and has been duly authorized and empowered to execute such document on behalf of such Party, and that such document shall be binding on such Party in accordance with its terms.

14. Non-Assignment. Each Party hereto warrants and represents that it, he or she (i) has not assigned, encumbered or in any manner transferred (in whole or in part), or purported to assign, encumber or in any manner transfer (in whole or in part), any of the Settled Claims to any third party that is not a Party to this Agreement.

15. Claims Arising Under and Related to This Agreement. Nothing in this Agreement shall be construed to release any Party from any claims directly arising under the express terms of this Agreement, including any subsequent breach of this Agreement by any Party or its affiliates.

16. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Execution of a copy shall have the same force and effect as execution of an original. This Agreement may be executed by facsimile or by PDF, and a facsimile or PDF signature shall have the same force and effect as an original signature on this document.



FuelCell Energy, Inc.
By: Arthur A. Bottone
Title: President and CEO
Date: October 6, 2015

Governor Jack Markell, in His
Capacity as Governor of Delaware
Date:

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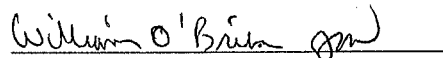
FuelCell Energy, Inc.

By:
Title:
Date:

Meredith Stewart Tweedie

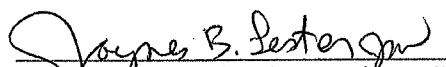
Governor Jack Markell, in His
Capacity as Governor of Delaware
By: Meredith Stewart Tweedie, Chief Legal Counsel

Date: 10/19/15



William O'Brien, in His Capacity
as Former Executive Director of the Delaware
Public Service Commission

Date:

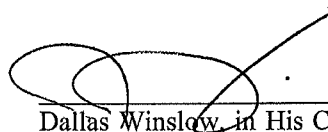


James B. Lester, in His Capacity as Commissioner
of the Delaware Public Service Commission

Date:

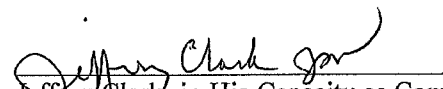
Joann Conaway, in Her Capacity as Commissioner
of the Delaware Public Service Commission

Date:



Dallas Winslow, in His Capacity as Commissioner
of the Delaware Public Service Commission

Date:




Jeffrey Clark, in His Capacity as Commissioner of
the Delaware Public Service Commission

Date:

William O'Brien, in His Capacity
as Former Executive Director of the Delaware
Public Service Commission
Date:

Jaymes B. Lester, in His Capacity as
Commissioner of the Delaware Public Service
Commission
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