

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

Public Meeting held December 17, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
John F. Coleman, Jr.
Ralph V. Yanora

Proposed Rulemaking for Diversity Reporting of
Major Jurisdictional Utilities

L-2020-3017284

NOTICE OF PROPOSED RULEMAKING

BY THE COMMISSION:

The Commission's Policy Statement on Diversity at Major Jurisdictional Utility Companies, 52 Pa. Code §§ 69.801-69.809, (Policy Statement), encourages major jurisdictional utilities to file diversity reports annually with the Commission and provides guidelines identifying the information that the major jurisdictional utilities have been requested to report to describe their efforts to employ, and to contract with, members of diverse groups. On December 3, 2020, the Commission entered a Final Policy Statement at Docket No. M-2020-3018089 updating the Diversity Reporting Policy Statement. The updates bring the demographic terms in closer alignment with the Commonwealth's diverse citizenship and with terms used in diversity reporting to federal agencies. The Diversity Policy Statement updates will become effective on publication in the *Pennsylvania Bulletin*.

Having finalized the updates to the Diversity Policy Statement, the Commission now proposes that the diversity reporting recommendations in the Diversity Policy

Statement become a regulatory obligation to be codified in 52 Pa. Code Chapter 51 for major jurisdictional utilities providing electric, natural gas, water, wastewater, and telecommunications services.

BACKGROUND

Every January, leaders of Commonwealth agencies including the Commission pledge to support hiring, compensating, training and advancing individuals based on merit regardless of their diverse identities while promoting affirmative action steps to eliminate barriers for protected groups. *See* Governor Wolf's Executive Order on Equal Employment Opportunity, No. 2016-04.

On March 24, 1995, the Commission adopted its Diversity Statement of Policy at Docket No. M-00940557. When proposed by then-Commissioner Lisa Crutchfield, these guidelines were groundbreaking and progressive for that time. However, 25 years later brings us into a new century and gives us a timely opportunity to reinvigorate the Commission's efforts to promote and implement effective diversity programs at our major jurisdictional utilities.

Pennsylvania is a diverse state when it comes to energy production, natural resources, manufacturing, agriculture and the residents of the Commonwealth. Our jurisdictional public utilities should draw on the strengths provided by the diversity within this Commonwealth, many of whom are also customers of jurisdictional utilities. As such, the Commission finds that jurisdictional utilities should continue to develop and implement utility-wide diversity programs for employment and contracting of goods and services. Such programs should focus on how to maintain or increase the numbers of minority, women, disabled, Lesbian/Gay/Bisexual/Transgender/Questioning (LGBTQ) and veteran employees and vendors.

Properly structured, diversity programs can successfully leverage untapped talent pools to help fill these critical jobs. Furthermore, as regulated monopolies, the Commonwealth's jurisdictional utilities have unique beneficial community relationships which diversity programs have the power to strengthen. The Commission launched a utility careers campaign in the Fall of 2017 to address the looming problem of increased utility workforce retirements. See <https://pautilitycareers.com/1-Press-Release> (accessed December 4, 2020).

Currently, the Commission's Diversity Policy Statement encourages utilities to file a diversity report with the Commission annually. In reviewing the reports submitted, Commission staff has found that, in many instances, the major jurisdictional utilities are either including too much information, not enough information, or unnecessary information in the reports. In an attempt to solicit the appropriate information, the Commission's Final Policy Statement at Docket No. M-2020-3018089 will revise the reporting guidelines upon publication in the *Pennsylvania Bulletin*. This will serve to refine the information that the major jurisdictional utilities are being requested to file and streamline the reporting and review processes.

The reporting pursuant to the Commission's Diversity Policy Statement is not obligatory. After 25 years of voluntary reporting, the Commission finds that it is appropriate to propose a Diversity Reporting regulation to make diversity reporting by major jurisdictional utilities obligatory, streamlined and more purposeful.

SUMMARY OF THE PROPOSED DIVERSITY REPORTING REGULATION

The guidelines in the Commission's policy statement currently at 52 Pa. Code §§ 69.801-809 set forth the goal of maintaining a diverse workforce and supply chain and include recommendations for the voluntary filing of diversity information by major jurisdictional utilities. The General Assembly has empowered the Commission to enact

regulations governing public utilities. Section 501 of the Public Utility Code, 66 Pa.C.S. § 501(b), provides in relevant part that:

[T]he commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

Section 504 of the Public Utility Code, 66 Pa.C.S. § 504, provides in relevant pertinent part that the Commission:

[M]ay require any public utility to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe, and special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce.

The Commission is now proposing that diversity reporting be mandatory for major jurisdictional utilities providing electric, natural gas, water, wastewater, and telecommunications services. This would also entail promulgating within the Diversity Reporting regulation the definitions that have been recently modified in Sections 69.802 and 69.802a and the filing recommendations recently modified in Section 69.809. 52 Pa. Code §§ 69.802, 69.809. It would also require mandating the use of a specific form for reporting workforce diversity as set forth in the Final Policy Statement Order.

§ 51.11 -- General

This section sets out the purpose of the proposed Diversity Reporting regulation as set forth in Annex A.

§ 51.12 – Definitions Applicable to Employee and Vendor Diversity

§ 51.13 – Definitions for Reporting Employee Statistics

§ 51.14 --Definitions for Reporting Vendor Statistics

The Commission is proposing to adopt as part of the Diversity Reporting regulation the general definitions and the specific employee-reporting and specific vendor-reporting definitions currently in Sections 69.802 and 69.802a without substantive changes as set forth in Annex A. 52 Pa. Code 69.802. We note that we have used the phrase “major jurisdictional utility” in the proposed Diversity Reporting regulation rather than “major jurisdictional utility company” as the use of “company” did not add any clarity to the Diversity Reporting regulation.

Because the definitions in the proposed regulation would also be applicable to the Diversity Policy Statement, and because the Diversity Policy Statement would be the predicate recommendations for the contents being reported, there are definitions proposed for inclusion in the regulation that would not be otherwise used in the regulation. Defining terms for both the proposed regulation and the remaining policy provisions in one location and as a regulation serves several purposes. It establishes uniform terms for adherence to the regulation and for understanding the policy. It avoids the potential for disjunction between one set of definitions for the regulation and a separate set for the policy.

§ 51.15 – Diversity Reporting Requirement

Since 1995, the Commission has encouraged major jurisdictional utilities to file diversity reports with the Commission’s Secretary by March 1 of each year pursuant to its Diversity Policy Statement at 52 Pa. Code § 69.809 (1995). The Commission is now proposing that diversity reporting by major jurisdictional utilities providing electric, natural gas, water, wastewater, and telecommunications services should be mandatory. Mandatory reporting in general, and the use of a specific form for reporting employee demographics in particular, would establish consistency among the major jurisdictional utilities in terms of the information being tracked and reported. It would also streamline the reporting and review process relative to diversity in employment and supply chain activities.

The Commission proposed to take the language from Section 69.809 and revise it to indicate that major jurisdictional utilities would now be required to file annual diversity reports with the Commission's Secretary by March 1 of each year. The language "are encouraged to file" would be replaced with "shall file" to indicate that diversity reporting would be a mandatory requirement. 52 Pa. Code 69.809. Additionally, the phrase "annual report should contain" would be revised to read as "the annual report shall contain" to indicate that the following reporting requirements would be mandatory as set forth in Annex A.

The provision in the Diversity Policy Statement at Section 69.809(b), relative to reporting information that is "otherwise unobtainable," is not part of the proposed Diversity Reporting regulation. 52 Pa. Code 69.809(b). The proposed Diversity Reporting regulation would instead specify what is to be reported.

The proposed Diversity Reporting regulation would indicate the docket in which a major jurisdictional utility is to file its annual report and that there would be consequences for the failure to file the report.

USE OF FORM TO REPORT WORKFORCE DEMOGRAPHICS

Further, use of the Commission form for reporting diversity in a major jurisdictional utility's workforce would be required as set forth in Appendix A. The regulation would list the information required in the form and identify the form by name. The Commission would make the form available to the major jurisdictional utilities, but the form itself would not be codified.

As discussed in greater detail in the Final Policy Statement, we modeled our recommended reporting form in large measure on the federal EEO-1 form used by the Equal Employment Opportunity Commission (EEOC). Starting with the 2021 federal EEO-1 filing, employers will have the opportunity to provide aggregate information in a

comment area. With respect to gender, this could include information provided by employees who self-identify as LGBTQ or who do not make an affirmative selection for gender. Final Policy Statement at 9.

The Commission understands the privacy issues surrounding the reporting of the number of LGBTQ employees but also wants to provide the opportunity for a major jurisdictional utility to report its LGBTQ composition to the extent known but without violating the privacy of its employees. As such, the Commission proposes to use the Demographic Composition of Workforce form recently adopted in conjunction with the revisions to the Diversity Policy Statement. The form would include the number of LGBTQ employees that a major jurisdictional utility employs with the caveat that only employees who agree to be counted in LGBTQ diversity reporting may be included in the report.

There would be nothing in the form or the reporting that identifies any specific employees relative to any of the categories reported.

IMPACT OF THE PROPOSED DIVERSITY REPORTING REGULATION ON THE DIVERSITY POLICY STATEMENT

The Commission intends to retain its policy statement on diversity at Sections 69.801 through Section 69.808, including the existing policy recommendations regarding encouraging diversity, guidelines for diversity development, contracting recommendations, program development, minimum improvement levels, subcontracting program and external outreach. 52 Pa. Code §§ 69.801 and 69.803-808. Filing would no longer be optional; thus, there would no longer be a need for Section 69.809. 52 Pa. Code § 69.809. The Commission intends to use one set of definitions, as proposed in Annex A for the Diversity Reporting regulation, applicable to both the regulation and the policy statement. These anticipated changes to the Diversity Policy Statement will be undertaken after the Diversity Reporting regulation becomes effective.

CONCLUSION

This proposed regulation builds on the Commission's recently amended Diversity Policy Statement which will become final upon publication in the *Pennsylvania Bulletin*. The proposed regulation would make the reporting requirement mandatory for major jurisdictional utilities. The proposed regulation would incorporate the definitions and the requirement to use the Commission's form for reporting from the Diversity Policy Statement as part of the proposed regulation. Amendment of the Diversity Reporting Policy Statement to reflect adoption of the Diversity Reporting regulation would be addressed after proposed Diversity Reporting regulation becomes final.

Accordingly, under Sections 501 and 504 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 504; Section 201 of the Act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law (45 P.S. § 1201), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); Section 5 of the Regulatory Review Act (71 P.S. § 745.5); and Section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, the Commission proposes a new Diversity Reporting regulation at 52 Pa. Code §§ 51.11-51.15 as set forth in Annex A.

THEREFORE,

IT IS ORDERED:

1. That a proposed rulemaking be opened to consider the proposed Diversity Reporting regulation set forth in Annex A.

2. That the Law Bureau shall submit this Order and Annex A to the Office of the Attorney General for review as to form and legality and to the Governor's Budget Officed for review for fiscal impact.

3. That the Law Bureau shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. That the Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

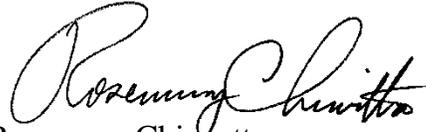
5. That interested parties may submit written comments referencing Docket No. L-2020-3017284 within 45 days of publication in the *Pennsylvania Bulletin*. Comments should be eFiled through the Commission's eFiling System per the Commission's Emergency Order dated March 20, 2020, at Docket No. M-2020-3019262. You may set up a free eFiling account with the Commission at <https://efiling.puc.pa.gov/> if you do not have one. Filing instructions may be found on the Commission's website at http://www.puc.pa.gov/filing_resources.aspx. Comments containing confidential information should be emailed to Commission Secretary Rosemary Chiavetta at rchiavetta@pa.gov rather than eFiled.

6. That the Secretary shall post and make available electronically the Order and Annex A on the Commission's website. A copy may also be obtained by calling the Secretary's Bureau at 717-772-7777 or the Law Bureau at 717-787-5000.

7. That the Secretary shall serve an electronic copy of the Order and Annex A on all major jurisdictional utilities in the Commonwealth as well as the parties served at the *Amended Policy Statement on Diversity at Major Jurisdictional Utility Companies*, Docket No. M-2020-3018089 (Dec. 3, 2020).

8. The contact persons for this matter are Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau 717-787-5558, jcardinale@pa.gov; and Rhonda L. Daviston, Assistant Counsel, Law Bureau, 717-787-6166, rdaviston@pa.gov. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting the Law Bureau at 717-787-5000.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta,
Secretary

(SEAL)

ORDER ADOPTED: December 17, 2020

ORDER ENTERED: December 17, 2020

Appendix A

Demographic Composition of Workforce

Form to be used by
Major Jurisdictional Utilities
Providing Electric, Natural Gas, Water, Wastewater, and
Telecommunications Services

This form would not be codified but would be made available by the Commission to the major jurisdictional utilities.

Demographics of Utility Workforce

52 Pa. Code §§ 51.11-51.15

<u>Total Number of Employees:</u>			<u>Utility Name:</u>							<u>Year Reported:</u>		
			<u>A-Docket Number:</u>									
<u>Job Categories</u>	<u>Gender</u>		<u>Race and Ethnicity</u>						<u>Person with Disabilities (Only employees who agreed to be reported)</u>	<u>LGBTQ (Only employees who agreed to be reported)</u>	<u>Veteran</u>	
	Male	Female	Hispanic or Latino	Not Hispanic or Latino								
			White	Black or African-American	Asian	Native American or Alaska Native	Native Hawaiian or Pacific Islander	Two or more races				
Executive/Senior Level Officials & Managers												
First/Mid-Level Officials & Managers												
Professionals												
Technicians												
Administrative Support Workers												
All others												
Totals												

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 51. GENERAL PROVISIONS

DIVERSITY

§ 51.11. General.

Diversity is an economic reality that each major jurisdictional utility is expected to recognize in its corporate strategy now and in the future. The Commission’s Diversity Policy Statement at 52 Pa. Code §§ 69.801-809 provides recommendations for addressing such diversity issues. While the means by which a major jurisdictional utility addresses diversity in its workforce and vendor supply chains should be utility-specific, the results of such efforts shall be reported annually by each major jurisdictional utility.

§ 51.12. Definitions Applicable to Employee and Vendor Diversity

The following words and terms, when used in §§ 51.11 and 51.15 and in the Commission’s Diversity Policy Statement at 52 Pa. Code §§ 69.801-69.809, in the context of major jurisdictional utility employees and vendors have the following meanings:

Diversity—The attainment of organizational objectives by maximizing the contributions of individuals from every segment of the population including minorities, women, persons with disabilities, LGBTQ and veterans.

LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning. This term also includes gender non-conforming individuals. Employer reporting on LGBTQ shall be based on employee self-identification.

Major jurisdictional utility—An electric, natural gas, water or wastewater utility whose net plant in service is valued at \$10 million or more. The term includes major telecommunications utilities with 50,000 or more access lines.

Person with disabilities—A person who has a disability as defined in the Americans With Disabilities Act (ADA), 42 U.S.C.A. § 12102. Employer reporting on person with disabilities shall be based on employee self-identification.

Veteran—A person who meets any veteran category defined in 42 C.F.R. § 61-300.2.

§ 51.13. Definitions for Reporting Employee Statistics.

The following words and terms, when used in §§ 51.11 and 51.15 and in the Commission's Diversity Policy Statement at 52 Pa. Code §§ 69.801-69.809, in the context of major jurisdictional utility employees have the following meanings:

Black or African-American—A person having origins in any of the black racial groups of Africa.

Asian (Not Hispanic or Latino)—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

Long-term plan—A plan applicable to a period of 5 years.

MIL—Minimum Improvement Level—A level or goal which, when achieved, indicates progress in a preferred direction.

Midterm plan—A plan applicable to a period of 3 years.

Native American or Alaska Native (Not Hispanic or Latino)—A person having origins in any of the original peoples of North and South America (Including Central America) and who maintain tribal affiliation or community attachment.

Native Hawaiian or Pacific Islander (Not Hispanic or Latino)—A person having origins in any of the peoples of Hawaii, Guam, Samoa or other Pacific Islands.

Short-term plan—A plan applicable to a period of 1 year.

Two or more races (Not Hispanic or Latino)—A person who identifies with more than one of the five races identified in this section.

White (Not Hispanic or Latino)—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

§ 51.14. Definitions For Reporting Vendor Statistics

The following words and terms, when used in §§ 51.11 and 51.15 and in the Commission’s Diversity Policy Statement at 52 Pa. Code §§ 69.801-69.809, in the context of a vendor with whom a major jurisdictional utility does business have the following meanings, unless the context clearly indicates otherwise:

Control—the exercise of the power to make policy decisions.

Exempt Procurement—A product or service which may be removed from the dollar base used to establish minimum improvement levels, because of the demonstrated unavailability of a minority/women/people with disabilities/LGBTQ/veteran-owned business currently capable of supplying a product or service. The term may also include one or more of the following situations:

- (i) The vendor is the original equipment manufacturer.
- (ii) The vendor is the only known source of the product or service.
- (iii) A plant emergency situation dictates use of a specific vendor.
- (iv) The purchase is from an affiliate, corporate parent, or a subsidiary.

MBE—Minority-Owned Business Enterprise—A business enterprise that is at least 51% owned by a minority individual or group or individuals; or a publicly-owned business that has at least 51% of its stock owned by one or more minority individuals, and whose management and daily business operations are controlled by these individuals.

Minority—Black American, Hispanic American, Native American, Asian-Pacific American, or any other socially disadvantaged individual as defined in 13 C.F.R. § 124.103.

Operate—Active involvement in the day-to-day management. The term involves more than serving as an officer or director.

Subcontract—An agreement or arrangement between a contractor and a party or person—in which the entities do not stand in the relationship of an employer and an employee—for the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which in whole or in part, is necessary to the performance of any one or more contracts.

Substantial objective—An objective that is achievable and which demonstrates a major jurisdictional utility’s commitment to increase the share of the utility’s purchases from

and contracts from minority/women/persons with disabilities/LGBTQ/veteran-owned businesses.

WBE–Women-Owned Business Enterprise—A business enterprise that is at least 51% owned by a woman or women; or a publicly owned business that has at least 51% of its stock owned by one or more women, and whose management and daily business operations are controlled by one or more women.

§ 51.15. Diversity Reporting Requirement.

(a) Each major jurisdictional utility shall file with the Secretary of the Commission by March 1 of each year an annual report describing its diversity program activity for the prior year. The annual report shall contain the following elements:

(1) A copy of corporate policy committed to improving diversity in the workplace and in the procurement process.

(2) A description of training implemented on diversity initiatives in employment and in the contract of goods and services.

(3) The demographic composition of the major jurisdictional utility’s workforce, reporting the number of employees by gender, race and ethnicity, persons with disabilities and veterans, on a form, Demographics of Utility Workforce, to be provided by the Commission.

(4) A description of diversity recruiting strategies.

(5) A description of diversity promotion efforts.

(6) A description of diversity retention efforts.

(7) A brief description of involvement with organizations promoting diversity.

(8) A brief summary of diverse-owned businesses that the major jurisdictional utility contracts with for goods and services. Include percentage of dollars spent with diverse-owned businesses versus non-diverse businesses.

(b) This information and form shall be filed at a major jurisdictional utility’s A-docket.

(c) The Commission will use all available remedies to ensure reporting compliance including fines.