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STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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[M-2020-3018089]

Amended Policy Statement on Diversity at Major Jurisdictional Utilities

[50 Pa.B. 3598]

[Saturday, July 18, 2020]

Public Meeting held
May 21, 2020

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson; John F. Coleman, Jr.; Ralph V. Yanora

Amended Policy Statement on Diversity at Major Jurisdictional Utilities; M-2020-3018089

Proposed Policy Statement and Order

By the Commission:

On February 6, 2020, the Pennsylvania Public Utility Commission (Commission) directed that the Policy Statement on Diversity at Major Jurisdictional Utility Companies at 52 Pa. Code §§ 69.801—69.809 (Policy Statement) be amended to update the Commission's efforts to promote and implement effective diversity programs at major jurisdictional utility companies.¹ The Policy Statement encourages utilities to file a diversity report annually with the Commission, and provides guidelines identifying the information utilities should report to describe their efforts to employ and contract with members of diverse groups. The Commission further directed that the Commission's Policy Statement be updated to reflect the Commonwealth's diverse citizenship. Accordingly, by this order, the Commission proposes to amend its Policy Statement by updating the definition of diversity to now include veterans and people who are lesbian, gay, bisexual, transgender, queer or questioning their sexuality (LGBTQ).

Summary of Proposed Amendments

The Commission proposes the following amendments to the Policy Statement as set forth in Annex A to this Order.

§ 69.802. Definitions.

Specifically, we will add the following definitions to Section 69.802: disabled person, LGBTQ and veteran. We propose defining "LGBTQ" as it is currently defined in Black's Law Dictionary 11th Edition.² In defining the term "veteran," we propose adopting the definition from 51 Pa.C.S. § 9601 which defines "veteran" in the context of business ownership. Using this definition ensures uniformity of

the term "veteran." The term "disabled person" was not previously defined, yet it is used throughout the Policy Statement. We propose adopting the Americans with Disabilities Act's (ADA), 42 U.S.C.A. § 12102, definition and citing directly to the ADA in order for the definition of "disabled person" to stay current in the future.

We also propose to update the definition of "diversity" by explicitly identifying the following groups: minorities, women, persons with disabilities, LGBTQ and veterans. Additionally, we propose to amend the definition of "Minority-Owned Business Enterprise" by specifically including Subcontinent Asian-Americans and Asian Pacific-Americans in the list of minority groups. Finally, the acronyms of Women-Owned Business Enterprise (WBE) and Minority-Owned Business Enterprise (MBE) will be removed since these acronyms are not used anywhere in the Commission's policy statement on diversity.

§ 69.809. Filings.

The Commission's staff has found the detail and type of information reported in the major jurisdictional utility companies' diversity reports to be inconsistent. In order to solicit the appropriate information, we propose revising the recommended reporting elements in Section 69.809 in their entirety. Section 69.809 will request the following elements from major jurisdictional utility companies that opt to report on their diversity programs:

- (1) A copy of any corporate policy committed to improving diversity in the workplace and in the procurement process;
- (2) a description of any training implemented on diversity initiatives in employment and in the contract of goods and services;
- (3) a standardized format to account for diverse employee numbers;
- (4) a description of any diversity recruiting strategies;
- (5) a description of any diversity promotion efforts;
- (6) a description of any diversity retention efforts;
- (7) a brief description of any involvement with organizations promoting diversity.

Among these new reporting elements will be a new standardized form that major jurisdictional utility companies can use to report their diverse workforce demographics, included as Attachment A. We propose using a form modeled after the Security and Exchange Commission's Diversity Assessment Report for Entities Regulated by the SEC.

We also propose updating Section 69.809 to remove outdated references. The Commission no longer has a Bureau of Public Liaison, so major jurisdictional utility companies will be instructed to submit their reports to the Secretary of the Commission. Further, as the Policy Statement has been in effect since 1995, the initial reporting year is no longer necessary. Consequently, we propose removing this language in subsection (a). Additionally, the subsection letters in Section 69.809 are revised to address the omission of subsection (b).³

Business Ownership Groups

Throughout the Policy Statement, there are references to businesses owned by minorities, women and persons with disabilities. We propose to revise these references to also include LGBTQ and veterans when referring to businesses owned by minorities, women and persons with disabilities.

With this Order, the Commission is proposing guidance for the revisions to its policy statement on diversity. The Commission welcomes comments on this proposed policy statement; *Therefore,*

It Is Ordered:

1. That the proposed policy statement set forth in Annex A is issued for comment.
2. That the Law Bureau shall submit this Order and Annex A to the Governor's Budget Office for review for fiscal impact.
3. That the Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
4. That interested parties may submit written comments referencing Docket M-2020-3018089 within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120. Comments may also be filed electronically through the Commission's eFiling System. Filing instructions may be found on the Commission's website at: http://www.puc.pa.gov/filing_resources.aspx.
5. 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.
6. 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 Laura Griffin, Regulatory Review Assistant, Law Bureau, (717) 772-4597, laurgriffi@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-329. No fiscal impact; (8) recommends adoption.

Attachment A

Demographic Composition of Workforce of Major Jurisdictional Utility Companies

Total Number of Employees: _____

Demographics of Workforce by Percentage

<i>Job Categories</i>	<i>Gender</i>		<i>Race and Ethnicity</i>				<i>Persons with Disabilities Veteran</i>		
	<i>Male (%)</i>	<i>Female (%)</i>	<i>White (%)</i>	<i>African-American (%)</i>	<i>Pacific-Asian (%)</i>	<i>Subcontinent Asian-American (%)</i>	<i>Native American (%)</i>	<i>(%)</i>	<i>(%)</i>
Executive/Senior Level Officials and Managers									
First/Mid-Level Officials and Managers									

Professionals
 Technicians
 Administrative
 Support Workers
 All others

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

DIVERSITY AT MAJOR JURISDICTIONAL UTILITY COMPANIES— STATEMENT OF POLICY

§ 69.801. General.

From a business perspective, diversity should be associated with a company's business objectives and strategies. The Commission strongly believes that diversity is an economic reality that corporate entities must include in their corporate strategies now and in the future. The Commission intends to take the next step by encouraging major jurisdictional utility companies operating in this Commonwealth to incorporate diversity in their business strategy in connection with the procurement of goods and services.

§ 69.802. Definitions.

The following words and terms, when used in §§ 69.801 and 69.803—69.809, have the following meanings, unless the context clearly indicates otherwise:

African-Americans—United States citizens or legal aliens with permanent residence status in the United States who have origins in any racial groups of Africa.

Asian Pacific-Americans—United States citizens or legal aliens with permanent residence status in the United States who have origins in Asia, including persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands and the Federated States of Micronesia.

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

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.**

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-owned] 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) Purchases from affiliates, corporate parents and their subsidiaries.

Hispanic-Americans—United States citizens or legal aliens with permanent residence status in the United States who have origins in Mexico, Puerto Rico, Cuba, South America, Central America and the Caribbean.

LGBTQ—Lesbian, gay, bisexual, transgender, queer, and questioning.

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

[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" may include African-Americans, Hispanic-Americans, Native Americans, **Subcontinent Asian-Americans** and **[Asian Americans] Asian Pacific-Americans**, as well as other groups found to be disadvantaged under section 8(a) of the Small Business Act (15 U.S.C.A. § 637(d)).

MIL—Minimum Improvement Level—A level or goal which, when achieved, indicates progress in a preferred direction. An MIL is neither a requirement nor a quota, and no specific participation levels are intended.

Major jurisdictional utility company—Electric, gas, water and telephone utilities whose net plant in service is valued at \$10 million or more. The term includes major telephone companies, defined as companies exceeding 50,000 access lines.

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

Native-Americans—United States citizens or legal aliens with permanent residence status in the United States who have origins in any of the original peoples of North America or Hawaiian Islands, in particular, American Indians, Eskimos, Aleutes and Native Hawaiians.

Operate—Active involvement in the day-to-day management. The term involves more than acting as officers or directors.

Person with disabilities—An individual who has a disability as defined in the Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12102.

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

Subcontinent Asian-Americans—United States citizens or legal aliens with permanent residence status in the United States who have origins in India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal.

Subcontract—An agreement or arrangement between a contractor and a party or person—in which the parties 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 objectives—Objectives which are realistic and clearly demonstrate a utility's commitment to increase minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business share of the utility's purchases and contracts.

Veteran—An individual who served in the United States Armed Forces, including a reserve component or the National Guard, and who was discharged or released from service under conditions other than dishonorable.

[WBE—] Women-Owned Business Enterprise—A business enterprise that is at least 51% owned by a woman or women who are United States citizens or legal aliens with permanent residence status in the United States; 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 who are United States citizens or legal aliens with permanent residence status in the United States.

[W/MBE—A WBE or an MBE.]

§ 69.803. Guidelines for diversity development.

The Commission encourages major jurisdictional utility companies to implement diversity programs. This effort may include the following:

- (1) The articulation of a corporate policy by the senior executives of the major jurisdictional utility company committing the utility to improving its level of diversity in the workplace and within its procurement process.
- (2) The development and implementation of a corporate-wide diversity program with specified goals and objectives for each year.
- (3) The appointment of utility managers to be responsible for the success of the program.
- (4) The training of managers regarding implementing diversity initiatives in the areas of employment and contracting for goods and services.
- (5) The location of qualified minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business contractors and mentoring, partnering and training qualified women/minority/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses contractors to serve the needs of the major jurisdiction utility company.

§ 69.804. Contracting recommendations.

The Commission recommends that major jurisdictional utility companies strive to take maximum efforts to provide that minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses have an equal opportunity to compete for the purchase of equipment, supplies, services, fuels, materials, construction, professional services advertising and the like. The Commission encourages major jurisdictional utility companies to develop a diversity program which is designed to provide that a fair proportion of products and services contracts are offered to minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses. It is recommended that the major jurisdictional utility companies adopt the general guidelines in §§ 69.805—69.808 in the development or enhancement of their diversity program relative to contracting for goods and services.

§ 69.805. Program development.

The major jurisdictional utility companies are encouraged to have an appropriate executive accountable for providing overall direction and guidance to the minority/women/persons with

[disabilities-owned] disabilities/LGBTQ/veteran-owned business program. Each major jurisdictional utility company is invited to maintain a staff to implement program requirements concerning the women/minority/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses. It may not be necessary for the major jurisdictional utility company to increase its staff or to reassign existing staff to minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business program responsibilities if the major jurisdictional utility company can implement its program effectively through its current resource commitment and management structure.

§ 69.806. Minimum improvement levels.

By March 1 of each year, each major jurisdictional utility company is encouraged to annually set substantial and verifiable short-term, midterm and long-term plans for the utilization of minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses. Minimum improvement levels should be set annually for each major product and services category which provides opportunities for procurement.

(1) The major jurisdictional utility companies may consider the following factors in setting their minimum improvement levels:

(i) The total utility purchasing or contracting projections, or both, including fees to financial (for example, financial institutions and the like), advertising, legal and professional services.

(ii) Availability of minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses in the major jurisdictional utility company's service area and surrounding communities.

(iii) Market dynamics based on historical data and trends.

(iv) Other appropriate factors which would increase the minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses share of utility business.

(2) Program objectives should be established for both minority-owned, non-minority women-owned, **[and] persons with disabilities-owned, LGBTQ-owned and veteran-owned** business enterprises.

(3) A major jurisdictional utility company may exclude a specific product or service when it is clearly evident the minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses do not provide a specific product or service, or that exempt procurement is the only available procurement method for obtaining that specific product or service. Each utility should demonstrate the unavailability of minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses capable of supplying these products and services on a case by case basis. Because there may in the future be minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses capable of supplying products or services currently being supplied by an exempt procurement provider, the major jurisdictional utility company should explain in its annual report the continued use of any exempt procurement provider.

(4) A major jurisdictional utility company which is presently purchasing products or services from affiliates may subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing minimum improvement levels for purchases from minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses if the major jurisdiction utility company requires the affiliate to establish an appropriate subcontracting program for minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses where the affiliates employ subcontractors. A major jurisdictional utility company which takes advantage of this section should report to the Commission, in its annual report, whether the affiliates have established a subcontracting program and describe the results of the program.

(5) Overall program levels should be expressed as a percentage of total dollars awarded to outside suppliers and contractors other than products and services which fall within an exempt procurement category established by the major jurisdictional utility company.

(6) Payments for fuel, purchased power and franchise tax fees need not be included in the procurement dollar base used to establish minimum improvement levels.

(7) Each major jurisdictional utility company is encouraged to make special efforts to increase utilization of minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses, in conjunction with its established minimum improvement levels, in areas that are considered to be technical in nature, and where there has been low utilization, such as consultants, legal and financial services.

(8) Each major jurisdictional utility company is invited to consider the utilization of minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses when outsourcing noncore business functions and report these contracts as part of the annual report.

§ 69.807. Subcontracting program.

Each major jurisdictional utility company is encouraged to establish and maintain a subcontracting program for its prime contractors to utilize minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business subcontractors. The subcontracting program will serve as an enhancement to and not a replacement for the utility's minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business program.

(1) The major jurisdictional utility company should incorporate in purchase orders, requests for bid proposals and other appropriate procurement documents related to procurement efforts subject to its subcontracting program, a statement such as follows:

"It is the policy of this utility that businesses owned by minorities, women, **[and]** persons with disabilities, **LGBTQ and veterans** should have an equal opportunity to compete for subcontracts. The contractor agrees to use its best efforts to carry out this policy to the fullest extent consistent with the efficient performance of this contract."

(2) The major jurisdictional utility company is encouraged to assist its prime contractors in developing plans to increase the opportunities for participation by minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business subcontractors. Prime contractors will be encouraged to submit these plans and the results to the utility.

(3) The subcontracting program should apply to purchases/contracts exceeding \$500,000 for products and services, and for construction contracts over \$1 million. The subcontracting program need not be applied to the procurement of products and services in excluded categories.

(4) Each major jurisdictional utility company is encouraged to inform suppliers of products and services that subcontracting with businesses owned by **[minority/women/persons with disabilities] minority/women/persons with disabilities/LGBTQ/veterans** is a factor that may be considered in the bid evaluation process.

(5) Each major jurisdictional utility company should include awards to verified minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business subcontractors in each report to the Commission.

§ 69.808. External outreach.

Each major jurisdictional utility company should implement an outreach program to inform, to recruit and to expand procurement activities to qualified and qualifiable businesses owned by **[minority/women/persons with disabilities] minority/women/persons with disabilities/LGBTQ/veterans**. Outreach activities may vary for each utility depending on its size, service territory and specific lines of business. Each major jurisdictional utility company should, at a minimum, consider implementation of the following:

(1) Actively seek out opportunities to identify business contractors and suppliers that are owned by **[minority/women/persons with disabilities] minority/women/persons with disabilities/LGBTQ/veterans** and to expand source pools.

(2) Actively support the efforts of organizations experienced in promoting the interest of minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses.

(3) Initiate business development partnerships (long-term), joint ventures or venture capital projects with minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses such as outsourcing agreements of noncore utility business functions when applicable to allow business expansion within the minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business community. Provide technical/management support (short-term) to ensure the success of this initiative.

(4) Work with minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** business contractors to facilitate contracting relationships by explaining utility qualification requirements, bidding and contracting procedures, materials requirements, invoicing and payment schedules and other procurement practices and procedures.

§ 69.809. Filings.

(a) The major jurisdictional utility companies are encouraged to file with the Secretary of the Commission **[and the Bureau of Public Liaison]** by March 1 of each year[, **beginning in 1995,**] an annual report describing their diversity program activity for the prior year. The annual report should contain **[at least]** the following elements:

(1) **[A description of minority/women/persons with disabilities-owned business program activities engaged in during the previous calendar year. This description includes both internal and external activities.] A copy of any corporate policy committed to improving diversity in the workplace and in the procurement process.**

(2) **[A description of progress in meeting or exceeding the proposed levels and an explanation of circumstances that may have caused the utility to fall short of its established minimum improvement levels.] A description of any training implemented on diversity initiatives in employment and in the contract of goods and services.**

(3) **[A description of innovative approaches to encourage minority/women/persons with disabilities-owned business development, partnering, subcontracting, joint-venturing and venture capital projects.] The demographic composition of the utility's workforce, reporting the number of employees by gender, race and ethnicity, persons with disabilities, and veterans on a form provided by the Commission.**

(4) **[A summary of prime contractors which report utilization of minority/women/persons with disabilities-owned business subcontractors indicating the number of disability-owned business subcontractors and the associated dollars.] A description of any diversity recruiting strategies.**

(5) **[An explanation for the continued classification of exempt procurement for products or services which have been used to set minimum levels of improvement because of the established unavailability of minority/women/persons with disabilities-owned business suppliers.] A description of any diversity promotion efforts.**

(6) **[Sections 69.801—69.808 and this section permit utilities to break specific categories down further than presently suggested—for example, reporting contracts awarded to Filipino Americans separately from those awarded to Asian Pacific-Americans, or reporting male and female results within minority owned classifications. Data reported for nonminority women, may be reported separately from data reported for minority business enterprises.] A description of any diversity retention efforts.**

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

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

[(c)] (b) Information that is otherwise unobtainable to the major jurisdictional utility company, for example, prime contractor utilization of minority/women/persons with **[disabilities-owned] disabilities/LGBTQ/veteran-owned** businesses as subcontractors, should be reported in the annual filings.

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Top

Bottom