

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Amended Policy Statement on Diversity at Major Jurisdictional Utility Companies

Public Meeting held
December 3, 2020

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

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

Final Policy Statement and Order

By the Commission:

On May 21, 2020, the Commission entered a Proposed Policy Statement and Order wherein the Commission proposed to update its Policy Statement on Diversity at Major Jurisdictional Utility Companies at 52 Pa. Code §§ 69.801—69.809 (Policy Statement). The Commission published its Proposed Policy Statement and Order in the *Pennsylvania Bulletin* on July 18, 2020. 50 Pa.B. 3598. The comment period closed on September 1, 2020. The Policy Statement will now encourage major jurisdictional utility companies to use a common form to file a diversity report annually with the Commission and provides guidelines identifying the information major jurisdictional utility companies should report to describe their efforts to employ and contract with members of diverse groups. The revised Policy statement will now reflect the Commonwealth's diverse citizenship.

Summary of the Proposed Policy Statement

In the proposed policy statement, the Commission acknowledged that the terms and definitions in Section 69.802 needed to be updated in order to reflect the Commonwealth's diverse citizenship. Specifically, we proposed adding the following definitions to Section 69.802: disabled person, LGBTQ, and veteran. We proposed defining "LGBTQ" as it is currently defined in *Black's Law Dictionary* 11th Edition. We enumerated the demographic of "veteran" and adopted the definition from 51 Pa.C.S. § 9601 which defined "veteran" in the context of business ownership. We noted that the term "disabled person" was not previously defined even though it was used throughout the existing Policy Statement. To remedy this, we proposed 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 proposed updating the definition of "diversity" by explicitly identifying the following groups: minorities, women, persons with disabilities, LGBTQ, and veterans. Additionally, we proposed 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, we initially proposed removing the acronyms of Women-Owned Business Enterprise (WBE) and Minority-Owned Business Enterprise (MBE) because these acronyms were not used anywhere in the Commission's policy statement on diversity.

The proposed Policy Statement also focused on encouraging a uniform method of reporting diversity employment and vendor data. We noted that Commission staff found the detail and type of information reported in the major jurisdictional utility companies' diversity reports was inconsistent. We proposed revising the recommended reporting elements in Section 69.809 in their entirety. The proposed policy statement revised Section 69.809 to request the following elements from major jurisdictional utility companies:

- (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.

In addition to these new recommended reporting elements, the Commission also proposed a new standardized form that the major jurisdictional utility companies may use in reporting their diverse workforce demographics, which was included as Attachment A. We proposed using a form modeled after the Security and Exchange Commission's Diversity Assessment Report for Entities Regulated by the SEC.¹

Further, we proposed 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. Additionally, as the Policy Statement has been in effect since 1995, the initial reporting year is no longer necessary. As such, we proposed removing this language in subsection (a). Finally, the subsection letters in Section 69.809 were revised to address the omission of subsection (b).

Discussion

The Commission received and reviewed the comments filed in this proceeding. Based upon those comments, the Commission has determined that it will proceed with the proposal to revise the proposed policy statement, with modifications. The Commission received comments from Aqua Pennsylvania Inc. (Aqua), Duquesne Light Co. (Duquesne Light), Energy Association of Pennsylvania (EAP), First Energy, PECO Energy Company (PECO), Philadelphia Gas Works (PGW), Pennsylvania American Water Company (PAWC) and PPL Electric Utility Corporation (PPL). The comments received primarily suggest changes to the terms and their respective definitions that the Commission defined in its Proposed Policy Statement. The Commission addresses all of the comments it received in the following sections.

¹ The Commission modeled the Demographic Composition of Workforce of Major Jurisdictional Utility Companies Form after the SEC's Diversity Assessment Report for Entities Regulated by the SEC. Accessed at <https://www.sec.gov/files/OMWI-DAR-FORM.pdf> on November 10, 2020.

Applicability of the Policy Statement

EAP recommended, which First Energy and PECO joined, that the Commission amend the threshold for major jurisdictional utility companies that should report under the policy statement. EAP Comments at 3-4. Specifically, EAP recommends that the applicability of this policy statement not be based upon the value of net plant in service of EAP utilities, but on the employee headcount of those utilities. EAP Comments at 4. EAP opines that it has some member utilities that would meet the threshold value of net plant in service but have less than 50 employees. *Id.* EAP suggests that removing the threshold of net plant in service value and replacing it with a 50-employee-or-more threshold similar to the federal reporting threshold will avoid burdening smaller utilities with reporting. *Id.*

The Commission has chosen not to reduce the \$10 million net plant classification for the purposes of the diversity policy statement because such a change would not align with Commission regulations regarding other matters. The Commission notes in Section 73.2 that the term “major” as it applies to annual depreciation reports, service life studies and capital investment plans is defined as “[e]ach project with a cost in excess of 1% of the undepreciated original cost of the utility total plant in service or \$10 million, whichever is less. 52 Pa.Code § 73.2. It is apparent that if the Commission were to deviate from the \$10 million net plant in service threshold for the diversity policy statement that there would be a divergence in the Commission’s definitions of “major.” To avoid inconsistency between the Commission’s diversity policy statement and regulations, the Commission will retain the language in its proposed policy statement and keep the \$10 million net plant in service value as the threshold for major jurisdictional utility companies.

Resolution: Make no changes to the applicability of the Policy Statement.

Consistency of Terms and Definitions Used

It was suggested in Aqua, Duquesne Light, EAP, PECO, and First Energy’s comments that the Commission use the Equal Employment Opportunity Commission’s (EEOC) Employer Information Report EEO-1, 29 C.F.R. § 1602.7, (EEO-1 Report) terms and definitions for all of the existing and newly defined demographics that the Proposed Policy Statement identified. Aqua Comments at 3, Duquesne Light Comments at 3, EAP Comments at 6-7, PECO Comments at 1, First Energy Comments at 1. These commentators all reasoned that since major jurisdictional utility companies also report the diversity in their workforce using the EEO-1 Report definitions that using the EEO-1 Report definitions for the identified demographics in the proposed policy statement will ensure uniform reporting among the various agencies to whom major jurisdictional utility companies report their diverse demographics. The recommended terms and definitions used in the EEO-1 Report are:

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.

Black or African American (Not Hispanic or Latino)—A person having origins in any of the black racial groups of Africa.

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

Native American or Alaska Native (Not Hispanic or Latino)—A person having origins in any of the original peoples of North and South American (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.

Two or More Races (Not Hispanic or Latin)—All persons who identify with more than one of the above five races.

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

The Commission agrees that the definitions for the racial terms identified in Section 69.802 should be consistent with the racial terms enumerated and defined in the EEO-1 Report’s instructions. Adhering to the EEO-1 Report’s terms for race and their respective definitions will ensure consistency in major jurisdictional utility companies’ reporting of its workforce diversity and avoid complicating the reporting process. In adopting the racial terms and definitions in Section 69.802, the Commission adds two racial terms that did not previously exist in the policy statement. The terms “White (Not Hispanic or Latino)” and “Two or More Races” were added to be consistent with the EEO-1 Report’s terms and definitions. The term “White (Not Hispanic or Latino)” is now necessary since the term “Two or More Races” relies on all of the racial terms defined in Section 69.802

In addition to recommending adoption of the EEO-1 Report’s definitions, EAP also recommends removing from all of the definitions the requirement for citizenship or permanent residence in the United States. EAP Comments at 7–9. EAP recommends that the Commission remove the reference to citizenship or permanent residence status from its definitions and adopt the EEO-1 Report’s defined terms. *Id.* EAP opines that its members may employ people who are legally entitled to work in the United States but who are in the process of obtaining permanent legal status. *Id.* The Commission agrees that the requirements for citizenship or permanent residence could preclude reporting of people who are legally entitled to work in the United States. As such, in the final policy statement, the Commission removes any reference to citizenship or permanent residency status in the United States in its definitions.

EAP, First Energy, and PECO also suggested that the policy statement’s definition section be split into two different categories: definitions that apply to major jurisdictional utility company employees and another set of definitions that apply to major jurisdictional utility company vendors. EAP Comments at 4–6, First Energy Comments at 1 and PECO Comments at 1. EAP recommends that major jurisdictional utility company employee definitions should follow the EEO-1 Report’s definitions and that vendor diversity should be generally guided by the small business program representations set out in the Federal Acquisition Regulations (FAR) at 48 C.F.R. § 52.219-1. *Id.* This section of FAR establishes the following general categories:

Women-owned small business concern;
 Veteran-owned small business concern;
 Black American;
 Hispanic American;
 Native American;
 Asian-Pacific American;
 Subcontinent Asian.

Additionally, EAP recommended that the definition of “Minority Owned Business Enterprise” should be defined in the vendor section of the policy statement’s definition section. EAP Comments at 9. EAP notes that several of its member utilities confirm that a potential vendor or contractor’s claim of diversity is valid via third-party entities who certify or otherwise provide information regarding these metrics. Id. EAP explains that using vendor-specific terms and definitions will ensure that major jurisdictional utility companies can rely on third party entities who certify or otherwise provide information regarding these metrics. Id.

The Commission agrees that having separate definitions for major jurisdictional utility company employees and major jurisdictional utility company vendors allows for consistent reporting among major jurisdictional utility companies. The EEOC’s and DOL’s terminologies are inconsistent with each other, so it is necessary to have two separate sets of definitions to ensure that major jurisdictional utility companies can consistently report their diversity amongst their employees and vendors. The Commission renames Section 69.802 to “Definitions for Reporting Employee Statistics” and creates a new Section 69.802a entitled “Definitions for Reporting Vendor Statistics.” Section 69.802 now includes in its introductory paragraph “in the context of major jurisdictional utility company employees” to expressly indicate that the terms enumerated and defined in this section are to be applied in the policy statement when the context involves a major jurisdictional utility company’s employees. Additionally, the Commission removed the following terms from Section 69.802 that apply exclusively to major jurisdictional utility company vendors: “exempt procurement,” “minority owned business enterprise,” “operate,” “subcontract,” and “women owned business enterprise.” These terms and their respective definitions were moved to the new Section 69.802a since they pertain to major jurisdictional utility company vendors.

With respect to Section 69.802a, the Commission enumerates and defines the following terms: “control,” “exempt procurement,” “LGBTQ,” “minority-owned business enterprise,” “operate,” “person with disabilities,” “subcontract,” “veteran,” and “women owned business enterprise.” The Commission adopts the racial terms from the FAR and uses the racial terms therein to define “minority-owned business enterprise” because this term applies to major jurisdictional utility company vendors. While “LGBTQ,” “person with disabilities” and “veteran” are defined in Section 69.802, now relating to definitions of major jurisdictional utility company employees rather than definitions in general, it is necessary to also define these terms in Section 69.802a because they are also applicable to major jurisdictional utility company vendors.

Resolution: Amend Section 69.802 and add Section 69.802a to split the definitions applicable to major jurisdictional utility company employees and to their vendors into two separate lists. Add new and revised existing definitions to more specifically reflect the diversity in the Commonwealth and to align terms with those used by the EEOC and the DOL.

Definition of LGBTQ

Duquesne Light suggests that the Commission expand its definition of LGBTQ to also include “gender non-conforming individual.” Duquesne Light Comments at 3-4. Duquesne Light believes that expanding this definition to include gender non-conforming individual will make the definition of LGBTQ more inclusive. Id. The Commission agrees and adds to the definition of “LGBTQ” language indicating that the term “LGBTQ” also includes “gender non-conforming individual.”

EAP recommended, which First Energy and PECO joined, that the reporting of LGBTQ employees should only be done on a voluntary basis. EAP Comments at 8, First Energy Comments at 1 and PECO Comments at 1. It notes however, that starting with the 2021 EEO-1 Report, there will be an opportunity for employers to provide other aggregate information in a comment area and, 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. Id. at n. 6.

The Commission understands the privacy issues surrounding the reporting of LGBTQ employees but also wants to provide the opportunity for a major jurisdictional utility company to report its LGBTQ composition. As such, the Commission amends the Demographic Composition of Workforce of Major Jurisdictional Utility Companies form to include the number of LGBTQ employees a major jurisdictional utility company employs with the caveat that only employees that agree to be included in LGBTQ diversity reporting may be included in the report.

Resolution: Add “LGBTQ” throughout the Policy Statement.

Definition of Person with Disability

EAP recommended, which First Energy and PECO joined, that it is supportive of the Commission’s proposed definition of a person with disabilities. However, EAP suggests that the Commission’s definition clarify that reported information be based upon employee self-identification as disabled, not on employee short/long term accommodation requests. EAP Comments at 10, First Energy Comments at 1, and PECO Comments at 1.

The Commission agrees and adds a sentence after the definition of “Person with disabilities” indicating that for reporting purposes, an employer should report its number of employees that have disabilities based upon its employees’ self-identification.

Resolution: Add “person with disability” throughout the Policy Statement.

Definition of Veteran

The Commission received several comments on its proposed definition of “veteran.” EAP recommends that the Commission adopt the definition of veteran as it is used and reported to the Department of Labor (DOL) on the VETS-4212 report that major jurisdictional utility companies report to the DOL. EAP Comments at 11. EAP opines that the Commission’s proposed definition of veteran would not capture the total number of veterans that major jurisdictional utility companies report on the VETS-4212 report and that the Commission should adopt the definition of veteran as it is defined in the VETS-4212 report to capture the total number of protected categories of veterans. Id. The protected categories of veterans on the VETS-4212 report are as follows:

Active duty wartime or campaign badge veteran;
 Armed forces service medal veteran;
 Disabled veteran; and
 Recently separated veteran.

Duquesne Light further comments that the Commission should remove the language “discharged or released from service under conditions other than dishonorable” and instead replace it with “an individual who served in the United States Armed Forces, including a reserve component or the National Guard, and who self-identifies as having Veteran status.” Duquesne Light suggests that this definition would be more inclusive. Duquesne Light Comments at 6.

The Commission agrees with EAP’s comment that the definition of “Veteran” should align with the categories of veterans as defined in the FAR. 42 C.F.R. § 61-300.2. Accordingly, the Commission amends the definition of “veteran” to expressly refer to the FAR which includes all of the categories of veterans that major jurisdictional utility companies report to the DOL. Self-identification as a veteran is not necessary for accurate reporting since all of the recognized categories of veteran are enumerated at 42 C.F.R. § 61-300.2. Accordingly, self-identification as a veteran will not be included in the definition.

Resolution: Add “veteran” throughout the Policy Statement.

Reporting the Number of Diverse Employees

In Duquesne Light’s comments, it suggests that the Commission amend the diversity reporting form request the percentage of major jurisdictional utility company’s workforce demographics instead of the actual quantity of each demographic. Duquesne Light Comments at 2-3. Duquesne Light opines that requesting a percentage instead of the actual quantity of each demographic would give better perspective on the progress being made in the goal of having a diverse workforce. Id.

Requesting the actual number of employees in each enumerated demographic is the most accurate way to request reporting. From the actual employees counted in each demographic, the Commission should have the data necessary to compute each individual major jurisdictional utility company’s progress in maintaining a diverse workforce.

Resolution: Amend Section 69.809 to recommend reporting of numbers of employees rather than percentages of the workforce.

Subcontracting Reporting

Duquesne Light recommends that the Commission remove or reduce the dollar amount currently included in the proposed policy statement on subcontracts. Duquesne Light Comments at 7. Duquesne Light believes relationships can be forged with diverse businesses even through smaller contracts, which can serve as a gateway for a business to expand and provide more services to the utility industry. Id.

While the Commission appreciates the intent to be more inclusive of smaller subcontracts, the current threshold amount for reporting pursuant to the policy statement should provide sufficient insight to the progress being made by major jurisdictional utility companies’ use of minority-owned businesses. The parties are free to raise this issue again in the future rulemaking regarding diversity reporting.

Resolution: Made no changes.

Good faith Efforts Reporting

Duquesne Light suggests that the Commission include a provision in the policy statement to encourage reporting good faith efforts major jurisdictional utility companies make to increase diversity among their workforce and through their vendors. Duquesne Light Comments at 7-8.

The Commission appreciates the recommendation for major jurisdictional utility companies to report good faith efforts. The Commission rejected Duquesne Light’s recommendation because one of the goals of the revisions to the policy statement, with the addition of the recommendation to use the new reporting form, is to encourage a more uniform process for diversity reporting. Further, there is no penalty for diversity reporting that does not reflect the recommendations in the policy statement.

Resolution: Made no changes.

Reincorporation of Acronyms

The use of the acronyms was not addressed in the comments.

The Commission reviewed its proposed changes to delete the “MBE” and “WBE” acronyms and unilaterally determined that the acronyms “MBE” and “WBE” should be retained in the definitions of “Minority-Owned Business Enterprise” and “Women-Owned Business Enterprise,” respectively, because these acronyms are used through-out federal regulations and are part of common parlance. Accordingly, we reincorporate the acronyms “MBE” and “WBE” with their respective definitions in the final policy statement.

Resolution: Retain the acronyms “MBE” and “WBE” in Section 60.802a that were originally in Section 69.802.

Removal of Outdated Language

The proposed removal of outdated language was not addressed in the comments.

The Commission no longer has a Bureau of Public Liaison and an initial reporting year is no longer relevant.

Resolution: Amend Section 69.809 to remove references to the Bureau of Public Liaison and to an initial reporting year.

Housekeeping

While we did not address these matters in the Proposed Policy Statement Order, we are also making several non-substantive housekeeping revisions to the Policy Statement in this Order including:

Clarify Section 69.801 to describe the basis for the Policy Statement.

Remove various extraneous spacing throughout the Policy Statement.

Correct various punctuation errors.

Maintain consistent use of the term “major jurisdictional utility company” throughout the policy statement.

Re-number Section 69.809(c) as Section 69.809(b) since there is no Section 69.89(b).

Timing of Subsequent Rulemaking

EAP suggested in its comments, which First Energy and PECO joined, that the Commission should delay entering into a rulemaking for the mandatory diversity reporting among major jurisdictional utility companies until after the Diversity Policy Statement amendments are finalized and allow for a period of updated reporting and review before initiating a rulemaking proceeding.

Delaying the anticipated rulemaking until there has been a period of voluntary reporting under the final revised policy statement in effect is not necessary and will not serve any benefit. The revisions the Commission has made to the enumerated demographics and their respective definitions align with the EEO-1 Report's and DOL's demographics and definitions which major jurisdictional utility companies already use to report their diverse employment data. As such, the Commission does not see a need to delay commencing a rulemaking this year to require diversity reporting based upon the recommended terms and demographics revised in this Final Policy Statement Order. The Commission notes that major jurisdictional utility companies have been reporting their diversity demographics since 1995. Therefore, the recommended use of more explicit definitions should not impose any significant burden.

Conclusion

Accordingly, pursuant to 66 Pa.C.S. §§ 501, 505, 506, and 512, we will adopt as final, the revisions to Sections 69.801—69.809 as set forth in Annex A, attached hereto. We note that any issue, comment, or reply comment requesting a further change to Policy Statement or objecting to a possible change, but which we may not have specifically delineated herein, shall be deemed to have been duly considered and denied at this time without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail*

Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993); see also, generally, *U. of PA v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Therefore,

It Is Ordered That:

1. The Commission adopt the Final Policy Statement as set forth in Annex A to this Order.
2. The Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. This Policy Statement shall become effective upon publication in the *Pennsylvania Bulletin*.
4. This Final Order and Annex A be posted on the Commission's website.
5. 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 Commission's Law Bureau, 717-787-5000.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: December 3, 2020

ORDER ENTERED: December 3, 2020

Fiscal Note: Fiscal Note 57-329 remains valid for the final adoption of the subject regulations.

Appendix A
Demographic Composition of Workforce of Major Jurisdictional Utility Companies

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

Statement of Chairman Gladys Brown Dutrieuille

Earlier this year, I set a goal of revising the Commission's 25-year old Statement of Policy on Diversity at Major Jurisdictional Utility Companies, 52 Pa. Code §§ 69.80169.809 (Policy Statement). Little did I know that the Commission's action of revising and refreshing the Policy Statement would coincide with a national and worldwide movement for racial equity and a push for diversity in workplaces and institutions.

I am pleased to announce that the revisions to the Policy Statement are completed. The revisions have streamlined the diversity reporting process for the utilities, modernized definitions to make them more inclusive, and highlighted the utilities' contracting practices with diverse vendors. I believe that the visibility given to the topic of diversity at our jurisdictional utilities will only serve to strengthen their community ties and expand utility workforce talent pools in a time of increased employee retirements.

I look forward to the next step in this process which will be the issuance of a notice of proposed rulemaking to codify the policies adopted today.

GLADYS BROWN DUTRIEUILLE,
Chairperson

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. Diversity is an economic reality that corporate entities should 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 for reporting employee statistics.

The following words and terms, when used in §§ 69.801—69.809 in the context of major jurisdictional utility company employees, have the following meanings:

Black or African-Americans—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.

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.

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

LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning. This term also includes gender non-conforming individuals.

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. 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 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.

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 should be based on employee self-identification.

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

Substantial objectives—Objectives which are realistic and clearly demonstrate a major jurisdictional utility company's commitment to increase minority/women/persons with disabilities/LGBTQ/veteran-owned business share of the utility's purchases and contracts.

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.

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

§ 69.802a. Definitions for reporting vendor statistics.

The following words and terms, when used in §§ 69.801—69.809 in the context of major jurisdictional utility company vendors, 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) Purchases from affiliates, corporate parents and their subsidiaries.

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

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 Black Americans, Hispanic-Americans, Native Americans, Asian-Pacific Americans or any other socially disadvantaged individuals as defined in 13 C.F.R. § 124.103.

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

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 should be based on employee self-identification.

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.

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

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.

§ 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 it 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/LGBTQ/veteran-owned business contractors and mentoring, partnering and training qualified women/minority/persons with disabilities/LGBTQ/veteran-owned businesses contractors to serve the needs of the major jurisdictional 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/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/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/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/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/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/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 major jurisdictional utility company 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/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/LGBTQ/veteran-owned businesses share of utility business.

(2) Program objectives should be established for both minority-owned, non-minority women-owned, 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/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 major jurisdictional utility company should demonstrate the unavailability of minority/women/persons with 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/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/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/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/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/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/LGBTQ/veteran-owned business subcontractors. The subcontracting program will serve as an enhancement to and not a replacement for the major jurisdictional utility company's minority/women/persons with 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, 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/LGBTQ/veteran-owned business subcontractors. Prime contractors will be encouraged to submit these plans and the results to the major jurisdictional utility company.

(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/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/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/LGBTQ/veterans. Outreach activities may vary for each major jurisdictional utility company 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/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/LGBTQ/veteran-owned businesses.

(3) Initiate business development partnerships (long-term), joint ventures or venture capital projects with minority/women/persons with 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/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/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 an annual report describing their diversity program activity for the prior year. The annual report should contain the following elements:

(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) The demographic composition of the major jurisdictional utility company'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 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.

(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.

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

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