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PUBLIC SERVICE COMMISSION

October 18, 2016

2015 Annual Reports – Maryland Supplier

Administrative Docket  
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**PUBLIC DETERMINATION**

To: The Public Service Companies that have fully executed the Supplier Diversity Memorandum of Understanding<sup>1</sup> and Interested Persons

Pursuant to the newly adopted Code of Maryland Regulations (“COMAR”) Section 20.08.01.04, the Maryland Public Service Commission (“Commission”) is pleased to produce this Public Determination.<sup>2</sup> As it did during the Memorandum of Understanding (“MOU”) Utility Supplier Diversity Public Conference on July 21, 2016, the Commission wishes to express its gratitude to the Companies that have voluntarily committed to achieving the goals set forth in the MOU. The Commission also thanks the representatives of the business community,

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<sup>1</sup> The companies that have a fully executed Supplier Diversity Memorandum of Understanding (“MOU”) are: Association of Maryland Pilots; AT&T Corp.; Baltimore Gas and Electric Company; Chesapeake Utilities Corporation – Maryland Division; Choptank Electric Cooperative, Inc.; Columbia Gas of Maryland, Inc.; Comcast Phone of Northern Maryland Inc. and Comcast Business Communications, LLC.; Delmarva Power & Light Company; Easton Utilities; First Transit’s Baltimore Washington International Thurgood Marshall Airport Shuttle Bus Contract; Pivotal Utility Holdings, Inc. d/b/a Elkton Gas; Potomac Electric Power Company; Southern Maryland Electric Cooperative, Inc.; The Potomac Edison Company d/b/a Allegheny Power; Veolia Transportation Services, Inc.; Verizon Maryland LLC.; and Washington Gas Light Company; (individually, “Company,” and collectively, “MOU Companies”).

<sup>2</sup> COMAR 20.08.01.04 defines “public determination” as “publicly available report prepared by the Commission on the status of the Supplier Diversity Program.

supplier diversity advocates, and interested stakeholders for their interest in and support of this important initiative. Finally, the Commission wishes to express special thanks to Delegate Barbara Robinson and Special Secretary Jimmy Rhee for their time and comments.

The Commission accepts the Commission Staff's *Summary of the 2015 Maryland Supplier Diversity Program Annual Reporting* ("Report") filed on July 14, 2016, and incorporates that Report into this Public Determination. There, the Staff concluded that "the Program continues to progress towards the aspirational goal of encouraging the utility companies to award 25 percent of their total procurement spend to minority-, women-, service-disabled-veteran-owned businesses as well as not-for-profit companies."<sup>3</sup> The Report further found that more than 53% of the diverse utility procurement of \$567 Million was spent with minority owned firms, and less than 9% was spent with Service-Disabled-Veteran-Owned Businesses.

Overall, diverse spend for the 2015 year settled in at 15.44 percent, virtually unchanged for the second year in a row. The Commission is pleased to recognize the companies that met the aspirational goal of 25% of total procurement spend with women-, minority-, and service-disabled-veteran-owned businesses ("WMBE's"): Association of Maryland Pilots reached 41.94%; The Potomac Edison Company obtained 30.20%; AT&T Corporation attained 27.17% and finally, the Washington Gas Light Company achieved 26.31%. The Commission applauds the success achieved by these companies, and encourages the remaining utilities to continue their commitment to join them.

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<sup>3</sup> Maryland Supplier Diversity Program 2015 Calendar Year Summary Report at 1.

The Commission appreciates each utility's efforts to reach the aspirational goal and recognizes the many individual success stories, such as those presented at our Annual Conferences by diverse-owned firms and advocate organizations. Sharon R. Pinder, President and CEO, Capital Region Minority Supplier Development Council (CRMSDC); Susan Au Allen, National President & CEO and Mihyun Yun, National Marketing Director, Asian American Businesses, USPAACC; Wayne Frazier, President, Maryland Washington Minority Companies Association and Daryl Corley, representing the Elite SDVOSB mid-Atlantic region, all spoke eloquently about the importance of the utility commitment to the MOU. In addition, representatives of the business community spoke passionately about their individual business success under initiatives and relationships inspired by each Company's willingness to embrace the MOU. Specifically, Maureen A. O'Connor, CEO, LEM Products Inc., Mark L. Powell, CEO, ARGO Systems, LLC., Robert Wallace, CEO, Bith Energy, Inc., Sridhar Kunadi, CEO, n-Tech., Greg Lindholm, Construction Manager DC and VA, Miller's Pipeline, Pedro Alfonso, President, Dynamic Concepts, Inc., and Natalia Luis, Vice President, M Luis Construction offered compelling narratives regarding their business' growth and success.

The Commission notes that at one point, each of these companies began small and needed assistance to grow into the successful enterprise that we heard from at our Conference. This concept is embedded within the MOU in Section 3.3. There, the Companies have committed to establishing a Subcontractor Program that will encourage Prime Contractors to utilize diverse-owned subcontractors. The Commission received some feedback about these initiatives, specifically from Baltimore Gas and Electric and the Focus 25 Program. The Commission applauds these efforts, and encourages the MOU signatories to present additional information about their subcontractor development efforts in future Conferences.

The Commission believes that each company has a commitment to the success of this partnership and, that like any great effort, incorporating lessons learned can only enhance our chances for sustained success. Since the MOUs were initially signed in 2008, there have been only minor attempts to revise and update the effort to reflect new experiences and to embrace new challenges and opportunities. At our prior Conferences many parties have expressed interest in improving the MOU and the way it operates.<sup>4</sup>

The Commission has considered pursuing a revision of the MOU for some time; however, the completion of Rule Making 50 took precedent. Further, the last two years saw an unprecedented transition of supplier diversity managers amongst the MOU signatories which directly impacted the existence of the Maryland Utility Forum (“Forum”). Put simply, the timing was not right to proceed. However, today the Commission finds itself in the pleasant position of welcoming a newly empaneled and reconstituted Forum, newly hired and committed supplier diversity managers, and finally adopted regulations that can serve as a guide for a review of the MOU.

Accordingly, the Commission believes this is an appropriate time to review the MOU and to incorporate lessons learned over the past eight years, with an aim towards strengthening and improving its function and format. To that end, the Commission invites the Forum to consider and propose revisions to the MOU that would address the findings noted below. The Commission is

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<sup>4</sup> For example, in 2011 there was an effort to revise Appendix I - the list of certifying organizations, and every year there is interest in incorporating electric and gas commodity spend into the diverse spend.

willing to consider any other changes that would result in an improved MOU, so the Forum is encouraged to consider additional changes as well.<sup>5</sup>

### **Better Data Calculation and Reporting**

When first drafted, the MOU incorporated a reporting requirement which, among other things, incorporated use of the federal North American Industry Classification System<sup>6</sup> or, NAICS codes. The NAICS codes listed in the Commission's reporting templates used 10 distinct reporting categories. Over the years, parties have expressed concerns that the categories are too limited to capture the breadth of utility spend across regulated, but very different, companies and that using more codes would better capture data. The Commission is open to this suggestion and is willing to consider the use of additional codes. Accordingly, the Commission encourages the Forum to review the MOU reporting requirements to determine if we are collecting superfluous information or if there is other information we can collect that would be of value.

### **Enhanced Goal Setting**

Section 5 of the MOU incorporates an individualized goal setting structure, designed to encourage each company to assess its current diverse spend and, in time, strive to expand its

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<sup>5</sup> The Commission is aware of certain individualized revisions that have been incorporated into the MOU, including the existence of separate report filing requirements, referred to generally as First and Second signatories. This effort is not intended to eliminate those distinctions unless the end result suggests that they are no longer necessary.

<sup>6</sup> The Commission notes that when considering six digits, there are millions of "NAICS" codes. While the Commission is comfortable incorporating additional codes, the Commission encourages the Forum to maintain a minimum number of codes for reporting purposes.

spend. In order to incorporate measurable objectives, short-, mid-, and long-term goals would be established by each company. While some companies have continued to set goals, the Commission notes that the goal setting structure was tied to the passage of time. In other words, the short-term goal was set for year one, while the mid-term goal would be three years later and the long-term goal was five years after signing the MOU. Today, eight years later, the MOU no longer has a defined, built-in goal-setting function. The Commission encourages the Forum to revisit the MOU's goal setting function and to propose a new way to encourage long-term, measureable goals.

### **Certification**

Aside from the commitment to spend with diverse firms, there is perhaps no more recurring challenge than the effort to *find* qualified companies whose ownership and finances have been vetted by experienced third parties. Initially, the MOU's "Schedule 2" incorporated virtually every known certifying agency and organization, both government and non-profit. The purpose was to ensure that any WMBE firm would be eligible to participate in Maryland's MOU program. This proved to be somewhat difficult to follow, since the Schedule 2 list was borrowed from another state.<sup>7</sup>

It also proved to be problematic. In 2012, the Forum led a year-long effort to review Schedule 2 to determine if there were firms that should be removed from the list because it was

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<sup>7</sup> The MOU negotiations in 2008 relied heavily on California's program, created by passage of their General Order 156.

discovered that the “certifications” offered by some organizations were vastly different. Some firms offered rigorous financial and ownership review lasting several months, while other firms simply requested payment of a small certification fee. The Forum’s review sought to create some balance among the certifying firms so that a “certification” could be relied upon to mean that diverse ownership was, in fact, vetted and confirmed.

The review resulted in a newly revised list; however, questions persist regarding “self-certification” for new businesses, and “lost certification” due to a change or modification of company ownership and even “co-ownership” or instances where diverse individuals own part of a partnership. The Commission encourages the Forum to review “Schedule 2” to determine if the certification process should be revised or updated.<sup>8</sup>

### **Review of Schedule 1**

Schedule 1 of the MOU includes a wide range of corporate spend that is excluded from diverse spend calculations. Among the categories listed, several gas companies have questioned the inclusion of natural gas capacity contracts since there are instances where contracts can be fulfilled by diverse firms. Currently, the Commission encourages the use of diverse firms for gas capacity contracts; however, the actual spend is prohibited from inclusion in the MOU Annual Reports. The Commission encourages the Forum to consider this, as well as any other prohibited

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<sup>8</sup> The Commission notes that it has received two requests for inclusion into Schedule 2 from new agencies, the US Pan Asian American Chamber of Commerce Education Foundation (USPAACC), sponsored by Pepco, and the National Association of Minority Companies, Inc. (NAMCO) which had no sponsor. The Commission requested feedback on each request. Feedback was positive for USPAACC, but no feedback was received for NAMCO. The Commission encourages the Forum to review those requests.

spend, to determine if a category should be removed or, due to the advent of new technologies, included in Schedule 1.

**Notice to Companies that Failed to Submit an Annual Report for 2015**

The following companies did not file an Annual Report for 2015:

CenturyLink

First Transit BWI Airport

Veolia Transit.

Pursuant to COMAR 20.08.01.06, companies that do not file Annual Reports in two or more consecutive years may be removed from the Supplier Diversity Program. The Commission encourages the Forum and its staff to reach out to these companies to see if they need additional assistance with filing their Annual Reports or, if they will file their Report for 2015 soon.

With this Public Determination, the MOU 2016 Reporting Year is nearing its conclusion. Accordingly, the Commission recognizes the limitation in implementing these and other solutions for the upcoming 2016 Reporting Year because Annual Reports will be filed in just six months. Still, the Commission encourages the Forum to consider these and other improvements to the MOU in time for filing 2017 data. The Staff is encouraged to participate in Forum meetings to assist in this review as necessary.