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PUBLIC SERVICE COMMISSION

October 5, 2018

2017 Annual Reports – Maryland Supplier * Administrative Docket
Diversity Program * PC16
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PUBLIC DETERMINATION

To: The Public Service Companies that have fully executed the Supplier Diversity Memorandum of Understanding¹ and Interested Persons

Pursuant to the Code of Maryland Regulations (“COMAR”) Section 20.08.01.04, the Maryland Public Service Commission (“Commission”) issues this Public Determination² regarding the status in 2017 of the Commission’s Supplier Diversity Program (“Program”). The Companies participating in this voluntary program, which is in its ninth year of its modern

¹ The companies that have a fully executed Supplier Diversity Memorandum of Understanding (“MOU”) are as follows: 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 (n/k/a Elkton Gas Company); Potomac Electric Power Company; Southern Maryland Electric Cooperative, Inc.; The Potomac Edison Company; Veolia Transportation Services, Inc.; Verizon Maryland LLC.; and Washington Gas Light Company (individually, “Company,” and collectively, “Companies”).

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

incarnation, have nearly reached the overall program goal of achieving a 25 percent diverse spend. The Commission wishes to express its gratitude to the Companies that have chosen to voluntarily commit to achieving the goals set forth in the MOU. The Commission also thanks the representatives of the business community, supplier diversity advocates, and interested stakeholders for their interest in and support of this important initiative. The Commission carefully considered whether to modify the Supplier Diversity Program to include Tier II indirect spend and whether diverse spend categories should be expanded to include Veteran- and Lesbian, Gay, Bisexual, and Transgender- (“LGBT”) owned firms, but has determined that the Program should not be expanded at this time. Finally, the Commission wishes to express a special thank you to Jimmy Rhee, Special Secretary of the Governor’s Office of Small, Minority, & Women Business Affairs, for providing time and comments at our July 24, 2018 administrative review hearing.

Commission Staff Technical Report

The Commission accepts the Commission Technical Staff’s (“Staff”) Summary of the 2017 Maryland Supplier Diversity Program Annual Reporting (“Report”) filed on July 11, 2018, and incorporates that Report into this Public Determination. The Staff’s Report 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.”³ Diverse spend overall increased from \$698.76 million in 2016 to \$817.21 million in 2017, for an increase of \$118 million.

³ Staff Report at 33.

Overall, diverse spend increased from 21.96 percent of total spend in 2016 to 24.84 percent in 2017, the highest percentage of diverse spend in the Modern MOU Period.⁴ Overall, the Companies have nearly reached the Supplier Diversity Program goal of a 25 percent diverse spend. The Commission gives special recognition to the following six companies that met the aspirational goal of 25 percent for reporting year 2017, of total procurement spend with women-, minority-, and service-disabled-veteran-owned businesses (“WMBEs”):

Association of Maryland Pilots
Potomac Edison Company
Baltimore Gas and Electric Company
AT&T Corporation
Comcast Phone of Northern Maryland Inc.
and Comcast Business Communications, LLC
Potomac Electric Power Company

The Commission appreciates each utility’s presentation regarding their efforts to reach the 25 percent aspirational goal and recognizes the many individual success stories, such as those presented at our annual hearing by diverse-owned firms and advocate organizations. The presentations by Wayne Frazier, President, Maryland Washington Minority Companies Association; Valerie Shearer, Secretary of the Utility Forum; Jon Lovitz, President, National LGBT Chamber of Commerce; Betsy Cerulo, Maryland LGBT Chamber of Commerce; Sharon R. Pinder, President and CEO, Capital Region Minority Supplier Development Council (“CRMSDC”); Daryl Corley, Elite Service Disabled Veteran Owned Business Network - Mid-Atlantic Region; Rickey Hart, President, RDAF Energy Solutions; B. Cole, Brioxxy; Aisha Pew, Dovecote Café; Krista Green, Director of Cultural Affairs, Baltimore Office of Promotion and

⁴ The “Modern MOU Period” is the time period since the MOU was recommitted to by the companies, and expanded to include additional companies. The MOU’s were recommitted to in 2008, and the Commission began tracking data and holding hearings in 2009.

the Arts; Harley Flack, President, Stella May; Luis Gutierrez, President, Dream Management; and Paul Taylor, Director, Baltimore Office of Minority- and Women-Owned Businesses, included recommendations regarding ways to improve contracting and connections with diverse groups, and proposed changes to the MOUs.

Revisions to the Memorandum of Understanding

In 2017, the participating utilities, through the Utility Forum, proposed two changes to the Commission's Supplier Diversity Program: (1) implementing amendments to the MOUs to include Tier II indirect spend, and (2) expanding the diverse spend categories to include Veteran- and LGBT-owned firms. Given the voluntary nature of this Program and the importance of staying on track in meeting its current aspirational goals, the Commission has determined that the Program and the MOUs should not be changed at this time. However, the Commission continues to seek guidance on how it might incorporate the Utility Forum's proposed changes into this voluntary MOU. As detailed below, we ask participants to continue collecting Tier II Indirect spend data, and with regard to the inclusion of Veteran- and LGBT-owned Firms in spend categories, we request that participants initiate the tracking and filing of data representative of their contracting with Veteran-owned business enterprises ("VOBE") and LGBT firms for inclusion in their 2018 Annual Reports. The Commission provides the following guidance:

1. Expansion of Tier II Spend to Include Indirect Spend

The Commission agrees to continue to allow for the collection of Tier II indirect spend data; however, the Commission prefers to keep this separate from the total diverse spend calculation at this time. The Commission would like to continue to explore how including this new category would impact existing reporting, which may require revisions to short- and long-term goals to reflect the newly included spend. Accordingly, MOU signatories should submit 2018 Annual Report data

with this category of spend. After an opportunity to review the impact on diverse spend, and a review of the Commission Staff's Report for 2018, the Commission will revisit this recommendation.

2. Expansion of Diverse Spend Categories to Include Veteran- or LGBT-Owned Firms

The Commission agrees that the MOU is intended to expand opportunities for all businesses to participate in supplier diversity initiatives, and it has been suggested that the current diverse spend categories be expanded to include spend with LGBT- and / or Veteran-Owned Businesses.⁵ The current MOU definitions of diverse spend categories are in harmony with similar definitions in Section 14-301(j)(1) of the State Finance Procurement Article. Section 14-301 does not currently include VOB- or LGBT-owned firms. However, while the Commission does see some benefit to collecting utility spend with these categories, we believe further information will be necessary to evaluate the impact the inclusion of these new categories would have on the Supplier Diversity Program,⁶ its short- and long-term goals, and the Program's overall aspirational goal. Accordingly, the Commission wishes to revisit this issue at the 2019 PC16 Annual Hearing where parties can provide additional comments on the proposed new MOU category definitions. In particular, the Commission believes that additional Utility Forum input is needed on whether expanding the diverse spend categories to include veteran- and LGBT-owned businesses would necessitate entering into expanded MOUs with all participants. The Companies are encouraged to maintain data representative of their contracting with VOB or LGBT firms and should file the data in their 2018 Annual Report. This will provide an opportunity to review the impact of including these categories, so that the Program can be adapted to continue on a successful path.

⁵ The Supplier Diversity Program currently includes spend with service-disabled-veteran-owned businesses firms.

⁶ During the hearing, one party suggested that any expansion of the MOU categories could not be made without first making the findings of fact required by *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). The Commission is not making any ruling regarding this assertion at this time.

Notice to Companies that Failed to Submit an Annual Report for 2017

The following companies did not file an Annual Report for 2017:⁷

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 regrets that these companies have not honored their commitment to participate in the voluntary Supplier Diversity Program. These companies are hereby on notice that should they fail to file an Annual Report next year, the Commission will remove them from the Program.

Expanding opportunities for all businesses to participate in supplier diversity initiatives involves not only participating companies' efforts to meeting goals, but also to increase the number of companies participating in the initiative. To that end, the Commission seeks the Utility Forum's advice and guidance on encouraging new companies that engage with the Maryland Public Service Commission to join the Supplier Diversity MOU.

Conclusion

The Commission remains pleased that the Supplier Diversity Program is continuing to grow, having enjoyed its most successful year since its inception. Six of the participating Companies have reached and exceeded the program goal of a 25 percent diverse spend in 2017 and the Commission encourages all parties to continue working towards the successful

⁷ These companies did not file an Annual Report for 2015 or 2016.

continuous improvement and attainment of the aspirational goals of the Supplier Diversity Program.

By Direction of the Commission,

/s/ Terry J. Romine

Terry J. Romine
Executive Secretary