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PUBLIC SERVICE COMMISSION

August 17, 2021

Supplier Diversity Program

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Administrative Docket
PC52

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PUBLIC DETERMINATION: 2020 ANNUAL REPORTS

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

1. Pursuant to the Code of Maryland Regulations (“COMAR”) Section 20.08.01.05,¹ the Commission issues this Public Determination² regarding the 2020 performance of its Supplier Diversity Program (“Program”), as reviewed at the annual conference held virtually on July 20, 2021.
2. The conference included a presentation by the Commission’s Technical Staff (“Staff”) on

¹ COMAR 20.08.01.05B. “Public Conference.” (1) The Commission shall hold a public conference each year for the purpose of reviewing the annual reports and annual plans received from participating companies. (2) Within 60 days of the public conference, the Commission shall issue a public report with any findings from the public conference.

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

the diverse supplier procurements by companies participating in the Program,³ a discussion on the proposed inclusion of HUBZones in the Commission's Program, a review of recent additions to the Program, an update on the impact of COVID-19 on the Program, and the sharing by the Companies, elected officials, advocates, and contractors of best practices, lessons learned, and innovative ways to reach diversity goals.

Staff Report

3. On July 14, 2021, Staff filed a Summary of the 2020 Maryland Supplier Diversity Program Annual Reporting ("Staff Report"),⁴ noting that 15 Companies in the Program⁵ spent a record \$1.2 billion on procurement of goods and services from diverse suppliers, while reporting \$3.6 billion in total utility procurement.⁶ Thus, while the total utility procurement decreased overall by 0.87 percent from the previous reporting year,⁷ the total diverse spend increased by 12

³ The companies with a fully executed Supplier Diversity Memorandum of Understanding ("MOU") that are participating in the Program are: Association of Maryland Pilots, AT&T Corporation, Baltimore Gas and Electric Company ("BGE"), CenturyLink, Chesapeake Utilities Corporation-Maryland Division, Choptank Electric Cooperative, Inc., Columbia Gas of Maryland, Comcast Phone of Northern Maryland, Inc. and Comcast Business Communications, LLC (collectively, "Comcast"), Delmarva Power and Light Company, Easton Utilities, First Transit BWI Airport, Pivotal Utility Holdings, Inc. d/b/a Elkton Gas, Potomac Electric Power Company ("Pepco"), The Potomac Edison Company ("Potomac Edison"), Southern Maryland Electric Cooperative, Inc. ("SMECO"), Veolia, Verizon Maryland, Inc., and Washington Gas Light Company ("Washington Gas") (collectively, "Companies"). XO Communications voluntarily withdrew from the Program, and First Transit BWI Airport and Veolia Transit were removed from the Program in 2019 for failure to file annual reports. *See* Public Determination, PC52, September 17, 2020 at 2.

⁴ Errata to the Commission Staff's Summary of the 2020 Maryland Supplier Diversity Program - Corrected Annual Report, PC52 (July 14, 2021).

⁵ 15 of the 16 active signatories to the Supplier Diversity MOU filed their annual Supplier Diversity reports. Pivotal Utility Holdings, Inc. d/b/a Elkton Gas was acquired by Chesapeake Utilities Corporation – Maryland Division in 2020, in Case Number 9632. Thus Elkton Gas's spend is now included in that reported by Chesapeake Utilities. Staff Report at 3.

⁶ *Id.* at 4.

⁷ *Id.*

percent.⁸ Furthermore, the diverse spend ratio (“DSR”)⁹ for 2020 was 33.54 percent – the highest recorded DSR in the history of the Program.¹⁰ The 2020 reporting period marked the third time since the inception of the Supplier Diversity MOU that the Companies have collectively exceeded the 25 percent goal to procure goods and services from diverse suppliers throughout the State of Maryland.¹¹ Eight companies individually exceeded the goal of 25 percent of total procurement spent with qualified diverse suppliers, including Association of Maryland Pilots, BGE, CenturyLink, Comcast, Delmarva Power and Light Company, Potomac Edison, Pepco, and Washington Gas.¹²

4. The Commission notes that, after not filing annual reports in five of the past twelve years, including 2015, 2016, and 2017, CenturyLink now ranks first among companies filing in 2020 with a 66.81 percent DSR.¹³ Furthermore, CenturyLink increased its supplier diversity spend by 449 percent from 2019.¹⁴ The Company appeared before the Commission in 2018 with a pledge for growth of its Supplier Diversity program,¹⁵ and the Commission recognizes CenturyLink’s successful efforts to satisfy that pledge as well as its performance in 2020.

5. The Commission accepts Staff’s Report and incorporates it into this Public Determination.

⁸ *Id.*

⁹ The DSR is the key metric that the Program seeks to track and is derived by dividing total diverse supplier procurement by total utility procurement.

¹⁰ Report at 4.

¹¹ *Id.*

¹² *Id.* at 5 and 6.

¹³ *Id.* at 18.

¹⁴ Tr. 81:11, 12 (July 20, 2021).

¹⁵ Tr. 80:20-81:1 (July 20, 2021).

COVID-19

6. While the Commission's supplier diversity conference in 2020 was largely dedicated to the immediate impacts that COVID-19¹⁶ had on the Program, the 2021 conference focused on efforts to rebuild and recover in the wake of the pandemic.

7. The Commission acknowledges that many data points associated with COVID-19 have waxed and waned throughout its existence, and that the virus is still very present and impactful, even as of the issuance of this Public Determination. Thus, it is undeniable that the full effect of COVID-19 still cannot be assessed.

8. While some participating Companies have continued to face challenges and experience setbacks related to supplier diversity due to the significant and continuing impacts of COVID-19,¹⁷ others have been able to rebuild and recover to varying degrees.¹⁸ The Commission recognizes these Companies for their performances, particularly in light of the ongoing nature of COVID-19. The flexibility, creativity, and innovation they have shown in developing alternative means to achieve their goals is appreciated, as is their willingness to share ideas and successes with others in the Program.

¹⁶ The COVID-19 virus, or coronavirus disease 2019, is a new coronavirus not previously identified. Its outbreak has led to a worldwide pandemic impacting the United States from the latter part of 2019 through to and including the issuance of this Public Determination.

¹⁷ *See, e.g.*, Association of Maryland Pilots noted decreased numbers in certain spending categories due to COVID-19. Tr. 90:20-22 (July 20, 2021); SMECO acknowledged the obstacle of having face-to-face local and national diversity events cancelled due to COVID-19. Tr. 114:20-22 (July 20, 2021); Chesapeake Utilities Corporation-Maryland Division stated that the shortages and price increases of materials due to COVID-19 was a major challenge. Tr. 132:16-22 (July 20, 2021).

¹⁸ *See, e.g.*, CenturyLink developed an extensive national outreach program that led to a 17 percent increase in its Maryland spend. Tr. 81:4-11 (July 20, 2021); BGE stated that, despite the pandemic, 2020 was its best year in Supplier Diversity. Tr. 84:22-23 (July 20, 2021); Comcast operates the RISE program, created to strengthen and empower the small businesses hit the hardest by COVID-19. Tr. 99:21-100:1 (July 20, 2021).

HUBZone Program

9. The U.S. Small Business Administration's Historically Underutilized Business Zone Empowerment Contracting Program, or "HUBZone Program," is a program in which participating companies operate within distressed communities impacted by low income, high poverty, or high unemployment rates. It is intended to promote job growth, capital investment and economic development by providing contracting assistance to participating companies.¹⁹

10. Maryland has 24 counties that are subdivided into 1,406 census tracts. HUBZones are located within 311 of the tracts, with 70 percent of these tracts located in Baltimore City and Prince George's County.²⁰ Attached to this Public Determination are maps showing the State's electric and natural gas utilities, with HUBZone locations identified and overlaid.²¹

11. Maryland currently has 419 HUBZone-certified small businesses,²² with the highest concentration of certified companies located in Congressional Districts 5²³ and 7²⁴. Of the 419 HUBZone-certified small businesses, 340 already qualify to participate in the Commission's existing Supplier Diversity Program as part of an existing diverse spend category.²⁵

12. Several stakeholders, including the Maryland Washington Minority Companies Association, propose the addition of HUBZone-certified small businesses as a category of diverse supplier, stating that doing so would generate employment opportunities and economic

¹⁹ PC52: *Supplier Diversity Program*, Item No. 42, Letter from Delegate Darryl Barnes (April 9, 2021).

²⁰ PC52: *Supplier Diversity Program*, Item No. 43, Letter from Wayne R. Frazier (undated) ("Frazier Letter").

²¹ As noted on the attached maps, 57 of the 311 census tracts are designated and set to expire pending the release of the 2020 census.

²² Tr. 74:11-12 (July 20, 2021).

²³ Maryland's 5th Congressional District encompasses Calvert, Charles, and St. Mary's Counties, as well as parts of Anne Arundel and Prince George's Counties.

²⁴ Maryland's 7th Congressional District contains portions of Howard and Baltimore Counties and parts of the City of Baltimore.

²⁵ Frazier Letter.

growth within Maryland's most economically distressed communities. Notably, Delegate Darryl Barnes, representing the 25th Legislative District in Prince George's County and Chairman of the Legislative Black Caucus, stated, "[L]ooking at the HUBZones within the State of Maryland, I see nothing but equity and inclusion."²⁶

13. The Commission finds the HUBZone Program proposal to be worthy of further analysis, but premature for approval at this time. Immediate action by the Commission does not appear necessary as 81 percent of the HUBZone small businesses that are currently certified represent at least one of the existing diverse supplier categories.²⁷ These firms are able to bid for projects today, and the MOU signatories may already be reporting those projects as qualifying MOU spend. Therefore, incorporating that spend into the MOU diverse spend may not reflect an improvement in the Program; instead, it may diminish the spend of an existing category (such as minority or disabled veteran) and increase the spend attributed to a potential new HUBZone category. Only 19 percent of the 419 certified businesses are not presently eligible for inclusion in the Supplier Diversity Program because they are not certified minority-, women-, LGBTQ-, disabled veteran- or veteran- owned businesses.²⁸ Furthermore, as shown on the attached maps of Company service territories and HUBZones, several MOU signatories, including Chesapeake Utilities Corporation-Maryland Division, Easton Utilities, Choptank Electric Cooperative, Inc., and SMECO, contain few, if any, HUBZones in their service territories. Consideration must be given to any impact that the distribution of HUBZones may have on each Company's ability to reach HUBZone businesses as an added diverse supplier category.

²⁶ Tr. 61:22-23 (July 20, 2021).

²⁷ Frazier Letter.

²⁸ *Id.*

14. Economic inclusion is the backbone of the Commission’s Supplier Diversity Program, and the desire to promote job growth and improved economic circumstances for the Maryland communities that need it the most is important, noble, and supported by the Commission. At this time, however, the Commission denies the request to expand the diverse supplier categories to include companies participating in the HUBZone Program (to the extent that these businesses do not already participate in the Supplier Diversity Program).

15. At the conference, the Commission received testimony that the Maryland Utility Forum will soon consider and evaluate the request to include HUBZone-certified small businesses in the Supplier Diversity Program.²⁹ As the Commission noted three years ago when we were asked to consider expanding the MOU categories to include LGBTQ- and veteran-owned company spend, here the MOU signatories should consider:

- a. Whether they are able to track spend for HUBZone firms in the manner required by the MOU;
- b. Whether they currently contract with HUBZone firms and if so, how much spend could be attributed to those firms;
- c. The potential impacts on current MOU categories and whether the Commission should consider revising the aspirational goal to reflect the potential spend improvements that come with additional categories; and
- d. Any other impacts that expansion of the MOU categories to include HUBZone- certified firms may have on the Supplier Diversity Program.

The Commission looks forward to receiving a recommendation from the Maryland Utility Forum regarding the inclusion of the HUBZone Program, to be delivered at the Commission’s next annual supplier diversity conference.

²⁹ See Testimony of Frank Kelly, Interim Chair for the Maryland Utility Forum, listing some of the Forum’s goals moving forward, including, “Analyze the impact and inclusion of the HUBZone certification as it relates to the MOU... The Forum has invited Michelle Burnett, Executive Director of the HUBZone Contractors National Council to discuss the benefits of including HUBZONE owners as diverse certification in accordance with this MOU before we can make – render a recommendation to this Commission.” Tr. 29:15-30:14 (July 20, 2021).

Conclusion

The Commission commends the Companies that have chosen to voluntarily commit to the Program and continue to work towards the achievement of 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. With the year being the Program's most successful year to-date, the Commission encourages Program participants to continue their progress toward attaining and exceeding the MOU's goals and toward the continued improvement of the Program.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary



