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PUBLIC SERVICE COMMISSION

August 25, 2022

Supplier Diversity Program

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Administrative Docket

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PC52

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PUBLIC DETERMINATION: 2021 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 2021 performance of its Supplier Diversity Program (“Program”), as reviewed at the annual conference held at the Center for the Arts Lounge at the Community College of Baltimore County on July 12, 2022.

2. The conference included a presentation by the Commission’s Technical Staff (“Staff”) on the diverse supplier procurements by companies participating in the Program,³ discussion related

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.”

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 (“Delmarva Power”), Easton Utilities, First Transit BWI Airport, Pivotal Utility Holdings, Inc. d/b/a Elkton Gas, Maryland-American Water

to the conference theme, “Inclusive Recovery,” a review of Maryland-American Water’s recent addition to the Program, an update on the possible inclusion of HUBZones in the Commission’s 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 12, 2022, Staff filed a Summary of the 2021 Maryland Supplier Diversity Program Annual Reporting (“Staff Report”), noting that sixteen Companies in the Program⁴ spent a record \$1.41 billion on procurement of goods and services from diverse suppliers, and \$3.86 billion in total utility procurement.⁵ While the total utility procurement increased by 8.05 percent from the previous reporting year,⁶ the total diverse spend increased by 17.62 percent.⁷ Furthermore, the diverse spend ratio (“DSR”)⁸ for 2021 was 36.54 percent - the highest recorded DSR in the history of the Program.⁹

4. The 2021 reporting period marked the fourth time since the inception of the Supplier Diversity MOU that the Companies have collectively exceeded the 25 percent goal to procure

Company (“Maryland-American Water”), 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*, Supplier Diversity Program-Public Determination: 2019 Annual Reports, September 17, 2020, at 2.

⁴ 16 of the 17 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.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.*

⁸ 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.

⁹ Staff Report at 4.

goods and services from diverse suppliers throughout the State of Maryland.¹⁰ Nine companies individually met or exceeded the goal of 25 percent of total procurement spent with qualified diverse suppliers for the 2021 reporting period, including Association of Maryland Pilots, BGE, CenturyLink, Comcast, Delmarva Power, Maryland-American Water, Potomac Edison, Pepco, and Washington Gas.¹¹

5. Staff's Report noted that minority-owned businesses account for the highest amount of diverse spend at approximately \$696 million, which represents a 10 percent increase from last year.¹² The second largest category of diverse spend is women-owned businesses at approximately \$600 million, representing a 26 percent increase from last year,¹³ and the third largest category of diverse spend is veteran-owned businesses at approximately \$80 million, which is a 47 percent increase from last year.¹⁴

6. The Commission accepts Staff's Report and incorporates it into this Public Determination.

Inclusive Recovery

7. At the July 2020 annual conference, much focus was placed on COVID-19 and its impact on participating utilities and diverse suppliers. Participants at the conference discussed the high rate of closures among businesses owned by diverse suppliers, the difficulty of completing current contracts and obtaining new ones, the lack of available emergency funding, and the inability to

¹⁰ *Id.*

¹¹ *Id.* at 5-6.

¹² *Id.* at 6; Tr. 25:20-23 (July 12, 2022).

¹³ Staff Report at 9; Tr. 26:1-6 (July 12, 2022).

¹⁴ Staff Report at 10; Tr. 26:8-10 (July 12, 2022).

attend in-person networking events as examples of the extreme challenges faced due to COVID-19.¹⁵

8. At the following annual conference, the focus shifted to efforts to rebuild in the midst of the ongoing pandemic. While some diverse suppliers continued to face challenges and experience setbacks related to the significant and continuing impacts of COVID-19, others were able to recover to varying degrees. Discussions centered on the creativity and innovation shown by the participating utilities and diverse suppliers in developing alternative means to achieve their goals.¹⁶

9. This year's annual conference further explored the process of the participating utilities working inclusively with diverse suppliers to provide support as the suppliers continue to recover from the economic impacts of the pandemic. The utilities responded positively to the changing needs of diverse suppliers, and the annual conference involved discussion on the creative solutions developed by the utilities and the benefits received by the suppliers.¹⁷ The Commission acknowledges the innovation shown during this time of transition and appreciates the willingness by the participating utilities and diverse suppliers to discuss changes made and lessons learned.

Maryland-American Water

10. The Commission notes that Maryland-American Water joined the Supplier Diversity Program this year, signing the MOU with the Commission on February 2, 2022. Maryland-

¹⁵ Supplier Diversity Program-Public Determination: 2019 Annual Reports, September 17, 2020, at 3.

¹⁶ Supplier Diversity Program-Public Determination: 2020 Annual Reports, August 17, 2021, at 4.

¹⁷ *See, e.g.*, Maryland-American Water noted its continued use of virtual meetings, first introduced during COVID-19, as the format helps to “connect key decision makers and stakeholders with diverse suppliers.” Tr. 33:8-16 (July 12, 2022); Washington Gas noted the addition of six new diverse suppliers to its portfolio, all a result of its Inclusive Recovery Program developed in response to COVID-19 impacts. Tr. 67:21-68:14 (July 12, 2022); SMECO noted that, when they experienced COVID-related challenges obtaining electrical grid commodities from their regularly contracted suppliers, they turned to new diverse suppliers with stock on hand in order to meet their demand. Tr. 77:11-78:13 (July 12, 2022).

American Water promptly gathered its necessary data and submitted its first Annual Report on April 8, 2022, revealing a 28.88 percent DSR.

11. The Commission recognizes that, in addition to exceeding the 25 percent DSR goal in its first year with the Program, Maryland-American Water actively engaged with the Maryland Utility Forum (“MUF”) and participated in the MUF’s panel presentation at the annual conference.¹⁸ Maryland-American Water, the first large water utility to join the Commission’s Supplier Diversity Program, has already been a positive addition to the Program, and will hopefully serve as an example to other utilities that have yet to join.

HUBZone Program

12. At last year’s annual conference, stakeholders proposed the addition of HUBZone-certified small businesses as a category of diverse supplier.¹⁹ In the Public Determination that followed, the Commission found the HUBZone Program proposal to be worthy of further analysis, but premature for approval.²⁰ The Commission denied the proposal, and noted testimony from the MUF that it would soon consider and evaluate the proposal to include HUBZone-certified small businesses in the Program.²¹ The Commission listed factors for the MUF and MOU signatories to

¹⁸ Tr. 30:20-34:21 (July 12, 2022).

¹⁹ 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, and is intended to promote job growth, capital investment, and economic development by providing contracting assistance to participating companies. *PC52: Supplier Diversity Program*, Item No. 42, Letter from Delegate Darryl Barnes (April 9, 2021).

²⁰ The Commission cited several factors for its finding of prematurity, including: (1) of Maryland’s 419 HUBZone-certified small businesses, 340 already qualified to participate in the Program as part of an existing diverse spend category, thereby lending to the possibility that HUBZone spend could decrease the spend if an existing category; (2) of Maryland’s 1,406 census tracts, HUBZones were located in 311 of the tracts, with 70 percent of the tracts located in Baltimore City; and (3) several MOU signatory service territories contain few, if any, HUBZones, both making it substantially more difficult for some signatories to satisfy a HUBZone diverse spend goal than others. *Supplier Diversity Program-Public Determination: 2020 Annual Reports*, August 17, 2021, at 6.

²¹ *Id.* at 7.

consider regarding the addition of a diverse spend category and stated that it looked forward to receiving a recommendation from the MUF regarding the inclusion of the HUBZone Program.²²

13. This year, the MUF stated that they have continued to look into HUBZone-certified small businesses for possible inclusion in the Supplier Diversity Program, but that they are still in the researching phase and plan to use this next year to develop a satisfactory recommendation to make to the Commission at next year's conference.²³

14. The Commission continues to hold economic inclusion, the promotion of job growth, and improved economic circumstances as top priorities for the Supplier Diversity Program. Given that the intention of the HUBZone Program is to promote job growth, capital investment, and economic development, the Commission is hopeful that a path can be found to include HUBZone-certified small businesses in the Supplier Diversity Program. The Commission notes that Maryland would be the first state to adopt the HUBZone classification as a diverse spend category, and appreciates the time and attention being given to the matter by the MUF and stakeholders to ensure that the Commission's previously stated concerns are addressed.

Uniform MOU

15. Since the adoption of the Supplier Diversity MOU in 2009, twenty signatories have joined the Supplier Diversity Program, with sixteen presently active within the Program. Over the years, the substantive terms of the MOU have not changed; however, some MOUs differ from others in non-substantive ways like formatting. Furthermore, none of the MOUs include Tier II indirect spend or veteran-owned and lesbian, gay, bisexual, and transgender- ("LGBT") owned businesses

²² *Id.*

²³ Tr. 36:5-19 (July 12, 2022).

as diverse spend categories as their inclusion in the Supplier Diversity MOU came through the issuance of the Public Determination regarding the 2018 performance of the Supplier Diversity Program.²⁴

16. At this year's conference, the MUF noted that they have constructed a new, uniform MOU to be signed by the utilities and the Commission, and stated that the MUF is "awaiting direction from the Commission on [the] next step."²⁵

17. The Commission appreciates the MUF's effort to develop a uniform document. Regarding a next step in the process, Section 1.1.2 of the MOU²⁶ and COMAR 20.08.01.05(C)²⁷ outline the terms and process for modifications and additions to the Supplier Diversity MOU. In accordance with the identified regulation, the next step in the process would be for any signatory to formally file in the PC52 docket a proposal to adopt the new, uniform MOU prior to the next annual conference.

²⁴ Supplier Diversity Program-Public Determination: 2018 Annual Reports, September 5, 2019, at 4.

²⁵ Tr. 30:16-20 and 35:20-22 (July 12, 2022).

²⁶ 1.1.2 Revisions of Scope - This MOU may be revised on the basis of experience gained in its application and/or changes in legislation. Either the Utility or the Commission Staff may petition the Commission for the purpose of amending this MOU. Any such petition shall clearly set forth the changes proposed and the supporting rationale.

²⁷ COMAR 20.08.01.05(C) Addenda to an MOU. (1) Either the Commission, a participating company or the staff may propose addenda to one, several, or all MOUs at any time prior to an annual public conference. (2) Once proposed by any party, the Commission staff and any affected participating companies shall discuss the merits of the addenda and submit a written recommendation to the Commission. (3) In a public determination prepared after an annual public conference, the Commission shall summarize and respond to any pending proposed addenda. (4) Within 60 days after a public determination is issued, participating companies may submit a written response to any addenda proposed by the Commission, staff, or other participating company. (5) No MOU amendment or other addendum to an MOU shall be of any force or effect unless it has been voluntarily accepted in writing by both an authorized representative of affected participating companies and by the Commission. (6) All accepted addenda to an MOU shall be in effect at a time agreed upon by parties. (7) The process in this section does not limit the Commission or any participating company's ability to propose changes to an MOU at any time.

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