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PUBLIC SERVICE COMMISSION

September 10, 2024

2023 Annual Reports – Maryland Supplier	*	Administrative Docket
Diversity Program	*	PC52
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PUBLIC DETERMINATION ON 2023 ANNUAL REPORTS

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

Pursuant to the Code of Maryland Regulations (“COMAR”) Section 20.08.01.05,<sup>1</sup> the Commission issues this Public Determination<sup>2</sup> regarding the 2023 performance of its Supplier Diversity Program (“Program”) as reviewed at The Harold Williams Supplier Diversity Hearing, held at the Baltimore, Maryland headquarters of Baltimore Gas and Electric Company on July 18, 2024.

The conference included a presentation by the Commission’s Technical Staff (“Staff”) on the diverse supplier procurements by companies participating in the Program,<sup>3</sup> as well as

<sup>1</sup> 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.

<sup>2</sup> 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.”

<sup>3</sup> There are 16 companies with a fully executed Supplier Diversity Memorandum of Understanding (“MOU”) that are actively participating in the Program: 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, Maryland-American Water Company (“Maryland-American Water”), The Potomac Edison Company (“Potomac Edison”), Potomac Electric Power Company (“Pepco”), Southern Maryland Electric Cooperative, Inc. (“SMECO”), Verizon Maryland, Inc. (“Verizon”), and Washington Gas Light Company (“Washington Gas”)

presentations on the positive impact that former Commissioner Harold Williams had on the Program, the Companies' goals and achievements, the diverse suppliers, and the signing of a new, uniform Memorandum of Understanding ("MOU") by the Commissioners and Companies. Discussions were also held among the Companies, elected officials, advocates, and contractors on best practices, lessons learned, and innovative ways to reach diversity goals.

### **Staff's Summary of the Annual Reports**

On July 10, 2024, Staff filed its Summary of the 2023 Maryland Supplier Diversity Program Annual Reporting ("Staff Report"), noting that 16 companies<sup>4</sup> in the Program spent a record \$2.17 billion on procurement of goods and services from diverse suppliers, and \$5.38 billion in total utility procurement.<sup>5</sup> While the total utility procurement increased by 11.41 percent from the previous reporting year, the total diverse spend increased by 12.58 percent.<sup>6</sup> As a result, the

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(collectively, "the Companies"). 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. 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* The Commission Staff's Summary of the 2023 Maryland Supplier Diversity Program Annual Reporting, July 10, 2024, at 3, ("Staff Report").

<sup>4</sup> Maryland-American Water did file its annual report on time; however, the Commission inadvertently did not file the report in the PC 52 docket, thus its data was not included in the original Staff Report but will be included in an errata report in the future. Maryland-American Water spent 55.09% of its total procurement with diverse suppliers, the highest percentage among participating utilities. CenturyLink also filed its annual report, but some of the information provided was incomplete and no response was received to the data request sent by Staff seeking further information. Nevertheless, CenturyLink's diversity spend will be included in an errata report in the future once Staff receives the requested information and clarification.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

diverse spend ratio (“DSR”)<sup>7</sup> for 2023 was 40.38 percent - the highest recorded DSR in the history of the Program.<sup>8</sup>

The 2023 reporting period marked the sixth year in a row that the Companies have collectively exceeded the Supplier Diversity MOU’s 25 percent goal to procure goods and services from diverse suppliers throughout the State of Maryland.<sup>9</sup> Nine companies individually met or exceeded the goal of 25 percent of total procurement spent with qualified diverse suppliers for the 2023 reporting period, including Association of Maryland Pilots, AT&T, BGE, Comcast, Delmarva Power, Maryland-American Water, Pepco, Verizon, and Washington Gas.<sup>10</sup>

Staff’s Report noted that minority-owned businesses account for the highest amount of diverse spend at approximately \$1.34 billion, or 61.72 percent of total diverse spend.<sup>11</sup> The second largest category of diverse spend is women-owned businesses at approximately \$612.1 million in diverse spend,<sup>12</sup> and the third largest category of diverse spend is veteran-owned businesses at approximately \$146 million,<sup>13</sup> which is a \$23.2 million increase above the \$122.8 million in veteran-owned spending in the previous program year.<sup>14</sup>

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

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<sup>7</sup> 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.

<sup>8</sup> Staff Report at 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 5 and 9.

<sup>13</sup> *Id.* at 11.

<sup>14</sup> The Commission Staff’s Summary of the 2022 Maryland Supplier Diversity Program Annual Reporting, June 8, 2023, at 11 (“Staff 2022 Report”).

### **Honoring Commissioner Harold Williams**

The July 18, 2024 annual conference was exceptional in that a significant portion of the proceeding was dedicated to honoring the legacy of the late Commissioner Emeritus Harold Williams. While last year's annual conference involved the renaming of the proceeding to "The Harold Williams Supplier Diversity Hearing" as a means by which to always remember the commitment of the late Commissioner to the Supplier Diversity Program,<sup>15</sup> this year's conference highlighted the important role that Commissioner Williams played in the establishment and continuation of the Program.

Commissioner Williams was remembered as a keystone in Maryland for ensuring equity in business practices, and as being instrumental in structuring minority and women business programs, both locally and nationally.<sup>16</sup> His passion and commitment to diversity and inclusion in the corporate supply chain were celebrated,<sup>17</sup> as was his vision to make sure that diverse suppliers have the ability to offer goods and services to the utility industries and to share in the success of a strong Maryland economy.<sup>18</sup> The Commission will continue its policy of reinforcing Commissioner Williams's efforts to encourage utilities in the State of Maryland to engage in diversifying and maintaining a supply chain that includes a number of businesses that might otherwise be under-represented.

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<sup>15</sup> Staff 2022 Report at 9.

<sup>16</sup> Tr. 7:13-16.

<sup>17</sup> Tr. 7:18-19.

<sup>18</sup> Tr. 10:6-14.

### **Adopting the Uniform MOU**

At the annual conference in 2022, the Maryland Utility Forum (“MUF”) noted that they had constructed a new, uniform MOU intended to bring a consistent, current document to the Companies and the Commission. The MUF explained that several changes made to the MOU since its inception were not reflected in the MOU, and therefore proposed adopting a new version reflective of the present program. The Commission stated in the Public Determination that followed<sup>19</sup> that the next step in the process would be for any signatory to formally file in the PC 52 docket a proposal to adopt the new, uniform MOU prior to the next annual conference, as required under Section 1.1.2 of the MOU<sup>20</sup> and COMAR 20.08.01.05(C).<sup>21</sup>

On January 12, 2023, Potomac Edison filed, on behalf of the MOU Petitioners<sup>22</sup> and in accordance with MOU Section 1.1.2 and COMAR 20.08.01.05(C), a Joint Petition to Amend the

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<sup>19</sup> Supplier Diversity Program-Public Determination: 2021 Annual Reports, page 7 (August 25, 2022).

<sup>20</sup> MOU Section 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.

<sup>21</sup> 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.

<sup>22</sup> The MOU Petitioners are comprised of Potomac Edison, Verizon Maryland, Inc., Chesapeake Utilities Corporation-Maryland Division, SMECO, CenturyLink, Maryland-American Water, Choptank Electric Cooperative, Inc., Easton Utilities, BGE, Pepco, Delmarva Power, Association of Maryland Pilots, Washington Gas, and Columbia Gas of Maryland.

Supplier Diversity MOU. At the June 20, 2023 annual conference on the Program's 2022 performance, Staff recommended that the Commission approve the new, uniform MOU.

In the Public Determination that followed, the Commission stated its support of the uniform MOU, noting its addition of specific language related to Tier 1 and Tier 2 diverse spending, two diverse supplier categories: LGBT-owned businesses and veteran-owned business, and an appendix allowing signatories to indicate their goals without modifying the body of the MOU.<sup>23</sup> The Commission also noted, however, that given its concurrent approval of the inclusion of HUBZone-certified small businesses as a category of diverse supplier, adopting the uniform MOU as proposed would immediately place the Supplier Diversity Program again in the position of operating off of an outdated MOU, since the proposed uniform MOU contained no mention of HUBZones. As such, the Commission recommended that HUBZones be included in the uniform MOU, as and where appropriate, after which it would be approved and implemented by the Commission.<sup>24</sup>

On January 26, 2024, Potomac Edison filed, on behalf of the MOU Petitioners, a Joint Petition to amend the MOU.<sup>25</sup> On May 24, 2024, in accordance with the requirements stated in COMAR 20.08.01.05(C)(2), Staff filed its response to the proposed amended MOU, recommending that the Commission approve and implement the new, uniform MOU.

At the July 18, 2024 Harold Williams Supplier Diversity Hearing, the Commission formally approved the Petition to Amend and signed, along with all applicable signatories present,

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<sup>23</sup> Supplier Diversity Program-Public Determination: 2022 Annual Reports at 8-9, (August 16, 2023).

<sup>24</sup> *Id.* at 9.

<sup>25</sup> Potomac Edison initially filed this Petition on December 20, 2023, but filed a corrected version along with redline attachment on January 26, 2024. (Maillog Nos. 306782 and 307301, respectively.)

a copy of the new, uniform Supplier Diversity MOU. The MOUs will be finalized, filed, and posted in the PC 52 docket in the future in accordance with COMAR 20.08.01.03(C)<sup>26</sup> and 20.08.01.06(A).<sup>27</sup>

### **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 2023 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

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<sup>26</sup> COMAR 20.08.01.03 Establishment of a Program (C). A signed MOU shall be filed publicly with the Public Service Commission.

<sup>27</sup> COMAR 20.08.01.06 Compliance (A). The Commission shall maintain on its website: (1) A list of Companies participating in the Supplier Diversity Program; (2) Copies of all public annual plan and annual report filings made by participating companies; (3) Copies of all signed MOUs; and (4) Copies of all agreed-to addenda.