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PUBLIC SERVICE COMMISSION

August 16, 2023

Supplier Diversity Program

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Administrative Docket  
PC52

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PUBLIC DETERMINATION ON 2022 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 2022 performance of its Supplier Diversity Program (“Program”), as reviewed at the annual conference held at the Southern Maryland Electric Cooperative Engineering and Operations Center in Hughesville, Maryland on June 20, 2023.

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> discussion related

<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> 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 Company (“Maryland-American Water”), Potomac Electric Power Company (“Pepco”), The Potomac Edison  
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to the 30th Anniversary of the Commission’s Supplier Diversity Program, a proposal to implement a new, uniform Memorandum of Understanding (“MOU”) for all signatories, a request to include HUBZones as a category of diverse supplier in the Commission’s Program, the initiation of a rulemaking proceeding intended to rename the annual supplier diversity conference, and the sharing by the participating utilities, elected officials, advocates, and contractors of best practices, lessons learned, and innovative ways to reach diversity goals.

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

On June 20, 2023, Staff filed its Summary of the 2022 Maryland Supplier Diversity Program Annual Reporting (“Staff Report”), noting that sixteen companies in the Program<sup>4</sup> spent a record \$1.53 billion on procurement of goods and services from diverse suppliers, and \$4.16 billion in total utility procurement.<sup>5</sup> While the total utility procurement increased by 7.71 percent from the previous reporting year, the total diverse spend increased by 8.82 percent.<sup>6</sup> Furthermore, the diverse spend ratio (“DSR”)<sup>7</sup> for 2022 was 36.89 percent - the highest recorded DSR in the history of the Program.<sup>8</sup>

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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*, The Commission Staff’s Summary of the 2022 Maryland Supplier Diversity Program Annual Reporting (“Staff Report”), June 20, 2023, at 3.

<sup>4</sup> 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.

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

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

<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.

The 2022 reporting period marked the fifth 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.<sup>9</sup> 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.<sup>10</sup>

Staff's Report noted that minority-owned businesses account for the highest amount of diverse spend at approximately \$768.64 million, or 50.12 percent of total diverse spend.<sup>11</sup> The second largest category of diverse spend is women-owned businesses at approximately \$627.86 million, which is an increase from \$600 million from the 2021 program year,<sup>12</sup> and the third largest category of diverse spend is veteran-owned businesses at approximately \$121.87 million, which is an increase from \$80 million in the previous program year.<sup>13</sup>

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

### **30th Anniversary of the Supplier Diversity Program**

The June 20, 2023, conference was exceptional in that, in addition to the annual gathering of participants and discussions of successful utility programs, it served as a celebration for the 30th anniversary of the Commission's Supplier Diversity Program. During the conference the Commission highlighted the immense growth that the Program has experienced as well as the pride

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

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

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

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

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

to be felt from the three decades of commitment by the public service companies to supporting businesses owned by minorities, women, service-disabled veterans, veterans, non-profits, and members from the LGBT community.<sup>14</sup>

The Commission noted that, when discussing the Supplier Diversity Program, the attention often goes to what has happened since 2008 when the MOU was restructured to reflect its current state and participating companies recommitted to the Program.<sup>15</sup> The Commission further noted, however, that while not much information is available on the first fifteen years of the Program, that period of time is still very important to the overall Program, and played a large role in the development of its current structure.<sup>16</sup> During the first fifteen years, the utility companies did not make supplier diversity filings with the Commission, there were no reporting requirements, and annual hearings were not held.<sup>17</sup> Former Commissioner Harold Williams turned lessons learned from this first phase of the Program into modifications reflected in the 2008 version of the MOU, including requirements for data collection, reporting, the filing of annual plans, and the annual conference.<sup>18</sup> These changes indicated that the Commission would be annually and consistently engaged in order to ensure the Program's continued growth and success. To that point, since 2008 the Program has seen several additional utilities sign the MOU, record-breaking diverse supplier spend has been reported several times over, and new categories of diverse suppliers have been added to the Program.

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<sup>14</sup> Tr. 8:21-9:5 (June 20, 2023).

<sup>15</sup> Tr. 105:14-17 (June 20, 2023).

<sup>16</sup> Tr. 105:17-23 (June 20, 2023).

<sup>17</sup> Tr. 106:1-5 (June 20, 2023).

<sup>18</sup> Tr. 106:15-107:6 (June 20, 2023).

The Commission celebrates the first thirty years of its Supplier Diversity Program, commends the utilities that have participated thus far, and looks forward to what the next thirty years will bring.

### **Inclusion of HUBZone-Certified Business as Diverse Suppliers**

At the 2021 annual conference, stakeholders proposed the addition of HUBZone-certified small businesses as a category of diverse supplier.<sup>19</sup> In the Public Determination that followed, the Commission denied the proposal, finding it to be premature but worthy of further analysis.<sup>20</sup> The Commission listed factors for the Maryland Utility Forum (“MUF”) and MOU signatories to consider as part of the further analysis, and stated that it looked forward to receiving a recommendation from the MUF regarding the inclusion of HUBZone businesses as a diverse supplier category.<sup>21</sup>

At the 2022 annual conference, the MUF stated that it was still researching the possible inclusion of HUBZone-certified small businesses as a diverse supplier category, and that it planned to develop a recommendation to be made at the 2023 annual conference.<sup>22</sup> The Commission noted its hope that a path could be found to make the addition to the Supplier Diversity Program.<sup>23</sup>

At this year’s annual conference, the MUF made a recommendation to the Commission to include the HUBZone Program as an additional category within the Supplier Diversity Program.<sup>24</sup>

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<sup>19</sup> 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).

<sup>20</sup> Supplier Diversity Program-Public Determination: 2020 Annual Reports, August 17, 2021, at 6.

<sup>21</sup> *Id.*

<sup>22</sup> Tr. 36:5-19 (July 12, 2022).

<sup>23</sup> Supplier Diversity Program-Public Determination: 2021 Annual Reports, August 25, 2022, at 6.

<sup>24</sup> Tr. 40:13-14 (June 20, 2023).

Support for the recommendation was given by Michelle Burnett, Executive Director of the HUBZone Contractors National Council,<sup>25</sup> and Wayne Frasier, President of the Maryland Washington Minority Companies Association.<sup>26</sup> Signatories Verizon Maryland, Inc. and Chesapeake Utilities Corporation-Maryland Division also noted that they already track suppliers from HUBZones and are prepared to report them separately.<sup>27</sup>

One concern previously stated by the Commission - that in cases of suppliers qualifying for more than one category of diverse supplier, HUBZone spend could potentially decrease the spend within already existing categories - has been adequately addressed by the MUF through its proposal to account for diverse suppliers that qualify for more than one category as “race and/or gender over the HUBZone category.”<sup>28</sup> While the utilities are prohibited from counting a supplier in more than one category, they are not precluded from tracking and noting all categories that a supplier may be included in, thereby giving a more accurate reflection of the impact of the Supplier Diversity Program. Furthermore, the utilities are also encouraged to track and report the location of HUBZones within their respective territories so as to accurately reflect any limitations on opportunities to engage HUBZone-certified suppliers.<sup>29</sup>

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<sup>25</sup> HUBZone Contractors National Council is a non-profit organization that was established in order to advocate on behalf of HUBZones. Tr. 42: 15-19 (June 20, 2023).

<sup>26</sup> Tr. 45:3-21 (June 20, 2023).

<sup>27</sup> Tr. 87:19-21; 98: 17-18 (June 20, 2023).

<sup>28</sup> Tr. 40:7-12; 40:23-41:5 (July 20, 2023). The Commission notes that, historically, it has not been uncommon for diverse suppliers to qualify for more than one category within the Program. In such cases, the utility has chosen which category to include the supplier in.

<sup>29</sup> See, Supplier Diversity Program-Public Determination: 2020 Annual Reports, August 17, 2021 at 6, wherein the Commission noted that, 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 that several MOU signatory service territories contain few, if any, HUBZones, making it substantially more difficult for some signatories to satisfy a HUBZone diverse spend goal than others.

The Commission appreciates the time taken by the MUF and others to thoroughly research the HUBZone Program prior to recommending its addition to the Supplier Diversity Program. The Commission continues to hold economic inclusion, the promotion of job growth, and improved economic circumstances as top priorities for the Supplier Diversity Program, and finds that the HUBZone Program shares those same priorities. The Commission therefore approves the addition of HUBZone-certified small businesses as a category of diverse supplier within the Commission's Supplier Diversity Program, subject to the guidelines proposed by the MUF at this year's annual conference.<sup>30</sup>

### **Adoption of a Uniform MOU**

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 model 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 LGBT-owned businesses 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.<sup>31</sup>

At last year's conference, the MUF noted that they had constructed a new, uniform MOU intended to bring a consistent, current document to the utilities and the Commission. The

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<sup>30</sup> Only SBA-certified HUBZone businesses will be included, as per the SBA guidelines, and in the circumstance of a supplier that qualifies for more than one category of diverse supplier, a utility will count the supplier based on race or gender rather than HUBZone. Tr. 40:19-22; 40:23-41:5.

<sup>31</sup> Supplier Diversity Program-Public Determination: 2018 Annual Reports, September 5, 2019, at 4.

Commission directed the MUF to Section 1.1.2 of the MOU<sup>32</sup> and COMAR 20.08.01.05(C)<sup>33</sup> for the next steps in the process of uniform MOU adoption. Accordingly, on January 12, 2023, Potomac Edison filed, on behalf of the MOU Petitioners,<sup>34</sup> a Joint Petition to Amend the Supplier Diversity MOU. Staff had no objections to the Joint Petition and recommended that the Commission approve the proposed changes to the model MOU.<sup>35</sup>

Upon review of the amended MOU filed with the Joint Petition, the Commission finds that the modifications from current MOUs include the 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 that allows a signatory to indicate their goals without modifying the body of the MOU. The Commission supports the adoption of a uniform MOU containing the noted updates and modifications; however, given the Commission's approval of the addition 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

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<sup>32</sup> 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>33</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>34</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.

<sup>35</sup> Staff Comments Re: Supplier Diversity Program Changes to Memorandum of Understanding Administrative Docket PC52, June 8, 2023; Errata to Staff Comments Re: Supplier Diversity Program Changes to Memorandum of Understanding Administrative Docket PC52, June 12, 2023.



position of operating off of an outdated MOU, since the proposed uniform MOU contains no mention of HUBZones. The Commission therefore recommends that the MOU Petitioners include HUBZones in the uniform MOU, as and where appropriate, then refile its proposal.

### **Renaming of the Annual Conference**

In recognition of the important role that the annual conference plays in the continued development of the Supplier Diversity Program, and in honor of the individual largely responsible for the modifications and improvements made to the Program as part of the 2008 re-initiation of the MOU, the Commissioners voted to rename the annual conference “The Harold Williams Supplier Diversity Hearing.” This renaming is a means by which to always remember the commitment of the late Commissioner Harold Williams to the Supplier Diversity Program, as well as the importance of gathering to share and celebrate the successes within the Program. In order to effectuate the name change, the Commissioners also voted to initiate a rulemaking proceeding to revise COMAR to reflect that the annual conference for the Commission’s PC52 Supplier Diversity Program shall be renamed as stated above.<sup>36</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 the year being the Program’s most successful year to-date, the Commission encourages

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<sup>36</sup> Tr. 106:8-112:5 (June 20, 2023).

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