

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 3, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora, Commissioner
Kathryn L. Zerfuss, Commissioner, Statement
John F. Coleman, Jr., Commissioner

Diversity Policy Statement Revision of
52 Pa. Code §§ 69.801—69.809

M-2023-3038267

PROPOSED DIVERSITY POLICY STATEMENT

BY THE COMMISSION:

The Pennsylvania Public Utility Commission (PUC) proposes to amend further its Diversity Policy Statement which was previously amended in 2020 at 52 Pa. Code §§ 69.801—69.809. *Amended Policy Statement on Diversity at Major Jurisdictional Utility Companies*, Docket No. M-2020-3018089 (order entered 12/3/20) 51 Pa.B. 435 (1/23/21). Since amending the Policy Statement in 2020, the Commission has promulgated Diversity Reporting Regulations at Chapter 51. *See Diversity Reporting of Major Jurisdictional Utilities*, Docket No. L-2020-3017284 (order entered 6/16/22), 52 Pa.B. 5934 (9/17/22). On September 17, 2022, the PUC's Diversity Reporting Regulations, 52 Pa. Code §§ 51.11—51.13,¹ became effective. With the addition of the

¹ Diversity Reporting of Major Jurisdictional Utilities, Docket No. L-2020-3017284 (Order entered on April 14, 2022; Order on Reconsideration entered on June 16, 2022, 52 Pa.B. 5934 (Sept. 17, 2022)) (Final Rulemaking Order). The Diversity Reporting Regulation (Chapter 51) became effective upon publication in the *Pennsylvania Bulletin* at 52 Pa.B. 5934 (9/17/2022).

Diversity Reporting Regulations, it is now necessary for the Commission to amend its Diversity Policy Statement for consistency.

BACKGROUND

The PUC has had a Diversity Policy Statement since 1995. *See Policy Statement re Diversity at Major Jurisdictional Utility Companies*, Docket No. M-00940557 (Order entered 2/9/1995), 25 Pa.B. 1084 (3/25/1995). The PUC’s Diversity Policy Statement at Section 69.801 (relating to General) encourages major jurisdictional utility companies to, “incorporate diversity in their business strategy in connection with the procurement of good and services.” 52 Pa. Code § 69.801.

On February 6, 2020, Chairman Brown-Dutrieuille made a motion for the PUC to update its Diversity Policy Statement. Chairman Brown-Dutrieuille stated:

On March 24, 1995, the Commission adopted its Statement of Policy on Diversity at Major Jurisdictional Utility Companies, 52 Pa. Code §§ 69.801-69.809 (Policy Statement). When proposed by Commissioner Lisa Crutchfield, these guidelines were seen as, and were in fact, groundbreaking and progressive for that time. However, twenty-five (25) years later brings us into a new century and, I believe, a timely opportunity to reinvigorate the Commission’s efforts to promote and implement effective diversity programs at our major jurisdictional utility companies.

Pennsylvania is a diverse state when it comes to energy production, natural resources, manufacturing, agriculture, and last, but not least, the citizens of the Commonwealth. Our jurisdictional public utilities should draw on the strengths provided by the diverse citizens of this state, whom I might add are also utility customers. As such, jurisdictional utilities should continue to develop and implement company-wide diversity programs for employment and contracting of goods and services. These programs should focus on how to maintain or increase the numbers of qualified minority, women, disabled, LGBTQ, and veteran employees, vendors,

and service providers. The Commission launched a utility careers campaign in the Fall of 2017 to address the looming problem of increased utility workforce retirements. Properly structured, diversity programs can successfully leverage untapped talent pools to help fill these critical jobs. Furthermore, as regulated monopolies, our jurisdictional utilities have unique beneficial community relationships which I believe diversity programs have the power to strengthen.

Chairman Gladys Brown-Dutrieuille Motion, Docket No. L-2020-3017284 at 1 (2/6/20).

In the 2020 revision to the Diversity Policy Statement, the PUC acknowledged that the terms and definitions in Section 69.802 needed to be updated in order to reflect the Commonwealth's diverse citizenship. Specifically, we added the following definitions to Section 69.802: disabled person, LGBTQ, and veteran. We defined "LGBTQ" as it is currently defined in *Black's Law Dictionary* 11th Edition. We enumerated the demographic of "veteran" and adopted the definition from 51 Pa.C.S. § 9601 which defined "veteran" in the context of business ownership. We noted that the term "disabled person" was not previously defined even though it was used throughout the existing Policy Statement. To remedy this, we adopted the Americans with Disabilities Act's (ADA), 42 U.S.C.A. § 12102, definition and cited directly to the ADA in order for the definition of "disabled person" to stay current in the future.

We also updated the definition of "diversity" by explicitly identifying the following groups: minorities, women, persons with disabilities, LGBTQ, and veterans. Additionally, we amended the definition of "Minority-Owned Business Enterprise" by specifically including Subcontinent Asian-Americans and Asian Pacific-Americans in the list of minority groups.

The 2020 Diversity Policy Statement also focused on encouraging a uniform method of reporting diversity employment and vendor data. We noted that PUC staff found the detail and type of information reported in the major jurisdictional utility companies' diversity reports to be inconsistent. Accordingly, we revised the recommended reporting elements in Section 69.809 in their entirety. The 2020 Diversity Policy Statement revised Section 69.809 to request the following elements from major jurisdictional utility companies:

- (1) A copy of any corporate policy committed to improving diversity in the workplace and in the procurement process;
- (2) a description of any training implemented on diversity initiatives in employment and in the contract of goods and services;
- (3) a standardized format to account for diverse employee numbers;
- (4) a description of any diversity recruiting strategies;
- (5) a description of any diversity promotion efforts;
- (6) a description of any diversity retention efforts;
- (7) a brief description of any involvement with organizations promoting diversity.

In addition to these recommended reporting elements, the PUC also implemented a standardized form that the major jurisdictional utilities could use in reporting their diverse workforce demographics. The form was modeled after the Security and Exchange Commission's Diversity Assessment Report for Entities Regulated by the SEC.²

Further, the PUC updated Section 69.809 to remove outdated references. The PUC no longer has a Bureau of Public Liaison so major jurisdictional utilities were

² The Commission modeled the Demographic Composition of Workforce of Major Jurisdictional Utility Companies Form after the SEC's Diversity Assessment Report for Entities Regulated by the SEC. Accessed at <https://www.sec.gov/files/OMWI-DAR-FORM.pdf> on June 22, 2023.

instructed to submit their reports to the Secretary of the PUC. Additionally, as the Policy Statement has been in effect since 1995, the initial reporting year was no longer necessary, so it was removed.

Following the PUC's 2020 revisions to the Diversity Policy Statement, the PUC promulgated Diversity Reporting Regulations in 2022. *See Diversity Reporting of Major Jurisdictional Utilities*, Docket No. L-2020-3017284 (Order entered 6/16/22), 52 Pa.B. 5934 (9/17/22). This regulation built on the PUC's existing Diversity Policy Statement. The guidelines and recommendations in the PUC's policy statement at 52 Pa. Code §§ 69.801-809 set forth the goal of maintaining a diverse workforce and supply chain and included recommendations for the voluntary filing of diversity information by major jurisdictional utilities.

The PUC's diversity reporting became mandatory for major jurisdictional utilities providing electric, natural gas, water and wastewater services. This new obligation was codified in 52 Pa. Code Chapter 51. This entailed promulgating within the Diversity Reporting regulation the following: (1) regulatory definitions that were recently modified in Sections 69.802 and 69.802a and (2) filing obligations that the filing recommendations had recently modified in Section 69.809. 52 Pa. Code §§ 69.802, 69.802a and 69.809. It also required mandating the use of a specific form, as may be modified from time to time by the PUC, for reporting workforce diversity.

RATIONALE FOR AMENDING THE DIVERSITY POLICY STATEMENT

The Diversity Reporting Regulation requires major jurisdictional public utilities providing electric, natural gas, water and wastewater services to report their diversity efforts. 52 Pa. Code §§ 51.11-1.13. The major amendment contained in these newly promulgated PUC regulations is that these major jurisdictional utilities are now required to report on their diversity efforts; reporting diversity efforts is no longer dependent on major jurisdictional utilities complying with a recommendation in a policy statement.

However, while major telecommunications utilities are exempt from the definition of a “major jurisdictional utility” as that term is used in the Diversity Reporting Regulations, we now expressly address major telecommunications utilities in the proposed Diversity Policy Statement to make it clear that major telecommunications utilities are still encouraged to comply with the diversity objectives in this Policy Statement and that they are encouraged to report their diversity efforts consistent with the Policy Statement. Additionally, we are updating sections of the Diversity Policy Statement as described below.

Diversity is an economic reality that public utilities should include in their corporate strategies now and in the future and they should associate diversity with their business objectives and strategies. As such, the PUC will continue to recommend that the major jurisdictional utilities providing electric, natural gas, water and wastewater services and major telecommunications utilities operating in this Commonwealth incorporate diversity in their business strategy in connection with their employment practices and in the procurement of goods and services. 52 Pa. Code § 69.801 (relating to general).

The PUC retains its Diversity Policy Statement alongside Chapter 51 as the provisions in the Diversity Policy Statement are still relevant to major jurisdictional utilities and major telecommunications utilities. Essentially, the Diversity Policy Statement encourages the major jurisdictional utilities and major telecommunications utilities to foster diversity among their respective workforces, and Chapter 51 requires major jurisdictional utilities to report on their respective diversity programs. With respect to the procurement of goods and services, we note that the Policy Statement references minority/women/persons with disabilities/LGBTQ/veteran-owned businesses throughout. Section 69.804 expressly addresses major jurisdictional utilities contracting with minority/women/persons with disabilities/LGBTQ/veteran-owned businesses. 52 Pa. Code § 69.804. Regarding subcontracting, the Policy Statement encourages major jurisdictional utilities to establish and maintain a subcontracting program for its prime

contractors to utilize minority/women/persons with disabilities/LGBTQ/veteran-owned business subcontractors. 52 Pa. Code. § 69.807. Major jurisdictional utilities are further directed in Chapter 51 to report their diversity efforts with respect to their procurement process and contracts for goods and services. *See* 52 Pa. Code § 51.13.

Accordingly, the PUC still needs a Diversity Policy Statement in conjunction with Chapter 51.

DISCUSSION OF PROPOSED CHANGES IN THE DIVERSITY POLICY STATEMENT

The PUC proposes the following amendments to the Diversity Policy Statement as set forth in Annex A to this Order.

§ 69.801. General.

The Diversity Policy Statement makes recommendations applicable to all “major jurisdictional utilities” which included major telecommunications utilities. The Diversity Reporting Regulation now defines “major jurisdictional utility” as an “electric, natural gas, water or wastewater utility whose net plant in service is valued at \$10 million or more.” 52 Pa. Code § 51.12 (relating to definitions). Thus, telecommunications utilities³ are not subject to the Diversity Reporting Regulation and are not required to file the annual diversity reports. The Diversity Reporting Regulation does not exempt major telecommunications utilities from the Diversity Policy Statement. The Diversity Policy Statement will, therefore, be amended to reflect that the Diversity Policy Statement

³ As we noted in our Final Rulemaking Order, the Commission did not include major telecommunications utilities in the definition of a “major jurisdictional utility,” and, thus, major telecommunications utilities are not required to file diversity reports under Section 51.13. 52 Pa. Code § 51.13. Section 3015(f) of the Public Utility Code requires the Commission to establish that the benefits of requiring new reports from telecommunications utilities substantially outweigh the attendant expenses to prepare it. Final Rulemaking Order, citing 66 Pa.C.S. § 3015(f) (relating to alternative forms of regulation).

recommendations, applicable to major jurisdictional utilities, are also still applicable to major telecommunications utilities as has been the PUC's policy since 1995.

Proposed Change: The Diversity Policy Statement will be amended to expressly note that we recommend that "major telecommunications utilities," in conjunction with "major jurisdictional utilities," associate diversity with their business strategy in connection with procurement of goods and services. Further, the Diversity Policy Statement will be amended to encourage major telecommunications utilities to file diversity reports using the format in Section 69.809 (relating to filings) of these regulations.

§ 69.802. Definitions for reporting employee statistics.

The PUC proposes renaming this section to simply "Definitions" and delete "for reporting employee statistics" since there will only be one set of definitions for the Diversity Policy Statement going forward. As we noted in our Final Rulemaking Order, several terms in the Diversity Reporting Regulation are also defined in the Diversity Policy Statement. *See Diversity Reporting of Major Jurisdictional Utilities*, Docket No. L-2020-3017284 at 12-14, 52 Pa.B. 5934 at 5938, and 52 Pa. Code § 51.12.

Accordingly, the PUC proposes deleting the terms in Section 69.802 that are now defined in Section 51.12. *See* 52 Pa. Code §§ 69.802 and 51.12, respectively. The terms to be deleted are "Black or African Americans," "Asian (not Hispanic or Latino)," "Diversity," "Hispanic or Latino," "LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning" "major jurisdictional utility company," "Native American or Alaska Native (not Hispanic or Latino)," "Native Hawaiian or Pacific Islander (not Hispanic or Latino)," "person with disabilities," "two or more races (not Hispanic or Latino)," "White (not Hispanic or Latino)," and "veteran." Further, we propose adding the explanation that the definitions in the Diversity Reporting Regulation are applicable to the Diversity Policy Statement.

Because we need to retain definitions for “control,” “operate” and “subcontract” in the Diversity Policy Statement going forward, we also propose moving those terms from Section 69.802a (relating to definitions for reporting vendor statistics) to Section 69.802 since we propose deleting Section 69.802a in its entirety. The terms “control,” “operate” and “subcontract” will retain their respective definitions as they presently appear in Section 69.802a.

We also add a new term “major telecommunications utility.” The term “major telecommunications utilities” must be added since this Diversity Policy Statement is intended to apply equally to telecommunications utilities despite not being subject to the diversity reporting requirement in Chapter 51. By defining “major telecommunications utilities” in this Diversity Policy Statement it clearly establishes that telecommunications utilities with 50,000 or more access lines are considered major telecommunications utilities and are subject to the provisions in this Policy Statement. With this term defined we can fully reconcile the definitions in the Diversity Reporting Regulation in Chapter 51 as being applicable to this Policy Statement without excluding major telecommunications utilities from the Policy Statement. As “major jurisdictional utility” is now defined in Chapter 51, we do not reiterate the definition.

Proposed change: The name of Section 69.802 will be changed. The terms “Black or African Americans,” “Asian (not Hispanic or Latino),” “Diversity,” “Hispanic or Latino,” “LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning” “major jurisdictional utility company,” “Native American or Alaska Native (not Hispanic or Latino),” “Native Hawaiian or Pacific Islander (not Hispanic or Latino),” “person with disabilities,” “two or more races (not Hispanic or Latino),” “White (not Hispanic or Latino),” and “veteran” will be deleted. We will add the explanation that terms defined in Section 51.12 have the same meaning when used in reference to the Diversity Policy Statement. The terms “control,” “operate” and “subcontract” will be moved to Section

69.802, and they will retain their respective definitions as they presently appear in Section 69.802a.

§ 69.802a. Definitions for reporting vendor statistics.

As explained in greater detail in our discussion of Section 69.802, *supra*, we propose deleting Section 69.802a in its entirety because its terms either now appear in Section 51.12 or they will be moved to Section 69.802. 52 Pa. Code §§ 51.12 and 69.802, respectively. There is no longer a need to define the context in which these diversity terms are used which in turn obviates the need for a separate definition section.

Proposed change: Section 69.802a will be deleted in its entirety, consistent with the proposed change to Section 69.802.

§ 69.803. Guidelines for diversity development.

We propose to revise the term “major jurisdictional utility company” to now read “major jurisdictional utility” consistent with our use of this term in Chapter 51. *See* 52 Pa. Code § 51.12. The decision to exempt major telecommunications utilities from the Diversity Reporting Regulations does not mean that we have chosen to stop encouraging them to implement diversity programs. Because the major telecommunications utilities are no longer included in the definition of “major jurisdictional utility,” we need to add language to indicate that we are continuing to encourage major telecommunications utilities to have diversity programs.

Proposed change: We will update the reference to “utility” rather than “utility company.” We will note that we continue to encourage major telecommunications utilities to follow the guidelines in Section 69.803.

§ 69.804. Contracting recommendations.

We revise the term “major jurisdictional utility company” to now read “major jurisdictional utility” in light of our revision to this term in Chapter 51. *See* 52 Pa. Code § 51.12. Because of the change in the definition of “major jurisdictional utility,” explained *supra*, we need to add language to indicate that the contracting recommendations also continue to apply to major telecommunications utilities.

Proposed change: We will update the reference to “utility” rather than “utility company.” We will note that we continue to encourage major telecommunications utilities to follow the guidelines in Section 69.804.

§ 69.805. Program development.

We revise the term “major jurisdictional utility company” to now read “major jurisdictional utility” in light of our revision to this term in Chapter 51. *See* 52 Pa. Code § 51.12. Additionally, we add language to also indicate that we continue to encourage the major telecommunications utilities to have an appropriate executive accountable for providing overall direction and guidance to the minority/women/persons with disabilities/LGBTQ/veteran-owned business program.

Proposed change: We will update the reference to “utility” rather than “utility company.” We will note that major telecommunications utilities are encouraged to follow the guidelines in Section 69.805.

§ 69.806. Minimum improvement levels.

We revise the term “major jurisdictional utility company” to now read “major jurisdictional utility” in light of our revision to this term in Chapter 51. *See* 52 Pa. Code § 51.12. Additionally, we add language to indicate that we continue to encourage the major telecommunications utilities to annually set substantial and verifiable short-term,

midterm and long-term plans for the utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses.

Proposed change: We will update the reference to “utility” rather than “utility company.” We will note that major telecommunications utilities are encouraged to follow the guidelines in Section 69.806. We are also changing “case by case basis” to “case-by-case basis.”

§ 69.807. Subcontracting program.

We revise the term “major jurisdictional utility company” to now read “major jurisdictional utility” in light of our revision to this term in Chapter 51. *See* 52 Pa. Code § 51.12. Additionally, we add language to also indicate that we continue to encourage the major telecommunications utilities to establish and maintain a subcontracting program for its prime contractors to utilize minority/women/persons with disabilities/LGBTQ/veteran-owned business subcontractors. This section also contains a reference to “procurements of products and services in excluded categories” which is not a defined term. We propose amending this reference to simply “exempt procurement” which is a defined term in Section 51.12. 52 Pa. Code § 51.12 (relating to definitions). Finally, subsection 69.807(5) recommends submitting information which is already being addressed in Section 69.809. 52 Pa. Code § 69.809. As such, we propose removing this subsection entirely.

Proposed change: We will update the reference to “utility” rather than “utility company.” We will note that major telecommunications utilities are encouraged to follow the guidelines in Section 69.807. We will also amend the reference to “the procurements of products and services in excluded categories” to instead reference the term “exempt procurement” which is defined in Section 51.12. *See* 52 Pa. Code § 51.12 (relating to definitions). Finally, we remove subsection 69.807(5) in its entirety since the

information recommended for submission is being recommended for submission in Section 69.809(a)(8). *See* 52 Pa. Code § 69.809(a)(8).

§ 69.808. External outreach.

We propose to revise the term “major jurisdictional utility company” to now read “major jurisdictional utility” in light of our revision to this term in Chapter 51. *See* 52 Pa. Code § 51.12 (Major jurisdictional utility). Additionally, we propose to add language to also indicate that the major telecommunications utilities are also encouraged to implement an outreach program to inform, to recruit and to expand procurement activities to qualified and qualifiable businesses owned by minority/women/persons with disabilities/LGBTQ/veterans.

Proposed change: We will update the reference to “utility” rather than “utility company.” We will note that major telecommunications utilities are encouraged to follow the guidelines in Section 69.808.

§ 69.809. Filings.

We are proposing to change the title of Section 69.809 from “Filings” to “Major Telecommunications Utilities Filings.” While major telecommunications utilities are not subject to the Diversity Reporting Regulation, the PUC remains committed to encouraging major telecommunications utilities to adopt diversity programs and to submit diversity reports. The revision to Section 69.809 will expressly address “major telecommunications utilities” and will remove all references to “major jurisdictional utilities” to avoid any ambiguity with Chapter 51. We are encouraging major telecommunications utilities to use the reporting process in Chapter 51 if they choose to file the annual diversity reports to the Commission. We will also clarify what should be reported if information is otherwise unobtainable.

With respect to the filing of reports, we are also proposing to add additional subsections that address the confidential nature of the information and annual filing if a major telecommunications utility files such information. As we took measures in Chapter 51 to ensure the confidentiality of the information and filings submitted by major jurisdictional utilities providing electric, natural gas, water and wastewater services, likewise, we propose to encourage those measures here. *See Diversity Reporting of Major Jurisdictional Utilities*, Docket No. L-2020-3017284 at 23-24, 52 Pa.B. 5934 at 5941. We propose to recommend that annual reports should be filed confidentially in conformance with Section 1.32. 52 Pa. Code § 1.32 (relating to filing specifications). This recommendation is consistent with the reporting requirement for major jurisdictional utilities addressed in Section 51.13. *See* 52 Pa. Code § 51.13(c). We propose to also have a new subsection (d) added that recommends that information on persons with disabilities and LGBTQ status should be collected on a confidential and voluntary basis from major telecommunications utilities' respective employees consistent with what we directed in Chapter 51. *See* 52 Pa. Code § 51.13(d). Finally, we will add subsection (e) which we propose to direct that the information a major telecommunications utility files with the PUC pursuant to this policy statement will be treated as confidential.

Proposed change: We will note that major telecommunications utilities are encouraged to continue to report their diversity efforts. We will add the language “as unobtainable” after “should be reported” in subsection (b). We will add a new subsection (c) that recommends that major telecommunications utilities file their annual reports confidentially in conformance with Section 1.32. 52 Pa. Code § 1.32. A new subsection (d) will be added recommending that the reporting of persons with disabilities and LGBTQ status should be confidential and voluntary on the part of the major telecommunications utility employee. Finally, a new subsection (e) will be added that directs that any information a major telecommunications utility submits pursuant to this policy statement shall be confidential.

CONCLUSION

We appreciate the input from the stakeholders in Docket No. L-2020-3017284. We strongly urge the major jurisdictional utilities and major telecommunications utilities to enhance their efforts to associate diversity with their business objectives and strategies. This Proposed Diversity Policy Statement will be posted on the PUC's website and delivered to the Governor's Budget Office. Thereafter, it will be delivered to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Comments will be due 45 days after publication in the *Pennsylvania Bulletin*; **THEREFORE,**

IT IS ORDERED:

1. That after entry of this Notice of Proposed Policy Statement, the Law Bureau will submit this Order and Annex A to the Governor's Budget Office for review for fiscal impact.
2. That the Law Bureau shall thereafter deposit this Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
3. That comments referencing Docket M-2023-3038267 may be filed within 45 days of publication in the *Pennsylvania Bulletin*. Comments may be filed electronically through the Pennsylvania Public Utility Commission's eFiling System. Filing instructions may be found on the PUC's website at: http://www.puc.pa.gov/filing_resources.aspx. Alternatively, comments may be filed in writing: Attn: Secretary, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120.
4. That the Secretary of the Pennsylvania Public Utility Commission shall post and make available electronically the Order and Annex A on the PUC's website. A copy may also be obtained by calling the Secretary's Bureau at 717-772-7777.

5. That the contact persons for this matter are Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau, 717-787-5558, jcardinale@pa.gov; and Rhonda L. Daviston, Assistant Counsel, Law Bureau, 717-787-6166, rdaviston@pa.gov.

6. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Karen Thorne, Regulatory Review Assistant, Law Bureau, 717-772-4597, kathorne@pa.gov.

BY THE COMMISSION,



Rosemary Chiavetta,
Secretary

(SEAL)

ORDER ADOPTED: August 3, 2023

ORDER ENTERED: August 3, 2023

Annex A

CHAPTER 69. GENERAL PROVISIONS

Subpart C. FIXED SERVICE UTILITIES
CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND
GUIDELINES ON FIXED UTILITIES

* * * * *

DIVERSITY AT MAJOR JURISDICTIONAL UTILITY
COMPANIES—STATEMENT OF POLICY

§ 69.801. General.

From a business perspective, diversity should be associated with a **[company's] public utility's** business objectives and strategies. Diversity is an economic reality that **[corporate entities] public utilities** should include in their corporate strategies now and in the future. The Commission **[intends to take the next step by encouraging] encourages** major jurisdictional **[utility companies] utilities and major telecommunications utilities** operating in this Commonwealth to incorporate diversity in their business strategy in connection with the procurement of goods and services. **Major telecommunications utilities are further encouraged to file diversity reports in the same format as major jurisdictional utilities are directed in 52 Pa. Code §§ 51.11—51.13 (relating to diversity) (Chapter 51).**

§ 69.802. Definitions[for reporting employee statistics].

(a) The following words and terms, when used in §§ 69.801—69.809 **[in the context of major jurisdictional utility company employees]**, have the following meanings:

[Black or African-Americans—A person having origins in any of the black racial groups of Africa.]

[Asian (not Hispanic or Latino)—A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.]

[Diversity—The attainment of organizational objectives by maximizing the contributions of individuals from every segment of the population including minorities, women, persons with disabilities, LGBTQ and veterans.]

[Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.]

[LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning. This term also includes gender non-conforming individuals.]

Control—The exercise of the power to make policy decisions.

Long-term plan—A plan applicable to a period of 5 years.

MIL—Minimum Improvement Level—A level or goal which, when achieved, indicates progress in a preferred direction. An MIL is neither a requirement nor a quota, and no specific participation levels are intended.

[Major jurisdictional utility company—Electric, gas, water and telephone utilities whose net plant in service is valued at \$10 million or more. The term includes major telephone companies, defined as companies exceeding 50,000 access lines.]

Major telecommunications utility—A telecommunications public utility under 66 Pa.C.S. § 102 with 50,000 or more access lines.

Midterm plan—A plan applicable to a period of 3 years.

[Native American or Alaska Native (not Hispanic or Latino)—A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.]

[Native Hawaiian or Pacific Islander (not Hispanic or Latino)—A person having origins in any of the peoples of Hawaii, Guam, Samoa or other Pacific Islands.]

Operate—Active involvement in the day-to-day management. The term involves more than acting as officers or directors.

[Person with disabilities—A person who has a disability as defined in the Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12102. Employer reporting on person with disabilities should be based on employee self-identification.]

Short-term plan—A plan applicable to a period of 1 year.

Subcontract—An agreement or arrangement between a contractor and a party or person—in which the parties do not stand in the relationship of an

employer and an employee—for the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which in whole or in part, is necessary to the performance of any one or more contracts.

Substantial objectives—Objectives which are realistic and clearly demonstrate a major jurisdictional utility company’s commitment to increase minority/women/persons with disabilities/LGBTQ/veteran-owned business share of the utility’s purchases and contracts.

[*Two or more races (not Hispanic or Latino)*—A person who identifies with more than one of the five races identified in this section.]

[*White (not Hispanic or Latino)*—A person having origins in any of the original peoples of Europe, the Middle East or North Africa.]

[*Veteran*—A person who meets any veteran category defined in 42 C.F.R. § 61-300.2.]

(b) The following terms, when used in reference to this Diversity Policy Statement, are used as defined in Chapter 51.

Asian (not Hispanic or Latino)

Black or African American (not Hispanic or Latino)

Diversity

Exempt procurement

Hispanic or Latino

LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning

Major jurisdictional utility

MBE—Minority-owned business enterprise

Minority

Native American or Alaska Native (not Hispanic or Latino)

Native Hawaiian or Pacific Islander (not Hispanic or Latino)

Person with disabilities

Two or more races (not Hispanic or Latino)

Veteran

WBE—Women-owned business enterprise

White (not Hispanic or Latino)

§ 69.802a. [Definitions for reporting vendor statistics.] (Reserved).

[The following words and terms, when used in §§ 69.801—69.809 in the context of major jurisdictional utility company vendors, have the following meanings, unless the context clearly indicates otherwise:

Control—The exercise of the power to make policy decisions.

Exempt Procurement—A product or service which may be removed from the dollar base used to establish minimum improvement levels, because of the demonstrated unavailability of a minority/women/people with disabilities/LGBTQ/veteran-owned business currently capable of supplying a product or service. The term may also include one or more of the following situations:

- (I) The vendor is the original equipment manufacturer.
- (II) The vendor is the only known source of the product or service.
- (III) A plant emergency situation dictates use of a specific vendor.
- (IV) Purchases from affiliates, corporate parents and their subsidiaries.

LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning.

MBE—Minority-Owned Business Enterprise—A business enterprise that is at least 51% owned by a minority individual or group or individuals; or a publicly-owned business that has at least 51% of its stock owned by one or more minority individuals, and whose management and daily business operations are controlled by these individuals. “Minority” may include Black Americans, Hispanic-Americans, Native Americans, Asian-Pacific Americans or any other socially disadvantaged individuals as defined in 13 C.F.R. § 124.103.

Operate—Active involvement in the day-to-day management. The term involves more than acting as officers or directors.

Person with disabilities—A person who has a disability as defined in the Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12102. Employer reporting on person with disabilities should be based on employee self-identification.

Subcontract—An agreement or arrangement between a contractor and a party or person—in which the parties do not stand in the relationship of an employer and an employee—for the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which in whole or in part, is necessary to the performance of any one or more contracts.

Veteran—A person who meets any veteran category defined in 42 C.F.R. § 61—300.2.

WBE—Women-Owned Business Enterprise—A business enterprise that is at least 51% owned by a woman or women; or a publicly owned business that has at least 51% of its stock owned by one or more women, and whose management and daily business operations are controlled by one or more women.] (Reserved).

§ 69.803. Guidelines for diversity development.

The Commission encourages major jurisdictional [**utility companies**] **utilities and major telecommunications utilities** to implement diversity programs. This effort may include the following:

- (1) The articulation of a corporate policy by the senior executives of the major jurisdictional utility [**company**] **and the major telecommunications utility** committing it to improving its level of diversity in the workplace and within its procurement process.
- (2) The development and implementation of a corporate-wide diversity program with specified goals and objectives for each year.
- (3) The appointment of utility managers to be responsible for the success of the program.
- (4) The training of managers regarding implementing diversity initiatives in the areas of employment and contracting for goods and services.
- (5) The location of qualified minority/women/persons with disabilities/LGBTQ/veteran-owned business contractors and mentoring, partnering and training qualified women/minority/persons with disabilities/LGBTQ/veteran-

owned businesses contractors to serve the needs of the major jurisdictional utility **[company] and the major telecommunications utility**.

§ 69.804. Contracting recommendations.

The Commission recommends that major jurisdictional **[utility companies] utilities and major telecommunications utilities** strive to take maximum efforts to provide that minority/women/persons with disabilities/LGBTQ/veteran-owned businesses have an equal opportunity to compete for the purchase of equipment, supplies, services, fuels, materials, construction, professional services, advertising and the like. The Commission encourages major jurisdictional utility **[companies] and major telecommunications utilities** to develop a diversity program which is designed to provide that a fair proportion of products and services contracts are offered to minority/women/persons with disabilities/LGBTQ/veteran-owned businesses. It is recommended that **[the] each** major jurisdictional utility **[companies] and each major telecommunications utilities** adopt the general guidelines in §§ 69.805—69.808 in the development or enhancement of their diversity program relative to contracting for goods and services.

§ 69.805. Program development.

The major jurisdictional **[utility companies] utilities and the major telecommunications utilities** are encouraged to have an appropriate executive accountable for providing overall direction and guidance to the minority/women/persons with disabilities/LGBTQ/veteran-owned business program. Each major jurisdictional utility **[company] and each major telecommunications utility** is invited to maintain a staff to implement program requirements concerning the women/minority/persons with disabilities/LGBTQ/veteran-owned businesses. It may not be necessary for **[the] a** major jurisdictional utility **[company] or a major telecommunications utility** to increase its staff or to reassign existing staff to minority/women/persons with disabilities/LGBTQ/veteran-owned business program responsibilities if the major jurisdictional utility **[company] or the major telecommunications utility** can implement its program effectively through its current resource commitment and management structure.

§ 69.806. Minimum improvement levels.

By March 1 of each year, each major jurisdictional utility **[company] and each major telecommunications utility** is encouraged to annually set substantial and verifiable short-term, midterm and long-term plans for the utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses. Minimum improvement levels should be set annually for each major product and services category which provides opportunities for procurement.

(1) The major jurisdictional **[utility companies] utilities and the major telecommunications utilities** may consider the following factors in setting their minimum improvement levels:

(i) **[The] Their** total **[major jurisdictional utility company]** purchasing or contracting projections, or both, including fees to financial (for example, financial institutions and the like), advertising, legal and professional services.

(ii) Availability of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses in the major jurisdictional **[utility company] utility's or the major telecommunications utility's** service area and surrounding communities.

(iii) Market dynamics based on historical data and trends.

(iv) Other appropriate factors which would increase the minority/women/persons with disabilities/LGBTQ/veteran-owned businesses share of utility business.

(2) Program objectives should be established for both minority-owned, non-minority women-owned, persons with disabilities-owned, LGBTQ-owned and veteran-owned business enterprises.

(3) **[A] Each** major jurisdictional utility **[company] or each major telecommunications utility** may exclude a specific product or service when it is clearly evident the minority/women/persons with disabilities/LGBTQ/veteran-owned businesses do not provide a specific product or service, or that exempt procurement is the only available procurement method for obtaining that specific product or service. Each major jurisdictional utility **[company] and each major telecommunications utility** should demonstrate the unavailability of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses capable of supplying these products and services on a **[case by case] case-by-case** basis. Because there may in the future be minority/women/persons with disabilities/LGBTQ/veteran-owned businesses capable of supplying products or services currently being supplied by an exempt procurement provider, the major jurisdictional utility **[company] or the major telecommunications utility** should explain in its annual report the continued use of any exempt procurement provider.

(4) **[A] Each** major jurisdictional utility **[company] and each major telecommunications utility** which is presently purchasing products or services from affiliates may subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing minimum improvement levels for purchases from minority/women/persons with disabilities/LGBTQ/veteran-owned businesses if the major jurisdiction utility **[company] or the major telecommunications utility** requires the affiliate to establish an appropriate subcontracting program for minority/women/persons with

disabilities/LGBTQ/veteran-owned businesses where the affiliates employ subcontractors. **[A] Each major jurisdictional utility [company] and each major telecommunications utility** which takes advantage of this section should report to the Commission, in its annual report, whether the affiliates have established a subcontracting program and describe the results of the program.

(5) Overall program levels should be expressed as a percentage of total dollars awarded to outside suppliers and contractors other than products and services which fall within an exempt procurement category established by the major jurisdictional utility **[company] or the major telecommunications utility**.

(6) Payments for fuel, purchased power and franchise tax fees need not be included in the procurement dollar base used to establish minimum improvement levels.

(7) Each major jurisdictional utility **[company] and each major telecommunications utility** is encouraged to make special efforts to increase utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses, in conjunction with its established minimum improvement levels, in areas that are considered to be technical in nature, and where there has been low utilization, such as consultants, legal and financial services.

(8) Each major jurisdictional utility **[company] and each major telecommunications utility** is invited to consider the utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses when outsourcing noncore business functions and report these contracts as part of the annual report.

§ 69.807. Subcontracting program.

Each major jurisdictional utility **[company] and each major telecommunications utility** is encouraged to establish and maintain a subcontracting program for its prime contractors to utilize minority/women/persons with disabilities/LGBTQ/veteran-owned business subcontractors. The subcontracting program will serve as an enhancement to and not a replacement for **[the major jurisdictional utility company] a** minority/women/persons with disabilities/LGBTQ/veteran-owned business program.

(1) **[The] Each major jurisdictional utility [company] and each major telecommunications utility** should incorporate in purchase orders, requests for bid proposals and other appropriate procurement documents related to procurement efforts subject to its subcontracting program, a statement such as follows:

“It is the policy of this utility that businesses owned by minorities, women, persons with disabilities, LGBTQ and veterans should have an equal opportunity to compete

for subcontracts. The contractor agrees to use its best efforts to carry out this policy to the fullest extent consistent with the efficient performance of this contract.”

(2) [The] **Each** major jurisdictional utility [company] **and each major telecommunications utility** is encouraged to assist its prime contractors in developing plans to increase the opportunities for participation by minority/women/persons with disabilities/LGBTQ/veteran-owned business subcontractors. Prime contractors will be encouraged to submit these plans and the results to the major jurisdictional utility [company] **or the major telecommunications utility.**

(3) The subcontracting program should apply to purchases/contracts exceeding \$500,000 for products and services, and for construction contracts over \$1 million. The subcontracting program need not be applied to [the] **exempt** procurements. **See 52 Pa. Code § 51.12 (Exempt procurement)[of products and services in excluded categories].**

(4) Each major jurisdictional utility [company] **and each major telecommunications utility** is encouraged to inform suppliers of products and services that subcontracting with businesses owned by minority/women/persons with disabilities/LGBTQ/veterans is a factor that may be considered in the bid evaluation process.

[(5) Each should include awards to verified minority/women/persons with disabilities/LGBTQ/veteran-owned business subcontractors in each report to the Commission.]

§ 69.808. External outreach.

Each major jurisdictional utility [company] **and each major telecommunications utility** should implement an outreach program to inform, to recruit and to expand procurement activities to qualified and qualifiable businesses owned by minority/women/persons with disabilities/LGBTQ/veterans. Outreach activities may vary for each major jurisdictional utility [company] **and each major telecommunications utility** depending on its size, service territory and specific lines of business. Each major jurisdictional utility [company] **and each major telecommunications utility** should, at a minimum, consider implementation of the following:

(1) Actively seek out opportunities to identify business contractors and suppliers that are owned by minority/women/persons with disabilities/LGBTQ/veterans and to expand source pools.

(2) Actively support the efforts of organizations experienced in promoting the interest of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses.

(3) Initiate business development partnerships (long-term), joint ventures or venture capital projects with minority/women/persons with disabilities/LGBTQ/veteran-owned businesses such as outsourcing agreements of noncore utility business functions when applicable to allow business expansion within the minority/women/persons with disabilities/LGBTQ/veteran-owned business community. Provide technical/management support (short-term) to ensure the success of this initiative.

(4) Work with minority/women/persons with disabilities/LGBTQ/veteran-owned business contractors to facilitate contracting relationships by explaining utility qualification requirements, bidding and contracting procedures, materials requirements, invoicing and payment schedules and other procurement practices and procedures.

§ 69.809. Major Telecommunications Utility Filings.

(a) The major **[jurisdictional utility companies] telecommunications utilities** are encouraged to file with the Secretary of the Commission an annual report describing their diversity program activity for the prior year. The annual report should contain the following elements:

(1) A copy of any corporate policy committed to improving diversity in the workplace and in the procurement process.

(2) A description of any training implemented on diversity initiatives in employment and in the contract of goods and services.

(3) The demographic composition of the major [jurisdictional] **telecommunications** utility company's workforce, reporting the number of employees by gender, race and ethnicity, persons with disabilities, and veterans on a form provided by the Commission.

(4) A description of any diversity recruiting strategies.

(5) A description of any diversity promotion efforts.

(6) A description of any diversity retention efforts.

(7) A brief description of any involvement with organizations promoting diversity.

(8) A brief summary of **[diverse-owned businesses] MBEs/WBEs** the **[company] major telecommunications utility** contracts with for goods and services. Include

percentage of dollars spent with [diverse-owned businesses] MBEs/WBEs versus [non-diverse businesses] non-MBEs/non-WBEs.

(b) Information that is otherwise unobtainable to the [major jurisdictional utility company] major telecommunications utility, for example, prime contractor utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses as subcontractors, should be reported as unobtainable in the annual filings.

(c) Major telecommunications utilities that file annual reports with the Commission should file their respective annual reports confidentially in conformance with the filing specifications at § 1.32 (relating to filing specifications).

(d) Reporting of persons with disability and LGBTQ status should be confidential and voluntary on the part of the employee.

(e) If a major telecommunications utility files an annual report, the information and form filed shall be confidential.