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STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

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

Public Meeting held
February 1, 2024

Commissioners Present: Stephen M. DeFrank, Chairperson; Kimberly Barrow, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss, statement follows; John F. Coleman, Jr.

*Diversity Policy Statement Revision of 52 Pa. Code
§§ 69.801—69.809; M-2023-3038267*

Final Policy Statement and Order

By the Commission:

On August 3, 2023, the Commission (PUC or Commission) entered a Proposed Policy Statement and Order (PPSO) wherein the Commission proposed to revise its Diversity at Major Jurisdictional Utility Companies—Statement of Policy at 52 Pa. Code §§ 69.801—69.809 (Diversity Policy Statement). The PPSO was published in the *Pennsylvania Bulletin* at 53 Pa.B. 6047 (9/30/2023). The comment period closed on November 14, 2023. This Final Policy Statement and Order (FPSO) makes the Commission's intent clear that the Diversity Policy Statement still provides guidance to major telecommunications utilities. Upon publication in the *Pennsylvania Bulletin* of this FPSO, the Diversity Policy Statement will fully comport with the Diversity Reporting regulation at 52 Pa. Code §§ 51.11—51.13 (relating to general, definitions, diversity reporting requirement) (Diversity Reporting Regulation).

Summary of the Proposed Policy Statement

In the PPSO, the Commission acknowledged that, since codification of the Commission's Diversity Regulation which requires certain major jurisdictional public utilities to file reports on their diversity efforts, it is necessary to revise the Diversity Policy Statement. Now that major jurisdictional utilities are required to report on their diversity efforts, reporting diversity efforts is no longer dependent on those major jurisdictional utilities voluntarily complying with a recommendation in a policy statement.

However, while the Commission was constrained to exempt major telecommunications utilities from the definition of a "major jurisdictional utility" as that term is used in the Diversity Reporting Regulation because of statutory preclusion at 66 Pa.C.S. § 3015(f) relating to alternative forms of regulation, the Commission still intended to encourage major telecommunications utilities to report their diversity efforts. As such, we expressly addressed 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 the Policy Statement and that they are encouraged to report their diversity efforts consistent with the Policy Statement.

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 Commission continues to recommend that the major jurisdictional utilities providing electric, natural gas, water and wastewater services and the major telecommunications utilities operating in this Commonwealth all incorporate diversity in their business strategy and in the procurement of goods and services. 52 Pa. Code § 69.801 (relating to general).

In the PPSO, we noted that since the promulgation of Diversity Reporting Regulation, references to "major jurisdictional utility" in the Diversity Policy Statement could be read to not include major telecommunications utilities. As this was never the intent, the Diversity PPSO proposed changes to expressly include major telecommunications utilities to make it clear that major telecommunications utilities are still included in the Diversity Policy Statement.

Discussion

The Commission received and reviewed the comments filed in this proceeding. Based upon those comments, the Commission has determined that it will proceed with the proposal to revise the Diversity Policy Statement, with modifications. The Commission received comments from Energy Association of Pennsylvania and Verizon that noted their respective general support of the proposed revisions to the Diversity Policy Statement without any revisions thereto. The Commission also received comments from the Office of Consumer Advocate (OCA) that has suggested changes which we address herein.

Section 69.801 General

The OCA notes that the Commission did not include the term "employment practices" in Section 69.801 (relating to general). In Section 69.801, the OCA posits the following change:

The Commission encourages major jurisdictional utilities and major telecommunications utilities operating in this Commonwealth to incorporate diversity in their business strategy in connection with their employment practices and 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).

OCA Comments at 3.

The Commission will not adopt this recommendation because the Commission is not permitted to make managerial decisions such as hiring decisions with respect to the public utilities within its jurisdiction. The Pennsylvania Supreme Court and the Pennsylvania Commonwealth Court have consistently recognized that public utilities make managerial decisions that are not subject to Commission regulation. See *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 561 A.2d 1224, 1226-27 (Pa. 1989) ("Recognizing the Commission's duty to the public and a utility's right of self-management, our courts adopted the further proposition that it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown.") and *Pickford v. Pa. Pub. Util. Comm'n*, 4 A.3d 707 (Pa. Cmwlth. 2010).

The OCA asserts that the Commission makes a recommendation for employment practices in Section 69.803(1)(4) (guidelines for diversity development) and Section 69.809(a) (filings). However, these sections do not encourage employment practices per se. Section 69.803, in general, encourages diversity programs that are recommendations to public utilities to aid in developing and maintaining a diverse workforce. It is not the Commission's intent to interfere with public utility managerial decisions. With respect to Section 69.809(a), this section simply encourages reporting of the public utility's diversity program, not the implementation of a diversity program.¹ Employment practices are an integral part of a public utility's internal management, and it is not the intent of this Policy Statement to interfere with public utility employment practices. As such, it is not appropriate for the Commission to make management recommendations such as employment practices with respect to the public utilities it regulates.

Resolution: Accordingly, we have adopted the changes that we proposed in the PPSO to Section 69.801 without any further changes.

Proposed Section 69.802 Definitions for Reporting Employee Statistics; Final Section 69.802 Definitions

The terms "control" and "operate" are presently in Section 69.802a (relating to definitions for reporting vendor statistics), which was proposed for deletion in its entirety. The PPSO proposed to incorporate the terms in Section 69.802(a) (relating to definitions for reporting employee statistics). The terms are not, however, used in the final Diversity Policy Statement. The OCA recommends that the Commission remove the terms "control" and "operate" from the final Section 69.802(a) since the terms will not be used in the final Diversity Policy Statement.

The Commission acknowledges that the terms "control" and "operate" are not used in their singular form with respect to the Diversity Reporting Regulation. While "control" is used in its passive form in the definitions of MBE and WBE in the Diversity Reporting Regulation, the word "controlled" is modified with the phrase "whose management and daily business operations are controlled." 52 Pa. Code § 51.12 (relating to definitions). Further, we note that "control" is not defined in the Diversity Reporting Regulation. It is impermissible for a definition in a policy statement to define a term in a regulation. As such, we agree with the OCA that the term "control" should not be defined, and it will be removed from Section 69.802(a) in the final Diversity Policy Statement.

We also agree with the OCA that the term "operation" should be removed from Section 69.802 as well. Again, it is impermissible for a policy statement to define terms used in a regulation. Further, while the term "operation" is used in the definitions of Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) in the Diversity Reporting Regulation, respectively, the term "operation" is given context with the words "management and daily business" preceding "operation." See 52 Pa. Code § 51.12(c) (relating to definitions and the definitions for MBE—Minority-owned business enterprise and WBE—Women-owned business enterprise). As such, we agree with the OCA that "operate" should not be a defined term in Section 69.802, and it has been removed from the final Diversity Policy Statement.

Resolution: The terms "control" and "operate" are removed from Section 69.802.

Proposed Section 69.802a Definitions for Reporting Vendor Statistics

Resolution: As explained in the PPSO, this section is removed in its entirety from the final Diversity Policy Statement and the section number is reserved.

Sections 69.803—69.809

Resolution: These sections are adopted as explained in the PPSO except for minor edits, as discussed infra.

Housekeeping

Upon further review of the Diversity Policy Statement, the Commission recognized that the use of the term "major jurisdictional company" was still in use in the title as well as some areas in the Diversity Policy Statement itself. The Commission has revised these references so that they accurately reflect the terminology we have adopted throughout.

Resolution: The term "major jurisdictional company" is removed from the Policy Statement title, and it is replaced with "Utilities And Major Telecommunications Utilities." The term "major jurisdictional utility companies" is also replaced with "major jurisdictional utilities" in Sections 69.802 and 69.809.

Conclusion

Accordingly, pursuant to 66 Pa.C.S. §§ 501, 505, 506, and 512, we have adopted as final, the revisions to Sections 69.801—69.809 as set forth in Annex A, attached hereto. We note that any issue, comment, or reply comment requesting a further change to the Diversity Policy Statement or objecting to a possible change, but which we may not have specifically delineated herein, shall be deemed to have been duly considered and denied at this time without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n*, 625 A.2d 741 (Pa. Cmwlth. 1993); see also, generally, *U. of PA v. Pa. Pub. Util. Comm'n*, 485 A.2d 1217 (Pa. Cmwlth. 1984); *Therefore*,

It Is Ordered That:

1. The Commission adopt the final Policy Statement as set forth in Annex A to this Final Policy Statement and Order.
2. The Law Bureau will deposit this Order and Annex A with the Office of the Budget for fiscal review.
3. Upon receipt of the fiscal note, the Law Bureau will deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. This final Policy Statement shall become effective upon publication in the *Pennsylvania Bulletin*.
5. This Order and Annex A be posted on the Commission's website. 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.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: February 1, 2024

ORDER ENTERED: February 1, 2024

¹ This presumes that the reporting public utility has a diversity program. If one does not exist, then the reporting public utility would not have such a program to report.

**STATEMENT OF COMMISSIONER
KATHRYN L. ZERFUSS**

Before the Commission today are the final amendments to our Diversity Policy Statement, 52 Pa. Code §§ 69.801—69.809. I would like to thank the interested parties that filed comments and letters concerning these amendments as well as our Law Bureau for the work involved in finalizing these amendments. These amendments ensure that the Policy Statement is consistent with our recent Diversity Reporting Regulations, 52 Pa. Code §§ 51.11—51.13.²

As you may know, the Diversity Policy Statement retains important provisions that recommend major jurisdictional electric, natural gas, water and wastewater utilities, and major telecommunications utilities incorporate diversity into their business strategies in relation to their employment practices and the procurement of goods and services. These Diversity Policy Statement provisions, coupled with our Diversity Reporting Regulations, provide this Commission with valuable insight into the efforts utilities are making to attract the labor force, including the labor force generated through contracts and subcontracts, that is essential to providing safe, reasonable, efficient, and reliable service.

I would like to reiterate previous comments I have made in this proceeding that emphasize how utilities' diversity programs impact and strengthen their relationships with the customers that live and work in their communities and, ultimately, impact the way customers are served. I, again, commend the utilities for filing their first annual diversity reports last year, and I encourage them to continue with their diversity efforts and look forward to receiving their reports this year.

The Commonwealth has made some indelible marks by creating programs and opportunities to further develop a diverse workforce in Pennsylvania, such as the creation of the Commonwealth Workforce Transformation Program³ and the Governor's Executive Order 2023-18.⁴ I appreciate the Commonwealth's recent diversity and workforce equity actions, and I am excited for the Commission to continue engaging in actions that grow our diverse workforce here, as well as our accompanying workforce development efforts. I have been engaging in conversations with the Commonwealth's Chief Diversity Officer to see how this Commission can ensure that we are moving the needle to attract diversity of thought and diversity of perspective and to celebrate and support peoples' differences. It is critical for us to be self-aware and mindful of our actions so that we can be an employer of choice and attract and maintain a strong workforce to ensure that Pennsylvania residents and businesses are receiving safe, reasonable, efficient, and reliable utility service.

Date: February 1, 2024

KATHRYN L. ZERFUSS,
Commissioner

² On April 14, 2022, the Commission voted to adopt regulations requiring regular reporting on diversity programs and efforts by major jurisdictional utilities providing electric, natural gas, water, and wastewater services. The Diversity Reporting Regulations were enacted upon publication in the *Pennsylvania Bulletin*, at 52 Pa.B. 5934, on September 17, 2022.

³ The Commonwealth Workforce Transformation Program aims to assist Pennsylvania in growing its diverse workforce by using the federal investments of the federal Infrastructure Investment and Jobs Act of 2021, Pub.L. 117-169 (IIJA), and the federal Inflation Reduction Act of 2022, Pub.L. 117-169 (IRA), to create "good jobs with family-sustaining wages and equitable pathways to these good jobs for workers from all communities." Executive Order 2023-17.

⁴ Executive Order 2023-18 opens up new opportunities for small businesses and small diverse businesses to compete for state contracts by making the state procurement process more accessible and taking proactive steps and outreach to help these businesses grow and succeed.

Fiscal Note: Fiscal Note 57-343 remains valid for the final adoption of the subject regulations.

(Editor's Note: The Pennsylvania Code is amended by amending the statement of policy in 52 Pa. Code §§ 69.801—69.809 to read as set forth in Annex A.)

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

**CHAPTER 69. GENERAL ORDERS, POLICY
STATEMENTS AND GUIDELINES ON FIXED
UTILITIES**

**DIVERSITY AT MAJOR JURISDICTIONAL
UTILITIES AND MAJOR TELECOMMUNICATIONS
UTILITIES—STATEMENT OF POLICY**

§ 69.801. General.

From a business perspective, diversity should be associated with a public utility's business objectives and strategies. Diversity is an economic reality that public utilities should include in their corporate strategies now and in the future. The Commission encourages major jurisdictional 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).

§ 69.802. Definitions.

(a) The following words and terms, when used in §§ 69.801—69.809, have the following meanings:

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 telecommunications utility—A telecommunications public utility under 66 Pa.C.S. § 102 (relating to definitions) with 50,000 or more access lines.

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

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's commitment to increase minority/women/persons with disabilities/LGBTQ/veteran-owned business share of the utility's purchases and contracts.

(b) The following terms, when used in §§ 69.801—69.809, are used as defined in § 51.12 (relating to definitions).

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. [Reserved].**

§ **69.803. Guidelines for diversity development.**

The Commission encourages major jurisdictional 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 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 and the major telecommunications utility.

§ **69.804. Contracting recommendations.**

The Commission recommends that major jurisdictional 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 each major jurisdictional utility and each major telecommunications utility 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 each major jurisdictional utility and each major telecommunications utility 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 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 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 a major jurisdictional utility 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 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 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 utilities and the major telecommunications utilities may consider the following factors in setting their minimum improvement levels:

(i) Their total 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'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) Each major jurisdictional utility 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 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 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 or the major telecommunications utility should explain in its annual report the continued use of any exempt procurement provider.

(4) Each major jurisdictional utility 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 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. Each major jurisdictional utility 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 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 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 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 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 a minority/women/persons with disabilities/LGBTQ/veteran-owned business program.

(1) Each major jurisdictional utility 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) Each major jurisdictional utility 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 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 exempt procurements. See 52 Pa. Code § 51.12 (relating to definitions) for the definition of “exempt procurement.”

(4) Each major jurisdictional utility 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) [Reserved].

§ 69.808. External outreach.

Each major jurisdictional utility 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 and each major telecommunications utility depending on its size, service territory and specific lines of business. Each major jurisdictional utility 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 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 telecommunications utility'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 MBEs/WBEs that the major telecommunications utility contracts with for goods and services. Include percentage of dollars spent with MBEs/WBEs versus non-MBEs/non-WBEs.

(b) Information that is otherwise unobtainable to the 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.

[Pa.B. Doc. No. 24-429. Filed for public inspection March 29, 2024, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Policy Statement on Public and Private Fire Protection, 52 Pa. Code §§ 69.1501—69.1504

Public Meeting held
December 21, 2023

Commissioners Present: Stephen M. DeFrank, Chairperson; Kimberly Barrow, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

*Policy Statement on Public and Private Fire Protection,
52 Pa. Code §§ 69.1501—69.1504; M-2022-3033054*

Final Policy Statement

By the Commission:

On November 10, 2022, the Pennsylvania Public Utility Commission (PUC or Commission) entered a Proposed Policy Statement and Order wherein the PUC set forth recommended guidelines for the provision of public and

private fire protection service by water public utilities (Policy Statement). The Proposed Policy Statement was published in the *Pennsylvania Bulletin* at 53 Pa.B. 379 (January 14, 2023). The comment period closed on March 15, 2023. The Final Policy Statement is intended to provide water public utilities with a best practice guide for fire protection service and system hydraulic monitoring that the PUC considers reasonable and will be codified at 52 Pa. Code §§ 69.1501—69.1504. Ensuring that regulated fire protection service offerings are safe, reasonable, and adequate is a matter of utmost concern to the Commission and the public.

Background and Procedural History

The fire protection role of the Commonwealth's regulated water public utilities is a matter of utmost public importance. Ensuring that regulated fire protection service offerings are safe, reasonable, and adequate is likewise a matter of utmost concern to the PUC. Public and private fire protection services, whether serving a ubiquitous roadside fire hydrant or a sophisticated private commercial sprinkler system, are expected to supply adequate water safely, reliably, and immediately upon demand.

Amendments to the Commonwealth's Uniform Construction Code¹ over the past several decades have expanded the topic of fire protection to aspects of regulated water public utility service well beyond the provision of adequate numbers of functional fire hydrants. Internal fire protection services in the form of sprinkler systems have long been a requirement for commercial and industrial buildings. Municipal building codes and insurance requirements also increasingly mandate the installation of sprinkler systems in various types of residential construction as well. Lives and property depend on these emergency systems to work at a moment's notice. In turn, sophisticated water distribution system design, construction, management, and operations are required to accommodate and serve this type of high-volume instantaneous demand.

On June 16, 2022, the PUC adopted the Motion of Commissioner Ralph V. Yanora. The Motion directed the PUC's Bureau of Technical Utility Services (TUS), in conjunction with the PUC's Law Bureau, to solicit input from Class A water public utilities on the development of a policy statement reflecting a best practices approach to those aspects of fire protection services subject to PUC oversight. On June 29, 2022, the PUC issued a Secretarial Letter seeking comment from Class A water public utilities on the proposed policy. The PUC sought input on two areas specifically: (1) the use of hydraulic distribution system modeling required for fire protection; and (2) fire protection service afforded by current system design requirements. The Secretarial Letter was published at 52 Pa.B. 4064 (July 16, 2022).

Comments on the proposed policy were received from Aqua Pennsylvania, Inc. (Aqua), Columbia Water Company (Columbia), and the National Association of Water Companies—Pennsylvania Chapter (NAWC).

On November 10, 2022, the PUC entered the Proposed Policy Statement Order which set forth the proposed

¹The Act of Nov. 10, 1999 (P.L. 491, No. 45) (35 P.S. §§ 7210.101—7210.1103), known as the Pennsylvania Construction Code Act (PCCA). The PCCA directed the Pennsylvania Department of Labor and Industry to oversee statewide application and periodic review of certain international building and mechanical codes (i.e., regulations) known collectively as the Uniform Construction Code, 34 Pa. Code §§ 401.1—405.42, (PaUCC), last amended effective February 2022, 52 Pa.B. 971 (2/12/2022). See also National Fire Protection Association 13 (NFPA 13) Standard for the Installation of Sprinkler Systems, Section 8.2.6.6.4 (2022), <https://www.nfpa.org/codes-and-standards/13/nfpa-13> (last accessed 11/22/2023).