

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held April 4, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss, Statement
John F. Coleman, Jr., Statement, Dissenting

Diversity Reporting of Major Jurisdictional Utilities

L-2020-3017284

OPINION AND ORDER

BY THE COMMISSION:

On April 4, 2024, the Public Utility Commission (Commission) approved a Joint Motion of Vice Chair Kimberly Barrow and Commissioner Kathryn L. Zerfuss (Joint Motion) (Appendix A) proposing to have the Commission's Bureau of Technical Utility Services (TUS), in coordination with the Commission's Law Bureau, prepare and submit an annual report regarding the diversity efforts of the utilities subject to 52 Pa. Code §§ 51.11-51.13, for the annual reports filed in 2023 and 2024, respectively by May 31, 2024 and an annual report for each year thereafter by May 31st of each year (Joint Motion for an Annual Report). For the reason, set forth below, we shall seek comments consistent with this Opinion and Order.

History of the Proceeding

As noted previously, this matter originated from a Joint Motion approved by the Commission at its April 4, 2024 Public Meeting seeking comments to the Joint Motion directing that TUS and Law Bureau prepare annual reports summarizing the data compiled from the Commission's diversity reporting requirements.

On April 19, 2024, the Energy Association of Pennsylvania (EAP) filed Comments to the Joint Motion.¹

Discussion

At the outset we note, 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 include recommendations for the voluntary filing of diversity information by major jurisdictional utilities. The General Assembly has empowered the PUC to enact regulations governing public utilities. Section 501 of the Public Utility Code, provides in relevant part that:

[T]he commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

66 Pa. C.S. § 501(b).

¹ We note that EAP filed comments in response to the Joint Motion, raising procedural and substantive issues. EAP may file additional comments, if it chooses to do so, in response to this Opinion and Order. The Commission will consider all of the comments submitted by entities, including EAP, associated with this matter.

Section 504 of the Code, provides in relevant pertinent part that the PUC:

[M]ay require any public utility to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe, and special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce.

66 Pa. C.S. § 504.

Given the potential for interested parties that might be impacted by the Joint Motion, and who may not have been aware of the request for comments, to ensure due process by providing all interested parties with notice and an opportunity to be heard, we shall request comments from interested parties on the Commission's decision to issue an annual report regarding the diversity efforts of the utilities subject to 52 Pa. Code §§ 51.11-13 in accordance with the language set forth in the Joint Motion as stated above.

To that end, we will serve this Opinion and Order upon all interested parties and relevant jurisdictional utilities, and they will have fifteen (15) days from the entry date of this Opinion and Order to file comments to the Joint Motion for an Annual Report.

Conclusion

Accordingly, the Commission will issue this Opinion and Order seeking comments to the Joint Motion for an Annual Report within fifteen (15) days from its entry date consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That interested parties and applicable jurisdictional utilities have fifteen (15) days from the entry date of this Opinion and Order in which to file comments to the Joint Motion for an Annual Report, consistent with this Opinion and Order.

2. That the Secretary's Bureau serve a copy of this Opinion and Order upon interested parties and all applicable jurisdictional utilities, including, but not limited to, those served in Docket No. L-2020-3017284.

BY THE COMMISSION,



Rosemary Chiavetta,
Secretary

(SEAL)

ORDER ADOPTED: April 4, 2024

ORDER ENTERED: May 29, 2024

Appendix A

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

**Diversity Rulemaking of Major
Jurisdictional Utilities**

**Public Meeting held April 4, 2024
3017284-CMR**

**JOINT MOTION OF VICE CHAIR KIMBERLY BARROW
AND COMMISSIONER KATHRYN L. ZERFUSS**

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.¹ The diversity reporting regulations at Chapter 51 were enacted with publication in the *Pennsylvania Bulletin* at 52 Pa.B. 5934 on September 17, 2022.²

The regulation built upon the Commission's policy statement from 1995 which encouraged diversity reporting. Our 2020 update to the policy statement expanded diversity reporting guidelines to include minorities, women, persons with disabilities, LGBTQ, and veterans.

This regulation standardized the definitions and format required for the applicable major jurisdictional utilities,³ those with net plant in service of \$10 million or more, to annually file:

- (1) A copy of corporate policy committed to improving diversity in the workplace and in the procurement process.
- (2) A description of training implemented on diversity initiatives in employment and in the contract of goods and services.
- (3) The demographic composition of the major jurisdictional utility's workforce, reporting the number of employees by gender, race and ethnicity, LGBTQ, persons with disabilities and veterans.
- (4) A description of diversity recruiting strategies.
- (5) A description of diversity promotion efforts.

¹ Upon *sua sponte* reconsideration of the April 14, 2022 Order, the Commission issued a Final Rulemaking Order on Reconsideration to address the inclusion of a provision encouraging telecommunications utilities to file diversity reports and to restate the regulation in its entirety. *Diversity Reporting of Major Jurisdictional Utilities*, Docket No. L-2020-3017284 (Order entered June 16, 2022). In short, the Commission determined that inclusion of the telecommunications companies was not appropriate for the regulation.

² 52 Pa. Code §§ 51.11- 51.13.

³ As stated in footnote 1, telecommunication companies are not included in the regulation. However, pursuant to the Final Policy Statement and Order entered on February 1, 2024, Docket No. M-2023-3038267, the Commission encouraged major telecommunications utilities to report their diversity efforts and expressly included major telecommunications companies in the Diversity Policy Statement.

- (6) A description of diversity retention efforts.
- (7) A brief description of involvement with organizations promoting diversity.
- (8) A summary of diverse businesses that the utility contracts with for goods and services, including the percentage of dollars spent with diverse and non-diverse businesses.⁴

Keeping apprised of major jurisdictional utilities' diversity initiatives provides the Commission with valuable insight into how utilities are able to attract the labor force needed to provide safe, reasonable, efficient, and reliable service. Corporate diversity is not just a social justice issue, it is a financial issue. Recent studies have documented the relationship between diversity and improved financial performance.⁵ 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, as regulated monopolies, have a unique connection to the communities they serve and should draw on the strengths provided by the diverse citizens of this state. Properly structured, diversity programs can successfully leverage untapped talent pools in this time of increased utility workforce retirements, further supporting workforce development plans.

We believe that the transparency that comes with this reporting requirement is beneficial. As such, we direct our Bureau of Technical Utility Services, in coordination with the Law Bureau, to compile the information filed at this docket and issue reports regarding our utilities' filings that will be published annually on the Commission's website. The annual reports should contain statistics, including whether any trends have been identified in the information the utilities have provided, and shall retain the confidential nature of the information reported so that no specific company is identified. We emphasize that any sensitive information filed, such as LGBTQ specifics, person with disabilities data, and company policies related to procurement and trainings, will not be disclosed. Also, we note that because Pennsylvania is a diverse state, including the census statistics of a given utility service territory, we do not expect our utilities to achieve a certain diversity ratio or quota, nor will lack of diversity be cause for any further Commission action.

THEREFORE, WE MOVE THAT:

1. The Bureau of Technical Utility Services, in coordination with the Law Bureau, shall, by May 31, 2024, issue an annual report regarding the diversity efforts of the utilities

⁴ 52 Pa. Code § 51.13(a)(1)-(8).

⁵ See Dame Vivian Hunt, Sundiatu Dixon-Fyle, et. al., *Diversity Matters Even More: The Case for Holistic Impact*, McKinsey & Company (December 5, 2023), available at <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-matters-even-more-the-case-for-holistic-impact>; Cheryl Strauss Einhorn, *How a Diverse Workforce Can Help Company Performance*, Barron's (January 4, 2019), available at <https://www.barrons.com/articles/how-a-diverse-workforce-can-help-company-performance-51546625800>; Rocio Lorenzo and Martin Reeves, *How and Where Diversity Drive Financial Performance*, Harvard Business Review (January 30, 2018), available at <https://hbr.org/2018/01/how-and-where-diversity-drives-financial-performance>.

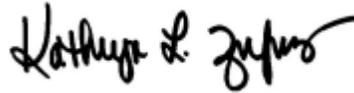
subject to 52 Pa. Code §§ 51.11-51.13, for the annual reports filed in 2023 and 2024, respectively.

2. The Bureau of Technical Utility Services, in coordination with the Law Bureau, shall, by May 31 of each year, issue the annual report regarding the diversity efforts of the utilities subject to 52 Pa. Code §§ 51.11-51.13.
3. If no responsive Comments to this Motion are filed by April 19, 2024, this matter will be adopted without further Commission action.
4. The Office of Special Assistants shall prepare an Opinion and Order consistent with this Motion.

April 4, 2024



Kimberly Barrow, Vice Chair



Kathryn L. Zarfuss, Commissioner