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July 20, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA E-FILING

**RE: Diversity Reporting for Major Jurisdictional Utilities—Notice of Proposed Rulemaking;
Docket No. L-2020-30017284**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission in the above-reference proceeding are the Comments of Citizens' Electric Company of Lewisburg, PA, Wellsboro Electric Company and Valley Energy, Inc. in the above-referenced matter. Copies of this filing are being served consistent with the attached Certificate of Service.

If you have any questions regarding this filing, please feel free to contact the undersigned. Thank you.

Very truly yours,

Pamela C. Polacek

By

Pamela C. Polacek

Counsel to Citizens' Electric Company of Lewisburg PA,
Wellsboro Electric Company and
Valley Energy, Inc.

Enclosure

c: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated this 20th day of July, 2021, in Venetia, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Diversity Reporting for Major :
Jurisdictional Utilities : Docket No. L-2020-3017284
Notice of Proposed Rulemaking :

**COMMENTS OF CITIZENS’ ELECTRIC COMPANY OF LEWISBURG, PA,
WELLSBORO ELECTRIC COMPANY AND VALLEY ENERGY, INC.**

On December 17, 2020, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued an Order initiating a Proposed Rulemaking to adopt regulations requiring diversity reporting for major jurisdictional utilities. The Proposed Rulemaking was published in the *Pennsylvania Bulletin* on June 5, 2021.¹ Pursuant to the schedule set forth in the Proposed Rulemaking Order, Citizens’ Electric Company of Lewisburg, PA (“Citizens”), Wellsboro Electric Company (“Wellsboro”) and Valley Energy, Inc. (“Valley”) (collectively, the “C&T Utilities” or “Companies”) hereby submit these Comments.²

The utility industry is pursuing many efforts to promote diversity, equity and inclusion. The Commission is conducting a utility careers campaign to attract new workers to the industry, including minority and diverse candidates. As the number of diverse candidates for utility jobs increase, the C&T Utilities hope to capture the attention of those candidates that view rural and small city workplaces as desirable locations for their careers. The C&T Utilities also consider diversity ownership of vendors when this information is provided and appropriate given the

¹ 51 Pa. Bull. 3134.

² The C&T Utilities also join in and endorse the Comments submitted by the Energy Association of Pennsylvania.

specific good or service. The C&T Utilities look forward to providing the Commission with information regarding those efforts in the annual filings submitted pursuant to the Amended Policy Statement at 52 Pa. Code §§ 69.801-69.809 that the Commission adopted in late 2020.³

The Proposed Rulemaking codifies the requirement to submit annual diversity reports containing information about utility workforce composition and vendor purchases. As drafted, the proposed regulations could be construed as requiring utilities to undertake specific actions to support diversity, equity and inclusion and to face negative repercussions from the Commission for failing to do so. The proposed regulations also include definitions that are not required to fulfill the reporting requirements, which could be construed to create substantive obligations for each utility to achieve "substantial objectives" and "minimum improvement levels." The C&T Utilities respectfully submit that the strategies and prioritization of achieving diversity goals is a matter that is within the discretion of the management and boards of each utility. This is especially evident regarding certain vendor arrangements that rely on the C&T family's relationship with the rural electric cooperative community.

A. Establishing and Monitoring Diversity, Equity and Inclusion Priorities is a Function for a Utility's Management and Board of Directors.

As an initial matter, the C&T Utilities urge the Commission to recognize the role of each utility's Board of Directors in establishing and monitoring diversity, equity and inclusion priorities for the organization. The Commission is specifically authorized by the General Assembly (through the Public Utility Code) to ensure that regulated utilities provide safe, adequate, reliable and continuous utility service, while also ensuring that the rates charged by the utility to consumers are just, reasonable and not unduly discriminatory. "Routine day-to-day

³ *Amended Policy Statement on Diversity at Major Jurisdictional Utilities*, Docket No. M-2020-3018089, Final Policy Statement and Order (Dec. 3, 2020) ("Policy Statement Order").

management decisions, which bear lesser risk to the utility as an ongoing concern, and which do not portend such ultimate danger of burdening the public with large rate increases to rescue the utility from extinction, or of impeding the utility's ability to raise capital through securities offerings, have traditionally been beyond the ambit of the PUC's control."⁴

The C&T Utilities each have Board-approved policies to promote diversity for their workforces and vendors. The C&T Utilities' management teams are responsible for meeting the policies and objectives set by their Boards. While the Commission maintains the authority to require periodic reports, the Order also notes that "jurisdictional utilities should continue to develop and implement utility-wide diversity programs for employment and contracting of goods and services." The Order also references a quantitative goal for those programs to "maintain or increase" the numbers of various categories of employees and vendors. The proposed regulations further incorporate definitions for "substantial objectives" and "minimum improvement level" that also indicate a qualitative assessment of each utility's diversity efforts to "maintain or increase" its reported statistics.

Diversity, equity and inclusion are important policies for the C&T Utilities, as evidenced by their Boards' actions in adopting the existing policies. Those policies must also be balanced with other important obligations and policies for each organization. For example, because the C&T Utilities are part of a corporate family, certain vendors are used by all of the corporate family. This is done to achieve economies of scale and to ensure interoperability of certain billing, computer, insurance, financing and other systems. In some situations, such as billing and finance, the corporate family has access through its rural electric cooperative parents to services

⁴ See *Pennsylvania Public Utility Commission v Philadelphia Electric Company*, 460 A.2d 734 (Pa. 1983).

from cooperatively-organized service providers.⁵ The choice between seeking a diversity vendor for those functions or continuing to use those combined purchases is a function of the Companies' managerial discretion.

Smaller utilities face additional challenges in procurement. Most of the Companies' outsourced work is for construction and right-of-way maintenance; however, the specific contracts and projects are generally for amounts that are much lower than the larger utilities. In these situations, where there is a smaller pool of interested contractors, the C&T Utilities lack bargaining leverage to insist that vendors provide diversity information, use diverse subcontractors or otherwise promote diversity. Local vendors also face the demographic challenges discussed below in seeking to diversify their workforces. The Companies include requests for diversity information as part of the bid solicitations; however, this information is not always provided. The Companies have been reluctant to reject bids based on the absence of data. Rejecting those bids could result in having a single vendor or paying more to complete the project, which would not be in the ratepayers' interests.

The C&T Utilities respectfully urge the Commission to be judicious in its decisions regarding the proposed regulations so utility management and boards maintain their appropriate role in the day-to-day management of their operations and major policy decisions. The following specific modifications should be made to reflect the managerial discretion that must be afforded to the utilities on these issues:

1. **Eliminate the First Sentence of §51.11:** The initial sentence in proposed Section 51.11 states "Diversity is an economic reality that each major jurisdictional utility is expected to recognize in its corporate strategy now and in

⁵ The National Rural Electric Cooperative Association ("NRECA") also is conducting a utility careers campaign, including targeted emphasis on recruiting diverse employees and veterans.

the future." By using the phrase "is expected," this sentence appears to elevate diversity among the competing priorities and policies established by its management. To eliminate any ambiguity, this sentence should be deleted from the final regulations.

2. **Remove Definitions of Long-term Plan, MIL (Minimum Improvement Level), Midterm Plan, and Short-term Plan from §51.13:** The proposed regulations repeat certain definitions from the Commission's diversity Policy Statement, including the four noted here. The proposed regulations do not use these terms. It is inappropriate to include defined terms in the regulations that are not part of the actual reporting obligation. In addition, the term MIL assumes a substantive evaluation of the "level or goal" that "indicates progress in a preferred direction", which is a matter of managerial discretion. The C&T Utilities urge the Commission to remove these terms from the final regulations.⁶
3. **Remove Definitions of Exempt Procurement and Substantial Objective from §51.14:** Similar to the definitions listed above, the terms exempt procurement and substantial objective are not used in the proposed regulations and should not be included in the definitions section. In addition, "substantial objective" is defined as one "which demonstrates a major jurisdictional utility's commitment to increase the share of the utility's purchases from and contracts with" diverse vendors. This seems to set a quota for assessing a utility's performance, rather than establishing a reporting requirement.

⁶ If the Commission retains the definition of MIL in the final regulations, then the definition should be identical to the definition in §69.802. Specifically, the following should be added: "An MIL is neither a requirement nor a quota, and no specific participation levels are intended."

4. **Modify the Filing Requirements in §51.15 (a) to Track the Requirements in**

§69.809(a): The Commission recently adopted an Amended Policy Statement setting forth the elements of the expected annual diversity filing. Those requirements are repeated in proposed regulation §51.15(a), but with slight modifications by eliminating the words "any" in requirements 1 through 7. The C&T Utilities recommend to reinsert "any" into those provision. Without the word "any", the regulations appear to presuppose that all of those items must be part of the utility's diversity efforts. That conclusion would undermine the Board's managerial discretion to establish and oversee the policies for the utility.

B. The Proposed Regulations Should Reflect Flexibility for Smaller Utilities.

During the proceeding to amend the Diversity Policy Statement, the Commission considered and declined to adopt a proposal by the Energy Association of Pennsylvania to modify the categories of utilities that are expected to file annual reports.⁷ The Commission noted that the term "major" is used for annual depreciation reports, service life studies and capital investment plans, and that the threshold of \$10 million is ascribed for each such requirement.⁸ The Policy Statement Order concluded that adopting a different threshold for the diversity reports, for example one based on the number of employees, would cause a divergence in the Commission's definitions of "major."

The C&T Utilities respect the Commission's prior decision and will not reargue here to be exempted from filing statistical information regarding their workforces and vendors. Notwithstanding, utilities with 100 employees or less are not required to submit workforce data under the United States Equal Employment Opportunity Commission's ("EEOC") requirements

⁷ Policy Statement Order, slip op. at 4-5.

⁸ *Id.* at 5 (citing 52 Pa. Code §73.2).

In addition, the C&T Utilities are not subject to the Securities and Exchange Commission's ("SEC") regulations and do not file the SEC's Diversity Assessment Report that was used as the model for the PUC's reporting form.⁹ Thus, unlike the larger utilities who are required to compile data for the EEOC and/or SEC, the Commission's filing requirements are unique and incremental obligations for the C&T Utilities. While those utilities covered by the EEOC and/or SEC reporting regime may have comprehensive systems to solicit data from new and existing employees, smaller entities may not have the same robust information. The C&T Utilities urge the PUC to be flexible in evaluating the report elements submitted by smaller utilities.

For example, the proposed reporting form notes that the Persons with Disabilities and LGBTQ categories should include "only employees who agree to be reported". The C&T Utilities do not currently solicit information such as this from their employees and are concerned that doing so could invade employees' privacy. This is especially implicated in a small workplace. Because the form is not being codified, it could be modified in the future. If this occurs, the Commission should recognize the ability of smaller utilities to depart from reporting some or all of the requirements.

The Commission has recognized that organizational size can be considered in adopting reporting requirements for major utilities. The Commission's regulations use various standards to determine which utilities must comply with filing and reporting requirements, including revenues and number of customers (e.g., the number of access lines for telecommunications utilities). In fact, the specific reporting requirement that the Commission relied upon in the Policy Statement Order to support using the \$10 million in assets threshold for diversity

⁹ *Id.* at 3 fn. 1.

reporting (i.e., Chapter 73—Annual Depreciation Reports) does not apply unless the electric, gas or water utility has more than \$20 million in annual intrastate revenue.¹⁰

The C&T Utilities urge the Commission to incorporate flexibility for small utilities by adding the following as Section 51.15(d): "For major jurisdictional utilities with 100 employees or less, the Commission shall accept reports that vary from the elements specified in subsection (a)."

C. The C&T Utilities Face Demographic Challenges in their Efforts to Diversify their Workforces.

The Commonwealth of Pennsylvania consists of 67 counties, each of which has a distinct racial and ethnic composition. Attachment A to these Comments contains a table obtained from the United States Census Bureau website comparing demographic information for Bradford County (Valley Energy), Union County (Citizens') and Tioga County (Wellsboro) to the totals for Pennsylvania. The three counties in which the C&T Utilities operate have lower minority percentages than the Commonwealth, with Bradford and Tioga Counties being substantially less diverse.

The C&T Utilities respectfully submit that the existing community demographics make it more difficult to attract diverse candidates for open positions. Rural areas are generally losing younger employees to more suburban and urban environments. The Companies are exploring methods to increase outreach regarding open job opportunities; however, those strategies may not result in increased minorities, women, disabled, LGBTQ and veteran employees, as the Commission desires. The Companies support the Commission's efforts to expand the pools of diverse applicants for jobs, and hope to reap the benefits of the enhanced workforce pool.

¹⁰ Compare 52 Pa. Code § 73.3(a) to Policy Statement Order, slip. op at 5.

WHEREFORE, Citizens' Electric Company of Lewisburg, PA, Wellsboro Electric Company and Valley Energy, Inc., respectfully urge the Commission to incorporate the Comments and modifications noted above in finalizing the proposed diversity reporting regulations.

Respectfully submitted,

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By _____
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