

Diversity, Equity, and Inclusion from a Public Utility Perspective

Due to recent legal developments, Diversity, Equity, and Inclusion (DEI) programs have become complex for corporations. However, public utilities face a unique landscape. Regulatory oversight, responsiveness to customers and investors, and a responsibility to provide essential services require a distinct DEI approach. Below is an overview of how state public utility commissions in Pennsylvania, New Jersey, and New York drive DEI initiatives.

PENNSYLVANIA

The Pennsylvania Public Utility Commission (PUC) has had a Diversity Policy Statement since 1995, originally encouraging public utilities to incorporate diversity in connection with the procurement of goods and services.¹ Over the past five years, the PUC has revised and amended the Diversity Policy Statement. These updates have broadened applicable definitions, clarified the scope of application, and updated reporting requirements. The Diversity Policy Statement now encourages public utilities to maintain a diverse workforce with related reporting obligations. The Policy Statement expressly encourages major public utilities to implement DEI programs, to articulate a commitment to DEI as corporate policy, to appoint utility managers to be responsible for the DEI program, and to set specified goals and objectives to improve diversity in both the workplace and in the procurement process.²

The PUC rationalizes its support for DEI efforts from a business perspective to drive the success of public utilities. "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."³ Commissioner Kathryn L. Zerfuss added, "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."⁴

NEW JERSEY

DEI efforts in New Jersey involving public utilities primarily focus on supplier spending and procurement. Public utilities of a certain size operating in the State of New Jersey are expected to report diversity spending to the New Jersey Board of Public Utilities (BPU) annually. New Jersey has also established the Supplier Diversity Development Council (SDDC) to work with diverse-owned businesses and forge a relationship between these businesses, public utilities, and the BPU. The SDDC identifies best practices for public utilities and advises the BPU on methods of reporting and assessing the measures taken by utilities.⁵

The BPU exercises its broad authority to perform management audits of regulated public utilities to encourage and provide oversight of DEI efforts. State law requires audits to be performed at least every six years for public utilities.⁶ Management audits involve an extensive review of public utilities and typically result in recommendations for new practices and procedures, which the BPU may order. DEI efforts made by public utilities are often scrutinized in such management audits. For example, the third-party auditor may assess whether public utilities employ a diverse workforce, track relevant diversity metrics, and consider diversity when making procurement and supply chain decisions. Both the auditor and the BPU use the management audit to assess the DEI efforts made by public utilities and will make recommendations to enhance such efforts.

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In 2022, the New York Public Service Commission (PSC) directed all electric, gas, and water utilities in New York State above a certain size to develop DEI plans and participate in a related working group. The PSC and its staff arm, the Department of Public Service, have explained that diversity from a public utility perspective will improve corporate success and management, and it will also improve customer service and correct missed opportunities for customer messaging and outreach, issues that are particularly important for public utilities.

The PSC has broadly interpreted its mandate to justify the requirement that public utilities maintain meaningful DEI programs. New York law provides the PSC with legal authority over public utilities to ensure that they provide safe and adequate service at just and reasonable rates,⁷ and the PSC found that consistent with this authority, utilities' DEI practices affect the provision of utility services. The PSC recently issued an order and released the results of an assessment of the public utilities' DEI plans.⁸ The DEI plans must focus on internal practices and employment, as well as external procurement and supplier spending. The DEI working group will continue to meet in 2024 and 2025 to follow up on the implementation of the DEI plans and assess progress.

ENHANCING PUBLIC UTILITY DEI INITIATIVES

State public utility commissions in Pennsylvania, New Jersey, and New York demonstrate a growing expectation for public utilities to prioritize DEI. These state regulatory bodies broadly construe their authority to encourage and mandate DEI efforts or diversity reporting. While commissions cannot fully dictate certain corporate management decisions,⁹ their regulatory oversight strongly influences a utility's approach and commitment to DEI.

Public utilities in this evolving regulatory environment require sophisticated strategies to meet current requirements and anticipate future changes and challenges. Public utilities must follow changing regulatory requirements and reporting mandates, update their DEI programs and offerings to meet competitive expectations and regulatory preferences, and navigate state Public Utility Commission proceedings and actions with these objectives in mind. Companies must remain compliant and ahead of the curve, including leveraging DEI for regulatory success and enhanced corporate achievement. Now more than ever, public utilities should integrate DEI into their corporate strategy effectively and develop a robust plan that resonates with regulators, stakeholders, and the communities they serve. This will allow companies to achieve excellence in DEI that transcends compliance and drives meaningful impact.

¹ 52 Pa. Code § 69.801.

² 52 Pa. Code § 69.803; *see generally* 52 Pa. Code §§ 69.801-69.809.

³ *Final Policy Statement and Order*, Docket No. M-2023-3038267 (Feb. 1, 2024).

⁴ *Id.*

⁵ Supplier Diversity Development Council, *available at* njbpusupplierdiversity.com.

⁶ N.J.S.A. § 48:2-16.4.

⁷ Public Service Law §§ 5, 65, 66, 89-b, 89-c.

⁸ *Order Releasing Assessment and Establishing Continued Process*, Docket No. 22-M-0314, Proceeding to Review Utilities' Diversity, Equity, and Inclusion Practices (Nov. 16, 2023).

⁹ *State of Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm'n*, 262 U.S. 276, 289 (1923) (“[W]hile the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and it is not clothed with the general power of management incident to ownership.”).