

April 4, 2023

VIA EMAIL (BOE.Clerk@baltimorecity.gov)

Board of Estimates
Baltimore City
100 N. Holliday St., Room 204
Baltimore, MD 21202

ATTENTION: Clerk, Board of Estimates

Re: Statement of Opposition to Amendment to Settlement Agreement with BGE

Dear Board of Estimates:

This letter is submitted in connection with the Board of Estimates meeting scheduled to be held on Wednesday, April 4, 2023. Please accept this correspondence as a statement made on behalf of myself and fellow Baltimore City residents Ajtiim Lee (“Mr. Lee”) and Malik Smith (“Mr. Smith”) in opposition to the Amendment to the Settlement Agreement (the “Amendment”) between Baltimore Gas & Electric Company (“BGE”) and the Mayor and City Council of Baltimore (the “City”) regarding the City’s Conduit System.¹

As you may recall, I represent Mr. Lee, Mr. Smith and seven other current or former BGE employees in the lawsuit *Kevin Alston, et al. v. Baltimore Gas & Electric Co., et al.*, Civil Action No. 24-C-21-002679, a potential class action alleging that BGE has a companywide and systemic pattern and practice of discriminating against Black utility workers by tolerating racial harassment and disparate treatment that create a hostile work environment for Black employees and by retaliating against those who oppose unlawful harassment and discrimination. As detailed in the nearly 300-page amended complaint filed on March 14, 2023, most of the plaintiffs personally experienced the use of racial slurs and/or other racially-motivated name-calling while working at BGE, including, but not limited to, use of the words “nigger,” “monkey,” “coon,” and “boy,” all of which were directed solely at employees or members of the public who were Black. Most of them, including both Mr. Lee and Mr. Smith, had nooses displayed or tied in front of them. In many instances, supervisors and managers were present when racist comments or conduct occurred but took no disciplinary action against the perpetrators. Further, even when such incidents were formally reported to BGE’s Human Resources Department or the Exelon Ethics Department, the offenders usually did not face any serious discipline. For instance, Mr. Lee took his concerns about witnessing a noose-tying directly to Calvin G. Butler Jr., who served as BGE’s first African American CEO from 2014 to 2019 and currently serves as

¹ This letter supplements the Statement of Opposition I submitted on behalf of Mr. Lee and Mr. Smith in connection with the Legislative Investigations Committee hearing held on February 23, 2023.

President and CEO of Exelon. However, Butler never even bothered to respond. Six of the plaintiffs were fired for patently discriminatory and/or retaliatory reasons and subsequently banned from working on any Exelon system, project or property, effectively foreclosing them from working for nearly all of the other utility companies in the region and ending their careers in the utility industry. In light of BGE's long history of discriminating and retaliating against Black utility workers, we strenuously oppose the Amendment and any other version of the conduit agreement that improperly exempts BGE from the contractor diversity requirements of the City Code.

As noted in our prior submission, while the Amendment gives lip service to "the importance of contractor diversity" and states that BGE will "make every good faith effort to equitably utilize the services" of minority and women's business enterprises, that language is not enforceable due to other language expressly stating that the City Code's contractor diversity requirements are not applicable. Further, the Agreement violates the provision of the City Code requiring every contract with the City to contain a mandatory non-discrimination clause stating that the "Contractor shall not discriminate on the basis of race" and "understands and agrees that violation of this clause is a material breach of the contract." *See* City Code Art. 5, § 29-15.

We were disturbed to learn that Acting City Solicitor Ebony Thompson ("Ms. Thompson") sought to include the non-discrimination clause and minority hiring goals mandated by the City Code in the Amendment and only agreed to omit those provisions under pressure and threats of litigation from BGE's General Counsel David E. Ralph. That Ms. Thompson initially sought to include those provisions in the Amendment is a tacit admission that, as drafted, the Amendment violates the letter and the spirit of the City Code.

We note that the Board of Estimates' Agenda states that, "while there are no M/WBE requirements in this agreement, BGE is obligated under a separate agreement with Maryland's Public Service Commission to utilize approximately 25% of minority and women-owned businesses, thereby obviating the need for such a term in this Agreement." That statement is demonstrably false for at least two independent reasons. First, the diverse supplier inclusion goals and, more specifically, the goal set forth in the February 6, 2009 Memorandum of Understanding between BGE and the Maryland Public Service Commission ("PSC") to achieve a 25% level of supplier spend is completely voluntary, not mandatory. Second, although both BGE and Ms. Thompson have touted the fact that BGE's 2021 Supplier Diversity Annual Report showed that it purchased 44% in goods and services from diversity certified suppliers, a close examination of the underlying data reveals that BGE spent just 17.41% on minority businesses while the majority or 23.82% of its diversity spend went to business owned by White women. BGE's recently released 2022 Supplier Diversity Annual Report shows that it purchased 42 percent in goods and services from diverse suppliers and spent just 18.54% on minority businesses while, once again, the majority or 23.48% of its diversity spend went to businesses owned by White women.

Further, a comparison of the latest figures to the numbers in the prior report reveals significant decreases in several key statistics year-over-year, including a 3% decrease in

the overall percentage or a \$3M decrease in the total amount spent with diverse suppliers, a \$95M decrease in the amount spent with Maryland businesses, and a \$5M decrease in the amount spent with Baltimore diverse businesses. Even worse, Black-owned businesses accounted for just 6.3% of BGE's diverse supplier spend in 2022, down from 6.41% the year before. These numbers and overall trends clearly demonstrate that BGE's compliance with the PSC's diverse supplier goal is no guarantee that it can or will meet the 27% minority business goal Ms. Thompson initially sought to include in the Amendment.

Finally, it also bears noting that the current report does not explain why BGE now claims that it only spent 41% on diverse suppliers in 2021 when the prior report stated (and as recently as last month company leaders still maintained) that it spent 44% on diverse suppliers in 2021. Whatever the explanation, that there is such a significant discrepancy in BGE's official reports to the PSC and that it has not even bothered to proffer any explanation for that discrepancy serves as further confirmation that City officials cannot and should not take what BGE says at face value and you certainly should not blindly trust BGE to make "every good faith effort" to equitably utilize diverse contractors.

Respectfully submitted,

/t/

Tonya Baña