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**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

Order Instituting Rulemaking for the Purpose of Reviewing
and Potentially Amending General Order 156 and to
Consider Other Measures to Promote Economic
Efficiencies of an Expanded Supplier Base and to Examine
the Composition of the Utilities' Workforce.

Rulemaking 09-07-027
(Filed July 30, 2009)

**COMMENTS OF THE GREENLINING INSTITUTE ON THE CALIFORNIA PUBLIC
UTILITIES COMMISSION 2010 GO 156 DIVERSITY EN BANC**

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I. INTRODUCTION

The Greenlining Institute ("Greenlining") respectfully submits the following reply comments to the California Public Utilities Commission ("Commission"), in response to the Commission's eighth annual *en banc* hearing on the state and progress of supplier diversity at the regulated utilities, under General Order ("GO") 156.

In Greenlining's opinion, this *en banc* hearing was the best yet. The discussion was robust and the questions posed by the Commissioners, Assemblyman Bradford, and the Honorable Ms. Moore, were finely honed and insightful. This is no doubt due in large part to the amount of activity taking place around supplier diversity as of late. Assemblyman Bradford's AB 2758, discussed in greater detail below, is a game-changer in modernizing the Commission's supplier diversity policies so they can best keep up with the hottest areas of growth in today's economy. Further, Commissioner Ryan's Smart Grid deployment plan decision, also discussed below, represents a substantial step forward in supplier diversity policy by cementing the issue firmly in one of the most expansive infrastructure projects the utility industry has seen in decades.

Moreover, this proceeding, and the ideas it has generated over the last several months, has informed the Commission, the utilities, and the diverse business community and paved the way for the kind of sophisticated conversation we saw at the *en banc*. It is all but certain that this event, already unique in years past, has now evolved to a degree of progress that is unmatched in any other sector or any other state's public utility arena. The cumulative impact of this year's events will create substantial and lasting benefits for utilities, for their ratepayers, and of course for diverse businesses for generations to come.

The conversation benefitted significantly, as it always does, from the contributions and tone set by the Honorable Gwen Moore. Ms. Moore's ongoing commitment to supplier diversity is a clear statement of just how important the issue is to diverse communities as well as to the overall health of the state. Her continued involvement in the issue is a great privilege to all participating stakeholders.

Greenlining also wishes to recognize Assemblyman Bradford's dedication to the issue of supplier diversity. Even beyond his landmark legislation, his presence for the duration of the *en banc*, his incisive questions, and his frank and honest commentary were a welcome addition to an already robust conversation. It is clear that the legacy being left by the inimitable Ms. Moore is in good hands with Assemblyman Bradford.

II. DISCUSSION

As Assemblyman Bradford pointed out, the first question asked in any conversation about a diverse business is inevitably "are they qualified?" The Assemblyman further noted that that question is almost never asked about a white-owned firm.¹ This observation is a stark reminder that despite the successes of the utilities' supplier diversity programs – and there have

¹ Reporter's Transcript ("RT") p. 33.

been many – we still have a long way to go. It is Greenlining’s hope that because of this proceeding this Commission will enact policies to make up some of that ground.

Given Greenlining’s mission, our comments here and throughout the proceeding have naturally focused on communities of color. However, many of the arguments and ideas advanced throughout have equal or perhaps even more weight with respect to the other categories of diversity recognized by GO 156.² Greenlining hopes that the Commission continues to read our comments in the inclusive spirit in which they are intended.

A. It’s Only A Matter of Time: Bring Cable to California’s Supplier Diversity Table.

Assemblyman Bradford aptly recognized that the cable industry in many ways “want[s] to perform as a utility.”³ By providing telephone service, the cable industry has teed itself up as a competitor – and a formidable one at that – to telecommunications companies like AT&T and Verizon, which are among the nation’s leaders in supplier diversity. The industry is a frequent visitor to the Commission, and in the eyes of at least one Commissioner it enjoys a highly favorable regulatory environment.⁴ Yet when the issue of supplier diversity arises, the cable companies are at best absent. At worst they are engaged in an “extremely conservative diatribe”⁵ on their unwillingness to report their supplier diversity data as would have been required under the un-amended AB 2758.

Yet cable companies are earning up to 25% of their revenues,⁶ some maybe even more, from California customers. As such, not only does “business as usual” for the cable companies

² LGBT-owned businesses, for example.

³ RT at 193-94.

⁴ Comments of Commissioner Simon, RT at 189.

⁵ Comments of Commissioner Simon, RT at 88.

⁶ Cox estimated during the hearing that California accounts for approximately 25% of its revenues.

constitute revenue drained away from California's diverse communities without ever being replenished, it weakens the financial stability of the companies' customer base. Put simply and from the perspective of communities of color, if our minority business enterprises ("MBEs") cannot flourish, our communities find it more difficult to afford cable's services. As such, improved supplier diversity practices and results are in the best interest of both the diverse business communities and the cable industry.

Greenlining therefore urges the Commission to go where it is already intending to go on this issue, and bring cable into the fold. Assemblyman Bradford indicated that cable companies should not be surprised if a legislative solution to the industry's intractability is posed. However, the Commission should not rely on the advent, soon or otherwise, of a legislative solution.

Instead, it should follow the suggestion offered up by Commissioner Simon and enter into Memoranda of Understanding ("MOUs") with each of the primary cable companies doing business in California. He noted that cable is not, and does not want to be, beholden to the Commission's regulatory authority. He further notes that an MOU would be precise in its objectives – laying the foundations for the cable industry to reinvest in the diverse communities that support it, but stopping short of bringing cable under the Commission's regulatory jurisdiction.

However, the Commission *must* ensure that the MOUs are assertive and aimed at producing true results. Essentially, the obligations and standards set in the MOU should echo those of GO 156, including full reporting on par with that which the traditional telecommunications companies have been engaged in for years.

Finally, it should be noted that just as in any other reporting industry, cable has its clear high-performers. Greenlining commends Cox for its dedication to supplier diversity, and the

many activities and processes in which it participates in order to achieve steady annual success. Greenlining hopes that the industry will continue to collaborate, so that other companies may benefit from the best practices implemented by Cox.

B. Underutilized and “Niche” Categories Indicate Holes in the Corporate Supplier Diversity Fabric.

Year after year, the utilities’ GO 156 reports show that procurement is still relatively segregated, with strong performance in blue collar areas like construction and weak performance in white collar areas like legal, financial, and real estate services. This disparity, and the antiquated beliefs it stems from and perpetuates, reared its ugly head at the *en banc* as well. For example, in response to questions by President Peevey, both AT&T and Verizon fell back on construction examples when asked about lagging supplier diversity performance in their wireless divisions.⁷

Undoubtedly, construction services do comprise a substantial portion of any company’s supplier diversity portfolio. However, it is insufficient and unsustainable to rely on just a few industries for the company’s supplier diversity success. Wireless companies, presumably, function like any other business, in that they require office supplies, furniture, fleet services, and professional services from outside companies. All of these purchases represent opportunities for progress, and should be seized rather than overlooked.

During the *en banc*, three underutilized categories were discussed that merit mention here. First, minority media was the subject of much discussion. Assemblyman Bradford noted that all the reporting companies utilize minority media firms for their communications with minority communities, but none seem to have considered using these same firms for their

⁷ RT at 170-71.

mainstream outreach, even where it would be advantageous to do so.⁸ For example, the Assemblyman noted that many, if not all, large mainstream media companies have non-urban dictates, which mean they do not buy electronic or print media in urban areas. If a company is not directly buying into minority media in urban areas and if its mainstream media company/ies are not buying into urban areas either, that company's message is not getting to customers in urban centers. At a time when the value of sensitive, timely, and proactive customer communications is so clearly highlighted, this possibility is highly disturbing.

Second, it was noted in public comment that many real estate commissions are paid by the seller, even though they are calculated as part of the purchase price paid by the utility.⁹ Ms. Andersson further noted that utilities buy and sell quite a bit of land and property, but that the real estate market is far from diverse. She urged that finding a way to include these indirectly-paid commission as a reportable spend would help to draw diversity into the real estate profession, in addition to the usual economic benefits realized by the utility. Greenlining urges the Commission to examine this issue more closely to determine whether there is an opportunity for progress in this area.

Finally, Mr. Corralejo noted that the utilities hold approximately \$500 million in customer deposits.¹⁰ He urged that the small and diverse business communities would benefit greatly if the utilities were to deposit these funds in community and minority-owned banks, which are more likely to lend to small and diverse businesses. At a time in which access to capital is particularly tight, this suggestion could not be more valuable. Though deposits do not

⁸ RT at 76.

⁹ RT at 284-86.

¹⁰ RT at 254-55. Greenlining has not independently verified the figure cited by Mr. Corralejo, but uses it here for the sake of argument.

“count” as procurement, Greenlining urges the Commission to explore ways to promote deposits of utility funds in community and minority-owned banks. Greenlining pledges to do the same.

C. In California, Green Must Encompass All Colors.

The green economy presents a unique opportunity to ingrain supplier diversity into the standard business practices of a large, multi-faceted industry that is still relatively near the beginning of its growth spurt in this country.¹¹ If all stakeholders collaborate to take advantage of this opportunity, communities of color stand to advance substantially toward equitable job and business opportunities in one of the only growth sectors in California’s economy today.

This year saw substantial progress toward promoting a diverse green economy in California. First, AB 2758, authored by Assemblyman Bradford, will highlight procurement related to renewable energy and other green projects, as well as broadband deployment and other “hot” sectors.¹² Second, Commissioner Ryan’s recent decision regarding deployment plans in the Smart Grid proceeding requires supplier diversity to be a component of the utilities’ Smart Grid deployment plans.¹³ Taken together, these policies are a very strong statement that California’s diversity must be reflected in our efforts to go green.

D. Technical Assistance Is Critical, But Must Be Done Right.

Technical assistance and capacity building were discussed or mentioned by the majority of the day’s speakers. Mr. Clanon noted that capacity building is where we can achieve “the biggest bang for the buck” in the coming years.¹⁴ Each reporting company engages in some

¹¹ Comments of Commissioner Simon, RT at 4-5.

¹² AB 25758, *available at* http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2751-2800/ab_2758_bill_20100929_chaptered.pdf.

¹³ Decision Adopting Requirements for Smart Grid Deployment Plans Pursuant to Senate Bill 17 (Padilla), Chapter 327, Statutes of 2009, D.10.06.047 in R.08.12.009 (June 24, 2010) *available at* http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/119902.htm.

¹⁴ RT at 25-26.

kinds of capacity building and technical assistance efforts, and Greenlining urges them to continue to do so. However, most of the diverse business representatives who spoke during the hearing noted that even more of such activities are required in order to meet existing needs. All of the representatives noted that these programs are helpful for the diverse businesses that participate in them.

Greenlining urges that expansion of technical assistance and capacity building programs be done efficiently and effectively. As to efficiency, Commissioner Ryan noted that certain basic business skills trainings are probably being offered by multiple companies and available to the same diverse businesses. She noted that combining forces in these areas and sharing these basic, common offerings would reduce duplication of efforts.¹⁵ As to effectiveness, Greenlining offers two recommendations. First, in designing both shared and individual utility technical assistance and capacity building programs, the utilities would be well served to consult with diverse business leaders such as those present at the en banc to determine what needs exist in the communities they represent. This will allow utilities to tailor their programs to the community's existing needs, thereby generating the most bang for their buck.

Second, any new technical assistance or capacity building program must have a strong sustainability component. According to Greenlining's sources, 75% of corporate request for proposals ("RFPs") now contain sustainability criteria, as procuring companies look to their suppliers to help reduce their total carbon footprint. Some of the utilities did mention green components to their offerings, but as the Commission looks to improve upon the existing opportunities, it is essential that sustainability play a key role.

¹⁵ RT at 160.

E. Suggested Amendments to GO 156.

Several comments made at the *en banc* give rise to suggestions for amending GO 156 in order to improve it for its next 20 years of success. These suggestions are enumerated below.

1. Codify the *en banc* itself.

Though it has been held in each of the last eight years, the *en banc* itself is not required under GO 156. Greenlining does not believe the current Commission would ever consider breaking this streak. However, times may soon be changing, and the makeup of the Commission could be substantially different in a matter of months. A great disservice would be done to diverse businesses, to the utilities, and to the Commission itself if the annual *en banc* were allowed to lapse. Greenlining urges the Commission to safeguard against the potential of their successors to be less proactive and less visionary than they, and to codify the requirement to hold an *en banc* as part of its amendments to GO 156.

2. Incorporate reporting of electric procurement.

The green economy and the great potential of prime supplier programs were two of the hearing's most consistent themes. The Commission can take yet another substantial stride toward ensuring a diverse green economy by incorporating reporting of electric procurement into GO 156, as it did with fuel procurement several years ago.¹⁶ This will allow utilities to bring their renewable energy providers – solar, wind, biomass, geothermal, fuel cell, and similar companies – into their prime supplier programs. This in turn will create demand for diverse suppliers for these renewable energy companies, thus creating a pipeline for diverse businesses into the green economy.

¹⁶ This idea was mentioned or alluded to by several speakers, including Commissioner Ryan and President Peevey. RT at 8, 15.

Perhaps anticipating the reaction of the utilities to this suggestion, President Peevey noted that the industries supplying electric power to the utilities are not terribly diverse. By recognizing that fact, especially in this forum with so many stakeholders present, President Peevey acknowledged that diversifying electric procurement will be difficult at first, but expressed confidence that progress will be made.¹⁷

As one of several key stakeholders in the issue of supplier diversity, Greenlining firmly supports President Peevey's position on the issue, recognizing the challenges but also the potential for great and lasting success. As such, Greenlining urges the Commission to include electric procurement in GO 156, and encourages the utilities to approach this challenge with the same skill and dedication (or perhaps even more) they currently apply to supplier diversity in other procurement categories.

3. Request reporting on numbers of contracts and of diverse contractors, in addition to dollars spent with diverse contractors.

Ms. Stanhoff, of the American Indian Chamber of Commerce, noted that at the end of the day, contracts are the best way to grow a business, diverse or otherwise.¹⁸ All the best efforts do not pay the bills or keep a company afloat – only contracts can do that. Mr. Allman, of Southern California Gas Company, noted that his company and San Diego Gas & Electric together utilize almost 600 diverse businesses that have annual revenues under \$1 million.¹⁹ Contracting opportunities with large, influential companies like California's regulated utilities are invaluable in strengthening and growing a small business because they allow the business to position itself to win bigger contracts from the utility as well as other companies.

¹⁷ RT at 15.

¹⁸ RT at 261-62.

¹⁹ RT at 84.

In order to promote increased numbers of contracts and of diverse contractors, Greenlining recommends that GO 156 begin to track the numbers of contracts utilities have with diverse contractors, as well as the number of diverse contractors they utilize each year.

4. Turn a spotlight on California.

“California First” was another consistent theme throughout the *en banc*. AB 2758 requires the Commission to report information to the legislature regarding procurement with diverse businesses with a majority of their workforce in California, but only to the extent that information is readily accessible. The Commission has the means to make that information readily accessible by ensuring that the Clearinghouse tracks that information and ensuring that the utilities report it as part of their annual reports under GO 156. Given the dire need in California for job creation, and the amount of revenue each reporting company earns in California every year (much of which is then spent out-of-state), this attention could not be more aptly timed. Greenlining urges the Commission to act with due haste to make this information available.

III. CONCLUSION

Assemblyman Bradford astutely noted that “a lot of times we confuse efforts with results.”²⁰ At the *en banc*, there was much discussion of efforts – what is being done today, what should be done tomorrow, what could be done better, what is working and what is not. However, at the end of the day, it’s about contracts. As Ms. Stanhoff noted, technical assistance is very valuable, but “the biggest technical support you can give somebody is to give them a contract and actually see that contract grow.”²¹ As the Commission concludes this proceeding

²⁰ RT at 13.

²¹ RT at 262.

and amends GO 156 in preparation for another 20 years of supplier diversity success, it would do well to remember that the efforts mean little without the results that should follow.

Dated: October 29, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alicia Miller, am 18 years of age or older and a non-party to the within proceeding. I hereby certify that I have this day served a copy of

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on all known parties to R.09-07-027 transmitting an e-mail message with the document attached to each party named in the official service list and by faxing or mailing a properly addressed copy by first-class mail with postage prepaid to those whose e-mail address is not available.

I certify that the foregoing is true and correct.

Executed in Berkeley, California on October 29, 2010

/s/ Alicia Miller
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