BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CAL

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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.	R.09-07-027 (Filed July 30, 2009)

OPENING COMMENTS OF AT&T CALIFORNIA (U 1001 C) AND CERTAIN OF ITS REGULATED AFFILIATES

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Pursuant to Rule 14.3 of the California Public Utilities Commission's Rules of Practice and Procedure, AT&T California and certain of its Regulated Affiliates[1] ("AT&T") hereby comment on the Proposed Decision of Commissioner Peevey ("Proposed Decision") issued on April 5, 2011.

I. INTRODUCTION

The Proposed Decision describes the robust participation by utilities as well as Community-Based Organizations ("CBOs") in this proceeding since its inception in July 2009. The Proposed Decision carefully identifies that the record developed over the course of more than 20 months includes initial responses to the Rulemaking followed by opening and reply comments; workshop reports with opening and reply comments; oral argument responses, comments, rebuttal, and reply comments; and finally, the post-*en banc* comments.[2] The Proposed Decision accurately recounts the immense amount of attention and resources that parties devoted to this proceeding and recognizes "[t]he parties' positions have evolved from somewhat entrenched general suspicions at the commencement of the proceeding, to a dialogue that is leading to joint efforts to maximize the use of [Technical Assistance] TA and [Capacity Building] CB resources."[3]

In response to the record established and the evolution of the parties' positions, the Proposed Decision embraces a wide array of proposals to further supplier diversity amongst utilities and their vendors in the State of California. For example, it endorses the Joint Utilities' supplier-diversity proposal of a baseline model of key program elements as well as the utilities' three-tiered approach to technical assistance and capacity building. The Proposed Decision also discusses upgrades to the Supplier Clearinghouse to include new business profiles for certified

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[1] The affiliates participating in these comments are AT&T Communications of California, Inc. (U 5002 C), AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C), Cagal Cellular Communications Corporation (U 3021 C), Santa Barbara Cellular Systems, Ltd. (U 3015 C), and Visalia Cellular Telephone Company (U 3014 C)), TCG Los Angeles, Inc. (U 5462 C), TCG San Francisco (U 5454 C), TCG San Diego (U 5389 C), AT&T Corp. d/b/a AT&T Advanced Solutions (U 6346 C), and SBC Long Distance, LLC d/b/a AT&T Long Distance (U 5800 C).

[2] Proposed Decision, p. 11.

[3] *Id*. at 12.

vendors, a central calendar of events sponsored by the utilities, posting of the TA and CB proposal from the Joint Utilities, and links to available utility and CBO training materials.[4] It recognizes that through this proceeding, utilities have agreed to aspirational interim steps to implement for their supplier diversity programs.[5] The Proposed Decision also requires electronic filing of GO 156 reports as well as posting of the reports on the Commission's website.[6] It takes a step forward by incorporating the *en banc* hearings directly into GO 156.[7] It also sets the path forward by identifying further workshops.[8] As demonstrated by these examples, the Proposed Decision provides an innovative approach of using a number of different means to creatively expand the way utilities design and implement their supplier diversity plans. Given the important measures taken in the Proposed Decision and the fact that this proceeding has been pending for close to two years, the Commission should move quickly to approve the Proposed Decision.

While the Commission has issued a Proposed Decision that takes great strides in furthering the supplier diversity programs developed by the utilities subject to GO 156, the Proposed Decision adopts revisions to GO 156 section 9.1.2 and creates a new section 9.1.10 that are not based on the record and should be rejected. In both of these sections, the Commission attempts to implement Assembly Bill 2758 that was approved by the Governor on September 29, 2010, at which point the record in this proceeding had been largely completed. While the *en banc* comments were received in October 29, 2010, after adoption of AB 2758, the Commission gave no notice that it would address AB 2758 in this proceeding. In fact, none of the parties addressed the legislation in their comments filed after the *en banc* hearing. The portion of section 9.1.2 that incorporates a request from Greenlining regarding reporting on MWDVBE contracts is also flawed and should be rejected. For these reasons as well as the others discussed below, the Commission should not adopt the changes to section 9.1.2 and the new section 9.1.10.

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[4] *Id*. at 50-53.
[5] *See id.* at Attachment B.
[6] *Id.* at 2.
[7] *Id.*
[8] *See id*. at 62 (Finding of Fact 10).

To the extent the Commission needs to implement this legislation, Staff should be authorized to hold a workshop soon after issuance of the Proposed Decision to address these issues in an expeditious manner.

II. THE REVISION TO GO 156 SECTION 9.1.2 SHOULD NOT BE ADOPTED.

The Proposed Decision incorporates new requirements into GO 156 section 9.1.2. No one proposed this specific revision to section 9.1.2. In Attachment C, the Proposed Decision revises this section to add the following new provisions shown in italics:

> A summary of WMDVBE purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total utility contract dollars awarded to outside vendors in those categories, *and with information regarding the total number of WMDVBEs with contracts, and the dollars awarded to such WMDVBEs. Each utility shall report the number of WMDVBEs who have the majority of their workforce working in California, to the extent such information is readily accessible. Each utility shall also report the number of WMDVBEs that received contracts during the reporting year.*

The sole basis in the Proposed Decision for adoption of the revision to section 9.1.2 is the following:

> Several parties recommended or agreed that certain changes be made to these requirements. Proposed changes that seem reasonable and lack opposition are:
>
> * * *
>
> Require reporting of total number of WMDVBEs that received contracts in addition to total value of WMDVBE contracts; and
>
> Make changes to conform to AB 2758:
>
> > Add wireless providers, include renewable energy procurement, wireless, broadband, smartgrid, & rail projects;
> >
> > Identify procurement from WMDVBEs with CA-majority workforce (to extent readily accessible)….[9]

The discussion cited above constitutes legal error and is not a sufficient basis for adopting the revisions to section 9.1.2. The Proposed Decision does not cite to any reference to indicate

[9] *Id.* at 28.

which party recommended these changes, nor does it indicate its basis for the determination that the new requirements are "reasonable" and "lack opposition." Because the Proposed Decision does not identify which party made the recommendation about reporting on the number of contracts, we reviewed the record to determine which party had made such a recommendation. Based on our research, we found that Greenlining raised the issue of reporting on the number of contracts with diverse vendors in October 2010:

> 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.[10]

Greenlining submitted these comments on October 29 after the *en banc* hearing as part of the last round of comments allowed into the record. Pursuant to the ruling dated August 26, 2010 from the Assigned Administrative Law Judge, parties were allowed to file comments on October 29, 2010 which were "limited to new or additional information which is discussed at the en banc hearing and which has not been previously addressed in the record."[11] There was no opportunity to file reply comments; therefore, parties were denied an opportunity to respond to the new requirement proposed by Greenlining. Consequently, there are no facts in the record regarding this proposal.

Furthermore, section 9.2.1 requires information that seems very similar to the data already provided by the utilities pursuant to Decision 06-11-028, which the Commission adopted at the request of Greenlining. This decision requires utilities to report annually on the data Identified in the following chart which is Attachment A to the decision:

[10] Comments of the Greenlining Institute on the California Pubic Utilities Commission 2010 GO 156 Diversity En Banc, p. 11 (Oct. 29, 2010).
[11] ALJ Ruling, p. 6 (Aug. 26, 2010).

	Data on Number of Vendors							
	Revenue Reported to CHS				Utility-Specific 2006 Summary			
# MWDVBEs	DVBE	MBE	WBE	Grand Total	DVBE	MBE	WBE	Grand Total
Under $1 million								
Under $5 million								
Under $10 million								
Above $10 million								
Total								

	Revenue and Payment Data							
	Revenue Reported to CHS				Utility-Specific 2006 Summary			
MWDVBE $M	DVBE	MBE	WBE	Grand Total	DVBE	MBE	WBE	Grand Total
Under $1 million								
Under $5 million								
Under $10 million								
Above $10 million								
Total								

The chart includes detailed information about the number and types of MWDVBEs paid in a given year and the amounts paid. It also includes the grand totals for these categories. The proposed changes to section 9.1.2 require reporting of the total number of MWDVBEs with contracts and the total amount paid.[12] In essence, section 9.1.2 requires the reporting of the data identified in the chart for the utility-specific grand totals for number of vendors and for revenue and payment data. There is no explanation in the Proposed Decision justifying the reporting of essentially the same data in two different reports. Because parties already provide information about the number of MWDVBEs paid and the amounts paid, Greenlining's new proposal should not be adopted.

Finally, neither Greenlining nor any other party provided any evidence regarding what benefits would accrue from it proposal. The reporting requirements in GO 156 have been in effect since 1988; based on the existing requirements for the annual report and plans, utilities provide a great deal of data regarding procurement. These results also show that the utilities who

[12] The revisions to section 9.2.1 also require a report of the number of WMDVBEs that received contracts during the reporting year. There is no explanation given as to why this data would be relevant if utilities already report on the number of WMDVBEs paid and the amounts paid. This is especially true in light of the fact that GO 156 does not include goals for the number of contracts entered with WMDVBE vendors.

have participated in GO 156 over the years have had great success in utilizing MWDVBEs. The reporting utilities also provide annual information pursuant to Decision 06-11-028.[13] Additional reporting of data merely creates regulatory burdens that are not necessary in light of the success of the supplier diversity programs, and the Proposed Decision does not explain how this new reporting adds any additional benefit over the existing reporting. Lacking such an explanation, the new reporting is arbitrary.

The workforce reporting requirement added to section 9.1.2 is also problematic. Although the Commission never gave notice to the parties that AB 2758 would be addressed in this proceeding, the Commission erroneously states that parties recommended or agreed that this new law should be implemented and that the proposed changes lacked opposition.[14] No such recommendations or agreements were reached in the proceeding. Thus, the Proposed Decision's depiction of this issue is simply incorrect as a factual matter and should be removed.

The Proposed Decision is also in error insofar as it interprets AB 2758 to revise the annual reports submitted by utilities to include workforce data. AB 2758 revised section 8283(e)(1) of the Public Utilities Code, which requires the Commission to submit an annual report to the Legislature, to require that:

> The report shall include information about which procurements are made with women, minority, and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California, to the extent that information is readily accessible.

The revised statute requires the Commission to include workforce data, where readily accessible, in its report; it does not require utilities to include this data in their annual reports. Thus, the Proposed Decision errs in adopting section 9.1.2, which revises the requirements for annual reports submitted by utilities.

Furthermore, the Proposed Decision indicates elsewhere that the Commission plans to obtain the workforce data from the Supplier Clearinghouse. The Proposed Decision states:

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[13] Decision 06-11-028 denied Greenlining's request to have reporting on the number of MWDVBEs and revenues paid added to GO 156.
[14] Proposed Decision, p. 28.

> In addition, AB 2758 provides legislative intent that the Clearinghouse consider an addition to the certification application to inquire where the majority of an applicant business's workforce is located.[15]

While the Clearinghouse does not collect this information today, it could add such an inquiry to its application for certification. For the existing bases of certified vendors, it could send an email asking them to update their profile with the workforce information. If the Commission wanted to discern which of these vendors had received a contract from a utility in the past, it could also create a query to gather this information. The use of the Clearinghouse to perform this function is much more efficient than trying to gather such information from a variety of different sources.

In sum, the adoption of section 9.1.2 would constitute legal error because (1) parties had no notice that the Commission was considering adoption of this provision; (2) parties had no opportunity to provide evidence regarding such a requirement; and (3) the Proposed Decision erroneously concludes that the revised section was agreed upon and unopposed when in fact, parties had no opportunity to address this provision.

III. THE COMMISSION SHOULD NOT APPROVE THE NEW GO 156 SECTION 9.1.10 SET FORTH IN THE PROPOSED DECISION BECAUSE THE PROCEEDING DID NOT ADDRESS ASSEMBLY BILL 2758.

As discussed above in Section II with respect to the request for workforce data in section 9.1.2, the Commission should not adopt the new section 9.1.10, which states:

> Utilities shall summarize WMDVBE purchases and/or contracts in product and service categories that include renewable and nonrenewable energy, wireless communications, broadband, smart grid, and rail projects, in addition to their current reporting categories. Utilities have discretion to segregate overlapped dollars. Utilities shall report renewable and nonrenewable energy procurement in a manner similar to their reporting of fuel procurement.

[15] *Id.* at 53.

As explained in the Proposed Decision, the references to renewable energy procurement, wireless, broadband, SmartGrid, and rail projects are based on the changes to the code made by AB 2758.[16] However, as explained above with respect to section 9.1.2, the Proposed Decision is erroneous in stating that parties recommended or agreed upon these changes. In fact, the parties did not address these issues, and the parties had no notice that the Commission planned to implement AB 2758 here. Because there is no record regarding this issue, adoption of section 9.1.10 would constitute legal error.

In addition to legal error, there are other problems with section 9.1.10 as drafted. First, it is not clear which entities should report on each identified category. For example, the Commission should clarify that telecommunications companies should not be required to report on renewable or nonrenewable energy, smart grids, or rail projects. Second, the Commission should clarify how the existing reporting structure based on SIC codes will be used so that the utilities report on these new categories in a uniform manner. Third, the parties should also reach an understanding of whether the amounts reported for these categories are included in the total procurement dollars reported in their annual reports. Fourth, the second sentence in the section is unclear in stating: "[u]tilities have discretion to segregate overlapped dollars." This sentence will lead to confusion as utilities each attempt to implement this new section. For these reasons, this section should be removed from the Proposed Decision.

IV. CONCLUSION

The Proposed Decision should be revised to delete the revisions to section 9.1.2 and the new section 9.1.10 because there is no record to support the adoption of these requirements. The Proposed Decision should be revised to authorize Staff to conduct a workshop regarding

[16] *Id.* at 28.

implementation of AB 2758. With this revision, the Commission should move expeditiously to approve the Proposed Decision.

Dated at San Francisco, California, this 25th day of April 2011.

Respectfully submitted,

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Appendix: AT&T's Recommended Changes to Proposed Decision's Findings of Fact and Conclusions of Law

Findings of Fact

1. The Joint Utilities supplier diversity program proposal is an important consensus document that serves as a baseline model of key program elements across the energy, telecommunications, and water industries.

2. The Joint Utilities supplier diversity program proposal provides a clear description to businesses seeking utility procurement contracts of the knowledge and training expected to be competitive and its inclusion in this decision as Attachment A will help disseminate the information to the public.

3. It will advance the goals and policies of GO 156 for utilities and CBOs that conduct TA and CB training to share resources, conduct outreach, work together, exchange constructive criticism, share best practices, and assist smaller and newer reporting companies with their supplier diversity programs.

4. The utilities identified their own interim steps, including quantified target goals and program initiatives, which are designed to improve the results of their GO 156 programs. These interim steps provide new opportunities for small and diverse businesses to identify procurement opportunities.

5. It will advance the goals and policies contained in GO 156 to require electronic filing of annual reports and posting of the reports on the Commission's website.

6. It will advance the goals and policies contained in GO 156 to require separate reporting on spending on electric procurement.

~~7. It will advance the goals and policies contained in GO 156 to require utilities to report the total number of WMDVBEs that received contracts in the year reported.~~

~~8. It will advance the goals and policies contained in GO 156 to make changes to conform with the statutory changes enacted by Chapter 475 Statutes of 2010, including addition of wireless providers and identification of WMDVBEs that have a majority of their workforce in California.~~

~~9~~7. It will advance the goals and policies contained in GO 156 for the utilities, CBOs, and Commission staff to work together to develop a networking event model where prime contractors and potential subcontractors meet to discuss (i) future large procurement projects, (ii) the benefits to primes of greater use of a diverse supplier base for subcontracts, and (iii) best practices for verification of prime contractor commitments to use diverse businesses.

~~10~~8. It will advance the goals and policies contained in GO 156 for the utilities, CBOs, and Commission staff to work together to develop workshops that identify best practices, including showcasing successful programs, encourage utilities to share experienced WMDVBEs, explore the mechanics of bid partnerships, review the current state of advertising spend, and identify relevant consulting specialties.

~~11~~9. It will advance the goals and policies contained in GO 156 for utilities and disabled veterans groups to work together to complete development of an updated database of DVBE profiles and make it publicly available.

~~12~~10. It will advance the goals and policies contained in GO 156 for CBOs to initiate a dialogue with utilities about prompt payment provisions and flexible bond requirements in some contracts.

~~13~~11. It will advance the goals and policies contained in GO 156 for CBOs to develop a workshop for WMDVBEs on obtaining credit, particularly from community banks, and to work with the utilities and Commission staff to develop a workshop on cost effective options for small business insurance.

~~14~~12. It will advance the goals and policies contained in GO 156 for utilities to seeking to diversify their supplier base should (i) actively consider what contracts could be unbundled into two or more smaller contracts, particularly contracts greater than $1 million, (ii) have conversations with CBOs about potentially fruitful procurement areas for unbundling.

~~15~~13. It will advance the goals and policies contained in GO 156 for utilities to educate their management on the value of the program and how to integrate supplier diversity into all business lines.

~~16~~14. It will advance the goals and policies contained in GO 156 for utilities to develop or strengthen existing mentoring programs.

~~17~~15. It will advance the goals and policies contained in GO 156 for CBOs to reach out to the reporting companies and ask to be included in new or existing programs.

~~18~~16. It will advance the goals and policies contained in GO 156 for CBOs and utilities to host matchmaking events to link up small and large suppliers.

~~19~~17. It will advance the goals and policies contained in GO 156 for utilities to (i) post future procurement plans on their websites to the extent possible, and (ii) work with CBOs to develop a general framework or guidelines for making planned procurement public.

~~20~~18. It will advance the goals and policies contained in GO 156 for utilities to work with CBOs and WMDVBEs to develop a notice to RFP participants of feedback rights on losing bids.

~~21~~19. It will advance the goals and policies contained in GO 156 for utilities to consider pre-bid conferences and other means to improve the quality of submitted bids.

~~22~~20. It will advance the goals and policies contained in GO 156 for CBOs to seek out procurement information, build working relationships with utility procurement personnel, and take the lead in timely informing their members and communities of bid opportunities.

~~23~~21. It will advance the goals and policies contained in GO 156 for the Supplier Clearinghouse to complete implementation of the next phases of the website upgrades, including the public database and new business profiles.

~~24~~22. It will advance the goals and policies contained in GO 156 for the Supplier Clearinghouse to keep a current public calendar on its website with information voluntarily submitted by utilities, CBOs, and the Commission about all networking, matchmaking, training, and TA events.

~~25~~23. It will advance the goals and policies contained in GO 156 for the Supplier Clearinghouse to post on its website the Joint Utility supplier diversity program proposal,

including TA and CB elements, and to work with the utilities and CBOs to expand the website to include links to available utility and CBO training materials.

~~26~~24. It will advance the goals and policies contained in GO 156 for the utilities to initiate a conversation with CBOs and the Supplier Clearinghouse over (i) the merits of incorporating NMSDC and WBENC certification renewals, and (ii) development of a webpage of links directly to utility procurement webpages where open RFPs are listed.

~~27~~25. It will advance the goals and policies contained in GO 156 for CBOs to obtain certification training from the Clearinghouse and hold workshops in their communities to help grow certification of WMDVBEs.

~~28~~26. It will advance the goals and policies contained in GO 156 for CBOs to set clear organizational goals for adding WMDVBEs to the database particularly in targeted underutilized areas.

~~29~~27. It will advance the goals and policies contained in GO 156 for CBOs to work with the utilities to expand and improve the TA and CB elements of the Joint Utilities proposal to assure this training actually reaches potentially competitive businesses.

~~30~~28. It will advance the goals and policies contained in GO 156 for utilities to coordinate outreach and training spending with CBOs actively working in their service territories to increase the number of certified WMDVBEs and to link small and diverse businesses to available TA and CB.

~~31~~29. It will advance the goals and policies contained in GO 156 to authorize an annual *en banc* hearing by the Commission that includes top utility executives and experienced leaders of CBOs.

Conclusions of Law

1. GO 156 should be amended to require electronic filing of annual reports and posting of the reports on the Commission's website.

2. GO 156 should be amended to require separate reporting on spending on electric procurement.

~~3. GO 156 should be amended to require utilities to report the total number of WMDVBEs that received contracts in the year reported.~~

~~4~~3. Staff should convene a workshop to determine what changes are needed to implement ~~GO 156 should be amended to make changes to conform with~~ the statutory changes enacted by Chapter 475 Statutes of 2010.

~~5~~4. GO 156 should be amended to authorize an annual *en banc* hearing by the Commission that includes top utility executives and experienced leaders of CBOs.

~~6~~5. The Commission's USDP staff are fully authorized by Pub. Util. Code §§8281-8286 and GO 156 to provide all reasonable assistance to utilities, CBOs, and small and diverse businesses to implement the findings of fact in this decision, subject to budget and staffing constraints.