

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Update General Order 156 to Comply with Assembly Bill 1678 by Extending Provisions of the Utilities' Supplier Diversity Program to Lesbian, Gay, Bisexual and/or Transgender (LGBT) Business Enterprises.

R. _____

**ORDER INSTITUTING RULEMAKING
TO UPDATE GENERAL ORDER 156 TO COMPLY WITH
ASSEMBLY BILL 1678 BY EXTENDING PROVISIONS OF THE UTILITIES'
SUPPLIER DIVERSITY PROGRAM TO LESBIAN, GAY, BISEXUAL AND/OR
TRANSGENDER (LGBT) BUSINESS ENTERPRISES**

Summary

We institute this rulemaking to update and amend General Order (GO) 156 to comply with Assembly Bill 1678 by extending the provisions of the utilities' Supplier Diversity Program to the Lesbian, Gay, Bisexual and/or Transgender (LGBT) Business Enterprises and to encourage the Commission-regulated utilities to seek the full and fair participation of the LGBT-owned business enterprises in their private procurement programs. This Rulemaking also proposes other minor corrections to GO 156.

1. Background

Beginning in 1986, the California Legislature enacted a series of statutes to encourage a fair proportion of total utility contracts and subcontracts for

products and services be awarded to women-owned, minority-owned, and disabled veteran-owned business enterprises.¹ (Pub. Util. Code §§ 8281-8286.)²

On September 26, 2014, Governor Brown signed AB 1678, which further amended California Public Utilities Code Sections 8281 *et seq.* and extended the provisions of the utilities' Supplier Diversity Program under GO 156 to the business enterprises owned by the lesbian, gay, bisexual, or transgender (LGBT) person. Specifically, this bill:

- (1) Requires the Commission to adopt the LGBT status qualifiers created by the National Gay & Lesbian Chamber of Commerce (NGLCC); and
- (2) Authorizes the Commission to update the LGBT status qualifiers as appropriate.

The combined purposes of these statutes, including AB 1678, are to (a) encourage greater economic opportunity for women, minority, disabled veteran and LGBT business enterprises; (b) promote competition among regulated public utility suppliers to enhance economic efficiency in the procurement of electrical, gas, and telephone corporations' (and their affiliates') contracts; and (c) clarify and expand the program for the utilities' procurement of products and services from those enterprises. (§ 8281(b)(2).)

¹ The Legislature passed Assembly Bill (AB) 3678 (Stats. 1986, ch. 1259), which requires California regulated utilities with \$25 million in annual revenues to establish a program to procure goods and services from woman- and minority-owned business enterprises. In response to AB 3678, the Commission issued General Order (GO) 156, which established guidelines for the utilities to follow in meeting these requirements.

² Unless otherwise indicated, all future statutory references to "section" mean to the Public Utilities Code.

Commission-regulated electrical, gas, and telephone corporations with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates are directly covered by these laws. (§§ 8283-8285.) Commission-regulated water utilities, that are privately owned and operated, were not originally required to participate in the program; however, the largest water companies in the State have been voluntarily complying even before 2009. Then in 2009, the Legislature added water companies with gross annual revenues exceeding \$25,000,000.³ Thus, as of 2009 those water companies are also covered by these laws. (§§ 8283-8285.) Over the years, other smaller utilities have voluntarily chosen to similarly expand their procurement programs to achieve the statutory purposes.

GO 156, first adopted in 1988, sets forth Commission guidelines for the utilities to follow in meeting the statutory goals for woman-owned, minority-owned and disabled veterans-owned business enterprises (WMDVBEs) in furtherance of §§ 8281-8286.

In the current version of GO 156, Attachment A,⁴ the Commission established voluntary procurement goals for each covered utility of 5% for woman-owned, 15% for minority-owned, and 1.5% for disabled veteran-owned business enterprises.⁵ Because these are voluntary procurement goals, there is no penalty for failure of any utility to meet or exceed their annual goals. To date,

³ Water companies were added by Stats. 2008, ch. 316.

⁴ The current version of GO 156, reflecting all amendments through the issuance of D.11-05-019, D.12-01-030 and D.12-01-031, is attached to this Order as Attachment A.

⁵ *Id.* at § 8.2.

the utilities have reported annually on their procurement purchases from WMDVBEs, and their progress in meeting the procurement goals.⁶

GO 156 has been amended numerous times over the years, most recently by Decision (D.) 11-05-019.⁷ Nothing in the current version of GO 156, Attachment A, or proposed amended version, Attachment B, authorizes or permits a utility to use set-asides, preferences, or quotas in administration of its WMDVLBE program and utilities retain the authority to use legitimate business judgment to select a supplier for a particular contract.⁸

Until now, GO 156 authorized and participating utilities established a joint clearinghouse to certify women-owned (WBE), and minority-owned (MBE).⁹ As further updated in the Attachment B, proposed amended GO 156, the clearinghouse would also certify LGBT-owned (LBE) suppliers.¹⁰ Disabled veteran-owned business enterprises (DVBE) are certified by the California State Department of General Services, Office of Small Business and Disabled Veterans Business Enterprise Services. Under the proposed amended GO 156, Attachment B, a utility that contracts with a supplier who is not certified may not count those expenditures toward their annual goal nor can the contract be

⁶ Until the recent signing of AB 1678, the utilities were only required to report on WMDVBEs. The proposed amended GO 156, Attachment B, would extend the reporting requirements to include LGBT-owned business enterprises.

⁷ D.12-01-030 and D.12-01-031 made minor corrections to D.11-05-019.

⁸ Attachment A or B.

⁹ See Attachment A, GO 156 reflecting all amendments through the issuance of D.11-05-019, D.12-01-030 and D.12-01-031.

¹⁰ Attachment A at 3.1.

included in the WMDVLBE expenditures listed in the utilities' annual reports to the Commission.

2. Discussion

The proposed amended GO 156, attached to this order as Attachment B, revises GO 156 in compliance with AB 1678 and the amended Public Utilities Code Sections 8281 *et seq.* and expands the provisions of the utilities' Supplier Diversity Program under GO 156 to the LGBT-owned business enterprises. Specifically, the proposed amended GO 156 accomplishes the following:

- (1) Updates the provisions of GO 156 to extend the provisions of the utilities' Supplier Diversity Program under GO 156 to LGBT-owned business enterprises.
- (2) Adopts the LGBT status qualifiers created by the National Gay & Lesbian Chamber of Commerce (NGLCC).
- (3) Establishes certification and post-certification renewal process for LGBT-owned business enterprises.
- (4) Makes minor corrections.

3. Preliminary Scoping Memo

We make the following preliminary determinations:

3.1. Issues

The general scope of this proceeding is to update and amend GO 156 to extend the provisions of the utilities' Supplier Diversity Program under GO 156 to LGBT-owned business enterprises, in compliance with AB 1678 requirements, and to make minor corrections to the GO 156. More specifically, we pose the following questions for all interested parties to comment on.

1. Does the proposed amended GO 156 comply with the mandates of AB 1678?
 - (a) Review the Attachment B, proposed Amended GO 156.

- (b) Review AB 1678 that directs the Commission to adopt the LGBT status qualifiers created by the NGLCC and the authorization for the Commission to update those qualifiers as appropriate.
2. Determine when, if any, and what, if any, should be the target date and target percentage goal for the LGBT-owned business enterprises? Why are your proposed target date and target percentage the reasonable goals for the LGBT-owned business enterprises?
 3. Should the Commission adopt any other status qualifiers or requirements other than the LGBT status qualifiers created by the NGLCC? If so what and why?
 4. Are there any other issues that the Commission should consider as it undertakes this update of GO 156 program?

3.2. Category

This proceeding is preliminarily categorized as quasi-legislative. *Ex parte* communications are permitted without restriction or reporting requirement, until and unless the assigned Commissioner changes the category of the proceeding.

3.3. Category

We preliminarily determine that hearings are not needed.

3.4. Schedule

The following schedule is adopted, and may be revised by the Administrative Law Judge as required to promote the efficient and fair resolution of the rulemaking:

Opening comments	November 5, 2014
Reply comments	November 12, 2014
Proposed decision	(Target) December 2014
Commission vote	(Target) January 2015

Any person who objects to the preliminary categorization of this rulemaking or to the preliminary hearing determinations shall state their objections in their Opening Comments.

This proceeding will conform to the statutory case management deadline for quasi-legislative matters set forth in Pub. Util. Code § 1701.5.

4. Service List and Service of OIR

This proceeding could affect all Commission-regulated utilities required to participate in the GO 156 program. We will, therefore, direct that this rulemaking be served on all such Commission-regulated utilities listed on Attachment C and parties on the service lists of the two most recent rulemaking proceedings to amend GO 156, Rulemaking (R.) 09-07-027 (2011 OIR to Amend GO 156) and R.06-04-011 (2006 OIR to Amend GO 156). The Executive Director shall also serve copies of this rulemaking on the utilities and parties in the proceedings listed below:

- R.10-12-007 (OIR on Energy Storage Cost-Effectiveness)
- R.12-06-013 (OIR on IOUs' Residential Rate Structure)
- R.14-08-013 (OIR on Distribution Resources Plans)
- R.08-12-009 (OIR on SMART Grid)
- R.13-11-005 (OIR on EE Rolling Portfolios)
- R.11-05-017 *et al.* (Consolidated Low Income Energy Efficiency Proceeding)
- R.10-11-014 (Recycled Water OIR)
- R.11-02-019 (Gas Safety OIR)
- R.13-01-010 (California Teleconnect Fund OIR)
- R.13-12-011 (OIR on Water-Energy Nexus)
- R.11-03-013 (Lifeline OIR)

Service of this OIR does not confer party status or place a person who has received such service on the Official Service List for this proceeding.

The combined service lists from Attachment C and above listed proceedings will constitute a temporary service list for this rulemaking proceeding and should be used for service of all pleadings until a service list for this proceeding is established.

5. Addition to Official Service List and Party Status

While all the Commission-regulated electrical, gas, and telephone corporations with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates are bound by the outcome of this proceeding, only those who notify us that they wish to be on the official service list will be placed on the official service list.

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure. Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. (*See* Rule 1.9(f).) The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). To be included on the service list for this proceeding, the request to the Process Office must include pertinent information such as:

- Name and party represented, if any
- Address
- Telephone number

- Email address
- Request for party, state service or information only status.¹¹
- Specify the docket number of this rulemaking in the subject line

Persons who file responsive comments thereby become parties to the proceeding (*see* Rule 1.4(a)(2)) and will be added to the “Parties” category of the official service list upon such filing. In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the “Information Only” category as described above; they will be removed from that category upon obtaining party status.

A temporary service list will be posted on the Commission’s website at www.cpuc.ca.gov as soon as practicable and will be updated with an official service list, as soon as practicable. Parties should ensure they are using the most up-to-date service list by checking the Commission’s website prior to each service/filing date.¹² Those seeking party status shall comply with Rule 1.4 (b).¹³

¹¹ Party status is for those planning to actively participate in this rulemaking through, at a minimum, submission of written comments on the questions raised in the Preliminary Scoping Memo. State service status is for employees of the State of California who will not be submitting comments. Information Only status is for those who wish to follow the proceeding and receive documents associated with it, but who will not be actively participating.

¹² In addition, pursuant to Rule 1.4 (a), persons and entities seeking party status may (a) file a response to this rulemaking; or (b) file a motion to become a party at a later date. If you do not provide your information to Process Office in advance of filing a response, you will not receive service of responses by parties.

¹³ Rule 1.4(b) states that those seeking party status shall “(1) fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding; and (2) show that the contentions will be reasonably pertinent to the issues already presented.”

We encourage electronic filing in this proceeding. Electronic filings should be made according to Rule 1.10 and Resolution ALJ-188. Consistent with those rules, a hard copy of all pleadings shall be concurrently served on the assigned Administrative Law Judge.

6. Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

7. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the rules contained in Article 1 of the Commission's Rules of Practice and Procedure. (See particularly Rules 1.5 through 1.10 and 1.13.)

If you have questions about the Commission's filing and service procedures, contact the Docket Office.

8. Public Advisor

Any person or entity interested in participating in this Rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's office in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825.

9. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file its notice of intent to claim intervenor compensation within 30 days of the filing of reply comments, except that notice

may be filed within 30 days of a prehearing conference in the event that one is held. (See Rule 17.1(a)(2).)

O R D E R

IT IS ORDERED that:

1. The Commission institutes this Rulemaking on its own motion to update and amend General Order 156 to comply with Assembly Bill 1678 by extending the provisions of the Utilities' Supplier Diversity Program to Lesbian, Gay, Bisexual and/or Transgender Business Enterprises.

2. The Executive Director shall cause this Order Instituting Rulemaking to be served on all regulated utilities that are required to participate in the General Order 156 program pursuant to Public Utilities Code Section 8283 with this Order Instituting Rulemaking. Attachment C lists those entities as reflected in the Commission records. Any error or omission in Attachment C shall not excuse any participating regulated utility from being bound by the outcome of this proceeding.

3. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be served all parties on the service lists of the two most recent rulemaking proceedings to amend General Order (GO) 156, Rulemaking (R.) 09-07-027 (2011 OIR to Amend GO 156) and R.06-04-011 (2006 OIR to Amend GO 156) and the following dockets:

- R.10-12-007 (OIR on Energy Storage Cost-Effectiveness)
- R.12-06-013 (OIR on IOUs' Residential Rate Structure)
- R.14-08-013 (OIR on Distribution Resources Plans)
- R.08-12-009 (OIR on SMART Grid)
- R.13-11-005 (OIR on EE Rolling Portfolios)
- R.11-05-017 *et al.* (Consolidated Low Income Energy Efficiency Proceeding)
- R.10-11-014 (Recycled Water OIR)
- R.11-02-019 (Gas Safety OIR)
- R.13-01-010 (California Teleconnect Fund OIR)

R.13-12-011 (OIR on Water-Energy Nexus)

R.11-03-013 (Lifeline OIR)

Service of this Order Instituting Rulemaking does not confer party status or place a person who has received such service on the Official Service List for this proceeding.

4. The combined service list from the dockets listed in Ordering Paragraph 3 above with the list of regulated utilities on Attachment C will constitute a temporary service list for this rulemaking proceeding and that temporary service list shall be used for service of all pleadings until an official service list for this proceeding is established.

5. The Commission's Process Office shall create a temporary service list which combines the list of utilities listed on Attachment C and the service lists of the dockets listed in Ordering Paragraph 3 above and post the temporary service list on the Commission's website (www.cpuc.ca.gov) for this rulemaking proceeding docket as soon as practicable.

6. An official service list for this proceeding shall be created by the Commission's Process Office and posted on the Commission's website (www.cpuc.ca.gov) for this rulemaking proceeding docket as soon as it is practicable. Parties may also obtain the service list by contacting the Process Office at (415) 703-2021.

7. Parties serving documents in this proceeding shall comply with Rule 1.10 regarding electronic service. Any documents served on the assigned Commissioner and Administrative Law Judge shall be both by e-mail and by delivery or mailing a paper format copy of the document.

8. This Rulemaking is preliminarily determined to be quasi-legislative. It is preliminarily determined that evidentiary hearings are not needed in this proceeding.

9. The proceeding schedule set forth in Section 4.4 of this Order is adopted, and may be revised by the Administrative Law Judge as required to promote the efficient and fair resolution of the rulemaking.

10. Any person may file opening comments on the attached proposed revised General Order 156 by November 5, 2014, and reply comments by November 12, 2014. Commenters shall include in their opening comments any objections regarding the category, need for hearing, issues to be considered, or schedule.

11. Any person interested in being added to the official service list must follow Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

12. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file its notice of intent to claim intervenor compensation within 30 days of the filing of reply comments, except that notice may be filed within 30 days of a prehearing conference in the event that one is held. (*See* Rule 17.1(a)(2).)

13. The assigned Commissioner or assigned Administrative Law Judge may revise the schedule, as required to promote the efficient and fair resolution of the rulemaking.

This order is effective today.

Dated _____, at San Francisco, California.