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Decision 03-11-024 November 13, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purpose of Amending General Order 156.	Rulemaking 03-02-035 (Filed February 27, 2003)

DECISION AMENDING GENERAL ORDER 156 AND CALLING FOR WORKSHOPS

I. Summary

This rulemaking resulted from the Petition of the Greenlining Institute and Latino Issues Forum (Greenlining/LIF) to institute a rulemaking to amend General Order (GO) 156. We instituted this rulemaking to eliminate the exclusions currently permitted under GO 156, and to refine certain aspects of GO 156 verification and reporting.

This decision amends GO 156 to eliminate the exclusions. It also calls for the parties to recommend further amendments to GO 156 through the workshop process.

II. GO 156

In 1986, the California Legislature enacted a series of statutes to ensure that a fair proportion of total utility contracts and subcontracts for products and services are awarded to women, minority, and disabled veteran business enterprises (WMDVBE). (See generally Pub. Util. Code §§ 8281–8286.) The purpose of these statutes is to (a) encourage greater economic opportunity for women, minority, and disabled veteran 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 WMDVBE enterprises. (See § 8281(b)(2).)

Consistent with this policy, the Legislature directed the Commission to require certain utilities and their regulated subsidiaries and affiliates[1] to submit annual plans for increasing WMDVBE procurement in all categories of products and services. The Legislature also required the Commission to establish guidelines for the utilities to use in establishing programs pursuant to these statutes. (See § 8283(a) and (c).)

In April 1988, the Commission promulgated GO 156 in order to implement Pub. Util. Code § 8281 et seq. (See Decision (D.) 88-04-057, 28 CPUC2d 36.) GO 156, § 8.2 requires utilities to establish minimum long-term goals for each major category of products and services a utility purchases from outside vendors of not less than 15% for minority owned business enterprises and not less than 5% for women owned business enterprises. The goal for disabled veteran business enterprises is 1.5%, effective January 1, 1997.[2]

The current version of § 8.5 of GO 156 provides that a utility can create an "excluded category" of products or services where it is clearly evident that WMDVBEs do not provide such services or that sole source procurement is the

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[1] According to § 8283, these statues apply to electric, gas and telephone utilities with gross annual revenues exceeding twenty-five million dollars and their Commission-regulated subsidiaries and affiliates.

[2] GO 156, § 8.12 provides that no penalty shall be imposed for failure of any utility to meet or exceed WMDVBE goals.

only available procurement method. The utility has the burden of demonstrating the unavailability of WMDVBEs capable of supplying such products and services and must justify in its annual report the continued existence of any excluded category.[3]

III. Greenlining/LIF's Petition

On October 28, 2002, Greenlining/LIF filed a petition for rulemaking pursuant to Pub. Util. Code § 1708.5 to amend GO 156.[4] Greenlining/LIF proposed to amend GO 156 to eliminate the currently allowed exclusions from the base of procurement dollars the utilities use to establish the monetary value of the WMDVBE procurement goals. Greenlining/LIF also proposed that the Commission require the utilities to standardize their WMDVBE reporting and verification.

IV. The Rulemaking

The Commission initiated this rulemaking to amend GO 156, § 8.5 and related sections, to eliminate a utility's ability to create an "excluded category" of

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[3] Section 8.5 of GO 156 states: "A utility may create an 'excluded category' of products or services where it is clearly evident that WMDVBEs do not provide a specific product or service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMDVBEs capable of supplying such products or services. Because there may in the future be WMDVBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of any excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMDVBE program progress and future plans."

[4] Section 1708.5 authorizes "interested persons to petition the commission to adopt, amend, or repeal a regulation." The Commission is then to consider the petition and, within six months, either deny the petition or institute a proceeding to adopt, repeal, or amend the regulation.

products and services, and to refine certain aspects of GO 156 verification and reporting.

We proposed eliminating the exclusions provided by § 8.5 in order that the utilities make more concerted efforts to implement GO 156, and to achieve greater standardization of the reports. For the last 14 years, pursuant to GO 156, the utilities have been able to exclude certain products and services from the base of WMDVBE procurement dollars where the utilities can demonstrate the unavailability of WMDVBE suppliers. In the first decision implementing Pub. Util. Code §§ 8281-8285, we explained the utilities' burden if they created certain excluded categories.

> "We will allow utilities to create 'excluded categories' of products or services where they can demonstrate the unavailability of WMBE [currently WMDVBE] suppliers. Utilities can note such categories in their annual reports to the Commission. In order to ensure that such excluded categories meet real needs and do not continue to exist after WMBE suppliers in such categories become available, we will require utilities to report any efforts made to recruit WMBE suppliers in these categories and to note in their annual plans any plans they have to recruit such suppliers in the future." (D.88-04-057, 28 CPUC2d 36, 60.)

The Commission has emphasized that GO 156 exclusions are not carved in stone and should continue only as long as they are truly needed. Significantly, utilities must justify exclusions on an annual basis. "If it were otherwise, the exclusion program could act as a barrier to [WMDVBE] progress. (D.90-12-027, 38 CPUC2d 384, 390.)

The rulemaking found that the utilities are mixed in their ability to eliminate all WMDVBE exclusions. For instance SBC / California (SBC) does not currently utilize exclusions in its WMDVBE report to the Commission. However, the rulemaking recognized that some utilities have increased, rather than

decreased their exclusions. Furthermore, the rulemaking concluded that recent utility reports pursuant to GO 156 demonstrate that many utilities do not present sufficient justification on an annual basis for continuing the exclusions. For example, GO 156 requires that if a utility uses an exclusion, it must justify such use and provide "a description of any efforts made to find and or recruit WMDVBE suppliers of products and services in the excluded category." (GO 156, § 9.1.9.) However, a review of the annual WMDVBE reports for 1999, 2000, and 2001 for Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E), and Verizon California, Inc. (Verizon) demonstrates that the justification and description of the excluded categories is insufficient and conclusory.

In order to facilitate greater standardization in the reports, this rulemaking proposes amending GO 156 to require that the utilities report their WMDVBE product and services expenditures according to the uniform system of accounts (USOA) applicable for each utility. The rulemaking also proposes that the utilities be required to retain their workpapers associated with their WMDVBE annual reports and to provide these workpapers to the Commission upon request.

V. Exclusions

A. The Proposal

As stated above, the rulemaking proposes to eliminate the exclusions permitted by § 8.5 of GO 156. Specifically, the rulemaking proposes that § 8.5 be amended as follows:

> "A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, the utility may explain in detail in its annual report how its ability to meet its WMDVBE goals are affected because

> WMDVBEs capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. The utility may also include a description of any efforts made to find or recruit WMDVBE suppliers of products or services in areas where WMDVBE suppliers are currently unavailable, or where sole source procurement is currently the only available procurement method."

B. Parties' Comments

Greenlining/LIF support the rulemaking's proposal to eliminate exclusions. Greenlining/LIF propose alternative language to the proposed § 8.5 which reorders and clarifies the last two sentences of proposed § 8.5.[5]

Sprint Communications Company L.P., Sprint Telephony PCS L.P., and Sprint Spectrum L.P., as agent for WirelessCo L.P. (collectively Sprint) support the Commission's objective to achieve greater uniformity among utilities in filing their annual WMDBVE reports, and have no objection to eliminating exclusions

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[5] Greenlining/LIF's proposed amendment to § 8.5 is as follows:

> "A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, for each major category of products and services where the minimum long-term goals required by GO 156, § 8.2 are not met, the utility shall include a comprehensive discussion and detailed description of any efforts made to find or recruit WMDVBE suppliers of products and services in areas where the utility contends that WMDVBE suppliers are currently unavailable, or where sole source procurement is currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its internal WMDVBE goals are affected because WMDVBEs capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method."

from GO 156. Similarly, SBC and SBC Advanced Solutions do not oppose eliminating exclusions because they do not use them.

The joint utilities[6] disagree with eliminating exclusions because they believe exclusions are necessary in order to normalize the reporting results between utility industries. This is so, the joint utilities argue, because utilities in the various industries differ to the extent to which they are required to make purchases within categories where no certified WMDVBE supplier currently exists. The joint utilities believe exclusions should continue in order for the Commission to make appropriate comparisons across industries.

The joint utilities make two recommendations. First, they believe the Commission should work with the utilities and interested parties to develop industry-specific lists of product and service categories that the utilities may continue to exclude from their total WMDFBE calculations, and should periodically review these lists. Second, the joint utilities recommend that the Commission should allow the continued use of exclusions for categories (or subcategories) of products and services that do not appear on the Commission-approved, industry-specific lists of excluded categories, subject to a detailed explanation of the unavailability of WMDVBEs subject to the standard set forth in the current version of § 8.5. The joint utilities believe that a detailed explanation of the unavailability of WMDVBE suppliers would provide more beneficial information than eliminating exclusions. Edison agrees with the joint utilities.

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[6] The Joint Utilities include AT&T Communications of California, Inc., Citizens Telecommunications Company of California, PG&E, PacifiCorp, Roseville Telephone Company, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Gas Company, Southwest Gas Corporation, Verizon, and WorldCom, Inc.

Allegiance Telecom of California (Allegiance) agrees with the joint utilities that the exclusions should not be eliminated because such elimination will add to the obstacles Allegiance faces and will not increase WMDVBE procurement nor heighten public recognition of excellence in achieving the goals of GO 156.

C. Discussion

When the WMDVBE program was established, the Commission emphasized that the permitted exclusions should continue so long as they are truly needed, and required the utilities to justify them annually. While some utilities, such as SBC, have eliminated exclusions, many have not made significant progress over the years toward this goal. Continuing exclusions will not assist in our dual goals of eliminating them, or in standardizing the WMDVBE reports. We, therefore, amend § 8.5 to eliminate them. However, we modify our proposed rule to permit utilities to also report their WMDVBE data with exclusions in the explanatory section in order for a utility to more fully explain why it has not been able to totally eliminate exclusions. We also adopt Greenlining/LIF's proposal reordering sentences and clarifying language.[7]

We do not adopt the joint utilities' proposal to codify into the GO a list of exclusions because we believe this would further institutionalize their existence, rather than assist in eliminating them.

Amended § 8.5 reads as follows:

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[7] We also eliminate, rather than amend, § 9.1.7, because the amended language duplicates some of § 8.5's requirements, and the original § 9.1.7 is no longer necessary in light of our amendment to § 8.5. Finally, we amend the following sections of GO 156 to conform them to the amendments we make to § 8.5. The rulemaking included these amendments. The affected sections include: § 1.3.14; § 6.3.3; § 8.8, § 8.10.4; § 9.1.7; and § 10.1.4.

> A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, for each major category of products and services where the minimum long-term goals required by Section 8.2 are not met, the utility shall include a comprehensive discussion and detailed description of any efforts made to find or recruit WMDVBE suppliers of products or services in areas where WMDVBE suppliers are currently unavailable, or where sole source procurement is currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its WMDVBE goals are affected because WMDVBEs capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. In this explanatory section, the utility may also include data with exclusions pursuant to former Section 8.5, if such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility's report must contain the data without exclusions in the first instance.

VI. Document Retention

A. The Proposal

The rulemaking proposes the following amendment of § 9.1.9.

> "Utilities shall retain their workpapers associated with their WMDVBE annual report and shall provide these workpapers to the Commission upon request."

B. The Parties' Comments

All utilities commenting on the document retention proposal believed it was too vague. The joint utilities and SBC request a definition of the term "workpapers," stating that they do not generate workpapers in preparing their annual reports, but compile data from a variety of sources, such as the utilities' accounting systems.

Most utilities suggest that the Commission should clarify how long the workpapers should be retained. The joint utilities recommend that the utilities should keep relevant documents in accordance with document retention policy or corporate retention schedule that classifies and specifies the length of time required for retention.[8] Edison concurs, stating that § 9.1.9 should be modified so that the requirement to retain workpapers be subject to each utility's document retention policy. SBC recommends that the utilities be required to retain their workpapers for three years, and Sprint supports a two-year document retention policy. None of these parties suggests specific word changes to the GO.

Greenlining/LIF recommend that the utilities should be required to retain the workpapers from three to ten years, in keeping with their various document retention policies.

C. Discussion

We clarify the proposed rule for utilities to understand that they should retain all documents or data they rely on in preparing their WMDVBE reports. Clarifying the length of time a utility should retain this information is reasonable, and generally, conforming the time limit to the utilities' various document retention policies is reasonable. However, we agree with Greenlining/LIF that, at a minimum, utilities should retain this information for three years. We, therefore, modify our proposed § 9.1.9 to reflect these changes.

Amended § 9.1.9 reads as follows:

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[8] The joint utilities state that 18 C.F.R. Part 125 requires energy utilities to retain their annual reports for 5 years, general accounting ledgers for 10 years, insurance records until the expiration of the policies, and procurement documents for 3-6 years depending on the type of document.

> "Utilities shall retain all documents and data they rely on in preparing their WMDVBE annual report for the longer of either three years or in conformance with the utilities' individual document retention policies, and shall provide these documents and data to the Commission upon request."

VII. Verification

A. The Proposal

The rulemaking proposes the following amendments to § 9.1.2:

> "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. In order to achieve uniformity of reporting, product and service categories shall be reported according to the uniform system of accounts (USOA) applicable for each utility. (For example, electric utilities would present their information according to the Federal Energy Regulatory Commission's (FERC's) USOA applicable to electric utilities; gas utilities would utilize FERC's USOA for gas utilities and telephone utilities would report their information consistent with the Federal Communication Commission's USOA.)"

B. Parties' Comments

Greenlining/LIF support the rulemaking's proposal that the utilities report their data according to the uniform system of accounts in order to more easily compare the utilities' data.

All utilities commenting on the verification proposal oppose reporting their WMDVBE product and service expenditures according to the uniform system of accounts. SBC states that the uniform system of accounts contains hundreds of account codes and thousands of codes when sub-accounts are added. SBC believes that the uniform system of accounts is too detailed for the Commission's analysis of GO 156 reports because GO 156 is concerned with

"major" product and service categories (citing § 8). SBC recommends that the Commission establish a reasonable set of product and service categories for all utilities (or at least all utilities within an industry) to use and attaches a proposed list of categories to its comments.

The joint utilities state that certain competitive local exchange carriers (CLCs) are exempt from maintaining their books and records according to the uniform system of accounts, and therefore, the administrative burden of the CLCs conforming their WMDVBE reports to the uniform system of accounts would impose significant costs. Because none of the joint utilities use the uniform system of accounts in reporting WMDVBE information, these utilities argue that requiring such a change in future reports would be a significant and burdensome, requiring massive restructuring of the methods utilities use to gather data for their annual reports. These utilities also believe that the uniform system of accounts is too vague in some instances and too detailed in others to be of use in WMDVBE reporting.

Sprint states that this proposal is impossible for it to implement because none of Sprint's California companies are required to maintain their accounting records in compliance with the uniform system of accounts, and therefore, its expenditures cannot be provided in a format that would match the uniform system of accounts categories.

C. Discussion

We wish to achieve greater uniformity in WMDVBE reporting. To achieve this goal, it is essential for the utilities to report using the same categories with agreed-upon definitions. If different industry groups require industry-specific categories, it would be ideal to have uniform categories for all utilities and also

additional uniform categories for each of the industries. The rulemaking proposed utilizing the uniform system of accounts to achieve this goal.

All the utilities objected to this proposal, stating that the uniform system of accounts is too detailed, expensive to implement, and will achieve confusion rather than uniformity. Unfortunately, the only competing proposal from SBC does not contain sufficiently detailed categories or clear definitions of these categories.

We, therefore, direct the Commission's Communications and Public Information Division (CPID) to hold a workshop commencing no later than 90 days from the mailing of this decision, or as further directed by the Assigned Commissioner or Administrative Law Judge (ALJ) upon the request of CPID.[9] The purpose of this workshop is to develop uniform reporting categories for all utilities to employ in their WMDVBE reports, and if appropriate, additional industry-specific reporting categories. Additionally, the workshop should develop a detailed definition of each of these categories. For example, if a category was described as "professional services," it might be defined to include legal, accounting, and engineering services. We do not foreclose adopting the uniform system of accounts, but believe the parties should have the opportunity in a cooperative manner to develop workable alternatives.

No later than 30 days after the conclusion of the workshop, or as further directed by the Assigned Commissioner or ALJ upon the request of CPID, CPID shall deliver a workshop report to the Commission President and Executive Director, and shall serve this report on all Commissioners, the Chief ALJ, the ALJ

[9] The workshop may continue for more than one day in the discretion of CPID.

assigned to this proceeding, and the workshop participants. We anticipate expeditiously opening another rulemaking to address proposed amendments to GO 156 regarding uniform reporting categories resulting from the workshop. If the parties are unsuccessful in developing workable proposals, we will entertain a Petition for Modification in this proceeding in order to adopt reporting requirements pursuant to the uniform system of accounts.

VIII. Miscellaneous Proposals

Greenlining/LIF agree with eliminating exclusions. However, if the Commission does not eliminate them, then Greenlining/LIF recommend that GO 156 be amended to require that the utilities "overwhelmingly demonstrate" the need for each exclusion it takes. We do not discuss this proposal further because we amend GO 156 to eliminate exclusions.

Greenlining/LIF also believe that the GO's definition of procurement should be standardized, so that all utilities report the same data. According to Greenlining/LIF, some utilities include contract dollars when calculating their procurement records while others do not. Therefore, Greenlining/LIF propose the following amendment to § 8.8:

> "Overall program goals shall be expressed as a percentage of total dollars awarded to outside vendors in all categories of products and services purchased by a utility other than products and services that are included in a fuel procurement base established pursuant to Section 8.10. "Total dollars awarded" shall include all expenses paid to outside vendors including those paid by means of purchase order, credit card, and the like, per Decision 03-11-024 [the final decision issued in this rulemaking.]"

SBC opposes this amendment as unnecessary, with the potential to create ambiguity and confusion. SBC explains that the current language of § 8.8 cannot reasonably be read to exclude a purchase from an outside vendor of a product or

service for use by the utility just because the utility paid for the purchase with a credit card, rather than cash or check. SBC states that Greenlining/LIF's use of the term "purchase order" is confusing because it is not a method of payment, and the term "and the like" is vague and difficult to interpret following "purchase order."

We agree with SBC that § 8.8 requires program goals to be expressed as a percentage of total dollars awarded to outside vendors, with no limitation on how the vendors are paid. We, therefore, do not adopt the amendment to § 8.8 proposed by Greenlining/LIF because it is unnecessary.

Finally, Lodi Gas Storage, L.L.C. (LGS) recommends that the Commission consider whether to grant exemptions from compliance with GO 156 to competitive utilities without cost-based rates, or to adjust the $25,000,000 gross revenue threshold set forth in GO 156 for inflation.

GO 156 implements Pub. Util. Code § 8281 et seq. Section 8283 subjects all electric, gas, and telephone utilities with gross annual revenues exceeding $25,000,000 and their Commission-regulated subsidiaries and affiliates to GO 156 without exception. We, therefore, deny LGS' proposals.

IX. Filing of Reports

The rulemaking listed the utilities subject to GO 156 in Appendix B and made them respondents to this rulemaking. Many of the respondent utilities filed the WMDVBE report required by the rulemaking. (See Appendix B to this order for a list of respondents, and whether or not they filed the required

report.[10]) However, some utilities did not file the required report. We assume that some of these utilities may have found it difficult to comply because they previously have not filed annual WMDVBE reports with the Commission and, therefore, do not have the data necessary to file the requested report.

All respondent utilities are put on notice that they are required to comply with GO 156. We direct that CPID monitor the annual WMDVBE reports filed for 2003, and forward a list of utilities who do not comply with GO 156 to the Executive Director for the Commission to evaluate whether to institute an enforcement proceeding against these utilities.[11] We emphasize that we are seeking compliance with GO 156, and not to penalize a utility. However, failure to comply with the requirements of a Commission GO is grounds for seeking and assessing penalties.

X. Comments on Draft Decision

The draft decision of President Peevey in this matter was mailed to the parties in accordance with Pub. Utill. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on October 23, 2003 by Greenlining/LIF, Edison, the Joint Utilities, and PG&E, and reply comments were filed on October 28, 2003, by PG&E and SBC. We make no changes to the draft decision in response to the comments.

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[10] Some of the utilities have sought permission to file their reports late. These requests either have been granted by ALJ ruling or are granted as more specifically set forth in Appendix B.

[11] Failure to file a report as required by this rulemaking, among other things, will be viewed as an aggravating factor in assessing penalties.

XI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this proceeding.

Findings of Fact

1. When the WMDVBE program was established, the Commission emphasized that the permitted exclusions should continue so long as they are truly needed, and required the utilities to justify them annually.

2. Continuing exclusions will not assist in our dual goals of eliminating them, or in standardizing the WMDVBE reports.

3. We clarify the proposed § 9.1.9 so that utilities understand they should retain all documents or data they rely on in preparing their WMDVBE reports.

4. Clarifying the length of time a utility should retain documents or data relied upon in preparing the WMDVBE reports and, generally, conforming the time limit to the utilities' various document retention policies is reasonable. However, at a minimum, utilities should retain this information for three years.

5. In order to achieve greater uniformity in WMDVBE reporting, it is essential for the utilities to report using the same categories with agreed-upon definitions.

Conclusions of Law

1. The amendments to GO 156 as set forth in Appendix A should be adopted.

2. CPID should hold a workshop commencing no later than 90 days from the mailing of this decision, or as further directed by the Assigned Commissioner or ALJ upon the request of CPID. The purpose of this workshop is to develop uniform reporting categories for all utilities to employ in their WMDVBE reports, and, if appropriate, additional industry-specific reporting categories.

Additionally, the workshop should develop a detailed definition of each of the categories.

3. No later than 30 days after the conclusion of the workshop, or as further directed by the Assigned Commissioner or ALJ upon the request of CPID, CPID should deliver a workshop report to the Commission President and Executive Director, and should serve this report on all Commissioners, the Chief ALJ, the ALJ assigned to this proceeding, and the workshop participants.

4. CPID should monitor the annual WMDVBE reports filed pursuant to GO 156 for 2003, and forward a list of utilities who do not comply with GO 156 to the Executive Director for the Commission to evaluate whether to institute an enforcement proceeding against these utilities.

5. Section 8283 subjects all electric, gas, and telephone utilities with gross annual revenues exceeding $25,000,000 and their Commission-regulated subsidiaries and affiliates to GO 156 without exception.

6. This decision should be effective immediately in order to amend GO 156 without further delay.

O R D E R

IT IS ORDERED that:

1. General Order (GO) 156 is amended as set forth in Appendix A.

2. The Commission's Communications and Public Information Division (CPID) will hold a workshop commencing no later than 90 days from the mailing of this decision, or as further directed by the Assigned Commissioner or Administrative Law Judge (ALJ) upon the request of CPID for the purposes set forth in this decision.

3. No later than 30 days after the conclusion of the workshop, or as further directed by the Assigned Commissioner or ALJ upon the request of CPID, CPID will deliver a workshop report to the Commission President and Executive Director, and will serve this report on all Commissioners, the Chief ALJ, the ALJ assigned to this proceeding, and the workshop participants.

4. CPID will monitor the annual women, minority, and disabled business enterprises (WMDVBE) reports filed pursuant to GO 156 for 2003, and forward a list of utilities who do not comply with GO 156 to the Executive Director for the Commission to evaluate whether to institute an enforcement proceeding against these utilities.

5. The motions of the utilities set forth in Appendix for an extension of time to file their reports in response to this rulemaking are granted.

6. This proceeding is closed.

This order is effective today.

Dated November 13, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
SUSAN P. KENNEDY
Commissioners

Commissioner Geoffrey F. Brown, being necessarily absent, did not participate.

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1. Proposed Amendments to General Order (GO) 156, § 8.5 [eliminating the "excluded category" for WMDVBE reporting]. Other Rules affected by this change are GO 156, §§ 1.3.14; 6.3.3; 8.8, 8.10.4, 9.1.7, 9.1.9, and 10.1.4 as set forth below.

Existing Rule, GO 156, § 8.5

A utility may create an "excluded category" of products or services where it is clearly evident that WMDVBEs do not provide a specific product or service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMDVBEs capable of supplying such products or services. Because there may in the future be WMDVBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of is excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMDVBE program progress and future plans.

GO 156, § 8.5 as amended and adopted by this decision

A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, for each major category of products and services where the minimum long-term goals required by Section 8.2 are not met, the utility shall include a comprehensive discussion and detailed description of any efforts made to find or recruit WMDVBE suppliers of products or services in areas where WMDVBE suppliers are currently unavailable, or where sole source procurement is currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its WMDVBE goals are affected because

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WMDVBEs capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. In this explanatory section, the utility may also include data with exclusions pursuant to former Section 8.5, if such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility's report must contain the data without exclusions in the first instance.

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Existing Rule, GO 156, § 1.3.14

"Excluded category" means a category of products or services which may be removed from the dollar base used to establish goals, pursuant to Section 8.5 of this General Order, because of the established unavailability of WMDVBEs capable of supplying those products or services.

GO 156, Rule 1.3.14, as amended and adopted by this decision

Deleted per Decision 03-11-024 [the final decision issued in this rulemaking.]

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Existing Rule, GO 156, § 6.3.3

The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like, or to the procurement of products and services in excluded categories.

GO 156, § 6.3.3, as amended and adopted by this decision

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The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like.

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Existing Rule, GO 156, § 8.8

Overall program goals shall be expressed as a percentage of total dollars awarded to outside vendors in all categories of products and services purchased by a utility other than products and services which fall within an excluded category established by the utility pursuant to Section 8.5, or which are included in a fuel procurement base established pursuant to Section 8.10.

GO 156, § 8.8, as amended and adopted by this decision

Overall program goals shall be expressed as a percentage of total dollars awarded to outside vendors in all categories of products and services purchased by a utility other than products and services which are included in a fuel procurement base established pursuant to Section 8.10.

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Existing Rule, GO 156, § 8.10.4

Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under Section 8.5 and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMDVBEs.

GO 156, § 8.10.4, as amended and adopted by this decision

Delete per Decision 03-11-024 [the final decision issued in this rulemaking.]

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Existing Rule, GO 156, § 9.1.7

A summary of purchases and/or contracts for products and services in excluded categories.

GO 156, § 9.1.7, as amended and adopted by this decision

Delete per Decision 03-11-024 [the final decision issued in this rulemaking.]

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Existing Rule, GO 156, § 9.1.9

See Proposal, part 2 below.

GO 156, § 9.1.9, as amended and adopted by this decision

See text for § 9.1.9 below.

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Existing Rule, GO 156, § 10.1.4

Plans for seeking and or recruiting WMDVBE suppliers of products or services in any "excluded category" of products or services which has been removed from the procurement dollar base used to set goals because of the established unavailability of WMDVBE suppliers.

GO 156, § 10.1.4, as amended and adopted by this decision

Plans for seeking and or recruiting WMDVBE suppliers of products or services where WMDVBE suppliers are currently unavailable.

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2. Proposed Amendments to General Order (GO) 156, § 9 [regarding elements to include in the utilities annual report]

Existing Rule, GO 156, § 9.1.2

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.

GO 156, § 9.1.2, as amended and adopted by this decision

[No amendment to the existing § 9.1.2 at this time, per the discussion in this decision.]

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Existing Rule, GO 156, § 9.1.9

A justification for the continued existence of any "excluded category" of products or services which has been removed from the procurement dollar base used to set goals because of the established unavailability of WMDVBE suppliers. Such justification must include a description of any efforts made to find and or recruit WMDVBE suppliers of products or services in the excluded category.

GO 156, § 9.1.9, as amended and adopted by this decision

Utilities shall retain all documents and data they rely on in preparing their WMDVBE annual report for the longer of either three years or in conformance with the utilities' individual document retention policies, and shall provide these documents and data to the Commission upon request.

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(END OF APPENDIX A)

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LIST OF RESPONDENTS TO THE RULEMAKING

	Report Pursuant to Rulemaking Filed
AB Cellular Holding, L.L.C.	Yes[1]
Allegiance Telecom of California, Inc.	Yes
AT&T Communications of California, Inc.	Yes
AT&T Broadband, Inc.	Yes (as Comcast)
AT&T Wireless Services of California, Inc.	Yes
Bakersfield Cellular L.L.C.	Yes
Bay Area Cellular Telephone Company	Yes
Brooks Fiber Comms. of San Jose, Inc.	No
Cable & Wireless USA, Inc.	Yes
Cagal Cellular Communications Corp.	Yes
Cellco Partnership	Yes (as Verizon wireless)

[1] The following entities are also included in AT&T Wireless Services of California's report: AB Cellular LA, LLC., AT&T Wireless Services of San Diego, LLC; Bakersfield Cellular, LLC; Bay Area Cellular Telephone Company; Cagal Cellular Communications Corporation; Napa Cellular Telephone Company; Nevada County Cellular Corporation; Redding Cellular Partnership; Salinas Cellular Telephone Company; Santa Barbara Cellular Systems, Ltd., Visalia Cellular Telephone Company; and Yuba City Cellular Company.

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Choice Communications	No
Cingular Wireless	Yes
Citizens Telecommunications Co. of California	Yes
Comcast Phone of California, LLC	Yes
Cox California Telecom, L.L.C.	Yes
Cox Communications PCS, L.P.	No
Fresno MSA Ltd. Partnership	No
Global Crossing Telecommunications	No
GTE Mobilnet of California	No
Lodi Gas Storage, L.L.C.	No[2]
Los Angeles SMSA Limited Partnership	No
MCI Metro Access Transmission Services	No
MCI Worldcom, Inc.	Yes
Metropolitan Fiber Systems of California, Inc.	No
Mpower Communications Corp.	No
Napa Cellular Telephone Company	Yes
Nationwide Cellular Svc. Inc.	No

[2] Lodi Gas Storage filed reply comments to the rulemaking.

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Nextel of California, Inc.	Yes
Nosva, L.P.	No
Omnipoint Communications, Inc.	Yes[3]
PacifiCorp	Yes
Pacific Gas and Electric Company	Yes
Pac-West Telecommunications, Inc.	No
Qwest Communications Corporation	No
Roseville Telephone Company	Yes
SBC/California	Yes
SBC Advanced Solutions, Inc.	Yes
Sacramento Valley Ltd. Partnership	No
Salinas Cellular Telephone Company	Yes
San Diego Gas & Electric Company	Yes
Santa Barbara Cellular	Yes
Sierra Pacific Power Company	Yes
Southern California Edison Company	Yes

[3] Omnipoint Communication's motion for an extension of time to file this report is granted by this decision.

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Southern California Gas Company	Yes
Southwest Gas Corporation	Yes
Sprint Communications Company, L.P.	Yes
Sprint Telephony PCS, L.P.	Yes
Sprint Spectrum L.P. as agent for WirelessCo L.P.	Yes
Talk America, Inc.	No
TCG Los Angeles	No
U.S. Cellular	No
Vartec Telecom, Inc.	No
Verizon California, Inc.	Yes
Verizon Wireless, L.L.C.	Yes[4]
Visalia Cellular Telephone Company	Yes
Wild Goose Storage, Inc.	No[5]

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[4] Verizon Wireless' motion for extension of time to file this report is granted by this decision.

[5] On June 13, 2003, Wild Goose Storage, Inc. served a letter upon the Administrative Law Judge stating that it has not, to date, filed a WMDVBE report pursuant to GO 156 and has not, therefore, invoked any excluded categories. Wild Goose states it is in the process of compiling a GO 156 compliance report and will submit this report to the Commission upon its completion.

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XO California, Inc.	Yes

(END OF APPENDIX B)