



FILED

07-22-10

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)

**ADMINISTRATIVE LAW JUDGE'S RULING ON MOTIONS
FOR RECONSIDERATION OF RULING
ISSUED ON JULY 15, 2010 AND OTHER MATTERS**

Motions for Reconsideration

On July 6, 2010, the Administrative Law Judge (ALJ) issued a ruling which, *inter alia*, described the decision by several community groups present at the June 23, 2010 oral argument, to work together to see if they could develop a detailed and joint expression of their aspirations for a model of "technical assistance" for new, small, and diverse businesses. "Technical assistance" was generally defined as covering the period from certification through competitive bid preparation. The ALJ agreed to accept into the record a report describing the results of those attempts. However, in an effort to ensure that the Commission is able to issue a timely proposed decision this Fall, the ALJ issued a revised ruling, on July 15, 2010, which removed language from the earlier ruling that requested community groups to file and serve the report by August 23, 2010. Two motions have been filed seeking to amend, modify, or revise this latter ruling.

On July 19, 2010, the Black Economic Council, Mabuhay Alliance, Inc. and the Latino Hispanic Business Chamber of Greater Los Angeles jointly filed a

“Motion for Modification of ALJ’s Ruling of July 15; the Need for More Input” (First Motion). The moving parties provided a list of various activities which they state have occurred as part of their effort to create “models of technical support.” They also dispute that keeping the record open to receive a report will disrupt the timetable set forth in the Scoping Memo of March 17, 2010, even if the proposed decision were to be issued by the end of September 2010. Finally, they argue that parties have the legal right to be heard and introduce evidence, such that “the ALJ should not be permitted to bar Community Based Organizations from providing the economic and other consequences of this rulemaking.”

On July 20, 2010, the California Hispanic Chambers of Commerce and the California Asian Pacific Chamber of Commerce jointly filed a motion for reconsideration (Second Motion) of the July 15, 2010 ruling. The moving parties argued that because the parties have identified technical assistance as an essential step in improving access to utility contracting, the report is necessary to the Commission’s rulemaking. In the alternative, the moving parties requested an extension of time to, August 6, 2010, to file Reply Comments to the staff workshop report, currently scheduled to be due on July 23, 2010.

We note with concern that both motions mischaracterize the nature of the report initially described in the July 6, 2010 ruling. The report used four question areas to focus voluntary efforts by community groups to achieve consensus on specific elements of model technical assistance, current resource inventory, and recommendations for distribution of technical assistance. (The utilities have already described their technical assistance programs in filed comments and through participation in workshops).

In the First Motion, the moving parties also described various activities they have undertaken, some of which are beyond the original topic. A partial list

of activities that are outside the scope of the initially authorized report includes gathering data on accounting firms and deposits in minority banks, efforts related to capacity building of qualified businesses, meetings with utilities for legal arguments, promotion of federal legislation, etc. These may be viewed by the moving parties as useful steps in promoting utility supplier diversity, but they are not within the narrow range of activities authorized in the report on consensus among community groups described in the July 6, 2010 ruling.

Also mistaken is the claim in the Second Motion that the report was to detail “how technical assistance programs can improve Women Minority Disabled Veterans Business Enterprises competitiveness.” This view has been undisputed over the course of the rulemaking. Instead, as noted above, the report was meant to provide an opportunity for community groups to work together to define their terms, assess their resources, find ways to share resources for mutual benefit, and identify how to best move their technical assistance programs forward, in light of the utility programs already in place.

Elimination of the report at issue, a proposed expression of opinion by community groups, has no deleterious effect on their ability to participate in this proceeding. No group has been denied an opportunity to place its views before the Commission. To the contrary, over the past year, there have been numerous opportunities for all parties to provide written comments, argument, and individual participation in workshops. No group that sought participation has been denied party status. There is already an extensive record on a wide variety of issues related to the utility supplier diversity programs in place, and the views of numerous community groups. The elimination of the report, which has generated some confusion, does nothing to advance or inhibit voluntary actions

by interested parties in continuing discussions with each other about what steps can and might be taken to assure a larger, more diverse pool of businesses available and qualified to bid on utility supplier contracts. Moreover, the notion that all of the issues raised by the moving parties would be included in the report, underscores the pressures of time at work against issuance of the proposed decision this year.

The Reply Comments to the June 7, 2010 workshop on “Barriers to Competition” are an appropriate vehicle for parties to summarize their final thoughts on best practices for the content and availability of technical assistance to new, small, and diverse businesses. The date by which Reply Comments are due is hereby extended to August 6, 2010, and parties are welcome, and encouraged, to jointly submit such comments. The motions for reconsideration are otherwise denied.

Other Matters

The Scoping Memo and Ruling in this proceeding provided that utilities were to file written responses to questions regarding utility aspirational interim steps towards General Order 156 goals by May 26, 2010 and comments on the responses were permitted to be filed by June 9, 2010. At the oral argument held on June 23, 2010, a utility representative presented “Rebuttal Remarks” to the comments filed, and stated that, at the status conference held on May 19, 2010, I granted the utilities permission to file them.

On good faith, I accepted that representation and agreed to allow them to be filed and served. Now other parties wish to file responses to the rebuttal remarks. I have reviewed the transcript from the status conference and do not see any evidence that I granted permission to utility parties to file "rebuttal" remarks. However, since these remarks were filed and served, I will permit other parties to file final reply comments, not to exceed five pages and specific to the "rebuttal remarks" jointly filed by several utilities, on or before July 8, 2010.

IT IS SO RULED.

Dated July 22, 2010, at San Francisco, California.

/s/ MELANIE M. DARLING
Melanie M. Darling
Administrative Law Judge

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Dated July 22, 2010, at San Francisco, California.

/s/ SANDRA M. JACKSON

Sandra M. Jackson

N O T I C E

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