

Decision 06-11-028 November 30, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the Greenlining Institute to adopt, amend, or repeal a regulation pursuant to Public Utilities Code Section 1708.5 and, in particular, for an Order Instituting Rulemaking to track Supplier Diversity pursuant to California Public Utilities Commission General Order 156.

Petition 05-10-031
(Filed October 19, 2005)

**OPINION ORDERING UTILITIES
TO TRACK SUPPLIER DIVERSITY AND
DENYING PETITION FOR RULEMAKING**

I. Summary

We order utilities with annual revenues exceeding \$25 million to track supplier diversity. We make this order upon review of the comments filed by the parties and the Greenlining Institute's (Greenlining) petition and status report following informal discussions. We deny Greenlining's petition for rulemaking, because we need not modify General Order (GO) 156 to require tracking of supplier diversity.

II. Background and Procedural History

Pub. Util. Code § 1708.5(a)¹ and Rule 6.3 of the Commission's Rules of Practice and Procedure authorize "interested persons to petition the commission

¹ Unless stated otherwise, all statutory citations refer to the California Public Utilities Code.

to adopt, amend, or repeal a regulation.” Greenlining’s petition requests that the Commission open a rulemaking to track supplier diversity. Greenlining proposed a tracking mechanism designed to track by size Women/Minority/Disabled/Veteran Business Enterprises (WMDVBE) that contract with utilities. The Joint Utilities (San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Southwest Gas Corporation (Southwest), and SureWest Telephone (SureWest)) opposed Greenlining’s petition. AT&T California (Pacific Bell Telephone Company formerly dba SBC California) initially supported the concept of tracking supplier diversity but opposed making that a requirement under GO 156. Greenlining replied with the declaration of two supplier diversity experts who supported Greenlining’s proposal and discredited alternatives raised by AT&T. AT&T subsequently agreed to voluntarily track the information requested by Greenlining.

On March 21, 2006, Greenlining sent an e-mail to the administrative law judge (ALJ) requesting that the Commission delay a determination on Greenlining’s petition until October 2006 in order to give Greenlining the opportunity to secure voluntary compliance with its petition. Section 1708.5(b)(1) requires us to act within six months of the filing of a petition. However, Greenlining had met collectively with the utilities at the supplier diversity meetings and discussed its proposal with individual utilities. The manager of the Commission’s utility supplier diversity program, Arthur Jimenez, had worked with the parties on a reporting mechanism and on the means of obtaining WMDVBE revenues from the Commission’s WMDVBE clearinghouse operator, Asian, Inc. On April 18, 2006, the ALJ granted

Greenlining an extension until June 16, 2006 to secure voluntary compliance with its proposal in conformance with Commission policy favoring alternative dispute resolution (ADR). On July 14, 2006, the ALJ ordered Greenlining to file a status report on or before July 28, 2006 and permitted parties to file comments on the status report on or before August 11, 2006.

III. Greenlining's Status Report

In its status report, Greenlining outlined its efforts to secure voluntary compliance with its proposal to track supplier diversity. Greenlining and AT&T have agreed to a report format with two parts. The first part would provide information regarding the number of minority, women and disabled veteran small business suppliers the utility uses. This information is broken down by supplier revenue. Revenue data would be supplied by the WMDVBE clearinghouse. The second part would report the amount of money the utility spent on WMDVBE, broken down by revenue class.

Greenlining states that PG&E and SCE support tracking supplier diversity in principle and that Sempra is not opposed to the tracking proposal. In comments on Greenlining's status report, SDG&E and SoCalGas state Greenlining's proposal is unnecessary, because the Commission already collects WMDVBE supplier data through the clearinghouse. SDG&E and SoCalGas oppose modifying GO 156 to require the tracking of supplier diversity information, because they believe it would add a small business component into a program, that was intended to promote contracting with qualified WMDVBE suppliers regardless of size.

IV. Discussion

Greenlining's proposed report format, revised after informal discussions among parties to this proceeding and supported by AT&T, is reasonable and

should be adopted. Tracking supplier diversity by supplier revenue will afford us the opportunity to assess the awarding of WMDVBE contracts by size of supplier. Small businesses are important to the economy of California, and it is reasonable to assess their level of representation in utility WMDVBE contracting.

This tracking proposal is not burdensome. Utilities required to report under GO 156 already file an annual report and an annual plan. To additionally track supplier diversity would minimally affect their WMDVBE reporting requirements. Thus, the benefits of tracking supplier diversity outweigh the minimal burden imposed.

Although Greenlining requests formal modification of GO 156 through a rulemaking, it is not necessary to modify GO 156 to require the tracking Greenlining proposes. GO 156, first adopted in 1988, sets forth our rules for implementing the statutory requirements in §§ 8281-8286. These requirements were enacted to: (a) encourage greater economic opportunity for WMDVBE; (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).) GO 156 has been amended a number of times, most recently in Decision (D.) 06-08-031.

GO 156 implements the legislative requirement for affected utilities to furnish an annual report regarding the implementation of the statutory programs. That report addresses such issues as program activities, purchases, expenses, progress in meeting goals, and utilization of WMDVBE subcontractors. We do not find it necessary to add tracking WMDVBE suppliers by revenues to that report, since at this time procurement from WMDVBE suppliers is not

revenue specific. However, Greenlining has worked with AT&T on its proposal and has secured the commitment of other utilities to voluntarily track supplier diversity. We possess the authority to order the reporting of the information Greenlining seeks, without the additional step of opening a rulemaking to modify GO 156.

We appreciate the parties' participation in informal ADR and the assistance of our staff in those efforts. The efforts of the parties have assisted us in resolving this proceeding efficiently, after extending the six-month deadline for acting on the petition.

We have broad authority to order the furnishing of reports. (*See* § 584.) We will order utilities with gross revenues exceeding \$25 million to annually report the aggregate number of WMDVBE suppliers that provide products or services to those utilities in each of three reporting categories (disabled veteran business enterprises (DVBE), minority business enterprises (MBE), and women business enterprises (WBE)), based on revenue information obtained from the WMDVBE clearinghouse and company-specific payment information. The information shall be broken down by four dollar thresholds: (1) less than or equal to \$1 million, (2) greater than \$1 million but less than or equal to \$5 million, (3) greater than \$5 million but less than or equal to \$10 million, and (4) greater than \$10 million. The report also shall show aggregate WMDVBE clearinghouse reported revenues and utility specific payments for the three diversity categories, broken down by the same four dollar thresholds.² Twelve copies of that report shall be served on our Executive Director on March 1 each year, simultaneously

² The report format is attached to this decision as Attachment 1.

with the GO 156 report. To ensure the utilities can meet this deadline, the WMDVBE clearinghouse shall provide the revenue information by January 15 each year.

V. Comments on Proposed Decision

The proposed decision of ALJ Grau in this matter was mailed to the parties in accordance with § 311 and Rule 14.2(a). Comments were filed on November 13, 2006. No reply comments were filed.

VI. Assignment of Petition

Michael R. Peevey is the assigned Commissioner and Janice Grau is the assigned ALJ to the Petition to institute a rulemaking.

Findings of Fact

1. On October 19, 2005, Greenlining filed a Petition pursuant to Pub. Util. Code § 1708.5 requesting that the Commission institute a rulemaking to track supplier diversity pursuant to GO 156.
2. An April 18, 2006 ruling granted Greenlining an extension until June 16, 2006 to secure voluntary compliance with its proposal in conformance with the Commission's policy favoring ADR.
3. Greenlining filed a status report on July 28, 2006. Greenlining and AT&T agreed to a reporting format that would track WMDVBE suppliers and money spent on WMDVBE suppliers by revenue. SDG&E and SoCalGas oppose modifying GO 156 to require the tracking of supplier diversity information.
4. GO 156 implements the legislative requirement for utilities with annual revenues exceeding \$25 million to furnish an annual report regarding the implementation of the statutory WMDVBE programs.
5. Pub. Util. Code § 584 requires public utilities to furnish reports to the Commission.

Conclusions of Law

1. It is reasonable to require utilities with annual revenues exceeding \$25 million to furnish an annual report to the Executive Director on March 1 showing the aggregate number of WMDVBE suppliers that provide products or services to those utilities and aggregate WMDVBE clearinghouse reported revenues and utility specific payments in each of three reporting categories (DVBE, MBE, and WBE), based on revenue information obtained from the WMDVBE clearinghouse and company-specific payment information and broken down by four dollar thresholds: (1) less than or equal to \$1 million, (2) greater than \$1 million but less than or equal to \$5 million, (3) greater than \$5 million but less than or equal to \$10 million, and (4) greater than \$10 million.

2. It is reasonable to deny Greenlining's request for a rulemaking to address tracking supplier diversity pursuant to GO 156, since it is not necessary to initiate a rulemaking to order the furnishing of an annual report tracking WMDVBE suppliers and money spent on WMDVBE suppliers by revenues.

O R D E R

IT IS ORDERED that:

1. Utilities with annual revenues exceeding \$25 million shall furnish 12 copies of an annual report to the Executive Director on March 1 to report the aggregate number of Women/Minority/Disabled/Veteran Business Enterprises (WMDVBE) suppliers that provide products or services to those utilities and aggregate WMDVBE clearinghouse reported revenues and utility specific payments in the format provided in Attachment 1, as set forth herein.

2. To the extent that the Petition of the Greenlining Institute requests the initiation of a rulemaking to track supplier diversity pursuant to General Order 156, it is denied.

3. The Executive Director shall serve this Order on the service list in Rulemaking 06-04-011.

4. Petition 05-10-031 is closed.

This order is effective today.

Dated November 30, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

