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TO PARTIES OF RECORD IN RULEMAKING 09-07-027

This is the proposed decision of Commissioner Michael R. Peevey. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Darling at md2@cpuc.ca.gov and Commissioner Peevey's advisor Carol Brown at cab@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**

(Mailed 4/5/2011)

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)

DECISION ADOPTING AMENDMENTS TO GENERAL ORDER 156

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DECISION ADOPTING AMENDMENTS TO GENERAL ORDER 156**1. Summary**

This decision makes several amendments to General Order (GO) 156, particularly to require (1) electronic filing of the GO 156 annual reports, (2) posting of the reports on the Commission's website, (3) separate reporting of electric procurement spending, and (4) reporting of the total number of women-, minority-, and disabled veteran-owned businesses enterprises (WMDVBEs) that received contracts in addition to the total dollar value. The decision also makes other changes to GO 156 to conform with the legislative changes enacted in Assembly Bill 2758,¹ including the express inclusion of wireless providers, reporting of renewable energy procurement and other areas, identification of WMDVBEs with a majority of the workforce in California, and use of the California Department of General Services criteria for Disabled Veteran-owned Business Enterprises. Furthermore, it amends GO 156 to authorize annual en banc hearings by the Commission to review with utility executives the program's progress, commitments, and initiatives and to hear community comments.

In addition, the decision makes numerous findings of fact and recommendations about aspects of utility supplier diversity programs, the role of the Supplier Clearinghouse, and activities by community-based organizations and the Commission's Utility Supplier Diversity Program. These findings and recommendations reflect the Commission's review of the parties' positions and

¹ Chapter 475, Statutes of 2010.

may provide a road map to continuing cooperation between all those committed to improvement of utility supplier diversity programs.

2. Background and Procedural History

In 1986, the California Legislature enacted Public Utilities (Pub. Util.) Code §§8281-8285 which made findings about the economic benefits of full and free participation by women-, minority-, and disabled veteran-owned business enterprises (WMDVBEs) in utility procurement, an area where these businesses had previously received a low proportion of procurement awards. Among other interests, the Legislature declared that by encouraging expansion of the number of potential suppliers, competition grows and economic efficiencies result to the benefit of ratepayers. The Legislature required electrical, gas, and telephone corporations with gross annual revenues exceeding \$25 million (utilities) to submit annual plans for increasing WMDVBE participation in procurement and annual reports on implementation of the plans.² In 2009, the Legislature added water corporations to the list of reporting companies, although most were already voluntarily submitting reports. That change brought the number of reporting companies to about 30.

Pursuant to §8284, the Commission adopted General Order (GO) 156 in 1988 to establish criteria for determining eligibility of WMDVBEs for procurement and to develop an outreach program to inform and recruit WMDVBE's to apply for procurement contracts. GO 156 has been modified

² §8282(f) contains a legislative declaration to electrical, gas, water, and telephone corporations not meeting the reporting threshold to voluntarily adopt a plan for increasing WMDVBE procurement.

through a number of subsequent Commission decisions to respond to the concerns of interested parties, market considerations, and other circumstances.

Rulemaking (R.) 09-07-027 was issued on July 30, 2009 to review the impact of GO 156 and its success in encouraging Commission-regulated utilities to seek the full and fair participation of WMDVBEs in their private procurement programs. The Order Instituting Rulemaking (OIR) included consideration of amendments and other actions or measures to help grow the number of qualified suppliers, encourage competition, and promote economic efficiencies.

As required by Rule 7.1(d),³ the OIR provided a preliminary scoping memo, including a preliminary category of proceeding as quasi-legislative and an assessment that issues could be resolved through workshops and comments without the need for hearings. The preliminary scope of this proceeding was initially as follows:

The general scope of this proceeding is to review the impact, success, target goals, and disparities within procurement areas of utility General Order 156 programs. The scope also includes consideration of the economic efficiencies of compliance, information sharing to improve performance, integration of new procurement areas such as “green” energy-related contracts, and examination of diversity and continuity in each utility’s workforce.⁴

The OIR provided a series of questions to be addressed by the parties. The Commission sought input from energy, telecommunications, and water utility companies as well as diverse community organizations including those

³ All references to “Rule” means the Commission’s Rules of Practice and Procedure.

⁴ R.09-07-027 at 17-18.

representing small business enterprises owned by women, minorities, and disabled veterans, and other groups interested in diversity in the utility supply chain and workforce. All those who filed Responses or Opening or Reply Comments have become parties to this rulemaking.

Pursuant to the OIR, responses and opening comments were to be filed by September 30, 2009 and reply comments were to be filed by October 30, 2009. There was a significant amount of public interest in this OIR and many groups that wanted to participate heard about the opportunity to comment near or after these deadlines. Therefore, assigned Administrative Law Judge (ALJ) Melanie Darling extended the deadlines for filing opening and reply comments. In addition, several parties filed comments after these extended deadlines accompanied by motions to become a party and to file comments after the deadlines. In order to maximize participation, all of these motions were granted and late-filed comments were accepted into the record through mid-December.

Responses and Opening Comments were filed by Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), San Diego Gas & Electric (SDG&E)/Southern California Gas (SoCalGas), Pacificorp, AT&T California (AT&T-CA) and certain of its regulated affiliates (jointly AT&T), Verizon California and MCI Communications (jointly Verizon), CTIA-The Wireless Association (CTIA), SureWest Telephone (SureWest), California Water Association (CWA), Park Water Company (PWC), African American Voice/Black Economic Council (BEC), American Indian Chamber of Commerce (AICC), California Hispanic Chambers of Commerce (CHCC), Coalition of Utility Employees (CUE), Disability Rights Advocates (DisabRA), Elite Service Disabled Veterans Business Enterprise Alliance (Elite SDVOB), Greenlining Institute (Greenlining), the Hon. Gwen Moore, and also both the energy and

telecommunications industries filed Joint Industry Opening Comments (Joint Energy and Joint Telecom, respectively).

Reply Comments were filed by PG&E, SDG&E/SoCalGas (jointly “Sempra”), SCE, Sierra Pacific Power Company (SPPC)⁵, Sprint Nextel (Sprint), BEC, California Asian Pacific Chambers of Commerce (CAPCC), California Department of Veterans Affairs (CDVA), CHCC, DisabRA, Disabled Veterans Business Enterprise Alliance (DVBEA), Gray Greer Shelby Vaughn LLC (GGSV), Greenlining, and the Joint Telecom industry.

3. The Scope of the Proceeding

The preliminary scope of the proceeding was broad by design to capture information to help the Commission decide what topics should be prioritized in support of implementing the goals and policies of §8281-8286 and GO 156 more than two decades after the program was justified and initiated. None of the comments filed objected to the categorization of the proceeding as quasi-legislative, however, there was a wide range of opinion on certain aspects of the preliminary scope of the proceeding and whether evidentiary hearings would be necessary.

On March 17, 2010, the assigned Commissioner and ALJ issued a Scoping Memo and Ruling (Scoping Memo) which somewhat narrowed the scope and set forth the schedule in this proceeding. Not all preliminary topics became the focus of additional activities in this OIR, but some are still included in the final decision because a sufficient record was developed for the Commission to make

⁵ On October 10, 2010, Decision (D.) 10-10-017 approved transfer of SPPC’s California assets to California Pacific Electric Company, LLC (CalPeco). The net effect is that CalPeco “stepped into the shoes” of SPPC.

findings of fact, reach conclusions, and/or make recommendations. The Scoping Memo affirmed the category for the proceeding and that no hearings were necessary due to several other avenues for party input and dialogue. The Scoping Memo also included, as Attachment A,⁶ a detailed summary of the responses and comments filed by parties.

In the Scoping Memo, the scope of the OIR was modified to exclude issues related to workforce diversity and aging because they are better suited to different Commission proceedings. Two workshops and oral argument were scheduled, as discussed below.

3.1. The Workshops

The comments revealed a priority interest in facilitated workshops to provide real-world advice, experience, and information in several key areas intended to promote the development of competitive small businesses, particularly WMDVBEs. Therefore, the Scoping Memo directed that the Commission's Utility Supplier Diversity Program (USDP) staff organize and facilitate two workshops to provide information and advice, share experiences, inspire discussion, and promote networking between business and utility representatives.

The first workshop, held May 5, 2010 in Southern California, focused on "underutilized areas" of procurement, i.e., where there are few or no small businesses and WMDVBEs bidding or receiving utility supply contracts. It

⁶ In the Scoping Memo and Attachment A, there are individual references to woman-owned business enterprises (WMBE), minority-owned business enterprises (MBE), and disabled veteran-owned business enterprise (DVBE), as well as a simplified collective reference to these diverse business enterprises as DBEs. This was for the reader's convenience and did not incorporate any definitions used by other agencies.

primarily addressed financial services, legal services, consultant services, insurance, and advertising. The workshop was an opportunity for utility procurement representatives and successful suppliers to share information and ideas about the challenges in each of these procurement areas, including the various types of service contracts put out to bid, useful development steps for small businesses and WMDVBEs to become more competitive, what actions utilities and community-based organizations (CBOs) can take to develop a broader pool of bidders, common deficiencies in bids for these types of contracts, and other obstacles to achieving a large pool of diverse applicants.

The second workshop, held June 7, 2010 in Northern California, focused on barriers small and diverse businesses face when trying to compete for utility supply contracts. It addressed certification and Clearinghouse issues, unbundling large contracts, the Request for Proposal (RFP) process, mentoring, and access to capital. The workshop was structured to stimulate dialogue between utility supplier diversity staff, CBOs, and business owners. The utility companies and non-utility parties (primarily CBOs) were each asked to respond to a set of questions tailored to their perspectives in the following areas:

- Certification Complaints/Not enough WMDVBEs
- Limited Bid Opportunities/Limited Industry Knowledge & Experience
- Bid Feedback/Lack of Bid Sophistication
- Limited Capacity/Inability to Deal with Large Projects
- Bonding, Insurance and Other Business Requirements

In summation of the dialogue between participating parties, the USDP staff prepared, filed, and served workshop reports after each all-day workshop.⁷ Numerous parties filed and served opening and reply comments about the substance of the workshop reports. Each workshop further developed the primary topics and parties' positions that are the subject of much of the discussion in this decision.

3.2. Oral Argument

In Opening Comments, each participating utility stated its commitment to the target goals of GO 156 and §§8281-8285 largely because they are good for business, good for ratepayers, and good for our state's communities. Many identified internal company steps or aspirations for further improvement, while most asserted that merely increasing target goals equally imposed on all industries and companies would be less productive for a variety of reasons. This is due, in part, to the fact that each industry and the companies within them, have different business models, practices, and procurement needs. Nonetheless, CBOs generally believed that each company could improve and in some cases advocated for specific targeted goals, interim steps, or programs.

The Scoping Memo addressed the issue of whether to increase the voluntary initial minimum long-term goals of 15% of procurement spend⁸ for MBEs, 5% for WBEs, and 1.5% for DVBES. The character of the issue was

⁷ The report prepared following the May 5, 2010 workshop on Underutilized Areas is Workshop Report #1 (WSR#1): The report prepared following the June 7, 2010 workshop on barriers to competition is Workshop Report #2 (WSR#2).

⁸ "Spend" refers to the portion of total procurement dollars a utility spent in a particular category of procurement or supplier.

modified based on party comments. Instead of increasing parts of, or the aggregate 21.5% target goal for total WMDVBE spending, all covered utilities were asked to submit responses to specific questions about their own self-identified short-term steps towards achieving or exceeding the target goals of GO 156.

Responding companies were PG&E, SCE, Southwest Gas Corporation, SDB&E/SoCalGas, Wild Goose Storage, LLC (Wild Goose), Pacificorp, AT&T, Verizon, Nextel, TW Telecom of California LP, Cbeyond Communications, LLC, Qwest Communications Company, LLC, Cox California Telecom, LLC/Cox TMI Wireless LLC, and CWA (joined by its individual members California American Water Company, California Water Service Company, Golden State Water Company, San Gabriel Valley Water Company, San Jose Water Company, and Suburban Water Systems, and non-member Park Water Company). CBOs that submitted comments on the utility companies' responses were Greenlining, CAPCC, CHCC, AICC, and a joint response by BEC/The Latino Business Chamber of Greater Los Angeles (LBCGLA)/Mabuhay Alliance, Inc. (Mabuhay) (collectively, Joint Parties).

Oral argument regarding these responses was held on June 23, 2010 before the assigned Commissioner to provide the utilities an opportunity to explain their progress targets and for CBOs to comment. Another round of comments on the interim steps was permitted by the ALJ's July 22, 2010 ruling. A review of the self-proposed interim steps and aspirational goals follows in Section 5.1 below.

3.3. Other Procedural Matters

After issuance of the Scoping Memo, Mabuhay, LBCGLA, and Cadence Leasing, Inc., a minority-owned firm, all sought and obtained party status.

Several parties filed a Notice of Intent to Claim Intervenor Compensation and have received a preliminary finding of eligibility in ALJ rulings. There were several rulings by the ALJ which reconfigured the timing and content of final comments, including a delay of the final workshop reply comments until August 6, 2010.⁹

On July 30, 2010, BEC, Mabuhay, and LBCGLA filed a motion requesting the opportunity to file additional comments after the Commission held its eighth public *en banc* hearing on October 12, 2010 regarding GO 156 and diversity in utility procurement practices. The Chief Executive Officers of California's six largest utilities were scheduled to appear before the Commission to discuss the progress, commitments, and initiatives made in setting and meeting diversity goals over the last year, and to look to new goals for the future. AT&T, PG&E, and Verizon opposed the motion primarily arguing that the record was complete and additional comments would be merely duplicative. In an August 26, 2010 ruling, the ALJ allowed one more round of comments limited to new information developed at the *en banc* hearing to be filed on October 29, 2010.

Several parties filed comments post *en banc*. The proceeding was then submitted based on 1) the initial OIR responses, opening and reply comments, 2) the workshop reports and opening and reply comments, 3) the oral argument responses, comments, rebuttal, and reply comments, and 4) the post-*en banc* comments.

⁹ ALJ Ruling on Motions for Reconsideration of Ruling Issued on July 15, 2010 and other Matters at 4.

4. **Post *en banc* Technical Assistance Proposals and Comments**

Section 6.2 of GO 156 provides that each utility shall implement their own unique outreach program to “inform and recruit” WMDVBEs and non-WMDVBEs to enhance the pool of utility suppliers. The central theme of nearly all parties throughout the proceeding and at the *en banc* hearing was that utilities will have many more procurement choices and WMDVBEs will win more contracts when small and diverse businesses have better access to more technical assistance and capacity building.

For purposes of this proceeding and decision, the general definition of these terms is as follows:

- Technical Assistance (TA) – addresses getting certification as a WMDVBE and technically informed about the industry and RFP process in order to become competitive; includes basic financial, marketing, and business skills.
- Capacity Building (CB) – addresses a qualified, successful business that is poised to expand its capacity through access to larger or unbundled contracts, bid partnerships, etc. upon development of advanced business and management skills, acquisition of ISO 9000¹⁰ certification, and/or external networking.

The 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 TA and CB resources. The participating

¹⁰ The International Organization for Standardization (ISO), a network of the national standards institutes of some 160 countries, with a central office in Geneva, Switzerland, sets international business standards and guidelines. The 9000 family of standards represents an international consensus on good quality management practices. <http://www.iso.org/iso/home.html>.

utilities initially took the position that they were effectively providing necessary TA and CB, while CBOs contended they were foolishly ignored, and TA and CB was hard to access despite utility claims to the contrary.

As the utilities began to explicitly identify numerous elements of their available TA and CB, support of local community groups, networking events, prime supplier programs, scholarships, educational partnerships, and other outreach activities, the CBOs acknowledged these efforts and sought to better utilize the benefits for their members and other small and diverse businesses. However, many CBOs also clearly defined what they saw as shortcomings, old habits, and a failure to fully engage their communities by current utility supplier diversity programs. They sought more funds, more involvement of community groups in delivering utility-based TA and CB, grants to conduct their own TA and CB, and measures of program effectiveness. Some utilities seemed surprised at how their programs were perceived by participating CBOs.

The culmination of more than a year of dialogue, comment, contentions, and proposals is found in the post en banc comments provided whereby two fairly comprehensive TA and CB improvement plans were submitted for Commission consideration, and other ideas and comments on this topic were offered.

4.1. The Joint Utilities Proposal

SCE, PG&E, Sempra, AT&T, Verizon, and CWA (Joint Utilities) developed a consensus supplier diversity proposal touted as a unified and comprehensive approach, based on their collective experience, which addresses all stages of a business's development and could serve as a model to smaller and newly reporting utility companies. The three-year proposal has five key elements:

- Cross-functional team of employees
- A prime supplier subcontracting program (utilities have each targeted development in “second tier”¹¹ spend, mentoring)
- Matchmaking events between prime contractors, small and diverse businesses, and utility managers
- Strategic target initiatives (e.g., AT&T’s Women of Color)
- A three-tiered TA and CB with each track suited to a particular level of business development and utility needs

The Joint Utilities plan focuses on contractor & supplier requirements, procurement information, marketing to utilities, expanding capabilities and business development. No additional funding need was projected beyond current supplier diversity program funding.

4.2. The Two Chambers Joint Proposal

CHCC and CAPCC submitted a TA and CB program focused on the 1000 most likely to succeed WMDVBEs which would eventually be directed into one of four “academies” located around the state for intensive training. They contend the proposal responds to CBO consensus that intensive TA and CB is needed, and addresses consensus obstacles identified in the proceeding, e.g., shortage of qualified WMDVBEs, lack of industry knowledge, bid sophistication, and inability to deal with large projects. The proposal envisions the Clearinghouse conducting a survey to identify promising WMDVBEs, academies run by winning bidders selected by the utilities with Commission oversight, use of specifically designed curriculum & training modules created to win bids, and

¹¹ “Second tier” generally refers to subcontractors participating in a larger or prime contract.

graduates placed in one-on-one utility mentoring programs. Other less qualified WMDVBEs would be referred to existing business development programs (e.g., U.S. Small Business Administration).

The Two Chambers plan would begin with one academy in an 18-month pilot program and focus on marketing, fiscal responsibility, bid preparation, advanced business skills, industry knowledge, administration of large projects, and ISO 9000 certification. The total estimated cost for four academies is about \$1.0 - \$1.5 million, some of which could be offset by a small enrollment fee, California Utilities Diversity Council¹² (CUDC) scholarships, and utility contributions.

4.3. BEC/LBCGLA/Mabuhay

The Joint Parties submitted comments that emphasized the importance of more TA and CB to ensure WMDVBEs can effectively compete to increase diversity and lower ratepayer costs. The Joint Parties suggested the Commission require all utilities to coordinate TA programs by industry and to develop a five-year TA and CB program annually funded by diversion of $\frac{1}{4}$ of 1% of total procurement dollars for that utility company.

The comments also included recommendations for increased philanthropy in minority and underserved communities, self-certification for small contracts, admission of failure of voluntary efforts in underutilized areas, placement of customer deposits in minority institutions, increased target goals to aggregate 34.5%, prioritizing WMDVBE growth in wireless, SmartGrid, green energy, and electric procurement, and expansion of GO 156 reporting to include cable and

other companies that appear before the Commission. These non-TA recommendations are discussed in more detail in Section 5 below.

4.4. AICC

The Chamber initially stated “the fundamental purpose of the GO 156 is to assist our American Indian businesses in increasing our business opportunities within the utilities...” AICC said it was offended by utility claims that there are not enough qualified American Indian businesses positioned to successfully compete for contracts. The 10-point proposal submitted was focused on growth of American Indian business success in utility procurement programs. The proposal contained recommendations that included raising the aggregate target goal to 35%, development of WMDVBE prime suppliers, prompt pay provisions, a higher minimum for sole-source orders, increased utility diversity staff, development of joint utility funds for credit and bonding, and increased philanthropy to AI organizations. These are non-TA issues that are discussed in more detail in Section 5 below.

4.5. Greenlining

Greenlining’s comments included favorable review of the OIR which it said paved the way for the sophisticated conversation at the “best ever” 2010 *en banc* hearing. Greenlining agreed that expanded TA and CB was critical and echoed other requests that utilities consult with CBOs when they design shared and individual TA and CB programs. The group cited Commissioner Ryan’s call at the *en banc* to combine and share TA resources to avoid duplication.

¹² CUDC was created as a resource for utilities, the Commission, and policymakers regarding employee diversity in the regulated utility industry.

Greenlining also offered several recommendations on other issues, including asking the Commission to enter Memoranda of Understanding on GO 156 voluntary goals with companies not subject to Commission jurisdiction but doing business in California (e.g., cable), to encourage utility use of minority media for mainstream outreach, support placement of customer deposits in minority banks, expand procurement of basic goods and services by wireless companies, and to promote supplier diversity in the “green economy” (e.g., renewables, broadband deployment, SmartGrid deployment, etc.) Non-TA issues are discussed in more detail in Section 5 below, as are the group’s suggested amendments to GO 156.

4.6. Discussion

Initially, we underscore that there are limits to what the Commission may order pursuant to its authority in §§8281-8285 and GO 156. For example, final vendor selections by a utility remain within its legitimate business judgment.¹³ Additionally, each utility voluntarily chooses the specific elements of its own outreach program.

However, we are fortunate in California that the largest utilities have embraced supplier diversity and committed to developing effective outreach programs. We have also benefited greatly in this proceeding from the vigilant participation by CBOs and business groups which brought the pluses and minuses of existing utility outreach programs to light. The conversation prompted by the OIR broke down some barriers between CBOs and many

¹³ Section 6 of GO 156 states, in relevant part, that “The utility retains its authority to use its legitimate business judgment to select the supplier for a particular contract.”

utilities and prompted a thorough airing of concerns and complaints among the parties.

That dialogue has helped the utilities to focus on how to better partner with community groups, to share and maximize use of resources, and to identify where existing TA and CB efforts could be improved in conformity with §6.2.1(2) and (3) of GO 156. It also allowed CBOs to better understand what resources are available from the utilities, what is expected of competitive bidders for supply contracts, and how procurement decisions are made and by whom. This in itself is an achievement for which the parties are congratulated.

The Joint Utilities proposal is most important for its unified expression of the “legitimate business judgment” of the utilities regarding baseline minimum standards for its suppliers. It was developed by a coalition of a large number of utilities, led by the three largest energy companies, the two largest telecommunications companies, and numerous water companies. Their collective position is now in writing for the CBOs and all prospective suppliers to see and follow when implementing TA & CB. For this reason alone, we think it merits broad exposure to the public and attach it to this decision as Attachment A.

It also serves another important function. This is a groundbreaking example of cross-industry consensus on key program elements for any utility’s supplier diversity program that can serve as a model to smaller companies and those new to reporting. This is the first time we have seen this level of initiative by utility companies and we applaud their effort. They have shown a better understanding that these programs should be transparent and they should work closely with the CBOs and communities within their respective service territories.

The Joint Utilities proposal has several other good points including a broad focus on all levels of WMDVBEs, a three-year commitment, advanced technology and emerging market components, and incorporation of existing programs and resources at community colleges and universities, local business organizations, and the U.S. Small Business Administration (SBA). On the other hand, it appears to have more emphasis on Tier I (1-3 years experience, <\$1 million annual revenue) businesses when many are clamoring for capacity building of established WMDVBEs. It is also unclear how many Tier II (3+ years of experience, > \$1 million annual revenues) and Tier III (5+ years, demonstrated readiness to grow) businesses can actually access the few identified academic training programs. Furthermore, it should not be limited to WMDVBE businesses.¹⁴ The proposal could be further developed and we encourage the parties to do so.

Attachment of the Joint Utilities proposal does not mean we reject the ideas set forth in the Two Chambers proposal. Both proposals reflect the wisdom gained from the discourse that occurred in this proceeding. Both TA and CB proposals targeted similar training components for small and diverse businesses, but with differing views on which businesses would gain early benefit, who would do the training, and how it would be funded. Some of the challenges of the Two Chambers proposal are that it requires an infusion of funds, a Clearinghouse survey outside the current contract requirements, an RFP process that includes development of training curricula, and an 18-month pilot

¹⁴ Section 6.2.1(8) provides, "Each utility is directed to offer the same assistance set forth in Section 6.2 to non-WMDVBEs, upon request."

program. These elements inject uncertainty and would necessarily delay actual benefits to current WMDVBEs.

We do not take a position on whether the utilities, CBOs, or third party vendors are best suited to do such training. All parties seem to agree that such training needs to occur if more small and diverse businesses are to become competitive for contracts. Clearly, the utility companies have already invested time and money in developing the TA and CB portions of their supplier diversity programs and are in the best position to know what business or industry acumen appears to be lacking in would-be suppliers. Avoiding duplication of effort is desirable. However, the existing programs are not perfect and CBOs offered many ideas for improvement that the utilities should consider. In addition, some CBOs already perform needed training in some of the identified categories. What the parties have deemed essential to improvement is that the utilities and CBOs that conduct TA and CB training should share resources, conduct outreach, work together, exchange constructive criticism, share best practices, and assist smaller and newer reporting companies to get their programs up and running.

The question of whether to focus on a few “high quality” WMDVBEs or to reach out to different levels of business development is an important one. Each approach has value. Utilities want to see rapid expansion of the pool of certified and qualified suppliers and their proposal involves a multi-tiered training model for small, medium, and large businesses. In contrast, the CBOs want to see more contracts awarded to qualified small and diverse businesses as soon as possible. The Two Chambers proposal reflects this view by focusing on businesses that already demonstrate a level of sophistication that qualifies them, or shows the potential to qualify, to competitively bid on larger contracts. We encourage the

Two Chambers and other CBOs to continue their efforts to identify “high potential” WMDVBEs and assist them directly or by referring them to other existing training programs.

The primary recommendation by the Joint Parties was for the Commission to order the utilities to develop a five-year plan for TA and CB and to fund the program from $\frac{1}{4}$ of 1% of total procurement dollars. The Joint Utilities proposal is a three-year plan which substantially conforms to their request, and goes beyond in other ways. However, none of the utilities supported a Commission order to divert procurement dollars. For example, Sempra argued that for the large utilities with billions of dollars in procurement spend, this would amount to many millions of dollars, far in excess of the total spent by many utilities on their programs.

We decline to order a specific amount, or percentage, of procurement spend to be directed towards an element of a utility’s supplier diversity program. Even if this did not exceed our authority by intervention in an internal business decision, it is the wrong response to the stated problem. Not every company or industry has the same lapses in their TA and CB program components, the proposed use of funds lacks guidelines or controls, the Joint Utilities have responded with a specific model of utility commitment contained in their proposal, and there is insufficient documentation in the record to support an order for ratepayer funding of this program element.

Greenlining offered a unique comment which was otherwise undeveloped during the proceeding. It stated that most corporate RFPs now contain “sustainability criteria” for suppliers to reduce their own carbon footprint, and suggested that TA programs include a sustainability component. This is a reasonable suggestion and we agree it merits discussion between the parties.

However, we differ with Greenlining on another matter. The organization echoed a linguistic complaint made by AICC that the participants in this program area should not use the phrase “qualified” businesses because it is a vestige of formerly held assumptions that non-white businesses are presumed not to be qualified in contrast to white-owned businesses. While acknowledging some sensitivity to historical injustice, we decline to wholly abandon the word which was used frequently by some parties without malice or ignorance, and instead was used to describe any business, usually new and/or small, which had not yet acquired either industry experience or the generally accepted business practices to support a competitive bid. The record established that such businesses exist and seek various kinds of technical support.

Accordingly, based on the record, we find that it will advance the goals and policies of GO 156 (1) to include the Joint Utilities proposal as Attachment A to this decision, (2) 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 to get their programs up and running, and (3) for CBOs to continue to provide input to utility TA programs and assist WMDVBEs to get the TA they need from whatever available source.

5. Discussion of Other Issues

It is important to point out that the achievements by California utilities in opening up their procurement activities to the supplier diversity goals set forth in the 1986 statutes and in GO 156 are truly significant, especially when

compared to other states and Fortune 500 companies.¹⁵ Although “nothing in GO 156 authorizes or permits a utility to utilize set-asides, preferences, or quotas,”¹⁶ several utilities have exceeded the voluntary target goals and the results are greater competition among suppliers and enhanced economic efficiencies in procurement by utilities and their regulated subsidiaries and affiliates.¹⁷ Even so, many utilities lag behind these target goals and offer various explanations for their limited results. Some, like water companies, who are just beginning to develop and report on their supplier diversity programs, seek advice and assistance. Others have individual factors like large foreign sourcing or no certified WMDVBEs for procurement categories in their service area.

More than a dozen non-utility parties (mostly CBOs and a few diverse businesses) actively participated in the OIR in order to seek changes they believe are necessary to fully realize the potential of §§8281-8285 and GO 156. Their participation was integral to the ensuing conversation which brought to light the necessity of utilities listening to CBOs and working with them in order to advance their supplier diversity goals. All CBOs contended that there were specific steps that utilities, the Clearinghouse, the Commission, and the organizations themselves could take to increase the number of certified bid-ready companies, to improve results in underutilized categories and in break-out target areas, and in addressing various identified barriers to small and diverse

¹⁵ Fortune 500 companies report about 10% procurement spending on diverse suppliers.

¹⁶ Section 6 of GO 156.

¹⁷ §8281(b)(2)(B).

business success within utility procurement programs. We discuss these various issues and suggestions below.

5.1. Target Goals and Aspirational Interim Steps

In 2009, utility spending on WMDVBE procurement rose to \$4.27 billion from \$3.47 billion in 2008, an increase of 23.05%.¹⁸ The percentage of total procurement also increased from 13.19% in 2008 to 16.72% in 2009. Although the “traditional six” (PG&E, SoCalGas, SDG&E, SCE, AT&T wire line, and Verizon wire line) continue to surpass the aggregate target goal of 21.5%, it has never been met by all utilities on a collective basis.¹⁹ As discussed above, the utilities were asked to quantify and express their previously stated commitments towards improvements in supplier diversity for the oral argument held in this proceeding on June 23, 2010. A brief summary of their testimony is in Attachment B to this decision. The summary includes total 2009 procurement spend, 2009 reported WMDVBE results by category, and each company’s own proposed interim steps both towards specific target goals and in their supplier diversity programs.

The large energy utilities offered some quantified goals and program initiatives, while most other companies offered only program initiatives and suggested that numerical goals were limited by actual procurement needs and WMDVBE availability. Despite CBO requests, none of the reporting companies identified any sub-category interim steps, e.g., Latino-owned, minority women-owned businesses, etc. CBOs provided a range of comments about the self-

¹⁸ CPUC Report to the Legislature on Utilities’ Year 2009 WMDVBE Procurement (September 2010) (2009 Report) at 1.

¹⁹ *Ibid.*

identified aspirational interim steps offered by the reporting companies. These comments are in the record but some highlights are described below:

- BEC, LBCGLA, and Mabuhay jointly commented that the proposals were “skimpy” and recommended:
 - ✓ A 15% target goal for Latino-owned businesses, 10% for Asian-owned businesses, 6.5% for Black-owned businesses, and 10% for women-of-color-owned businesses;
 - ✓ Double counting of minority DVBEs through 2013;
 - ✓ Support for women-of-color business initiatives by AT&T and Sempra;
 - ✓ Support for Sempra’s TA plan for DVBEs, WMDVBE partnerships with large financial institutions, work with minority media, targeted categories for expansion;
 - ✓ Support for PG&E’s 27% aspirational aggregate goal and offered to assist with minority DVBEs;
 - ✓ Rejection of Verizon’s requests to adopt exclusions for some categories, and to include out-of-state DVBEs; and
 - ✓ Criticism of SCE’s initiatives as “internal” rather than reaching out to CBOs.
- CAPCC: commented that few utility proposals included plans to coordinate or collaborate with CBOs, failing to utilize their strengths and recommended various means to improve this relationship.
- AICC: commented that only SDG&E provides procurement numbers for AI businesses and offered:
 - ✓ Support for AT&T, SDG&E, SoCalGas which have included AI woman-owned businesses in outreach and TA;

- ✓ Support for AT&T which included AI DVBE-owned businesses in its outreach program;
- ✓ Support for SCE for hosting an AICC matchmaking event; and
- ✓ A recommendation for more outreach to AI community, e.g., AI woman-owned businesses, Native American Bar Association, AI-DVBES.
- CHCC: commented that the interim proposals lacked a specific measure to increase outreach or commitment to work with CBOs to improve WMDVBE spend and recommended:
 - ✓ Requiring utilities to develop a strategic outreach campaign.
- Greenlining: commented that some utility plans have been effective while others have not, and recommended:
 - ✓ Support for utility-targeted demographic groups (e.g., Sempra & AT&T for minority woman-owned businesses, Sempra, AT&T, PG&E, and Verizon for DVBEs);
 - ✓ Support for Cox Cable for “great strides” and “proactive efforts” to improve supplier diversity; and “Wild Goose Storage” for its own aggressive goals;
 - ✓ Utilities identify specialties within professional categories and racial groups within the MBE category for targeted focus; and
 - ✓ Rejection of Verizon’s request to re-adopt exclusions for some categories.

5.1.1. Discussion

We applaud the utilities who stepped up to quantify their own self-identified aspirational steps for improvement in their supplier diversity programs over the next two years. In particular, PG&E, SCE, SDG&E, SoCalGas,

and Wild Goose took the impressive step of setting numerical targets for themselves which we think is an appropriate internal incentive. Other utilities may not get the kind of results they purport to seek when relying solely on program initiatives, although some initiatives are promising (e.g., AT&T's Women-of-Color, Operation Hand Salute). We look forward to discussing the progress of each company at the 2011 *en banc* proceeding and having a conversation about the effectiveness of their own self-developed strategies.

Based on the record, it is reasonable for the CBOs to ask for more utility coordination and collaboration with community groups because they are connected to a wide variety of small and diverse businesses.²⁰ The CBOs are likely able to identify potentially competitive businesses and help channel them to certification, training, and into position to submit qualifying bids for contracts. Failure to reach out and work with these groups is simply a waste of valuable resources.²¹

In summary, we do not adopt any revised target goals for reporting companies today. Instead we urge the CBOs to carefully review the identified interim steps and program initiatives to find where they can maximize the opportunities to channel small and diverse businesses into utility initiatives. Most utilities said they already work with, or intend to immediately work with, community groups to identify procurement needs and WMDVBEs. The CBOs themselves are in the best position to hold the reporting companies to their own promises during the coming year and we strongly encourage them to do so.

²⁰ E.g., SDG&E's representative testified that they would "start that process (of working with CBOs) today." Transcript of Oral Argument (June 23, 2010) at 13.

²¹ See, e.g., §6.2.1(2).

5.2. Changes to Annual Reporting

Reporting companies are required by Section 9 of GO 156 to annually file reports that contain specific information about their supplier diversity programs. Several parties recommended or agreed that certain changes be made to these requirements. Proposed changes that seem reasonable and lack opposition are:

- Add separate line item report on electric procurement spend;
- Require electronic filing of annual reports and posting on the Commission's website;
- 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); and
 - ✓ Conform to DGS criteria for DVBEs.

Other CBO ideas were problematic, vigorously opposed, or insufficiently developed to adopt here. Rejected ideas about annual reports, and the reasons therefore, include:

- Require reporting of economic benefits of the supplier diversity programs because economic benefits were thought to be obvious, quantification of benefits would be difficult and fail to include non-economic benefits, and it would drain available program funds;
- Require Commission audits of annual reports because the Commission already has this authority;

- Expand definition of minorities to include disabled and LBGT²² because it would require statutory changes;
- Require cable companies to report because it would require statutory changes;
- Exclude from reported base services those products and services “demonstrably lacking” in diverse suppliers because it would dilute incentives to improve results, and no corroborating availability studies have been done;
- Examine reporting of real estate transactions to separately identify commissions to encourage use of diverse brokers and agents because there is insufficient information; issue needs to be further developed; and
- Replace Standard Industrial Classification (SIC) codes, which are outdated and falling out of use, with the North American Industrial Classification System (NAICS) because there is insufficient information; issue needs to be further developed.

Accordingly, based on the record, we find that it will advance the goals and policies of GO 156 to adopt the identified changes to annual GO 156 reporting to require electronic filing, posting of annual reports on the Commission’s website, inclusion of electric procurement and the number of WMDVBEs that obtained contracts, and conforming changes from AB 2758.

5.3. Prime Supplier Programs

The topic of prime contractors/suppliers (primes) was broadly considered during the course of the OIR both for expanding use of small and diverse businesses as subcontractors and for verification that primes follow through on contract commitments to hire WMDVBE subcontractors. Section 6.3 of GO 156

²² Lesbian, bisexual, gay, and transgender.

tells each covered utility to establish a subcontracting program to encourage its primes to use WMDVBE contractors. Section 6.3.4 asks utilities to encourage primes to develop their own supplier diversity plans for subcontracting and authorizes a utility to incorporate these plans into their contracts with primes, should they choose to.

Nearly all parties agreed that primes are the key to opening up large contracts in some way to small and diverse businesses. Several parties, including AT&T, SDG&E, CWA and some CBOs, urged the Commission to take a stronger role supporting utility programs to improve use of WMDVBEs by primes. Early comments asked the Commission to hold a workshop for primes to explain the benefits of expanding their sub-contractor pool, and another for utilities to share best practices. In WSR#1, the USPD staff (Staff) agreed that the Commission should encourage primes to use small and diverse businesses, and that utilities may encourage primes to develop diversity programs. Staff echoed the common CBO view that if primes have a diversity program, they are more likely to use it. Joint Parties and CAPCC wanted such programs mandated by the Commission.

However, a mandate is problematic for several reasons, including potential legal limits and the voluntary nature of much of the Commission's GO 156 program. Nonetheless, all of the major utilities have some sort of prime supplier program. A few like Sempra and PG&E include contract language to assure a portion of subcontracting goes to WMDVBEs, and others have now identified the issue for action.²³ CBOs want access to the identities of each utility

²³ Section 6.3.5 of GO 156 offers an example of optional prime contract language.

company's primes so they can access these large suppliers directly. This seems like a good idea, although utilities state that some have non-disclosure agreements and the Commission may lack authority to order public dissemination of this information. However, there is no reason why the utilities could not hold networking events where primes and potential sub-contractors are invited and voluntarily disclose their identities and make connections for future contracting opportunities.

Another proposal widely supported by CBOs is that the Commission audit the prime contracts because many stated the primes do not follow through with using WMDVBE subcontractors which they promised when getting the prime contract. In WSR#2, Staff recommended that utilities engage in follow-through and verification of prime contractor claims to use WMDVBEs. Several utilities, like PG&E and Sempra, said they already do so and may enhance verification measures in the future, including possible audits. We agree these are essential steps to assure the integrity of their prime supplier programs and encourage all utilities who work with their primes on expanding the diversity of subcontractors to follow suit. In any event, §6.3.7 of GO 156, requires each utility to include a summary of prime contractor progress in its annual report, including any results from its own audits.

There was insufficient information in the record about other recommendations related to primes. For example, AICC sought focused development of WMDVBE primes and Greenlining recommended bringing renewable energy providers into prime supplier programs. The development of WMDVBE prime contractors may be valuable, but there is no information in the record on the availability of potential WMDVBE primes or methods of development. Similarly, whether renewable energy providers could be folded

into prime supplier programs was unexplored during the proceeding. Thus, we are unable to thoughtfully evaluate these proposals at this time.

Accordingly, we adopt no changes to GO 156 in this area. However, based on the record, we find that it will advance the goals and policies of GO 156 to recommend that the utilities, CBOs, and Staff work together to develop a networking event model where primes and potential sub-contractors meet to discuss (1) future large procurement projects, (2) the benefits to primes of greater use of a diverse supplier base for subcontracts, and (3) best practices for verification of prime contractor commitments to use diverse businesses.

5.4. Improved Spend in Underutilized Areas

An important issue for most parties is the matter of certain areas of procurement which are “underutilized,” meaning where procurement spending levels are below the aggregate WMDVBE percentage total for the company. The Commission has assisted the utilities and CBOs in prior years with workshops and networking events in the areas of legal and financial spend. During the course of this proceeding, including the May 5, 2010 workshop, the parties also identified advertising, insurance, and consulting as underutilized areas where procurement spend could be improved.

In 2009, the Commission co-sponsored two events for legal services and three for financial services. The most recent utility annual reports on GO 156 show progress during 2009 in the areas of legal and financial services. SoCalGas showed the highest level of legal spend at 41.38%, with PG&E at 20.58%, and AT&T-CA at 16.29%.²⁴ The results are less dramatic for financial spend with

²⁴ CPUC Report at 15.

SDG&E highest at 7.63%, SCE at 6.84%, and SoCalGas at 6.31%, although SCE spent the most on diverse financial firms, \$2.1 million, a 300% increase over 2008.²⁵

The major energy and telecommunications companies have described a range of strategies, activities, and efforts undertaken to support the development of WMDVBEs in legal, financial, and technical procurement areas. The breadth of these programs is described fully in the record. Generally, these utilities seem satisfied with their progress and remain committed to their current programs (e.g., SCE's networking with WMDVBE law firms, Sempra's outreach to WMDVBE firms). There has been some creative progress in financial services as utilities have begun to use WMDVBEs for stock trading, auditing, investment management, and commercial paper transactions. We note that smaller utility companies have not made the same inroads, due in part (they say) to a lack of resources or unavailability of professional WMDVBEs in their geographic area.

To address utility claims that it is hard to find experienced WMDVBE professional firms, Verizon, CHCC and Joint Parties suggested that the Commission allow reporting of "partial credit" for retention of women, minorities, and disabled veterans at majority professional firms or primes who have diversity programs. Sempra and PG&E opposed it on the grounds it could dilute incentives for primes and would require utility resources to design and implement an evaluation tool. This proposal is controversial and lacks sufficient development in the record, therefore, we decline to act on this proposal.

²⁵ *Ibid.*

In WSR#1, Staff agreed some of the current utility outreach seems effective, and recommended utilities host industry-specific workshops and set voluntary goals for specific underutilized areas. Greenlining supported voluntary goals in underutilized categories and also sought to expand these categories, preferably through some sort of formal assessment.²⁶ During the proceeding, and specifically at the May 2010 workshop, CBOs expressed concern over the pace of utility results, and offered recommendations on how to improve spend in underutilized areas. Some of these ideas are discussed below:

5.4.1. Legal Services

Joint Parties asked the Commission to acknowledge that voluntary efforts by utilities have been unsuccessful and to order utilities to (i) provide information on minorities at contract law firms, and (ii) develop alternative strategies and methods for improving spend in legal services (e.g., consortiums of WMDVBEs). We decline to order the utilities to gather this information as part of the voluntary program, in favor of recommending utilities reach out and work with their contract firms, as SCE did for legal services. Utilities are well-positioned to gain voluntary cooperation from contracted non-WMDVBE firms, and it likely helped SCE that it had a diverse in-house legal department. Other utilities could follow SCE's model for success, which SCE could also replicate in other professional categories. CBOs could also benefit from working with utilities and WMDVBEs to stimulate development of partnerships and consortiums of WMDVBEs.

²⁶ WSR#1 at 18.

5.4.2. Financial Services

Joint Parties made the same comments as for Legal Services and we decline to mandate such data collection. Some utilities have been very creative in finding ways to use small and diverse businesses and we encourage other utilities to learn from those experiences. The use of minority banks, particularly for customer deposits, is significant because it may have the added benefit of making more capital funds available within minority and low-income communities, an important part of business growth (e.g., Sempra placed \$14 million in customer deposits at a minority bank).²⁷ We endorse the Staff recommendation that utilities share information on experienced financial services WMDVBEs and suggest all utilities carefully review the reported range of opportunities for growth in this area. Similarly, CBOs can alert WMDVBEs to potential contract areas based on newly reported financial services procurement.

5.4.3. Advertising

Several parties agreed that low spend in advertising should be addressed, particularly by more use of minority/ethnic media. We decline to adopt the request by Joint Parties to order utilities to gather information about minorities employed at majority advertising firms. Sempra committed to developing opportunities as contracts expire, while PG&E encouraged WMDVBEs to develop partnerships with non-minority firms. We agree with the observations in WSR#1 that the advertising landscape is changing due to technology and financial economies. Therefore, small and diverse businesses in this category should consider reaching out to the utilities to better understand available

²⁷ A list of minority banks is attached as Appendix E to the WSR #2.

opportunities, for assistance in creating partnerships, and to attend or host networking events.

5.4.4. Insurance

There were differences of opinion on how to tackle low spend in this area. PG&E suggested WMDVBEs partner with large brokers, while SCE advised brokers to narrow their focus to an industry group. Sempra disagreed with SCE and recommended more networking events that included utility project managers. Staff agreed with Sempra in WSR #1 that networking is effective. This is a category ripe for a workshop since utilities appear to have very different ideas about their procurement needs in this area. We also disagree again with the Joint Parties on ordering data collection at non-WMDVBE firms.

5.4.5. Consulting and other areas

AT&T asked the Commission to host a workshop on consulting services and SCE suggested more WMDVBE partnering with non-minority firms. Sempra reported on its programmatic approach which emphasizes small internal networking with high potential WMDVBEs, executives, and non-WMDVBE primes that has led to WMDVBE consultants for project management, scheduling, information technology development, mapping, and quality assurance. We agree that consulting services may be an appropriate category for a workshop and recommend that the utilities, CBOs, and USPD staff work together to identify relevant consulting specialties and best practices of target programs like the one at Sempra.

We commend the utilities for the wide-ranging strategies and activities they have recently developed to address underutilized categories. There has been significant improvement in the areas of legal and financial services for some utilities as they, and their community partners, think more creatively and work

together. On the other hand, the facts are that some procurement categories, particularly professional services, continue to have very low spend relative to overall WMDVBE procurement.

We adopt no changes to GO 156 in this area. However, based on the record, we find that it will advance the goals and policies of GO 156 to recommend that the utilities, the CBOs, and Staff 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.

5.4.6. DVBEs

Many parties, both utilities and CBOs, were concerned about DVBE spend because nearly all utilities report less than the 1.5% target. Some DVBE organizations participated early in the proceeding, often providing information about initiatives the DVA or the organizations themselves had undertaken. For example, DVA and DVBEA supported an increased target goal of 3% for DVBE procurement, similar to a procurement program through the DGS. Elite SDVOB thought the goal was less important than changing attitudes at the utilities which they claimed routinely ignored veteran-owned businesses.

DVBEA and the Elite SDVOB both took issue with utility claims they could not find many DVBEs in their procurement categories. It appears one problem is establishing an up-to-date database. These veterans' groups are working together to complete the database and make it available to utilities. Furthermore, they have initiated discussions with utilities and the Commission about improving DVBE access to contracts and an effort has been launched to update business profiles of more than 1000 DVBEs. In general, DVBEs raise

many of the same issues as other CBOs on barriers to competing for contracts. For example, all these groups agreed with other CBOs that more TA and CB was needed and unbundling contracts would open up more bid opportunities.

As discussed in Section 4 above, we decline to adopt any change to the target goal for DVBEs in GO 156, but we agree there has been disappointing progress to date in this area. We strongly encourage the utilities to continue their outreach to DVA and veterans organizations, and work to incorporate the DVBE business profiles into the publicly available database of WMDVBEs at the Clearinghouse or otherwise make them readily accessible.

5.5. Barriers to Competing

From the inception of this proceeding, the CBOs have uniformly argued that there are numerous barriers preventing small and diverse businesses from effectively competing for contracts. Most of these issues were addressed in the TA and CB program section above. Other issues involve utility business practices and requirements which are discussed here.

As amended in 1990, the Pub. Util. Code anticipates that utilities may choose to modify some payment practices and bonding requirements as they open contracting to more small businesses.

Section 8286 provides:

(a) In order to facilitate the participation of women-owned businesses, minority-owned businesses, disabled veteran-owned businesses, and small businesses in contract procurement, any corporation subject to this article may consider the following measures to include those businesses in all phases of their contracting:

- (1) Timely or progressive payments to those businesses.
- (2) An amendment of the performance bond requirements so that bond requirements of electrical, gas, and telephone corporations do not prohibitively burden those businesses from

procuring the corporation's business.

(3) The provision of assistance to those businesses by securing contract payments to those businesses with letters of credit, negotiable securities, or other financing arrangements or measures.

(b) This section does not restrict a corporation's ability to require a bond.

5.5.1. Discussion

AICC and CSBA asked the Commission to order the utilities to establish a “prompt pay” provision (i.e., 30 days, 2% discount in 10 days, 1.5% interest after 30 days.) AICC also suggested we examine whether utilities can develop a surety bond program for small business contractors.

We agree that prompt payment and flexible bond requirements are important to small businesses and may remove barriers to competing for contracts. However, no changes to GO 156 are required because the utilities are already authorized to consider and implement these suggestions pursuant to §8286(a).

The parties also reviewed utility insurance requirements for suppliers which many CBOs said were too expensive for small businesses. Sempra and SCE have held meetings to assist WMDVBEs in getting insurance, but the telecommunications companies have not been similarly active. Instead, Verizon offers referrals and AT&T supports working with others on the issue. We agree with the CBOs that this is an obstacle that needs further inquiry and recommend a workshop or seminar for WMDVBEs to explore opportunities to form cooperatives and identify other cost-cutting options.

On the other hand, we decline to endorse suggestions that utilities create a development fund to extend small business credit or otherwise ask utility ratepayers to provide capital to small and diverse businesses. The utilities see

this matter as beyond the scope of GO 156 and outside their role. Some CBOs seemed to agree and instead asked for a workshop by lenders and community banks on loan criteria, microlending, and access to capital. The Staff agreed that a seminar for CBOs could be useful to them and we recommend that the CBOs develop a workshop with lenders, CBOs, and small and diverse businesses to learn how to access credit. Utilities that have business relationships with minority and community banks may be able to offer some assistance in identifying these institutions and encouraging their participation.

Accordingly, based on the record, we find that it will advance the goals and policies of GO 156 to recommend that CBOs initiate a dialogue with utilities about prompt payment provisions and flexible bond requirements in some contracts. These are internal business decisions but flexibility is authorized by statute and the ideas may be workable. In addition, we recommend that CBOs develop a workshop for WMDVBEs on obtaining credit, particularly from community banks, and to work with the utilities and Staff to develop a workshop on cost effective options for small business insurance.

5.6. Capacity Building—Unbundling Large Contracts and Mentoring

Capacity Building refers to the potential of a small but experienced business to increase its sophistication and performance capacity in order to become a competitive bidder on larger projects. The business development portions of this issue have been addressed as part of the TA and CB proposals in Section 4 above. However, the CBOs offered several suggestions and recommendations about actions that the utilities could take that would help existing suppliers to grow.

5.6.1. Large Contracts

Perhaps the most frequent obstacle cited by CBOs was an inability to penetrate the largest contracts which tend to be awarded to big contractors with whom the utility has a procurement history. Several reasons for this result have been discussed and small supplier inexperience, pre-existing relationships, lack of bid transparency, and the broad scope of the large contracts were among the factors identified that keep these contracts out of reach. GO 156 anticipated this problem in Section 6.2.1(8) which requires utilities to encourage their procurement employees “to break apart purchases and contracts as appropriate to accommodate the capabilities of WMDVBEs.”

Several CBOs favored requiring utilities to “unbundle” large contracts into somewhat smaller contracts for bid. It was one of the more controversial ideas because the utilities resist any mandate to expose the contracts for a variety of reasons, primarily that the decisions about the size of contracts are proprietary business judgments. However, according to the WSR#1, some utilities appear to understand that unbundling increases opportunities for small suppliers to grow, and have taken appropriate steps. For example, SCE committed to unbundling some consulting contracts and Sempra said it does some “strategic unbundling.” On the other hand, AT&T, Verizon, SWG and PG&E oppose any directive for unbundling claiming it lacks legal authority, voids economies of scale, is a business decision, and is unlikely to work.

The Joint Parties asked the Commission to order utilities to unbundle contracts in excess of \$1 million or explain why not. CAPCC argued that the Commission should adopt a comprehensive unbundling strategy, similar to one adopted by the federal Office of Management and Budget, that could be

“codified and implemented within the framework of GO 156.”²⁸ Other ideas included AICC’s suggestion to raise the minimum for “sole-source” purchase orders to \$250,000 and CAPCC’s proposal that the utilities and the Commission could implement a program which permits contracts less than \$75,000 to be offered to WMDVBEs, similar to one at Sacramento Municipal Utilities District that reserves these small contracts for small businesses to “get their foot in the door.”²⁹ Such specific set-asides are currently prohibited by GO 156.³⁰

As a result of the May 5, 2010 workshop, several utilities saw a new opportunity to work with CBOs and small and diverse businesses and agreed to voluntarily examine unbundling opportunities. In turn, CBOs may better understand why utilities have been reluctant to alter the scope of contracts entered with large primes with whom the utilities have a successful history. For this reason, Greenlining, AICC, and the Joint Parties argued that CBO access to executives and procurement decisionmakers to present the case for more unbundling was an integral step in WMDVBE growth. The WSR#1 also focused on supplier diversity staff involvement in all RFPs. Many utilities have described how they are working to engage their management in order to fully integrate supplier diversity at all levels of the procurement chain. CBOs confirmed the importance of management commitment and asked that utilities have programs to encourage internal awareness of supplier diversity. The large utilities claim they do this already, and §6.1.1 of GO 156 requires such training for procurement staff.

²⁸ CAPCC Opening Comments on WSR#1 at 4.

²⁹ *Ibid.*

We agree that unbundling large contracts is another way to increase the number of contracts open to small and diverse businesses and we applaud the voluntary actions taken to date by SCE and Sempra. Based on our understanding of the sensitivity of existing procurement relationships within the limited world of large suppliers, we do not order the utilities to take any specific actions to unbundle contracts. However, we agree that utilities committed to the GO 156 program should carefully consider whether contracts greater than \$1 million can be unbundled, and encourage conversations with CBOs about potentially fruitful procurement areas for unbundling. We also recommend that all reporting companies seeking to improve their results should educate their management on the value of the program and how to integrate supplier diversity into all business lines.

5.6.2. Mentoring

Another important area of discussion about capacity building was mentoring, particularly mentoring of high potential WMDVBEs by large, successful WMDVBEs, non-WMDVBE primes, and/or utility personnel. The idea is that mentors provide one-on-one assistance in developing industry expertise and relevant business sophistication, including bid preparation. This specialized and individual training advances the ability of a smaller WMDVBE to take on larger projects. CHCC recommended that the Commission encourage utilities to establish programs like the SBA Mentor-Protégé program. Alternatively, many utilities have already established some form of mentoring program (e.g., Sempra, SCE, PG&E, and AT&T). Sprint suggested that each

³⁰ Section 6.

utility identify the top 10 large non-diverse California suppliers and ask for their support in mentoring WMDVBEs to become sub-contractors.

We agree that individual mentoring can be of great benefit to a small business seeking to grow into larger contracts and approve of all the methods suggested by the parties: partnering with large WMDVBEs, large non-WMDVBE primes, and in utility programs. Industry expertise is essential and hard to come by outside mentoring or extended education and training. Therefore, we encourage all utilities to consider development of a mentoring program, if they do not have one, and recommend that interested CBOs and WMDVBEs reach out to the utilities to help them identify both large businesses and high potential, small businesses who could partner in a mentoring relationship. As an example, the Sprint proposal is a good idea. Similarly, water companies and small utilities can be good starting points for some WMDVBEs to gain initial experience. Matchmaking events hosted by CBOs and/or utilities could provide the opportunity for these potential mentoring partners to find each other.

Accordingly, based on the record, we recommend that utilities seeking to diversify their supplier base should (1) actively consider what contracts could be unbundled into two or more smaller contracts, particularly contracts greater than \$1 million, (2) have conversations with CBOs about potentially fruitful procurement areas for unbundling, (3) educate their management on the value of the program and how to integrate supplier diversity into all business lines, and (4) develop or strengthen existing mentoring programs. In addition, we recommend that CBOs reach out to the reporting companies and ask to be included in new or existing programs. Both CBOs and utilities should consider hosting mentor-matchmaking events to link up small and large suppliers.

5.7. Transparency of Procurement and the Bid Process

There was a vast amount of comment by parties on the transparency, or not, of utility procurement and the RFP process. Section 6.2.1(3) of GO 156 requires utilities to explain bid and contracting procedures and other procurement practices and procedures.

5.7.1. Notice of Procurement Opportunities

CBOs complained that it was difficult to find out when RFPs were issued and they wanted lead time to develop competitive WMDVBEs. GO 156 anticipated the value of advance notice in broadening the supplier pool in Section 6.2.1(5), which asks utilities to make high opportunity purchase categories available to WBDVBEs “to the extent possible.” The parties explored whether procurement plans could be made accessible 6-12 months prior to an RFP being issued. At the June 5, 2010 workshop, the energy companies were best able to identify areas for near-term procurement and provide long lead times to CBOs (e.g., PG&E identified future procurement plans for transformer and helicopter contracts and photovoltaic generation). SCE was willing to publicize this type of information 12-18 months in advance. Water companies said they could publicize it within six months of an RFP. However, some companies, including the large telecommunications companies, declined to identify planned procurement areas and suggested WMDVBEs read the companies’ annual reports, attend industry conventions, or stated that procurement plans were proprietary, nationally controlled, and/or unavailable to the public.

Furthermore, some companies used the Clearinghouse data base and other public means to identify potential bidders for notice of an RFP, while others pre-qualified potential suppliers to streamline the RFP process. Each had

its own methods for notice of an RFP to potential bidders. The CBO suggestion that utilities create a website notice system to WMDVBEs of relevant RFPs was dismissed by utilities as unworkable. CBOs offered other suggestions, including posting RFPs on the Supplier Clearinghouse website and requiring utilities to follow notice requirements for local government procurement. The utilities broadly opposed any standardized requirements for posting bids because they viewed how each contract is publicized as a business decision.

We agree that procurement practices vary between companies and industries so that a “one size fits all” recommendation to post procurement information is not likely to get widespread results. Therefore, as Staff recommended in WSRs #1 and #2, we encourage all reporting companies, otherwise unconstrained, to post information on their websites as early as possible about upcoming plans for procurement in specified categories of goods and services. Some parties may be interested in working together to develop a general framework or guideline for making planned procurement public. For example, CAPCC has a website that publishes RFP information and sends automatic notices to relevant WMDVBEs. CBOs are encouraged to regularly monitor the utility websites, attend industry conventions, review annual reports, and nurture relationships with utility supplier diversity personnel in order to get as much advance notice as possible of upcoming RFPs.

5.7.2. Bid Preparation and Feedback

The actual bid preparation and RFP process continues to be a challenge for many small and diverse businesses. Utilities said that many WMDVBEs submit incomplete or poorly developed bids. Bid preparation is lengthy, time-consuming, and an art form all its own. Because the parties all seem to agree

that this is a significant obstacle to success, education and training in this area is included in the TA and CB portion of this discussion.

The parties agreed that another key element in educating small and diverse businesses is giving feedback on losing bids. All utilities have a process available for unsuccessful bidders to get feedback upon request and suggested a qualified bidder is knowledgeable enough to use it. Sempra and SCE hold pre-bid conferences, an idea favored by the CBOs. Despite these mechanisms, the CBOs vigorously contend they are insufficient and often unknown. For example, CHCC and CAPCC want GO 156 amended to require utilities to tell businesses of their feedback rights in the RFP or in the notice of a losing bid. BEC requested the Commission establish an appeal process for losing bidders. The utilities responded that the present system is sufficient and no record exists to support additional notice.

It is a bit discouraging that there is a communications breakdown at this final stage of procurement. In WSR #2, Staff encouraged the utilities to standardize bid feedback and we agree that better notice to all bidders of their right to feedback should be unobjectionable. Therefore, we recommend that the utilities, CBOs, and WMDVBEs meet to consider whether notice of feedback rights is more useful to bidders in an RFP or rejection notice, and if consensus as to particular language can be reached. We also encourage other utilities to consider whether pre-bid conferences might improve the quality of bids received. However, we decline to order any particular notice in favor of discussion between the relevant parties. We also decline to adopt an appeal procedure for losing bidders because an award of a supply contract is within the

utility's authority "to use its legitimate business judgment to select the supplier for a particular contract."³¹

Accordingly, based on the record, we find that it will advance the goals and policies of GO 156 to recommend that utilities (1) post future procurement plans on their websites to the extent possible, (2) work with CBOs to consider a general framework or guidelines for making planned procurement public, (3) work with CBOs and WMDVBEs to develop notice to RFP participants of feedback rights on losing bids, and (4) consider pre-bid conferences and other means to improve the quality of submitted bids. We also recommend that CBOs proactively 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.

5.8. Supplier Clearinghouse Activities and Duties

Both utilities and CBOs have expressed some frustration and concern over past performance of the Supplier Clearinghouse (Clearinghouse) contractors. GO 156 authorized the creation of a clearinghouse for the sharing of WMDVBE identification and verification of status, particularly to audit and verify the status of women- and minority-owned businesses and to maintain a database of all certified WMDVBEs accessible to the utilities.³² Participating utilities contract with an entity for these services which are paid for by ratepayers. The current Clearinghouse vendor is PRWT Services, Inc., a Pennsylvania corporation operating in Los Angeles, California.

³¹ GO 156 at §6.

³² DVBEs are certified by the California Department of General Services.

As a result of various concerns expressed by WMDVBEs and utilities, in 2008, the Commission contracted with a consultant, K&L Gates (Consultant) to identify how to make the application and verification process more efficient and user-friendly. The Commission also asked for ideas on how to increase the number of certified suppliers. The Consultant made four recommendations which have all now been implemented.³³ These are (1) streamline the process for women and minority businesses already certified by the national organizations National Minority Supplier Development Council (NMSDC) and Women's Business Enterprise National Council (WBENC), (2) create a "fast-track" for small business certification, (3) reduce the number of required documents, and (4) create an on-line application. We commend the Clearinghouse for its responsiveness to these changes just as it took over the contract, and applaud its commitment to continued improvement of its services. These advancements have significantly reduced many of the concerns but not eliminated all suggestions for change.

5.8.1. Business Profiles

During this proceeding, the utilities continued to request more certified WMDVBEs in the database and that informative profiles be provided for each certified business listed. The Clearinghouse is currently working with the utilities to create useful profiles that could assist the utilities, the public, primes, and WMDVBEs find detailed information about the certified businesses in the database. As we discussed before, this could be an important network tool for WMDVBEs looking for larger WMDVBEs to partner with when seeking larger

³³ Resolution Exec-001.

contracts. It could also be an important resource for primes who choose to implement their own programs to increase use of small and diverse businesses as subcontractors. In WSR#2, the Staff supported the profile project and continued implementation of website improvements by the Clearinghouse.

5.8.2. Certification

Some CBOs, like CHCC, said that certification is still seen as cumbersome to certain applicants and the Clearinghouse database should be more accessible to the public and prime contractors. It is likely that some of this discontent arose before the most recent improvements enacted following the Consultant's recommendations. At the June 7, 2010 workshop, parties did not dispute that point, instead focusing more on getting contracts for certified businesses.

As described above, we think the Clearinghouse is on the right track in developing the business profiles and opening the WMDVBE database to the public. We also note that the timing for certifications has vastly improved to an average of less than two weeks. Recognition of NMSDC and WBENC certifications for one year by the Clearinghouse should have an immediate effect on increasing the number of businesses in the database. Several parties asked that these one-year certifications be recognized for the same three-year period Clearinghouse certifications are valid, But the idea of how to best utilize these certifications should be further developed, perhaps in a workshop, by the Clearinghouse, interested utilities and CBOs. However, a proposal for self-certification for small contracts seems fraught with the potential for mischief and lacks sufficient basis in the record.

5.8.3. Role of the Clearinghouse

The biggest shift in perspective surrounds the question of whether the role of the Clearinghouse should expand. During the proceeding there was a

substantial difference of opinion between utilities, who firmly opposed it at the outset, and CBOs who proposed wide-ranging new responsibilities. Over the course of events, the parties' positions have evolved and moved toward common ground.

The proposals are discussed below:

1. Central Calendar: By the time final comments were submitted, there was broad consensus in support of the Clearinghouse keeping a central public calendar with information from utilities, CBOs, and the Commission about all networking, matchmaking, training, and technical assistance events. Staff also supported this effort.
2. Pre-Screening of WMDVBEs: The CHCC and CAPCC suggestion that the Clearinghouse pre-screen certification applicants to determine the sophistication level of businesses and relevance to utility procurement is both problematic and opposed by the utilities as beyond the scope of GO 156. It is also premature. We recognize the problem these groups are trying to address, i.e., some businesses are simply not prepared or are ill-suited to seek utility contracts and will drain limited resources. However, standards would have to be set and the Clearinghouse would likely need costly new training and additional staff currently outside the Clearinghouse contract. This idea needs further development and utility support to fund the proposed activities.
3. TA materials: Greenlining and others supported a central repository at the Clearinghouse for TA information and resources based on their view that TA is a major necessity for new and small businesses and hard to find. Sempra and Verizon particularly opposed the idea as unjustified and duplicative, while PG&E merely said it was not likely to be effective. Some utilities have TA materials accessible on their own websites, but viewed the Clearinghouse as lacking expertise to evaluate TA materials and thought this expansion of the Clearinghouse role unnecessary. On the other hand,

CBOs were generally united that TA materials should be more available, particularly online, so that small businesses could access them at any time, preferably in one place. We agree with the CBOs that better public access to TA materials will assist small and diverse businesses to identify necessary steps they should take to become competitive. Currently, the Clearinghouse has a webpage of links to utility supplier diversity programs which could be expanded for limited cost to include links to TA materials. We also agree that for a small business, the centralized website of the Clearinghouse is a very useful location to open the door to such information. We recommend that the Clearinghouse work with the utilities and CBOs to expand and improve the website to include links to utility and CBO training materials. In addition, we think the Joint Utility TA and CB proposal should be posted on the Clearinghouse website because it is an informative, multi-company, cross-industry consensus of what the utilities are looking for in baseline knowledge for a business to be considered competitive, i.e., part of their “legitimate business judgment” when selecting suppliers.

4. RFPs and Bid Information: We have already discussed the differences in procurement practices between companies and industries that make it difficult for small and diverse businesses to get timely notice of upcoming bid opportunities. The CBOs were so united during the June 7, 2010 workshop that the Staff recommended that the utilities post RFPs on the Clearinghouse website. In response to WSR#2, nearly all of the utilities objected on the grounds that it is far afield from the role of the Clearinghouse and internally unworkable with existing RFP procedures. Notably, PG&E said they post RFPs on their own website and the Commission recently posted notice of one of its own RFPs on the Clearinghouse website. We have heard a great deal of frustration from WMDVBES and CBOs over the challenges in finding bid opportunities, at the same time we understand that some reporting companies have national procurement or internal screening for RFP notice. Another problem is that posting RFP information is a greater IT challenge than merely expanding a page of links and may

require significant time and effort, should the utilities decide to participate. We agree that this information is not widely distributed and that has an adverse impact on utilities that seek to enlarge the pool of small and diverse businesses available to bid for contracts. As discussed above, we think the first priority is for the parties to begin a conversation about broader public notice of bid opportunities. Furthermore, we recommend that the parties explore whether there is common ground for some broader role for the Clearinghouse. For example, the Clearinghouse might develop a webpage of links directly to those utility procurement webpages where RFPs are listed. Utilities might consider trying out Clearinghouse notice of an RFP to see if their fears of excessive unqualified bids are realized.

5.8.4. The Clearinghouse Contract

The voluntary contract between the utilities and the Clearinghouse sets forth a current scope of activities to be delivered by the Clearinghouse. The proposals summarized above may require additional staff and/or funds and would need to become a topic of future negotiations between the parties. Moreover, some of the changes to scope are sufficiently significant that amendments to GO 156 might be required. 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.

Accordingly, based on the record, we find that it will advance the goals and policies of GO 156 to recommend that the Clearinghouse (1) continue to implement the next phases of the website upgrades, including the public database and new business profiles, (2) keep a public calendar on its website with information voluntarily submitted by utilities, CBOs, and the Commission about all networking, matchmaking, training, and technical assistance events, (3)

post on its website the Joint Utility TA and CB proposal, and (4) work with the utilities and CBOs to expand the website to include links to available utility and CBO training materials. We also recommend that the utilities initiate a conversation with CBOs and the Clearinghouse over (1) the merits of incorporating NMSDC and WBENC certification renewals into the program, and (2) development of a webpage of links directly to utility procurement webpages where open RFPs are listed.

5.9. Community-Based Organizations

The GO 156 program is only as successful as the utilities, CBOs, and WMDVBEs make it. Thus, each participant has a role to play in its future growth and effectiveness at bringing in more competitive small and diverse businesses to the procurement system. For CBOs, their primary (not exclusive) role is to bring in more WMDVBEs for certification, advise and assist them on how and where to get useful resources, and to continue to collaborate with the utilities to improve supplier diversity programs.

At WSR#2, the CBOs each made a commitment to reach out to their communities and members to increase certification, although CSBA, BEC, and CHCC said funding would be either essential or helpful. The Joint Parties suggested that a particular goal be set (e.g., 40,000 by 12/31/11) to keep the parties focused on a bigger database. The Clearinghouse is taking the lead in certification training, however, some CBOs, like CHCC, asked that the Clearinghouse give them certification training to pass on to their communities. This seems reasonable and useful for local businesses who have limited time to seek assistance. As part of the discussion, the CBOs also committed to working with others in the same service territory to hold coordinated certification workshops.

We believe that the CBOs have an important up-front role in guiding their members and community businesses to certification and qualification as a competitive bidder. There are many ways to perform this role and we do not seek to establish one particular model. However, we think that the CBOs who committed to a certification outreach campaign should set clear goals for themselves and seek any needed funding from wherever available. In particular, the utilities who touted their community spending related to this program are encouraged to support and coordinate with CBOs who undertake certification and TA activities.

Similarly, at the June 7, 2010 workshop, the parties agreed to partner in workshops to inform businesses of expected experience and knowledge and where to get it. The Staff recommended the CBOs work with the utilities on expanding TA and CB and making it more accessible to small and diverse businesses. We agree and encourage all parties to consider sharing resources to avoid duplication, reduce costs, and improve the value of imparted assistance.

Accordingly, based on the record, we find that it will advance the goals and policies of GO 156 to recommend that willing CBOs (1) obtain certification training from the Clearinghouse and hold workshops in their communities to help grow WMDVBE certification, (2) set clear organizational goals for adding WMDVBEs to the database particularly in targeted underutilized areas, and (3) work with the utilities to expand and improve their TA and CB to assure this training actually reaches potentially competitive businesses. We also recommend that utilities coordinate outreach and training spending with the 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.

5.10. Commission Oversight

The Commission's role in implementing §§8281-8286 has manifested itself in several ways after enactment of GO 156. The Commission's USDP Staff have been very active in hosting, or helping others to host, informative workshops, seminars, networking and matchmaking events, monitoring Clearinghouse contracts and performance, coordinating with the CUDC, gathering utility data on program results, and preparing the Commission's annual report to the Legislature on utility WMDVBE procurement. The Commission has also periodically reviewed GO 156 to determine whether amendments or other actions could be useful towards better implementation of this largely voluntary program. In recent years, the full Commission has held an annual *en banc* hearing for all Commissioners to hear directly from top utility executives about their efforts, successes, and concerns about improving their programs results.

5.10.1. Other Commission Actions

The CBOs had several ideas about the Commission's role including a request that it publish lists of large WMDVBEs receiving contracts, enter MOUs with cable companies who are not explicitly within the statutory framework of §§8281-8286, and amend GO 156 to add a requirement that the Commission hold an annual *en banc* hearing on GO 156 program performance. We decline to adopt any of these suggestions at this time.

Currently, the GO 156 reports submitted to the Commission do not contain specific contract information from which it could identify particular WMDVBEs that received contracts. This information is with the utilities and CBOs are free to ask for it, if utilities choose to make it available. The question of whether the Commission could or should enter into MOUs with cable companies is outside the scope of this proceeding.

Lastly, we agree with the parties that the recent annual *en banc* hearings have grown into a formidable and useful conversation at a high level about the benefits of, and obstacles to, a vibrant and growing supplier diversity program. The presence of top utility executives, in addition to supplier diversity employees, underscores the importance the Commission places on sustained commitment by top management. In 2010, CBOs were also invited to offer comments which we believe added an important voice to the event. We agree that GO 156 should be amended to authorize the annual *en banc* hearings with both top utility executive and experienced CBO leaders. However, we decline to bind future Commissions to hold the hearings annually and instead encourage future Commissions to do so by pointing out that their substantial value is undisputed.

5.10.2. Workshops

Throughout this decision, we have recommended a number of workshops be held on various topics to further explore and develop certain ideas, to provide training and education, showcase best practices, focus on specific problems, or resolve other matters. Generally, the parties were supportive of workshops as a fruitful method of getting interested parties together for needed conversation, information sharing, or resolution of differences.

Depending on the topic, the parties had differing ideas as to who should host a particular workshop, and we made our own recommendations in this decision. The key factors to success are whether the right people are there, it is properly facilitated, there is a funding source, and public access to the content. On the latter issue, some parties recommended that the workshops be recorded or webcast. We agree that this would be of benefit to small and diverse

businesses, as well as smaller utilities, who have limited time and resources to attend distant events.

Workshops on best practices in several important areas of the program have occurred and parties found them useful. It was suggested that if reporting companies are invited to share their successes and problems in these workshops, that CBOs also be invited to offer constructive advice and new ideas.

Furthermore, parties asked for useful advance information in order to make better use of available time. We agree with these suggestions and also invite hosts of best practices workshops to provide written summaries to the USDP staff which could be posted on the Commission's website and otherwise distributed to interested persons, companies, and organizations.

5.10.3. Measuring Success

The parties were split along predictable lines at the beginning of the proceeding about whether to create an evaluation tool for utility programs. Utilities contended that the results of the programs were the best measure of success. On the other hand, CBOs complained they were never consulted and argued there was a significant disconnect between what the utilities offered and what WMDVBEs could access and use. We observe that some utilities entered the proceeding thinking that whatever ideas and plans they chose to implement were good ones and the CBOs must just be uninformed. Alternatively, some CBOs began the proceeding with broad, sweeping statements of discontent about the failings of most utility programs.

It is one measure of the success of this proceeding that the parties have become much more informed about each other's views and resources. Nonetheless, some concerns remained. CHCC recommended that the Commission create a review authority to evaluate the annual reports and utility

program elements during an annual forum, followed by recommendations for improvement. The utilities disputed the need for any additional formal review because they claim they get lots of CBO feedback, submit annual program reports to the Commission, participate in the *en banc* hearings, and are reviewed by CUDC.

The Commission itself is the review body for GO 156 and no additional layer of review is necessary. We agree that the annual reports, *en banc* hearings, and Commission-hosted workshops and events generate a lot of information about how the utility programs are working. Moreover, the Commission has acted from time to time through its proceedings to examine GO 156, most prominently through this OIR. We see no value-added from creating an advisory panel or developing a metric to measure the success of the programs which would divert limited funds. Instead, we strongly recommend that the parties continue the dialogue stimulated by this rulemaking and continue to participate in any related Commission proceedings.

Accordingly, based on the record, we find that it will advance the goals and policies of GO 156 to recommend that (1) GO 156 be amended to authorize annual *en banc* hearings with both top utility executive and experienced CBO leaders, (2) hosts of seminars and workshops record or webcast the events and make them available online, (3) CBOs be invited to best practices workshops to offer constructive advice and new ideas, and (4) hosts of best practices workshops provide written summaries to USDP Staff for website posting and other public distribution.

6. Conclusion

This decision challenges the parties to continue the dialogue they began, and provides a road map with its findings and recommendations on the most important areas for development and change.

The growing role of CBOs in supplier diversity programs came into clear view during the proceeding. Utilities need the CBOs to bring in more small and diverse businesses and help them become competitive bidders, while the CBOs gained momentum for their position at the table as viable partners. There are CBOs who are capable of providing not only technical assistance to WMDVBEs but also constructive advice to the utilities. The utilities heard the demand for more and better technical assistance programs and achieved a ground-breaking cross-industry consensus on a baseline model for what a competitive business needs to know. This is a mere snapshot of what the parties accomplished in this proceeding. A wide range of issues were opened and tackled, parties listened, and in some cases moved their views based on new information. As a result, we have approved a number of amendments to GO 156 and a long list of recommended actions which we believe will improve utility supplier diversity programs and relationships with their local communities, as well as reduce procurement costs.

7. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Pub. Utils. Code §311 and comments were allowed under Rule 14.3(a) of the Commission's Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____ by _____.

8. Assignment of Proceeding

The assigned Commissioner is Michael R. Peevey. The assigned ALJ is Melanie M. Darling.

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

17. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. GO 156 should be amended to make changes to conform with the statutory changes enacted by Chapter 475 Statutes of 2010.

5. 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. 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.

O R D E R

IT IS ORDERED that:

1. General Order 156 is amended as set forth in Attachment C.
2. The amended General Order 156 shall be posted on the Commission's website.
3. Rulemaking 09-07-027 is closed.

This order is effective today.

Dated _____, 2011, at San Francisco, California.