

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Petition of the Greenlining Institute and Latino Issues Forum for a Commission Order Instituting Rulemaking to adopt, amend or repeal a regulation pursuant to California Public Utilities Code Section 1708.5 by amending General Order 156.

Petition 02-10-035

Rulemaking for the Purpose of Amending General Order 156.

FILED  
PUBLIC UTILITIES COMMISSION  
FEBRUARY 27, 2003  
SAN FRANCISCO OFFICE  
RULEMAKING 03-02-035

**ORDER GRANTING A PETITION FOR RULEMAKING  
PURSUANT TO PUB. UTIL. CODE § 1708.5 AND INSTITUTING  
RULEMAKING TO AMEND GENERAL ORDER 156**

**I. Summary**

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

**II. GO 156**

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

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

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

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

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<sup>1</sup> According to § 8283, these statutes apply to electric, gas and telephone utilities with gross annual revenues exceeding twenty-five million dollars and their Commission-regulated subsidiaries and affiliates.

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

Section 8.5 of GO 156 provides that a utility can create an “excluded category” of products or services where it is clearly evident that WMDVBEs do not provide such services or that sole source procurement is the only available procurement method. The utility has the burden of demonstrating the unavailability of WMDVBEs capable of supplying such products and services and must justify in its annual report the continued existence of any excluded category.<sup>3</sup>

### **III. Greenlining/LIF’s Petition**

On October 28, 2002, Greenlining/LIF filed a petition for rulemaking pursuant to Pub. Util. Code 1708.5 to amend GO 156. Section 1708.5 authorizes “interested persons to petition the commission to adopt, amend, or repeal a regulation.” The Commission is then to consider the petition and, within six months, either deny the petition or institute a proceeding to adopt, repeal, or amend the regulation.

Greenlining/LIF’s petition makes two alternative proposals regarding exclusions. First, petitioners propose to amend GO 156 to eliminate the currently allowed exclusions from the base of procurement dollars the utilities use to establish the monetary value of the WMDVBE procurement goals, “unless a utility can overwhelmingly demonstrate that there are no WMDVBE companies

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

available and that they have engaged in best practices and very substantial efforts to encourage the development of such companies.” (Petition at p. 1, emphasis in the original.) Greenlining/LIF believe their recommended test is much stronger than what currently exists under GO 156, § 8.5, which permits the utility to exclude products or services if it is clearly evident that WMDVBEs do not provide such products or services. Alternatively, Greenlining/LIF request that the Commission entirely eliminate exclusions.

Greenlining/LIF believe that the markets have changed dramatically since the Commission’s first WMDVBE decision issued in 1982, that WMDVBEs are participating in the utilities’ markets to a more significant extent than before, and that the existence of exclusions encourages the utilities to exaggerate the absence of WMDVBE suppliers rather than to aggressively foster their participation. Furthermore, because some utilities use exclusions and others (such as SBC/California (SBC)) do not, petitioners argue that the existence of the reporting exclusion diminishes public recognition of excellence in achieving the implicit goals of General Order 156 of significantly increasing the extent of women, minority and disabled veteran business enterprises’ participation in the utilities contract procurement.

Greenlining/LIF also request that the Commission’s Communications and Public Information Division conduct a study showing how much in dollars, as well as in percent of dollars, each major utility has excluded each year since the initiation of GO 156, or that each utility be required to report this data.

Finally, Greenlining/LIF propose that the Commission conduct an audit to ensure that each utility’s WMDVBE verification and reporting process is accurate and reliable, and propose that the Commission require the utilities to standardize their WMDVBE reporting and verification.

#### **IV. The Utilities' Response**

The Joint Utilities<sup>4</sup> oppose Greenlining/LIF's petition because Greenlining/LIF have not justified why the exclusions test should be strengthened or eliminated. Although the Joint Utilities support Greenlining/LIF's objective of increasing utility spending with WMDVBE firms, these utilities do not believe the petition will advance Greenlining/LIF's objective. The Joint Utilities contend that while the market for some categories of utility products and services has developed and is reflected in the utilities' individual annual WMDVBE reports, the market for other such categories has not, and therefore the utilities should be permitted to continue excluding these categories from their WMDVBE goals.

The Joint Utilities also argue that GO 156 has specific requirements for WMDVBE verification and reporting, and Greenlining/LIF have not justified the changes they propose.

#### **V. Exclusions**

For the last 14 years, pursuant to GO 156, the utilities have been able to exclude certain products and services from the base of WMDVBE procurement dollars where the utilities can demonstrate the unavailability of WMDVBE suppliers. In the first decision implementing Pub. Util. Code §§ 8281-8285, we explained the utilities' burden if they created certain excluded categories.

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<sup>4</sup> The Joint Utilities consist of AT&T Communications of California, Inc., Citizens Communications, Pacific Gas and Electric Company (PG&E), PacifiCorp, Roseville Telephone Company, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Edison Company (Edison), Southern California Gas Company, Southwest Gas Corporation, and Verizon California, Inc. (Verizon).

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

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

To date, the utilities are mixed in their ability to eliminate all WMDVBE exclusions. For instance SBC does not currently utilize exclusions in its WMDVBE report to the Commission. However, some utilities have increased, rather than decreased their exclusions. Greenlining/LIF report that from 2000 to 2001, Edison’s exclusions have gone up from 27.5% to 31.4%. (See Petition at p. 4.)

Our review of recent utility reports pursuant to GO 156 demonstrates that many utilities do not present sufficient justification on an annual basis for continuing the exclusions. For example, GO 156 requires that if a utility uses an exclusion, it must justify such use and provide “a description of any efforts made to find and or recruit WMDVBE suppliers of products and services in the excluded category.” (GO 156, § 9.1.9.) However, a review of Edison, PG&E, and Verizon’s annual WMDVBE reports for 1999, 2000, and 2001 demonstrates that the justification and description of the excluded categories is insufficient. In

these three reports, Edison has offered substantially the same conclusory paragraph to justify its exclusions:

“The above table summarizes the purchasing categories where Edison has not been able to identify technically-qualified WMDVBEs. Most of the excluded categories are in areas of capital-intensive utility equipment manufacturing, nuclear fuel and nuclear energy-related products, and generation station overhaul and maintenance services.” (2001 Annual Report, p. 9-d. See also Edison’s 2000 and 1999 Annual Reports at p. 9-d respectively.)

Similarly, PG&E’s justification for its excluded categories is nearly identical each year. PG&E does not offer a comprehensive discussion of efforts to identify WMDVBEs in excluded categories other than a general reiteration of its prior year’s statement. (See 2001 Annual Report at p. 28, 2000; Annual Report at p. 34; and 1999 Annual Report at p. 31. See also Verizon’s 2001, 2000, and 1999 Annual Reports at pp. 17, 15, and 16 respectively.)

In order to ensure that the utilities will make more concerted efforts to implement GO 156, this rulemaking proposes amending § 8.5 of this general order as set forth in Appendix A to this order to eliminate a utility’s ability to create an “excluded category” of products and services. Eliminating the excluded categories will not limit a utility’s ability to explain why its WMDVBE numbers are not as high as they might like. Under the proposed amendment, the utility may explain in detail how its ability to meet its WMDVBE goals are affected because WMDVBE suppliers do not offer a particular product or service, or because sole source procurement is the only available procurement method. The utility may also include a description of the utility’s efforts to find and recruit such suppliers.

This proposal will permit all utilities’ efforts in the WMDVBE area to be more easily compared against each other, whereas now this type of comparison

is problematic because some utilize the exclusions and some do not. Moreover, under the proposal, we are optimistic that we will obtain more detailed explanations, as opposed to conclusory statements, from the utilities regarding the difficulties they encounter in finding or recruiting WMDVBE suppliers for certain products and services.

The proposal does not eliminate § 8.10, which permits each utility to establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMDVBEs. To the extent that it is more difficult to obtain WMDVBE providers for the fuel procurement covered by § 8.10, the utilities continue to have the ability to separately report this item under the proposal.

This rulemaking does not incorporate Greenlining/LIF's alternative proposal (i.e., to retain the utility's ability to create excluded categories but to raise their burden of proof in complying with § 8.5). Currently, under § 8.5, the utilities may create an excluded category where it is "clearly evident" that WMDVBEs do not provide a specified product or service. We do not believe Greenlining/LIF's suggested language, which would allow a utility to utilize exclusions if it can "overwhelmingly demonstrate" that there are no WMDVBE companies available and that it has engaged in best practices and very substantial efforts to encourage the development of such companies, will remedy the problem of conclusory justification to the Commission. Moreover, it may encourage litigation and argument as to what proof is necessary to "overwhelmingly demonstrate" the need for the exclusion.<sup>5</sup>

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<sup>5</sup> Although we grant Greenlining/LIF's petition, we note that Rulemaking 02-06-040 set out a proposed amendment to our Rules of Practice and Procedure for implementing Pub. Util. Code § 1708.5. Although the Commission has not yet issued a final order

*Footnote continued on next page*

Finally, in order to provide the Commission with a useful summary of data surrounding the utilities' utilization of § 8.5 in the past, we require each respondent utility subject to GO 156 (as set forth in Section VIII of this order) to file and serve in this rulemaking a report containing the following information.

- Report each "excluded category" the utility has invoked in its annual WMDVBE report to the Commission each year since the initiation of GO 156 through 2002. The utility should report this information by category and by year.
- Report how much in dollars, as well as in percentage of dollars, are attributable to a utility's exclusions under § 8.5 (or its predecessor) each year since the initiation of GO 156. In years a utility has utilized a separate fuel procurement base pursuant to Rule 8.10, it should report this data both (a) separately; and (b) combined with the dollars attributable to § 8.5 exclusions.

## **VI. Verification and Reporting**

Greenlining/LIF propose that the Commission conduct an audit to ensure that each utility's WMDVBE verification and reporting process is accurate and reliable. Petitioners also propose that the Commission require the utilities to standardize their WMDVBE reporting and verification.<sup>6</sup> Greenlining/LIF do not

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adopting these rules, the proposed rule requires a petitioner under § 1708.5 to include the specific wording for the amendment of a regulation if such amendment is sought. Until our Rules can be amended, we encourage petitioners to set forth the specific word changes of the General Order they propose (including the numbers of the sections to be changed and the text of the proposed change) so that we, and all affected parties, can fully understand petitioners' request.

<sup>6</sup> As to the audit, Greenlining/LIF request that the Commission conduct a one-time audit, presumably addressed at verifying the amount of money each utility spent with WMDVBE contractors, employing the following recommendations: (a) verify each utility's five largest WMDVBE contracts; (b) verify a significant random sampling of the top quartile (in dollar amount) of each utility's WMDVBE contracts; and (c) verify a small random sampling of all of the WMDVBE contracts of each utility. After the audit,

*Footnote continued on next page*

make these proposals in the form of a rule change, but rather, request that they occur in the Commission's administration of the WMDVBE program.

Sections 9 and 10 of GO 156 address the necessary elements of a utility's annual WMDVBE report and plan. Over the course of the administration of the WMDVBE program, Commission staff has sought to refine its data gathering methodology in order to standardize utility reporting. As a result, the format of the annual reports has continued to evolve. For example, in D.91-02-015, 39 CPUC2d 271, 276, and Exhibit A to that decision, the Commission adopted a WMDVBE program expenses cost itemization format. In D.95-12-045, 63 CPUC2d 203, 214 and Attachment A to that decision, the Commission required a common reporting requirement. However, utilities still present other information in a nonstandardized fashion. For example, utilities have their own breakdown of major categories of products and services which makes it difficult to compare utility data or to fully standardize reports.

Therefore, in order to facilitate greater standardization in the reports, this rulemaking proposes amending GO 156 to require that the utilities report their WMDVBE product and services expenditures according to the uniform system of accounts (USOA) applicable for each utility. (For example, electric utilities would report their information according to the Federal Energy Regulatory

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petitioners propose the Commission meet with the utilities to discuss the need for either future audits or standard WMDVBE contract reporting and verification.

Greenlining/LIF also propose that the utilities standardize their reporting and verification and, at the very least, believe the Commission should require each utility to disclose (a) how it reaches its WMDVBE procurement data, including details of each utility's verification process; (b) the actual amount of money in dollars distributed to WMDVBE contracts by the utility; and (c) detailed information and calculations on how the utility arrives at the numbers that it is reporting. (Petition at p. 5.)

Commission's USOA applicable to electric utilities; similarly, gas utilities would use FERC's USOA for gas utilities and telephone utilities would report its information consistent with the Federal Communication Commission's USOA.)

We also propose to require the utilities to retain their workpapers associated with their WMDVBE annual reports and to provide these workpapers to the Commission upon request.

Finally, we require the respondent utilities subject to GO 156 to include the following information in their report filed and served in this rulemaking.

- Identify by verification order number each vendor that received payment for contract service for the reporting year 2002.
- Identify the company name, a brief description of service provided, and the dollar amount paid to the vendor for the reporting year 2002.
- Utilities which report fuel purchases separately under GO 156, §9.1.10 must also report this information by verification order number, company name, description and dollar amount.
- Explain the basis for any discrepancies in the total dollar amounts reported in the utility's annual report vs. this request.

The utilities may meet and confer with Commission staff regarding the appropriate reporting format for the above information.

## **VII. Preliminary Scoping Memo**

This rulemaking will be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. As required by Rule 6(c)(2), this order includes a preliminary scoping memo as set forth below.

This rulemaking is instituted for the purpose of considering whether to amend portions of GO 156.

Pursuant to Rule 6(c)(2), we preliminarily determine the category of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 5(d). It is contemplated that this proceeding shall be conducted through a written record and that an order will issue on the merits based on the pleadings timely filed in this docket. However, parties will have the opportunity to comment on the necessity of hearings, and we may re-evaluate both the categorization and need for hearings after review of the comments.

In accordance with Rules 6.3 and 6(c)(2), the proposed schedule is as follows:

Rulemaking Issued	February 27, 2003
Utilities File Requested Report	May 15, 2003
Opening Comments (Including responses to order)	June 10, 2003
Prehearing Conference	June 23, 2003 at 10 a.m.
Scoping Memo	June 30, 2003
Reply Comments	July 7, 2003
Issuance of Draft Decision	October 6, 2003
Final Decision	November 2003

The proposed schedule may change, and will be refined by ruling either at the prehearing conference or by other written ruling issued by the Assigned Commissioner or assigned Administrative Law Judge (ALJ). For example, it is possible that workshops may serve as a useful forum for addressing issues in this rulemaking. Consistent with Rule 6(e), we expect that this proceeding will be concluded within 18 months.

As set forth in the schedule above, the utilities subject to GO 156 should file and serve their report before interested parties (which may include the same

utilities) file their comments (including any response to this order.) As required by Rule 6(c)(2), any party filing a response to this order shall state in its response any objections the party has regarding (1) the categorization of this proceeding as “quasi-legislative,” (2) the determination that there is no need for hearings, and (3) the preliminary scope and timetable for this proceeding as described in this order. Any party who believes that a hearing is required should, in its response, identify and describe (1) material issues of fact and (2) the evidence the party proposes to introduce at the requested hearing. Any right that a party may otherwise have to a hearing will be waived if the party does not submit such information in its response.

Any person interested in participating in this rulemaking who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor’s Office in San Francisco at (415) 703-2074 or in Los Angeles at (213) 649-4782.

Following review of the utilities’ reports and interested parties’ opening comments, the assigned ALJ shall convene a prehearing conference to discuss the issues, scope, and schedule of this proceeding. After the prehearing conference, the Assigned Commissioner will issue a scoping memo that finalizes the category, scope, and schedule of this proceeding. (See Rules 6(c)(2) and 6.3.) After the scoping memo issues, parties may file and serve an appeal to the Commission regarding the ruling on category. (See Rule 6.4.)

## **VIII. Service of This Order and Service List for This Proceeding**

### **A. Respondents and Service of This Order**

Section 1.2 of GO 156 states that the GO is applicable to all gas, electric, and telephone utilities under the Commission’s jurisdiction with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries

and affiliates. We list the utilities subject to GO 156 in Appendix B and make them respondents to this rulemaking. We direct that these utilities shall be served with this order.

This order should also be served on the services lists for Rulemaking (R.) 87-02-026 and R.93-09-026, which are the rulemaking which originally addressed GO 156 and the most recent proceeding where the Commission addressed GO 156 respectively.<sup>7</sup>

### **B. Service List**

Being served with this order does not guarantee that you will be placed on the rulemaking's service list. Respondent utilities shall be placed on the service list by the Process Office.

Anyone else wishing to be placed on the service list for this rulemaking should submit his or her request within 20 days of the mailing date of this order to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102. Parties should reference this rulemaking number and indicate whether they wish to be on the service list for this proceeding and, if so, if they wish to be an appearance, state service or information only. (An appearance means that the party will actively participate in this rulemaking by filing comments, etc. See description of state service and information only below.) These parties should also include their name, the name of their representative (if any), their address, and telephone and facsimile numbers, and an e-mail address, unless the party states that no e-mail address is available. A service list will then be prepared and posted on the Commission's web site at

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<sup>7</sup> Notice of availability of Greenlining/LIF's petition was served on both of these service lists.

www.cpuc.ca.gov as soon as practicable. Requests to be included in the service list made more than 20 days of this order's mailing must be sent to and approved by the assigned ALJ.

Those persons employed by the State of California who are interested in this proceeding may be added to the "state service" section of the service list

either by appearing at the prehearing conference and filling out an appearance form, or they may mail a written request to the Process Office within 20 days of this order's mailing. All of the names that appear on the state service list shall be served with all documents that parties may submit or file in connection with this proceeding.

Those persons who do not want to be parties, and only want notice of the hearings, rulings, proposed decisions, and decisions, may either appear at the prehearing conference and fill out an appearance form, or they may mail a written request to the Process Office requesting that they be added to the service list for information only.

#### **IX. Ex Parte Communications**

This proceeding is subject to Rule 7 which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rules 7(a)(4) and 7(d), ex parte communications will be allowed in this proceeding without any restrictions or reporting requirements until the assigned Commissioner makes an appealable determination of category. Following the Commissioner's determination, the applicable ex parte communications and reporting requirements shall depend on such determination unless and until the determination is modified by the Commission pursuant to Rules 6.4 and 6.5.

#### **X. Assignment of Petition 02-10-035**

Geoffrey F. Brown is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in Petition 02-10-035.

## **Findings of Fact**

1. On October 28, 2002, Greenlining Institute and Latino Issues Forum (Greenlining/LIF) filed a petition requesting certain amendments to GO 156 and refinements of GO 156's verification and reporting requirements.

2. It is reasonable to institute an order instituting rulemaking regarding possible amendments to GO 156, and to grant Greenlining/LIF's petition in this regard, in order to, among other things, effectuate a more concerted effort to implement GO 156 and facilitate greater standardization in the utilities' GO 156 reports.

## **Conclusions of Law**

1. Pursuant to Pub. Util. Code § 1708.5, the Commission has authority to consider a petition requesting the initiation of a rulemaking to amend GO 156.

2. The petition which is the subject of this order should be granted to the extent set forth in this order.

3. A rulemaking to amend GO 156 as set forth in this order should be initiated.

4. In their reports required to be filed and served by this rulemaking, utilities subject to GO 156 should report the following information:

- Report each "excluded category" the utility has invoked in its annual WMDVBE report to the Commission each year since the initiation of GO 156 through 2002. The utility should report this information by category and by year.
- Report how much in dollars, as well as in percentage of dollars, are attributable to a utility's exclusions under § 8.5 (or its predecessor) each year since the initiation of GO 156. In years a utility has utilized a separate fuel procurement base pursuant to Rule 8.10, it should report this data both (a) separately; and (b) combined with the dollars attributable to § 8.5 exclusions.

- Identify by verification order number each vendor that received payment for contract service for the reporting year 2002.
- Identify the company name, a brief description of service provided, and the dollar amount paid to the vendor for the reporting year 2002.
- Utilities which report fuel purchases separately under GO 156, §9.1.10 must also report this information by verification order number, company name, description and dollar amount.
- Explain the basis for any discrepancies in the total dollar amounts reported in the utility's annual report vs. this request.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Greenlining Institute and Latino Issues Forum's petition for the Commission to institute a rulemaking to amend General Order (GO) 156 is granted to the extent set forth in this order.
2. A rulemaking on the Commission's own motion into amending GO 156 as set forth in this order hereby initiated.
3. The Process Office shall place the respondent utilities set forth in Appendix B on the service list of this rulemaking. Other persons who wish to be included on the service list for this rulemaking shall send a letter to the Commission's Process Office no later than 20 days from the mailing of this order. Thereafter, such requests must be sent to, and approved by the assigned Administrative Law Judge (ALJ).
4. The utilities listed in Appendix B shall be made respondents to this rulemaking. These utilities shall file and serve the report directed in this

rulemaking no later than May 15, 2003, unless otherwise directed by the Commission, the Assigned Commissioner, or the assigned ALJ.

5. Interested parties shall file and serve their responses to this order instituting rulemaking (including opening comments) by June 10, 2003 and reply comments by July 7, 2003, unless otherwise directed by the Commission, the Assigned Commissioner, or the assigned ALJ, in accordance with the Commission's rules for filing and serving documents.

6. As required by Rule 6(c)(2) of the Commission's Rules of Practice and Procedure, any party filing a response to this rulemaking shall state in the response any objections to (i) categorization of this proceeding as quasi-legislative, (ii) the determination that there is no need for hearings, or (iii) the preliminary scope and timetable for this proceeding.

7. A prehearing conference is set for June 23, 2003 at 10 a.m. in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, California 94102 to discuss the preliminary scoping memo, unless otherwise directed by the Commission, the Assigned Commissioner, or the assigned ALJ. Following the prehearing conference, the assigned Commissioner will rule on the scoping memo and make changes as appropriate.

8. Any party who believes that a hearing is required in this proceeding shall make that request in the party's response to this order. Any right that a party may otherwise have to a hearing will be waived if the party does not submit such request in its response.

9. The Executive Director shall serve this order on all California utilities subject to GO 156 as set forth in Appendix B, as well as the service lists for Rulemaking (R.) 87-02-026 and R.93-09-026.

10. Petition 02-10-035 is closed.

11. All future items filed with respect to this order shall bear only the caption and docket number of the order instituting rulemaking.

This order is effective today.

Dated February 27, 2003, at San Francisco, California.

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

## **Appendix A**

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

### **Existing Rule, GO 156, § 8.5**

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

### **Proposed Final Rule, GO 156, § 8.5**

A utility may no longer create an “excluded category” of products and services for compliance with this General Order. However, the utility may explain in detail in its annual report how its ability to meet its WMDVBE goals are affected because WMDVBEs capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. The utility may also include a description of any efforts made to find or recruit WMDVBE suppliers of products or services in areas where WMDVBE suppliers are currently unavailable, or where sole source procurement is currently the only available procurement method.

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**Existing Rule, GO 156, § 1.3.14**

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

**Proposed Final Rule, GO 156, Rule 1.3.14**

Deleted per Decision \_\_\_\_\_ [the final decision issued in this rulemaking.]

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**Existing Rule, GO 156, § 6.3.3**

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

**Proposed Final Rule, GO 156, § 6.3.3**

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

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**Existing Rule, GO 156, § 8.8**

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

**Proposed Final Rule, GO 156, § 8.8**

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

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**Existing Rule, GO 156, § 8.10.4**

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

**Proposed Final Rule, GO 156, § 8.10.4**

Delete per Decision \_\_\_\_\_ [the final decision issued in this rulemaking.]

\* \* \* \* \*

**Existing Rule, GO 156, § 9.1.7**

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

**Proposed Final Rule, GO 156, § 9.1.7**

As to categories that a utility may have treated as “excluded categories” pursuant to former Section 8.5, an explanation if WMDVBE suppliers do not offer a particular product or service despite the utility’s best efforts to recruit such suppliers, and a detailed description of the utility’s efforts to find and recruit such suppliers.

\* \* \* \* \*

**Existing Rule, GO 156, § 9.1.9**

See Proposal, part 2 below.

**Proposed Final Rule, GO 156, § 9.1.9**

See text for proposed final rule 9.1.9 below

\* \* \* \* \*

**Existing Rule, GO 156, § 10.1.4**

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

**Proposed Final Rule, GO 156, § 10.1.4**

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

\* \* \* \* \*

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

**Existing Rule, GO 156, § 9.1.2**

A summary of WMDVBE purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total utility contract dollars awarded to outside vendors in those categories.

**Proposed Final Rule, GO 156, § 9.1.2.**

A summary of WMDVBE purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total utility contract dollars awarded to outside vendors in those categories. In order to achieve uniformity of reporting, product and service categories shall be reported according to the uniform system of accounts (USOA) applicable for each utility. (For example, electric utilities would present their information according to the

Federal Energy Regulatory Commission's (FERC's) USOA applicable to electric utilities; gas utilities would utilize FERC's USOA for gas utilities and telephone utilities would report their information consistent with the Federal Communication Commission's USOA.)

\* \* \* \* \*

**Existing Rule, GO 156, § 9.1.9**

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

**Proposed Final Rule, GO 156, § 9.1.9**

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

**(END OF APPENDIX A)**

**APPENDIX B**

**List of Respondents to the Rulemaking**

AB Cellular Holding, L.L.C.

Allegiance Telecom of California, Inc.

AT&T Communications of California, Inc.

AT&T Broadband, Inc.

AT&T Wireless Services of California, Inc.

Bakersfield Cellular L.L.C.

Bay Area Cellular Telephone Company

Brooks Fiber Comms. of San Jose, Inc.

Cable & Wireless USA, Inc.

Cagal Cellular Communications Corp.

Cellco Partnership

Choice Communications

Cingular Wireless

Citizens Telecommunications Co. of California

Cox California Telecom, L.L.C.

Cox Communications PCS, L.P.

Fresno MSA Ltd. Partnership

Global Crossing Telecommunications

P.02-10-035, R.03-02-035 ALJ/JJJ/hkr

GTE Mobilnet of California

Lodi Gas Storage, L.L.C.

Los Angeles SMSA Limited Partnership

MCI Metro Access Transmission Services

MCI Worldcom, Inc.

Metropolitan Fiber Systems of California, Inc.

Mpower Communications Corp.

Napa Cellular Telephone Company

Nationwide Cellular Svc. Inc.

Nextel of California, Inc.

Nosva, L.P.

Omnipoint Communications, Inc.

PacifiCorp

Pacific Gas and Electric Company

Pac-West Telecommunications, Inc.

Qwest Communications Corporation

Roseville Telephone Company

SBC/California

SBC Advanced Solutions, Inc.

Sacramento Valley Ltd. Partnership

P.02-10-035, R.03-02-035 ALJ/JJJ/hkr

Salinas Cellular Telephone Company

San Diego Gas & Electric Company

Santa Barbara Cellular

Sierra Pacific Power Company

Southern California Edison Company

Southern California Gas Company

Southwest Gas Corporation

Sprint Communications Company, L.P.

Sprint PCS

Talk America, Inc.

TCG Los Angeles

U.S. Cellular

Vartec Telecom, Inc.

Verizon California, Inc.

Verizon Wireless, L.L.C.

Visalia Cellular Telephone Company

Wild Goose Storage, Inc.

XO California, Inc.

**(END OF APPENDIX B)**