

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purpose of Amending
General Order 156.

FILED
PUBLIC UTILITIES
COMMISSION
AUGUST 25, 2005
SAN FRANCISCO OFFICE
RULEMAKING 05-08-029

**ORDER INSTITUTING RULEMAKING TO
AMEND GENERAL ORDER 156**

I. Summary

We institute this rulemaking to amend General Order (GO) 156 to achieve greater reporting uniformity in the utilities' annual GO 156 reports.

II. Statutory Background

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).)

III. Decision (D.) 03-11-024

On February 27, 2003, the Commission instituted Rulemaking (R.) 03-02-035 as a result of a petition for rulemaking filed by the Greenlining Institute and Latino Issues Form. D.03-11-024, issued in the rulemaking, amended GO 156 to eliminate the ability of the utility to create an “excluded category” of products or services from the base of WMDVBE procurement dollars.

D.03-11-024 also directed that one unresolved issue be sent to a workshop, with the idea of more fully developing that issue and achieving some consensus. D.03-11-024 anticipated that the Commission would open another rulemaking to address proposed amendments to GO 156 resulting from the workshop.

The issue sent to workshop was how to achieve greater uniformity in reporting WMDVBE information in the utilities’ annual reports. D.03-11-024 recognized that in order to achieve uniformity in WMDVBE reporting, it is necessary for the utilities to use the same categories with agreed-upon definitions. The earlier rulemaking resulted in no workable proposals to achieve such uniformity. As the Commission stated in D.03-11-024:

“We, therefore, direct the Commission’s Communications and Public Information Division (CPID)[¹] to hold a workshop commencing no later than 90 days from the mailing date of this decision The purpose of this workshop is to develop uniform reporting categories for all utilities to employ in their WMDVBE reports, and if appropriate, additional industry-specific reporting categories. Additionally, the workshop should develop a detailed definition of each of these categories.

¹ This division is now known as the Consumer Service and Information Division (CSID).

For example, if a category was described as ‘professional services,’ it might be defined to include legal, accounting, and engineering services. We do not foreclose adopting the uniform system of accounts [the proposal in the earlier rulemaking], but believe the parties should have the opportunity in a cooperative manner to develop workable alternatives.” (D.03-11-024 at pp. 12-13.)

IV. The Workshop²

CSID held the required workshop and issued a workshop report on June 3, 2004. Most of the participants in the workshop proposed that WMDVBE information be reported pursuant to the Standard Industrial Classification (SIC) system.

According to the workshop report, the Joint Utilities³ state that the SIC system is the most widely used and understood system in California. The

² At the workshop, Greenlining supported the inclusion of a reporting category for small businesses, recommending that utilities report small business procurement by race, ethnicity, gender, and disabled veteran status. The Joint Utilities and Nextel argue that this issue is outside the scope of GO 156 and Pub. Util. Code §§ 8281-8286.

The workshop report recommends that whether to consider issues relating to the utilities’ reporting of small business information may be more effectively addressed in a separate proceeding or forum. For example, the California Utility Diversity Council (CUDC) has been recently established. The purpose of the CUDC is to advise the Commission on issues of diversity. CUDC has 25 members including a representative from the small business community and several representatives from chambers of commerce. A copy of the workshop report was forwarded to CUDC for its consideration.

³ The Joint Utilities include AT&T Communications of California, Inc., Pacific Gas and Electric Company, Pac-West Telecommunications, Inc., SBC California, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Gas Company, Southern California Edison Company, Southwest Gas Corporation, Surewest, Verizon California Inc., and WorldCom, Inc.

Commission's WMDVBE clearinghouse operator uses the SIC system to categorize and identify the type of businesses that vendors operate. The Joint Utilities are unaware of any system superior to the SIC system which could be used to achieve uniformity of reporting WMDVBE information. The Joint Utilities provided a detailed SIC system definition of each procurement category developed by the United States Department of Labor, together with a web-site address for on-line access to this information.

Nextel of California, Inc. was the only workshop participant to object to the use of the SIC system. Nextel explains it does not collect SIC codes from suppliers and vendors, and therefore, does not have its information available on this basis. Nextel explains that it is launching the United Nations Standard Product and Service system, which would provide a listing of about 250 procurement categories.

V. The Proposal

This rulemaking proposes to amend GO 156 so that the utilities will file their annual WMDVBE reports pursuant to the SIC system. Accordingly, the rulemaking proposes adding a new sub-section to GO 156, Section 1.3 (Definitions) as follows:

Section 1.3.21 "Product and service categories' means product and service categories as defined by the Standard Industrial Classification (SIC) system maintained by the United States Department of Labor, Occupational Safety and Health Administration, as they currently read or as amended."

Achieving uniform reporting by adopting the SIC system makes sense, because this system is commonly used and accepted by most of the utilities at the workshop, government agencies and the business community. Moreover, the Commission's clearinghouse also uses this system. We anticipate that this new

rule, if adopted, would apply to the utilities' 2005 annual reports filed in early 2006.

Nextel objects to adopting the SIC system primarily because this utility does not use the SIC system to organize its procurement categories. Presumably, Nextel would argue that organizing its information according to the SIC system solely for the WMBVDE annual report would be expensive and burdensome. However, GO 156 has a provision to address situations of undue hardship.

GO 156, Section 1.1.3 provides:

“In cases where the application of any of these rules results in undue hardship or unreasonable expense to a utility, the utility may request relief by filing an application in accordance with the Commission’s Rules of Practice and Procedure. Where the relief requested is of minor importance or temporary in nature, the utility may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on all parties on the service list of this proceeding.”

Thus, Nextel or another similarly situated utility may utilize the provisions of Section 1.1.3 if the facts so warrant. In any such application to the Commission, we would expect a utility to clearly set forth, among other things, the facts constituting undue hardship; a detailed explanation of the reporting categories it proposes to substitute for the SIC system; how these categories compare with those used by the SIC system, and how reporting uniformity is not substantially compromised by the requested relief.

VI. 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 as set forth above.

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 solely 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	August 25, 2005
Opening Comments (including responses to order)	September 26, 2005
Reply Comments	October 11, 2005
Issuance of Draft Decision	December 11, 2005
Final Decision	January 2006

The proposed schedule may change, and may be refined by ruling issued by the Assigned Commissioner or the assigned Administrative Law Judge (ALJ). Consistent with Pub. Util. Code § 1701.5(a) and Rule 6(e), we anticipate that the resolution of this proceeding will not exceed 18 months from the date of the scoping memo.

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 (1-866-849-8390 or 1-415-703-2074) or in Los Angeles (1-866-849-8391 or 1-213-576-7055).

Following review of the comments and replies, 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.)

VII. Service of this Order and Service List for This Proceeding

R.03-02-035, which led to the issuance of D.03-11-024, was served on all utilities subject to GO 156, as well as on the service list of past WMDVBE proceedings. R.03-02-035 proposed a rule regarding reporting uniformity; thus, interested parties should currently be on the service list for R.03-02-035. Therefore, this rulemaking should be served on the service list for R.03-02-035.

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, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102, with a copy to the assigned ALJ at the same address. Parties should reference this rulemaking number and state 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. “State service” means the person is employed by the State of California. See discussion below concerning “information only.”)

These parties should also include their name, the name of their representative (if any), their address, and telephone and facsimile numbers, and email address, unless a party states that no email address is available. A service list will then be prepared and posted on the Commission’s web site at www.cpuc.ca.gov as soon as practicable. Requests to be included on 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 who do not want to be parties, and only want notice of the hearings, if any, rulings, proposed decisions, and decisions, may mail a written request to the Process Office at any time requesting that they be added to the service list for information only.

VIII. 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.

Findings of Fact

1. D.03-11-024 directed that the issue of how to achieve greater uniformity in reporting WMDVBE information in the utilities' annual reports be sent to a workshop, with the idea of opening a new rulemaking to adopt reasonable workshop recommendations.

2. The Commission held the workshop contemplated by D.03-11-024.

3. It is reasonable to institute an order instituting rulemaking regarding possible amendments to GO 156 in order to achieve greater uniformity in reporting WMDVBE information in the utilities' annual reports.

Conclusion of Law

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

O R D E R

IT IS ORDERED that:

1. A rulemaking on the Commission's own motion into amending General Order (GO) 156 as set forth in this order is hereby initiated.

2. The Commission's Process Office shall serve this rulemaking on the service list for Rulemaking (R.) 03-02-035. Other persons who wish to be included on the service list for this rulemaking shall send a letter to the Commission's Process Office, with a copy to the assigned Administrative Law Judge (ALJ), no later than 20 days from the mailing of this order, as further directed by this rulemaking. After this 20-day period, a service list will be prepared and posed on the Commission's web site as soon as practicable. Thereafter, requests to be included on the service list must be sent to, and approved by, the assigned ALJ.

3. Interested parties shall file and serve their comments to this rulemaking no later than September 26, 2005, and reply comments no later than October 11, 2005, unless otherwise directed by the Commission, the Assigned Commissioner, or the assigned ALJ, in accordance with the Commission rules for filing and serving documents. Parties shall include any response to this order with their opening comments filed on September 26, 2005.

4. 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.

5. 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.

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners