

CALIFORNIA PUBLIC UTILITIES COMMISSION

Executive Division
Business & Community Outreach Section

RESOLUTION Exec 001
July 9, 2009

RESOLUTION

Resolution Exec-001 Adopting Proposals of K&L Gates (consultant) to Streamline the Certification Process Currently in Place for Woman-Minority- and Disabled Veteran-Owned Suppliers Doing Business with Utilities Subject to the General Order 156 as Revised in D.06-08-031 and Implemented through CSID - 001.

Summary

This Resolution adopts with some modifications the proposals of K&L Gates¹ (“the Report”) to streamline the verification process currently in place for woman-, and minority suppliers (“WMBE”) who choose to do business with utilities subject to the General Order 156.² Decision (D). 06-08-031 and CSID-001 revised certain rules that allow for a utility-formed entity to operate (or contract for the service) to certify businesses to supply goods and services to California’s regulated utilities. The Commission maintains oversight of the rules that govern these processes and is the venue for suppliers to appeal Clearinghouse or Joint Utility decisions. D.06-08-031 and CSID-001 also reiterated certain verification and certification language in response to various utility proposals. This Resolution supersedes Resolution CSID-001 and modifies the comparable agency verification policies we adopted in D.06-08-031.

The proposed changes as per the Report are itemized as follows:

1. On-line application for WMBE applicants with the understanding that an on-line application does not remove entirely the requirements for the submission of certain hard-copy documents.

¹ Attachment A to this Resolution is a complete copy of the Report submitted by K&L Gates.

² Service Disabled Veteran businesses are certified through Department of General Services and thus not part of the Clearinghouse verification & certification process. The utilities subject to General Order 156 have a 1.5% procurement goal from Service Disabled Veteran businesses.

2. Fast Track application for small WMBEs that fall within the Government Code definition of “micro-business.”³
3. Removal of two required documents for all WMBE applicants.
4. Streamlined application process for applicants possessing a verification certificate from either National Minority Supplier Development Council (“NMSDC”) or Women’s Business Enterprise National Council (“WBENC”) that demonstrates that the business meets the 51% WMDVBE ownership, day to day control, and other requirements set forth in Public Utilities Code § 8281-8286, and General order 156.

Separate from the changes listed above, the Commission intends as part of this Resolution to modify the existing cost structure to fund the contract for certification and verification. Going forward, the water companies which previously volunteered to be subject to General Order 156, and are now subject to the Commission’s diversity program pursuant to Public Utilities Code §§ 8283-8284, shall be added to the cost structure to fund the contract on a going forward basis.

Background

The Legislature passed Assembly Bill 3678, which requires California regulated electric, gas, and telephone utilities with \$25 million in annual revenues to establish programs to procure goods and services from woman- and minority-owned business enterprises. In response to Assembly Bill 3678, the Commission issued General Order 156 (GO 156), which established guidelines for the utilities to follow in meeting these requirements.

In GO 156, the Commission established procurement goals of 5% for woman-, 15% for minority-, and 1.5% for disabled veteran-owned business enterprises. The utilities are required to report annually on their expenditures with women-, minority-, and disabled veteran-owned business enterprises (WMDVBEs), and their progress in meeting the procurement goals. GO 156 also required participating utilities to establish a joint clearinghouse to certify women and minority vendors. Utilities report expenditures with clearinghouse-verified vendors in their annual reports to the Commission.

For several years, the Commission used a contractor to operate the Clearinghouse and perform the verification services. Operational costs for the Clearinghouse were billed to the Commission and reimbursed by the participating utilities. In 2005, the Department of General Services (DGS) informed the Commission that this arrangement was no longer acceptable. The Commission considered several options and determined the most feasible was to have the utilities pay the operational costs of the Clearinghouse directly.

An Order Instituting Rulemaking (R.06-04-011) was issued to accomplish this goal. Comments were received from interested parties, and those deemed meritorious were included in the Proposed Decision. The Decision called upon the utilities to offer a proposal to accomplish the goals of removing the Commission from the Clearinghouse payment process, while still

³ “micro-business” is a small business that, together with affiliates, has average annual gross receipts of two million seven hundred fifty thousand dollars (\$2,750,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.

maintaining the Commission's mandated oversight role. The Joint Utilities⁴ offered a proposal to accomplish the transfer of the funding mechanism and related administrative functions. The proposal was based on the contract the CPUC uses with the Clearinghouse. Specifically, the Joint Utilities have a contract with Asian Inc. such that there is an executed master agreement by Asian Inc. and each of the GO 156 utilities. The master agreement governs the administration of the Clearinghouse. Under the terms of the master agreement, the five largest GO 156 utilities⁵ will each have one vote in reviewing/deciding activities of the Clearinghouse while the sixth vote goes to the smaller group of GO 156 utilities⁶ with the understanding that general oversight would remain with the Commission.

As noted above, Asian Inc. is the current Clearinghouse charged with verifying and certifying WMBEs. The contract with Asian Inc is with the Joint Utilities and expires on July 31, 2009. Resolution CSID-001 provided a number of terms as part of Exhibit A – Statement of Work – for the Clearinghouse contract.⁷

In planning for the new contract which will be in place beginning August 1, 2009 the Commission hired an outside consultant, K&L Gates, to review and analyze the existing verification and certification process to ensure that our WMBE database has the largest pool of diverse suppliers and that the potential applicants are not excluded from our database due to a cumbersome and/or unnecessary process to get certified.⁸ During this time, the Commission also heard from potential applicants who voiced concern about the Clearinghouse' verification and certification process. Some suggested that an on-line application would provide needed efficiencies, while others complained that certain documents were unnecessary and overly burdensome to provide. The Report was issued on October 6, 2008 with four recommendations to streamline the process. The Report claims that streamlining the process could result in expansion of our database from the current 3,500 businesses to up to potentially 15,000 businesses.

The Report was informally served via electronic mail on October 29, 2008 to the Joint Utilities and informal comments were received by November 14, 2008. The general consensus was that the recommendations made in the Report were acceptable to their respective utilities. However, the Joint Utilities stated that the Commission needed to formally act and adopt the findings of the Report either through a decision or resolution, in part because the proposed changes substantially modify comparable agency verifications policies we adopted in D.06-08-031. We agree with the Joint Utilities.⁹ This Resolution, a formal decision of the Commission made after service of the

⁴ The Joint Utilities are Southern California Edison, Southwest Gas, Sierra Pacific Power, Pacific Gas and Electric Company, Verizon California Inc., AT&T, SureWest, Sempra Energy Utilities (SoCalGas and SDG&E).

⁵ The five largest GO 156 utilities are PG&E, SCE, Verizon, AT&T, and Sempra Utilities (SoCalGas and SDG&E).

⁶ These are the remaining utilities that make up the Joint Utilities. Please see footnote no. 4.

⁷ Statement of Work as adopted in CSID-001 is attachment B to this Resolution.

⁸ Pursuant to GO 156 only those suppliers certified and part of our database can be counted towards the utilities GO 156 goals.

⁹ Public Utilities Code § 1708 states that: "The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made

Draft Resolution on the parties to the proceeding in which D.06-08-031 was issued, and after the provision to the public of notice and an opportunity to be heard, will supersede CSID-001 and many of the comparable agency verification policies we adopted in D.06-08-031 through our adoption of a slightly modified version of the recommendations in the Report.

Separate from the streamlining issue, this Resolution will also address the inclusion of the six California Class-A water utilities, collectively known as the California Water Association (CWA), to the cost structure for funding the Clearinghouse contract. In the past, the water companies, as well as other businesses, have used our verification and certification process to identify Women, Minority, and Disabled Veteran Business Enterprises (WMDVBEs). This Resolution sought comments on whether to include CWA as part of the Clearinghouse contract and to fund a proportionate amount of the total costs, now that the Public Utilities Code makes water corporations subject to the Commission's diversity program.¹⁰ In their most recent report, California American Water stated that "with the clearinghouse database now fully operational on the CPUC Web-page, we now have the capacity to identify firms which are certified WMDVBEs. The database has allowed CWA to initiate internal business practices for more easily identifying qualified WMDVBE suppliers for inclusion in the Supplier Chain strategic sourcing process."¹¹

Discussion

In this section we will discuss each proposed modification and its impact on the integrity of our database as well as past Commission decisions that may have provided guidance in this area. As a result of these modifications, the previously adopted Statement of Work for the Clearinghouse contract will also be modified to capture the issues below. The revised Statement of Work will be attached to this Resolution as Attachment B.

1. On-line application for WMBE applicants with the understanding that an on-line application does not remove entirely the requirements for the submission of certain hard-copy documents.

Currently the supplier verification application is available for download from Asian Inc.'s website; it is not, however, available as an on-line application. The Report recommends that there are a number of efficiency benefits from an on-line application:

- i. It is easier for the supplier to complete, especially to the extent that the tool allows the user to "save" a partially completed application and return later.
- ii. To the extent that the requirements document so specifies, the tool should be able to transfer certain information fields (e.g., SIC or NAICS core, business address)

by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

¹⁰ Current cost allocation methodology is based on proportionate gross revenues that are updated every three years. The participating utilities would enter into a master agreement among themselves and with the contractor. Each participating utility would also have a bilateral contract with the contractor governing that utility's proportionate financial obligation to the contractor.

¹¹ 2008 Annual Report of California American Water at page 3.

automatically into the Clearinghouse supplier database, thereby eliminating the requirement for the associated data entry work now performed by Asian Inc staff with respect to hard-copy applications; and

- iii. It may facilitate faster Utility access to more detailed WMBE profiles for selection of potential business partners.

We agree with the finding in the Report that an on-line application results in many efficiencies. Moreover, the Commission has received many comments from potential applicants that the certification process and specifically the application is so cumbersome that it is at times prohibitive. The comments by and large are that the application cannot be completed on-line and/or saved as partially completed.

Today's applicants are accustomed to utilizing today's technology, namely utilizing their computers rather than a pen to complete all sorts of applications. It should be noted that NMSDC and WBENC both already have on-line applications for applicants. An on-line application should also make this process more user friendly thereby expanding the pool of WMBE suppliers to utilities.

An on-line application requirement does not modify previous Commission language in D.06-08-031 or Resolution CSID-001. The Statement of Work as adopted in CSID-001 did not specify whether it should be on-line or hand written. However, with this Resolution we make clear that the new contract must include provisions for an on-line application applicants may use if they choose to.¹² Applicants may use the on-line application, or download the application and filing hard copies in the traditional manner.

The draft Resolution was sent to parties for comment on May 18, 2009. Opening comments were due on June 1st with reply comments on June 8th. The comments received did not address a concern for the on-line application. Thus the draft language as recommended by the Consultant's report remains unchanged.

2. Fast Track application for small WMBEs. Small as defined according to the Government Code definition of "micro-business"

The Report recommends that there should be a "Fast Track" application with reduced informational and document production requirements for very small businesses. The basic idea of this recommendation is to encourage small businesses to get certified and become a part of the database of businesses that utilities may do business with and count expenditures toward their diversity goals. The Report recommends that the Fast Track application would require the applicant to submit information and documentation that would allow the Clearinghouse to reasonably verify that it qualifies for the Fast Track application and its WMBE eligibility.¹³

¹² Attachment C specifies this new language making an on-line application a requirement.

¹³ Attachment D illustrates the basic information needed from these small businesses along with the list of items that should be eliminated.

With respect to eligibility for the Fast Track application, the Report recommends that we define eligibility according to the Government Code definition of “micro-business.” The Report also recommends that the Clearinghouse perform periodic audits and review via site visits to maintain the integrity of supplier diversity database. To this end, the Report suggests that the Fast Track application option should only be offered to California based businesses, since it would not be economically efficient for the Clearinghouse to perform site visits out of state. The Fast Track applicants would also be required to certify as to eligibility under penalty of perjury, and acknowledge that they are subject to the fines and penalties provided for a Public Utilities Code Section 8285 for providing false information about their WMBE status.

We agree with the Report that a Fast Track application process will encourage numerous small businesses to get certified and become part of the supplier diversity database, and we adopt the Report’s recommendations, with the following additional requirements. To maintain the integrity of the certification process we also approve of periodic site visits and eligibility offered only to California businesses. In terms of maintaining the integrity of the certification process, we propose to slightly modify the Report’s recommendation of the list of documents to be eliminated. The Report eliminates twenty six documents from the current required list of thirty seven.

After further review from our Supplier Diversity group as well as Legal Division, we propose to add nine of the eliminated documents back into the list of required documents. The result is that the Fast Track process will now eliminate seventeen documents from the existing requirement to submit a completed application. The items that should be added back are those that will maintain the integrity of our database and ensure against fraudulent applicants being included as part of the database.¹⁴ For example, any partnership agreements or buyout rights agreements will better indicate who the majority owner of a particular business is. We agree with the Report’s recommendation that many of the documents currently required may be onerous for a small business to provide or may not be critical to an initial assessment of WMBE status. However, we will require that businesses that get audited must provide any and all documents required as part of the audit, whether or not they were initially provided during the Fast Track verification. This recommendation is a deviation of the Statement of Work as adopted in CSID-001. Therefore, this Resolution supersedes the previous language and adopts a Fast Track application process for micro-businesses as defined above.

The draft Resolution was sent to parties for comment on May 18, 2009. Opening comments were due on June 1st with reply comments on June 8th. The comments received did not address a concern for the Fast-track application process. Thus the draft language as modified by this Resolution is adopted.

3. Removal of two required documents for all WMBE applicants

¹⁴ The items that are being added back to the list are, a) outstanding loans, b) relationships with other business concerns, c) previous business ownership, d) bank signature card or bank authorization letter, e) evidence of personal capital contributions, f) partnership agreements, g) profit-sharing agreements, h) buyout rights agreements, i) by-laws and amendments.

The Report recommends the elimination of two currently required documents. The idea behind the removal as recommended by the Report is that these are not generally requested by other verification and certification agencies such as NMSDC and WEBNC. These two documents are as follows:

- i. All stock certificates ever issued (replace with all current stock certificates representing stock currently issued and outstanding)
- ii. Executed supplier agreements

It is certainly reasonable to eliminate these two documents as they are not essential for the integrity of our certification process. The Commission is not convinced that verification needs a review of all stock certificates ever issued, but requiring applicants to provide certificates representing current stock currently issued and outstanding certificates is a more reasonable documentation requirement.

This recommendation is a deviation of the Statement of Work as adopted in CSID-001. Therefore, this Resolution supersedes the previous language and eliminates the above two document requirements from the verification and certification process.

The draft Resolution was sent to parties for comment on May 18, 2009. Opening comments were due on June 1st with reply comments on June 8th. The comments received did not address a concern for the removal of the two documents. Thus the draft language as recommended by the Consultant's report remains unchanged.

4. Streamlined application process for applicants possessing a comparable verification certificate from either National Minority Supplier Development Council ("NMSDC") or Women's Business Enterprise National Council ("WBENC")

Our current practice of certifying businesses from comparable agency verification (CAV) is to certify on a one time basis. (D.06-08-031, pp. 5, 8-11; CSID Res. p. 5) Only two agencies are recognized as CAV and they are NMSDC and WBENC.¹⁵ The CAV acceptance is a one-time event, and the Clearinghouse will not accept streamlined renewals from CAV-certified businesses. Rather, after its initial CAV-based certification expires, the CAV-certified supplier must complete the standard Clearinghouse supplier verification application and provide the necessary documents.

The Report recommends that going forward we give businesses the choice of either certifying through our Clearinghouse or through one of the two CAV agencies, WBENC or NMSDC. The Report notes that the eligibility tests for the WBENC, NMSDC, and Clearinghouse required documents and review and certification process are substantially similar. Most critically, the

¹⁵ The Small Business Administration (SBA) certification is not a CAV certification. SBA certifications are accepted without question similar to the Disabled Veteran Business certification from Department of General Services (DGS).

WBENC and NMSDC verifications require that the applicant be 51% owned and operated, managed, and controlled by women or minorities. The two CAV agencies both charge an annual fee and the certification expires annually whereas our Clearinghouse certification is free of charge and the certification is for three years.¹⁶ We currently accept the certification of WBENC and NMSDC, although on a one time only basis. This recommendation would provide the supplier the choice of selecting which certification agency to work with for verification renewals.

In D.06-08-031, we rejected a telephone utility proposal that the Commission eliminate its Clearinghouse, and rely entirely on NMSDC and WBENC. We stated that "At present, we do accept comparable verifications from other agencies, but this is only for a short time and the firm must be verified under our program within three years." (p. 10.) We further said: "While other verifying agencies and organizations may provide excellent services, we do believe that unbridled comparable verification will lead to a lack of uniformity and a general weakening in our rigorous standards. Comparable agency verifications should be allowed for the limited period now allowed." (*Id.*, at 10-11.)

We continue to firmly believe that we must maintain the highest level of integrity in ensuring that verification and certification of suppliers is not compromised. Prior to 2004, the Clearinghouse accepted certification from NMSDC and WBENC without question. This acceptance was on a one-time basis and the supplier was thereafter required to obtain certification through our Clearinghouse.

Beginning in 2004, the Commission authorized the Clearinghouse to withhold acceptance if the Clearinghouse had reason to believe the original verification may have been spurious. The Commission also provided that, in all such cases, the Clearinghouse shall investigate the matter and forward to the Commission the details of the case, its findings and a proposed determination in a timely manner.¹⁷ The Clearinghouse issued a report on September 19, 2008 detailing the number of applicants from which they withheld automatic acceptance and setting forth their findings showing that a number of these applicants were submitting fraudulent information and using NMSDC and WBENC as a back-door into our database.¹⁸

While we are not in any way questioning the integrity of these certifying agencies we are proposing a more cautious step toward full acceptance. We intend to make sure that we accept only CAVs that fully demonstrate that the applicant (1) meets the 51% women or minority ownership requirements [in the case of publicly owned businesses, 51% of the stock]; (2) the applicant meets the requirements concerning control of management and daily business operations pursuant to Public Utilities Code Section 8282 and General Order 156; and (3) any other program requirements. As such, we adopt as a pilot program the Report's recommendation to accept NMSDC and WBENC's certification without the supplier having to certify with our

¹⁶ The Joint Utilities as part of GO 156 pay for the cost of the Clearinghouse contract as well as its operation. The costs are divided proportionately based on each utilities gross revenues.

¹⁷ Authority for withholding acceptance was given via an email from the Commission to the Clearinghouse. Attached is that email dated March 6, 2004.

¹⁸ Comparable Agency Verification (CAV) Refrain Review Report submitted by Asian Inc on September 19, 2008.

Clearinghouse. After a full twelve months, we will have either the Commission's audit division or an independent auditor perform an audit of all NMSDC and WBENC's certifications to determine whether suppliers are using these comparable verifications from these agencies as an inappropriate way into our database, and skirting the ownership, control, and other requirements of the Public Utilities Code and General Order 156. The findings of the audit will then help us decide whether to accept CAVs on a going-forward basis, modify the program so that the Clearinghouse has a right to withhold confirmation of questionable verifications, or discontinue permitting CAVs beyond a one-time only basis. Our auditors have performed audits of Asian, Inc.'s certification beginning in 2005, so this comparable agency verification pilot program, audit provisions is nothing unusual.

Applicants using this pilot program will be required to certify, under penalty of perjury, that they are eligible and qualify for WMBE status pursuant to Public Utilities Code Sections 8281-8286, and that they will comply with all Commission rules and regulations concerning the WMBE program. Applicants using the pilot program will also be required to acknowledge that they are subject to the fines and penalties provided for in Public Utilities Code Section 8285 for providing false information about their WMBE status.

This recommendation is a deviation of the Statement of Work as adopted in D.06-08-031 and CSID-001. Therefore, this Resolution supersedes the previous language in that decision and resolution, and adopts language that would allow on-going certification of NMSDC and WBENC.

There were six parties that filed opening comments. AT&T was the only party that urged the Commission to accept NSMDC and WBENC certification on a permanent basis and also was the one party that filed reply comments in support of the same issue. The other parties either endorsed the draft Resolution and/or cautioned the Commission in terms of maintaining the integrity of the certification program.

For the same reasons that we have stated above and also the cautionary language of the other responses we will move forward with the pilot program to ensure that the integrity of our certification program is not compromised.

Southwest Gas asked for a clarification in terms of when the NSMDC & WBENC certification would expire. Both of those verification agencies have a one-year certification program and as such we will honor only that certification for one-year. AT&T in their reply comments proposed that we should accept pilot program certifications for a three-year period since our program is a three-year program. However, since the inception of the program we have accepted CAVs on a one-year term and required that after the one year the supplier should be certified by our certification program. There has not been an instance where we have accepted a one-year certificate for three years. That scenario would not only compromise our certification program, but also compromise the verification process of the other two agencies since the supplier would have no incentive to get certified by those agencies and could get a free pass for two years. Therefore, the proposal by AT&T to extend a one-year certification to three years is rejected and clarification for Southwest Gas is that the certification from NSMDC and WBENC is for a one-year period.

5. **Adding Water Utilities to the Joint Utilities group thereby changing the cost allocation methodology to include Water Utilities in the cost structure**

The draft Resolution sought comments on whether to include the six California Class-A water utilities, collectively known as the Water Utilities,¹⁹ to the cost structure for funding the Clearinghouse contract. In the past the water companies as well as other businesses have used our verification and certification process to identify WMDVBES. In their most recent report, California American Water stated that “with the clearinghouse database now fully operational on the CPUC Web-page, we now have the capacity to identify firms which are certified WMDVBES. The database has allowed Water Utilities to easily identify qualified WMDVBE suppliers for inclusion in the Supplier Chain strategic sourcing process.”²⁰

The Resolution invited comments on whether it is appropriate and fair to include Water Utilities as part of the Clearinghouse contract and to fund a proportionate amount of the total costs.²¹

If adopted, the Statement of Work (Attachment B) would be modified to include the six Class-A water companies as part of Section I. Additionally, the Clearinghouse will execute separate agreements with each participating utility. The Clearinghouse as is the current practice would bill each utility based on the proportionate gross revenue of each participating utility.

In response AT&T, Sempra Utilities, and Southwest Gas all filed opening comments in support of including the Water Utilities in the cost structure of the Clearinghouse contract. The Water Utilities also filed opening comments and while they did not oppose inclusion in the cost structure they did, however, asked that a few clarifying points be made. The comments suggested that we misstated that the Water Utilities are subject to GO 156. However, Public Utilities Code sections 8281-8286 were amended last year (Stats. 2008, Ch. 316) to list water corporations amongst the list of utilities subject to the Commission's WMDVBE requirements. While participation by the Water Utilities was voluntary in the past, the Commission does have the authority to make their participation mandatory due to the revised legislative language.²² The Water Utilities' comments do acknowledge that they are now covered by the code provisions, but they note that the Legislature intended us to have the flexibility to enable the water companies to continue with their Memorandum of Intent (MOI) which supports the goals of GO 156. The Water Utilities base their view on a provision of the legislation amending the Public Utilities Code stating that the Commission may use the MOI as a guideline for the Commission's future regulation of their WMDVBE programs. This provision, Section 5 of AB 873, states that: The Public Utilities Commission may use the "Water Industry Memorandum of

¹⁹ California American Water, California Water Service, Golden State Water, San Gabriel Valley Water, San Jose Water, & Suburban Water System.

²⁰ 2008 Annual Report of California American Water at page 3.

²¹ Current cost allocation methodology is based on proportionate gross revenues that are updated every three years. The participation utilities would enter into a master agreement among themselves and with the contractor. Each participating utility would also have a bilateral contract with the contractor governing that utility's proportionate financial obligation to the contractor.

²² The provisions are only applicable to water utilities with revenues greater than \$25 million.

Intent to Implement a Utility Supplier Diversity Program," dated April 19, 2004, as the basis for the development of program guidelines to implement the requirements of this act for water corporations.

While we acknowledge our ability to base water utility WMDVBE programs on the MOI, we also recognize that we have the discretion not to do so. We believe, for the most part, that applying one regulation (GO 156) to gas, electric, and telephone utilities, and another to water utilities, would unnecessarily complicate the Commission's supplier diversity program. We will, instead, seek to address what we believe are some of the concerns underlying the Water Utilities' desire for a separate set of regulations. The MOI treats water utilities differently than other utilities in that it allows such utilities to exclude from their procurement base purchase of water, utility pump taxes, and fuel costs, in recognition of their position that water purchase, often from governmental entities, comprise the vast bulk of many water utilities' overall purchases, and that inclusion of such purchases in the procurement base would skew the results in an unfavorable manner. Several legislative committee analyses relating to AB 873 repeat this litany, with some characterizing the percentage of water utility expenditures on water, fuel, and pump taxes as ranging from two thirds to three quarters of their overall purchases.

First, we note that GO 156 § 8.9 already states that: "Payments to other utilities and franchise tax fees, and other taxes and postage need not be included in the standard procurement base used to establish goals." Thus, to the extent the Water Utilities are concerned about pumping taxes, and payments to other utilities and government agencies/municipal utilities for water or other utility services, the current GO 156 adequately addresses their concerns.

Second, we note that GO 156 § 8.10.1 requires utilities to include in their standard procurement base fuel used to power vehicles, heat utility facilities, and supply emergency generators, unless the fuel is purchased from another utility and thus subject to the exclusion authorized herein. Fuel used by water utilities to serving pumping facilities seems very similar to the fuels we require other utilities to include in their standard procurement bases, and we have difficulty seeing why water utilities should receive special treatment.

Third, we recognize that water utility purchases of water for resale to their customers are somewhat analogous to natural gas fuel purchases by other utilities. Roughly 20 years ago, we addressed utility desires to have fuel purchases excluded from their procurement bases in the following manner. We initially permitted the exclusion of such purchases, with the understanding that we would research the issue and revisit the next year. After considering the issue further, we determined that while there were few WMBE suppliers of natural gas and similar fuels, there were some, and there was no reason to believe that there might not be more in the future. The allowance of a permanent fuel exclusion would be unlikely to provide any encouragement for the development of such suppliers in the future. At the same time, we recognized that the inclusion of all fuel costs in the standard procurement base could indeed skew certain utilities' overall results in an unfair manner, where fuel purchases constituted a large percentage of the utility's overall purchases, and there were very few WMBE fuel suppliers.

Rather than permitting utilities to exclude all fuel costs forever, we permitted them to opt to report fuel purchases in a separate procurement report, so that understandably low fuel procurement results would not create the impression that the utility's overall procurement efforts were poor. (D.90-12-027.) We distinguished between fuels such as natural gas that were primarily resold to utility customers, and fuels used for non-resale purposes such as powering vehicles, heating utility facilities and so on. While there were few WMBE bulk natural gas suppliers, there were more WMBEs capable of supplying vehicle fuel and fuel for other utility purposes. This option for filing two procurement reports has served both utilities and the Commission well over the past 20 years, allowing us to understand the scope of utility fuel procurement outcomes without creating the possibility that utilities might be belittled for poor overall procurement even though results for a significant percentage of their purchases were to a large extent beyond their control.

We will offer water utilities a similar option. They may, if they choose, report water purchases in a procurement report separate from the standard reports they must file in a manner consistent with the reports filed by other utilities. To the extent that they purchase water from other government and municipal water agencies and districts, of course, such purchases may be excluded altogether pursuant to GO 156 § 8.9. Since GO 156 § 8.12 makes clear that there are no penalties for failure of any utility to meet and/or exceed goals, the requirement that water utilities report water procurement cannot result in any adverse regulatory consequences. We believe this approach may satisfy some of the concerns underlying the Water Utilities' desire for special regulatory treatment, without sacrificing the overall benefits of regulatory consistency that should result from recognizing that the Public Utilities Code now lists water utilities amongst the classes of utilities subject to the Commission's DVBE regulation.

The Water Utilities also provided comments with respect to cost recovery and voting rights as part of the Joint Utilities decision making role overseeing the Clearinghouse contract. The Water Utilities did not object to being required to bear part of the costs for the Clearinghouse contracts, but rather asked that we establish a memorandum account for future cost recovery through rates. The other utilities that are currently part of the cost structure do not have a specific memorandum account dedicated to cost recovery of this contract, but recover the costs through general operating & maintenance (O&M).

The Water Utilities also proposed that if they are to pay a portion of the costs for the contract, they should have a vote in reviewing/deciding activities of the Clearinghouse. We agree with the Water Utilities that it should have a voting right in reviewing/deciding activities and this is in accordance with current practice of the Joint Utilities. Currently, each of the six large utilities that make up the JU have one vote each while the smaller utilities all have one combined vote. We order that after this Resolution is voted by the full Commission, we will hold a workshop to finalize the voting as well as the appropriate cost allocation percentage to each utility. As previously stated, the cost allocation is based on the highest average gross revenue for the last three years of each utility. Thus the utility with the highest average gross revenue for the last three years gets apportioned the highest percentage of the cost of the contract. This workshop will be preceded by a set of data requests from the Commission asking for gross revenues for the most recent three years.

Notice/Schedule & Comments

This Resolution will be served on all parties in R.06-04-011, D.06-08-031, and Resolution CSID-001. Comments to this Resolution should be submitted within 30 days after it is mailed with reply comments due 15 days after opening comments are submitted. The schedule is as follows:

- Draft Resolution mailed to parties on May 18th
- Opening comments due on June 1st
- Reply comments due June 8th
- Commission Decision on June 18th

The names and addresses of persons to whom communications should be addressed are:

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Findings

1. The Report's recommendations comply with General Order 156 as amended in D.06-08-031.
2. This Resolution supersedes CSID-001 and D.06-08-031 in the specific instances that the language regarding comparable agency verification differs from the provisions of this Resolution.
3. Public Utilities Code Sections 8281-8286, GO 156, D.06-08-031 and other authorities require the Commission to adopt criteria for verifying and determining the eligibility of WMDVBES for procurement contracts, and to oversee the implementation of the verification process adopted in this Resolution.
4. The six California water companies who volunteered to comply with GO 156 and are now included by statute (Public Utilities Code §§ 8283-8284) within the classes of utilities subject to our utility supplier diversity program should also be included in funding for the Clearinghouse contract based on the cost allocation methodology currently in place.

DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

[Appendices A thru E to Resolution Exec. 001](#)