

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**1-14-15
02:03 PM

January 14, 2015

Agenda ID #13642
Quasi-legislative**TO PARTIES OF RECORD IN RULEMAKING 14-10-009:**

This is the proposed decision of Commissioner Michael Picker. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's February 26, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ DAVID M. GAMSONDavid M. Gamson
Chief Administrative Law Judge (Interim)

DMG:sbf

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**

(Mailed 01/14/2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Update
General Order 156 to Comply with
Assembly Bill 1678 by Extending
Provisions of the Utilities' Supplier
Diversity Program to Lesbian, Gay,
Bisexual and/or Transgender (LGBT)
Business Enterprises.

Rulemaking 14-10-009
(Filed October 16, 2014)

**DECISION ADOPTING THE AMENDED GENERAL ORDER 156 WITH
AMENDMENTS NECESSARY TO COMPLY WITH ASSEMBLY BILL 1678 BY
EXTENDING THE PROVISIONS OF THE UTILITIES' SUPPLIER DIVERSITY
PROGRAM TO LESBIAN, GAY, BISEXUAL AND/OR TRANSGENDER (LGBT)
BUSINESS ENTERPRISES**

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Attachment A: Amended General Order 156

Attachment B: Current Version of General Order 156, Amended through May 6, 2011, Decision 11-05-019

**DECISION ADOPTING THE AMENDED GENERAL ORDER 156
WITH AMENDMENTS NECESSARY TO COMPLY WITH ASSEMBLY BILL
1678 BY EXTENDING THE PROVISIONS OF THE UTILITIES' SUPPLIER
DIVERSITY PROGRAM TO LESBIAN, GAY, BISEXUAL AND/OR
TRANSGENDER (LGBT) BUSINESS ENTERPRISES**

Summary

In this decision, we do the following:

- (1) Adopt the attached amended General Order (GO) 156, Attachment A to this decision. The amended GO 156 reflects the updates and revisions necessary to comply with and implement the requirements of Assembly Bill (AB) 1678 and the Public Utilities Code sections 8281 *et seq.* and expands the provisions of the Utilities' Supplier Diversity Program to the business enterprises owned by Lesbian, Gay, Bisexual and/or Transgender (LGTB) business enterprises (LBES);¹
- (2) Adopt the LGBT status qualifiers created by the National Gay and Lesbian Chamber of Commerce (NGLCC);
- (3) Authorize and direct the Executive Director of the Commission, on behalf of the Commission, to enter into the memorandum of understanding (MOU) with the NGLCC, to clearly establish general guidelines and an operating framework for the responsibilities and roles of the NGLCC and the Clearinghouse in implementing the amended GO 156 pursuant to Assembly Bill (AB) 1678;
- (4) Authorize and direct the Clearinghouse to begin data sharing with the NGLCC as soon as practicable and to comply with the MOU ordered in this decision;
- (5) Authorize and direct the Clearinghouse to implement the amended GO 156 we adopt today and to phase in the Clearinghouse's development and implementation of its

¹ The amended GO 156, Attachment A, also reflects minor corrections. For comparison, Attachment B to this decision is the most current version of GO 156, presently in effect, reflecting only the amendments through May 6, 2011.

- verification/certification and renewal/recertification processes for the LBEs for purposes of the Utilities' Supplier Diversity Program;
- (6) Direct the utilities to take the necessary actions to set the foundations for the Clearinghouse's implementation of the amended GO 156 we adopt today;
 - (7) Once the MOU ordered in this decision is executed by and between the Commission and the NGLCC, then authorize and direct the NGLCC to comply with the MOU in implementing the amended GO 156 pursuant to AB 1678 and to conduct verifications/certifications and renewals/recertifications of the LBEs for purposes of the Utilities' Supplier Diversity Program; and
 - (8) Adopt a three-year plan and framework to gather data and experience to set meaningful target goals for the LBEs for purposes of the Utilities' Supplier Diversity Program.

1. Background

Beginning in 1986, the California Legislature enacted a series of statutes, the Public Utilities Code² Sections 8281 *et seq.*, to encourage a fair proportion of total utility contracts and subcontracts for products and services to be awarded to women-owned, minority-owned, and disabled veteran-owned business enterprises (WMDVBES).³ These Code sections lay the legislative foundation for the Utilities' Supplier Diversity Program.

² Unless otherwise indicated, all references to "Code" in this decision refer to the Public Utilities Code.

³ The Legislature passed AB 3678 (Stats. 1986, ch. 1259), which requires California regulated utilities with \$25 million in annual revenues to establish a program to procure goods and services from woman- and minority-owned business enterprises. In response to Assembly Bill (AB) 3678, the Commission issued GO 156, which established guidelines for the utilities to follow in meeting these requirements. (Code Sections 8281 *et seq.*)

Commission-regulated electrical, gas, and telephone corporations with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates are directly covered by these Code sections. Commission-regulated water utilities, that are privately owned and operated, were not originally required to participate in the Supplier Diversity Program. However, the largest water companies in the state voluntarily began participating in the Supplier Diversity Program and complying with the program requirements even before 2009. In 2009, the Legislature added water companies with gross annual revenues exceeding \$25,000,000. Thus, as of 2009 those water companies are also covered by these laws. Over the years, other smaller utilities also began voluntarily participating in the Supplier Diversity Program and have expanded their procurement programs to achieve the statutory purposes of these Code sections.

General Order (GO) 156, first adopted in 1988, sets forth the general framework and guidelines for the Utilities' Supplier Diversity Program and the Commission rules for implementing Code sections 8281 *et seq.* toward meeting the statutory goals outlined in those sections. Over the years, these Code sections have been amended several times, and GO 156 has also been amended, most recently by Decision (D.) 11-05-019.

On September 26, 2014, Governor Brown signed Assembly Bill (AB) 1678, which further amended Code sections 8281 *et seq.* and extended the provisions of the Utilities' Supplier Diversity Program under GO 156 to the business enterprises owned by a person who is lesbian, gay, bisexual, or transgender (LGBT). Specifically, AB 1678:

- (1) Extends the provisions of Code sections 8281 *et seq.* to LGBT-owned business enterprises (LBEs);

- (2) Directs the Commission to adopt the LGBT status qualifiers created by the National Gay and Lesbian Chamber of Commerce (NGLCC);
- (3) Authorizes the Commission to update the LGBT status qualifiers as appropriate; and
- (4) Directs the Commission to require the utilities that are subject to Code sections 8281 *et seq.* and the Utilities' Supplier Diversity Program to submit, starting 2016, annual reports and plans (including goals and timetables, not quotas) for increasing procurement from the LBEs in all categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.⁴

The combined purposes of Code sections 8281 *et seq.*, as amended by AB 1678, are to: (a) encourage greater economic opportunity for business enterprises owned by women, minority, disabled veteran and LGBT persons; (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 Supplier Diversity Program for the utilities' procurement of products and services from those business enterprises.⁵

On October 16, 2014, we instituted this rulemaking proceeding by issuing an order instituting rulemaking (OIR) to update and amend GO 156 to comply with AB 1678 by extending the provisions of the Utilities' Supplier Diversity

⁴ Code section 8283(a) provides: "These annual plans shall include short- and long-term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage women, minority, disabled veteran, and LGBT business enterprises in subcontracts in all categories that provide subcontracting opportunities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects." Code Section 8283(b).

⁵ Code Section 8281(b)(2).

Program to the LBEs and to make other minor corrections to the most current version of GO 156, presently in effect, reflecting only the amendments through May 6, 2011.⁶

2. Procedural Matters

In the OIR, we indicated that we expected the proceeding to be conducted solely through a written record and that our decision would be based on pleadings timely filed in this docket. With the initial OIR, we presented the proposed amendments to the current version of the GO 156, as amended through May 6, 2011. We afforded an opportunity for the interested persons to become parties to the proceeding, and we set forth a schedule for their opening and reply comments on our proposed amendments to GO 156.

The following persons indicated their intent to become parties to the proceeding by filing the opening and/or reply comments to the initial OIR and by filing responsive comments to the November 21, 2014 ruling by the assigned Administrative Law Judge (ALJ):

- Pacific Gas and Electric Company (PG&E)
- PacifiCorp
- Southwest Gas Corporation (Southwest Gas)
- Comcast Phone of California, LLC (Comcast)
- San Diego Gas & Electric Company (SDG&E)
- Southern California Gas Company (SoCalGas)
- Southern California Edison Company (SCE)
- NGLCC

⁶ Attachment B to this decision is the version of GO 156, presently in effect, reflecting only the amendments through May 6, 2011.

- California Water Association (CWA)
- AT&T Corp., AT&T Long Distance, Pacific Bell Telephone Company, Cricket Communications, Inc., AT&T Mobility LLC, AT&T Mobility Wireless Operations Holdings, Inc., Santa Barbara Cellular Systems Ltd., New Cingular Wireless PCS, LLC (collectively referred to in this decision as AT&T)

All the comments filed in this proceeding have been duly considered. The OIR outlined the scope of the proceeding and therefore did not contemplate a need for a scoping ruling. The OIR also did not contemplate a prehearing conference or an evidentiary hearing. After review of the record, we confirm that a prehearing conference, an evidentiary hearing and a scoping ruling are not necessary. The OIR sufficiently identified the issues to be addressed in this proceeding. All other organizational matters are addressed in the OIR or in this decision.

3. Summary of Comments

Comments, including one reply comment,⁷ to the OIR were filed by AT&T, CWA, Comcast, the NGLCC, PacifiCorp, PG&E, SDG&E, SoCalGas, SCE, and Southwest Gas.

The majority of the parties supported the proposed revised GO 156 circulated for comment with the initial OIR and agreed that the proposed revisions generally comply with AB 1678 requirements. Most of the parties observed that it is too early for the Commission to set a target percentage goal for the LBEs. Many noted that additional foundational information should first be collected before the Commission sets a goal for the LBEs. Several parties also

⁷ On November 12, 2014, SDG&E and SoCalGas filed a Joint Reply Comment to the OIR.

noted that the proposed revised GO 156 is ambiguous as to how the Clearinghouse should apply the NGLCC's status qualifiers being proposed for adoption.

Finally, the NGLCC proposed that it should be the sole verifying/certifying entity for the LBEs under GO 156. The NGLCC argued that it has a proven verification/certification process which is already in place, with rigorous review and a mandatory site visit requirement. The NGLCC also argued that using the existing NGLCC's verification/certification process as the exclusive verification/certification channel would be cost effective to the California ratepayers who fund the Clearinghouse through the participating utilities and would eliminate undue redundancy and inconsistency. The majority of the utilities support the NGLCC's proposal that it should be the sole verifying/certifying entity instead of the Clearinghouse.

On November 14, 2014, the assigned ALJ issued a ruling seeking comments from the parties to evaluate if and how the Commission could and/or should adopt the NGLCC's proposal to be the verifying/certifying entity for the LBEs for the GO 156 purposes (ALJ's Ruling). Comments, including a reply comment, responsive to the ALJ's Ruling were filed by AT&T, CWA, the NGLCC, PG&E, SDG&E, SoCalGas, SCE, and Southwest Gas.

The responsive comments filed by the NGLCC and other parties demonstrate that the NGLCC has the necessary staffing (including over 145 volunteers), infrastructure, resources, a rigorous 4-step verification/certification process as well as an established renewal/recertification process, and 10 years of experience, in verifying/certifying the LBEs. The NGLCC notes that it has verified/certified 189 LBEs in the last two years. The NGLCC confirmed that it is ready, willing

and able to begin verifying/certifying LBEs for GO 156 purposes “starting January 1, 2015 or soon thereafter.” As of December 5, 2014, the NGLCC also contends it has 650 verified/certified LBEs in its current database and has the necessary capacity to data share with the Clearinghouse on those verified/certified LBEs.

In general, the responsive comments to the ALJ’s Ruling, including those of the NGLCC, show that the NGLCC’s proposal presents numerous promising components and has strong support by most of the parties. However, the comments and the NGLCC proposal show that the NGLCC’s processes present some significant concerns. One concern is that the NGLCC charges fees for its verification/certification (\$400) and/or renewal/recertification (\$200) processes, whereas the Clearinghouse verification/certification and renewal/recertification processes are free to the business enterprises. There is also a lesser concern of misalignment between the NGLCC’s and the Clearinghouse’s verification/certification and renewal/recertification durations. In particular, the Clearinghouse verification/certification is valid for three years, while the NGLCC’s initial verification/certification period is only one year. So the verification/certification periods differ. Likewise, the renewal/recertification periods for the NGLCC differ from that of the Clearinghouse.⁸

⁸ See The NGLCC’s Response to Question 5 of ALJ Ruling, dated December 5, 2014, at 3-4:

LGBTBE [or LBE] certification is valid for one year. After one year, the business must undergo a “check-in,” which is a written verification that the information on the business’s MyNGLCC profile is up-to-date and current. The applicant also must either submit proof of Local Affiliate Chamber membership or pay the \$200 recertification fee. Once those two items have been completed, the NGLCC issues an updated certificate for another year. The following year the business is subject to review by the

Footnote continued on next page

4. Discussion**4.1. Existing GO 156 Supplier Diversity Program**

Currently, the Commission contracts with an outside vendor for the maintenance of the Clearinghouse for the sharing of WMDVBE identification and verification/certification information. A firm seeking verification/certification as a WMBE completes a verification/certification form and submits it to the Clearinghouse vendor. Applying Commission-approved criteria, the vendor verifies that the firm qualifies as a WMBE. Once verified/certified, the woman- and/or minority-owned firm is included in the Clearinghouse database of the verified/certified WMDVBE firms.

Disabled veteran-owned business enterprises (DVBE) are verified/certified by the California State Department of General Services, Office of Small Business and Disabled Veterans Business Enterprise Services (DGS). GO 156 directs the Clearinghouse to accept the verifications/certifications by the DGS as though the firm has been certified by the Clearinghouse and to include such DVBE firm in the Clearinghouse's database of the verified/certified WMDVBE firms.

With the Clearinghouse database, utilities may contract with a verified/certified firm in the Clearinghouse database without having to independently verify/certify its WMDVBE status. Once verified/certified, firms

National Certification Committee once every two years and a site visit is required every four years. The NGLCC is willing to accept that LGBTBEs [or LBEs] certified by the NGLCC may stay in the CPUC clearinghouse database for the established three year term unless the NGLCC notifies the CPUC that we have determined during our renewal process that an LGBTBE [or LBE] no longer meets the certification requirements.

are required to submit verification/certification forms at least once every three years to the Clearinghouse for renewal/recertification process.

4.2. Summary of Amendments to GO 156

The attached amended GO 156 we adopt today, Attachment A to this decision, reflects all the necessary amendments which consist of updates and revisions to the current version of GO 156 needed to comply with and implement AB 1678 requirements and Code sections 8281 *et seq.* In general, these amendments expand the provisions of the Utilities' Supplier Diversity Program to the LBEs by:

- (1) Updating the provisions of GO 156 to extend the provisions of the Utilities' Supplier Diversity Program to the LBEs;
- (2) Establishing the verification/certification, renewal/recertification, complaint and appeal processes for the LBEs and incorporating and/or updating the roles and responsibilities of the Clearinghouse and the NGLCC;
- (3) Establishing and maintaining applicable database maintenance, reporting, monitoring, oversight and auditing requirements; and
- (4) Incorporating other amended provisions necessary to carry out the directives of this decision.

Finally, the amended GO 156, included as Attachment A, to this decision also reflects minor corrections.

4.3. LGBT Status Qualifiers

As required by AB 1678, this decision adopts the below listed LGBT status verification documents of majority business owners (also known as LGBT status qualifiers) created and used by the NGLCC. An applicant for the LBE status must present at least one of the status qualifying documents or status qualifiers listed below:

- (1) Copy of valid, municipal or state license/certificate of marriage, civil union, or domestic partnership;
- (2) Proof of domestic partnership health insurance utilization;
- (3) Copy of petition for same-sex partner hospital visitation rights;
- (4) Evidence of completed or attempted parenting or family building efforts with same-sex partners including surrogacy, adoption, or in-vitro fertilization procedures;
- (5) Joint living arrangement paperwork naming same-sex partner and reference to same-sex partner status must be made in the document. Examples of acceptable documents include: property, deeds/titles, lease or rental agreement, insurance (auto, health, home, etc.), phone/utility bills, wills, retirement plans, loans, lines of credit, investment holdings, etc.;
- (6) One letter from the NGLCC affiliate chamber leader attesting to LGBT status of each business owner;
- (7) Three letters of reference from personal contacts on their company letterhead or stationery who: (a) have known owner for over one year; and (b) can vouch / attest to LGBT status;
- (8) One letter from a recognized LGBT organization attesting to LGBT status and signed by the organization leader or board member;
- (9) Physician carry letter evidencing gender reassignment or related medical procedures (for transgender applicants);
- (10) Proof of media coverage, including publications, newspapers, or articles, explicitly stating LGBT status of owner(s);
- (11) Physician or attorney letter establishing LGBT status of owner(s);
- (12) Certificates, awards, recognition of owners as outstanding members of LGBT community; and/or

- (13) Legal petition for name/gender change (for transgender applicants).

4.4. Roles and Responsibilities

There are some concerns with the NGLCC's proposal that it should verify/certify the LBEs instead of the Clearinghouse, as the sole verifying/certifying entity.

The NGLCC, in its comments to the ALJ's Ruling, addressed some of our concerns. For instance, the NGLCC agreed that it would be willing to waive fees for verifications/certifications and renewals/recertifications of the LBEs for purposes of GO 156 Supplier Diversity Program participation. Likewise, the NGLCC also indicated that it is willing to find ways to align its verification/certification and renewal/recertification periods with those of the Clearinghouse's periods, if needed. Finally, the NGLCC indicated that it is willing to work with and notify the Commission if there are any changes to the LBE status qualifiers and verification/certification process and to communicate with the Commission on all issues concerning the LBEs and their participation in the opportunities afforded them under the GO 156.⁹

There are still a few other concerns we must consider. For instance, for those business enterprises that are already in the Clearinghouse process for woman-owned and/or minority-owned business enterprises, it is both convenient and efficient to allow them the option to process their LBE status applications through the Clearinghouse, instead of having to also separately apply through the NGLCC for their LBE status, while processing their WMBE status(es) through the Clearinghouse. Moreover, the legislative goals of Code

⁹ The NGLCC's December 5, 2014 Responsive Comments to the ALJ's Ruling.

sections 8281 *et seq.*, as amended through AB 1678, is to encourage greater economic opportunity for the LBEs and the utilities' procurement of products and services from those business enterprises. Providing two entry points for the LBEs through the Clearinghouse and the NGLCC would promote easier and greater access to the LBEs and therefore would be in the public interest. Lastly, the current GO 156 affords woman-owned and minority-owned business enterprises the choice of being verified/certified through Clearinghouse or other third parties. We believe the LBEs should be afforded that same option.

Based on the above considerations, we authorize both the Clearinghouse and the NGLCC to verify/certify and renew/recertify the LBEs as discussed below.

4.5. The Clearinghouse

The current Clearinghouse vendor/operator contract expires on June 30, 2015. This contract has been in place for more than five years. AB 1678 was signed in October 2014 -- five years after the current Clearinghouse vendor/operator contract became effective. As such, the current Clearinghouse vendor/operator contract did not envision AB 1678 or the GO 156 we adopt today implementing AB 1678 requirements. The current contract therefore does not provide for all of the Clearinghouse's work necessary to carry out the expanded scope of work associated with AB 1678 and related changes under the amended GO 156 we adopt today. Meanwhile, the contracting process is now underway for a new five-year contract for the Clearinghouse and possibly a new contractor/operator of the Clearinghouse to begin on July 1, 2015.

In view of the transitioning status of the Clearinghouse vendor/operator contracts, the best approach for implementing the amended GO 156 we adopt

today is to phase in the Clearinghouse's role and responsibilities during this vendor/operator contract-to-contract transition period.

During phase I, under the current Clearinghouse vendor/operator contract, due to expire on June 30, 2015, the utilities that contract with the current Clearinghouse vendor/contractor should amend the current contract to (1) authorize and direct the Clearinghouse to immediately begin data sharing to receive downloads of verified/certified and renewed/recertified LBEs from the NGLCC, and (2) authorize and direct the Clearinghouse to maintain the database associated with the LBEs. During phase I, the Clearinghouse will not be able to conduct any verification/certification and renewal/recertification for the LBEs.

During phase II, for the upcoming Clearinghouse vendor/operator contract (to start on July 1, 2015), the utilities that enter into that contract with the Clearinghouse vendor/contractor must ensure that the upcoming contract:

- (1) Authorizes and directs the Clearinghouse vendor/operator to continue the data sharing effort to receive downloads of verified/certified and renewed/recertified LBEs from the NGLCC;
- (2) Authorizes and directs the Clearinghouse vendor/operator to continue to maintain the database associated with the LBEs; and
- (3) Authorizes and directs the Clearinghouse vendor/contractor, by or before September 1, 2015, to collaborate with NGLCC and to develop and implement verification/certification and renewal/recertification processes for the LBEs that (a) comply with GO 156 we adopt today and (b) substantially conform to the NGLCC's processes to minimize any procedural inconsistencies for the LBE applicants.

4.6. The NGLCC

Upon review of the comments and balancing the competing concerns, we accept the NGLCC's offer of its expertise and resources to verify/certify (including recertification/renewal) the LBEs for purposes of GO 156. In view of

the NGLCC's comments responsive to the ALJ's Ruling, we believe many of the concerns associated with the NGLCC's proposal (that it should be the verifying/certifying agency for the LBEs) can be put to rest by way of memorializing the NGLCC's willingness and agreement into a memorandum of understanding (MOU) that sets general guidelines and an operating framework for the responsibilities and roles of the NGLCC and the Clearinghouse in implementing the amended GO 156 pursuant to Assembly Bill 1678. As discussed in section 4.4 or above, we reject the portion of the NGLCC's proposal that it should verify/certify the LBEs *instead of the Clearinghouse, as the sole verifying/certifying entity*.

By or before April 30, 2015, the Executive Director of the Commission, on behalf of the Commission, is authorized and directed to enter into the MOU with the NGLCC, and the MOU, at a minimum, must include the following provisions:

- (1) The NGLCC's agreement to collaboratively develop and implement a data sharing program to share the NGLCC's database of verified/certified LBEs with the Clearinghouse including immediately facilitating download of all of its verified/certified and renewed/recertified LBEs;
- (2) The NGLCC's agreement to follow GO 156 in verifying/certifying and renewing/recertifying LBEs for GO 156 purposes;
- (3) The NGLCC's agreement to use the LGBT status qualifiers adopted in this decision to certify/verify and renew/recertify the LBEs for purposes of GO 156;
- (4) The NGLCC's agreement to waive all fees to LBEs for verifying/certifying and renewing/recertifying any LBEs for purposes of GO 156 Supplier Diversity Program participation;

- (5) The NGLCC's agreement to follow Section 7 of GO 156 to implement the complaint and appeal processes relating to any NGLCC decisions verifying/certifying and renewing/recertifying of the LBEs for purposes of GO 156;
- (6) The NGLCC's agreement to align its verification/certification and renewal/recertification periods to the Clearinghouse's verification/certification and renewal/recertification periods;
- (7) The NGLCC's agreement to continue to use the status qualifiers adopted in this decision and notify the Commission if there are any changes to its LBE status qualifiers or verification/certification and renewal/recertification status qualifiers and processes;
- (8) The NGLCC's agreement to maintain regular communication with the Commission staff, at least once each quarter and four times each calendar year, to review and coordinate, as appropriate, on all issues concerning the LBEs and their participation in the opportunities afforded them under GO 156;
- (9) The Commission's designation of the NGLCC as an entity authorized to conduct the LBE verification/certification and renewal/recertification for purposes of this General Order; and
- (10) The Commission's agreement to direct and authorize the Clearinghouse to accept the verifications/certifications by the NGLCC as though the LBE firm has been verified/certified by the Clearinghouse and then includes such LBE firm in the Clearinghouse's database of the certified WMDVLBE firms.

Once the NGLCC and the Commission enter into the MOU described above:

- (1) The NGLCC is authorized and directed to comply with the MOU in implementing GO 156 pursuant to AB 1678 and to conduct verifications/certifications and

renewals/recertifications of the LBEs for purposes of the Utilities' Supplier Diversity Program under GO 156; and

- (2) The Clearinghouse is authorized and directed to:
 - (a) Accept the verifications/certifications by the NGLCC as though the LBE firm has been verified/certified by the Clearinghouse and then includes such LBE firm in the Clearinghouse's database of the certified WMDVLBE firms;
 - (b) Collaboratively develop and implement a data sharing program to share the NGLCC's database of verified/certified LBEs with the Clearinghouse; and
 - (c) Collaborate, coordinate and provide support, as appropriate, to the NGLCC for the NGLCC's compliance with the MOU and this General Order.
- (3) In order to qualify as an LBE and be included in the Clearinghouse database, businesses must have been verified/certified and/or renewed/recertified by the Clearinghouse or the NGLCC, and if the LBE was verified/certified and/or renewed/recertified by the NGLCC, that LBE must present to the Clearinghouse a current certificate or verification from the NGLCC.

Based on the foregoing and once the MOU is executed by the Commission and the NGLCC, the NGLCC will be authorized to conduct the LBE verification/certification and renewal/recertification for purposes of the Utilities' Supplier Diversity Program under GO 156. The Commission's Executive Director may grant reasonable time extensions for compliance with section 5.2. of the amended GO 156.

4.7. Annual Reports, Plans and Goals

Code Section 8283, as amended by AB 1678, provides:

- (a) The commission shall require each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues

- exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates, to submit annually, *a detailed and verifiable plan* for increasing procurement from ... *LGBT business enterprises* in all categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.
- (b) These annual plans shall include short- and long-term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage ...LGBT business enterprises in subcontracts in all categories that provide subcontracting opportunities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.
- (c) Every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) shall furnish an annual report to the commission regarding the implementation of programs established pursuant to this article in a form that the commission shall require, and at the time that the commission shall annually designate. The report shall include the information about LGBT business enterprises beginning with the 2016 report. [*Emphasis added.*]

We recognize that the utilities may have limited information to report on in their 2016 report. However, this is a legislative mandate, and consistent with the mandate, the utilities must do their best to prepare and submit 2016 annual reports and plans detailing, *inter alia*, program challenges, accomplishments, goals, timetables and progress towards the goals.

Also consistent with Code section 8283, in the most recent version of GO 156, dated May 6, 2011, the Commission established voluntary procurement goals for each covered utility of 5 percent for woman-owned, 15 percent for minority-owned, and 1.5 percent for disabled veteran-owned business

enterprises. Because these are voluntary procurement goals, there is no penalty for failure of any utility to meet or exceed their annual goals.¹⁰ To date, the utilities have reported annually on their procurement purchases from WMDVBEs, and their progress in meeting the procurement goals.

With AB 1678 requirements, the utilities must, starting with their 2016 annual reports and plans, report annually on, *inter alia*, their goals and timetables for their procurement purchases from the LBEs.¹¹ We recognize that, at this time, there is no Commission set percentage goal for the LBEs, and we agree with the majority of the parties that it is too early for the Commission to set a target percentage goal for the LBEs and that additional foundational information on the LBEs should first be collected. To that end, we have considered the proposed workshop idea, task force idea, and other suggestions in the comments filed by the parties.

We find that Comcast's second alternative proposal to be the preferred approach here, as discussed below.¹² Comcast correctly observes, in its opening comments to the OIR, that the Clearinghouse has no LBEs in its database at this time and has yet to implement the LBE certification procedures or certify any such businesses. Comcast also notes that even though the NGLCC has some certified/verified LBEs in its database, the NGLCC's database of certified/verified LBEs is still insufficient at this time for the utilities' needs. As

¹⁰ Nothing in the current version of GO 156 or proposed amended version, authorizes or permits a utility to use set asides, preferences, or quotas in administration of its WMDVLBE program and utilities retain the authority to use legitimate business judgment to select a supplier for a particular contract.

¹¹ Code Section 8283, subsection (d).

¹² Comcast's Opening Comment to OIR, dated November 5, 2014, at 3-4.

such, Comcast reasons it will be very difficult for the GO 156 utilities to find an adequate pool of qualified and certified LBEs and enter into procurement contracts with them immediately. We agree with these observations.

For those reasons, Comcast presents its first proposal that the Commission should allow the utilities to include LGBT procurement within existing target goals of 15 percent for minority-owned businesses, or within the 5 percent of women-owned businesses (Comcast's First Proposal). If the Commission rejects Comcast's First Proposal, alternately, Comcast presents a second proposal and recommends the Commission to allow these utilities to develop and implement plans to increase LGBT procurement over a reasonable period of time in order to ensure that they are able to find qualified LBEs and establish contracts with them on a reasonable basis (Comcast's Second Proposal).

We reject Comcast's First Proposal, at this time, without prejudice. There is insufficient basis to justify simply lumping in the LBEs within the existing target goals of 15 percent for minority-owned businesses, or within the 5 percent of women-owned businesses. The effect of Comcast's First Proposal would be to lower the current target goals for those groups by counting the LBE procurements as part of the percentage goals for the minority-owned businesses and/or the women-owned businesses. Without knowing more about the LBEs, we do not choose to undercut the current target goals of the minority-owned businesses or the women-owned businesses.

We adopt Comcast's Second Proposal with minor modification as discussed below. Comcast's Second Proposal provides that, starting in 2015 and for a few years thereafter, the utilities would set their own target goal(s) for the LBEs, and after a period of three years, the Commission would revisit the issue

to establish a meaningful Commission established target goal, as appropriate, for LBE procurement.

During the first year of implementing AB 1678 and the amended GO 156 we adopt today, the utilities should focus their initial efforts on smoothly integrating AB 1678 requirements to their GO 156 programs by identifying the LBEs, services, and areas of need for which there are such qualifying LBEs. During this time and with so many unknown variables, the utilities most likely require some flexibility to set their own targets in accordance with different utilities' experiences, operations, needs for services, and available LBE contracting opportunities.

After the first year, the utilities will have gained some implementation experience; the database of qualifying LBEs should be more robust than it is today; and the utilities will be in a better position to establish their initial goals for LBE procurement that reconcile with the available LBE pool and the utility's particular experiences and needs. Annually thereafter, the utilities should update those goals based on the prior year's experience. After three years of experience with the LBEs, reported to the Commission by the utilities in their annual reports and plans, the Commission may be in a position to revisit and review the issue of setting a meaningful percentage target goal.

This general approach is well-reasoned and properly balances the operational needs and limitations of the utilities, the need for additional foundational information on the LBEs, and the need to smoothly and effectively integrate and implement AB 1678 related updates to the GO 156 program for the Clearinghouse and the utilities. Therefore, we adopt Comcast's Second Proposal, as modified, as outlined below:

- (1) In setting the target percentage goal(s) for the LBEs' participation in procurement programs of the participating utilities, each utility shall do the following:
 - (a) In 2015, the first year of implementation of the LBEs' inclusion in the GO 156 Program, the utilities shall focus on integrating AB 1678 requirements by identifying the LBEs, services, and areas of need for which there are such qualifying LBEs;
 - (b) Starting in 2016, each utility shall prepare and submit the required detailed annual plan and report with its proposed short- and long-term goals and timetables required by Section 9 and 10 of the amended GO 156 and Code Section 8283, subsections (a), (b) and (c); and
 - (c) In 2017 and annually thereafter, in the annual plan and report, each utility shall update its previously proposed short- and long-term goals and timetables from its prior year's annual report and plan for the utility's LBE procurement, based on the utility's experience to date, database of qualifying entities and the utility's particular needs.
- (2) On January 1, 2018 or as soon as practicable thereafter, the Commission will revisit the issue of setting a meaningful target goal, as appropriate, for LBE procurement.

5. Confirmation of Preliminary Determinations on Categorization, Hearing Need and Related Matters

No party has objected to the preliminary categorization of this rulemaking or to the preliminary determination that no hearing is needed. We confirm the preliminary determination of this proceeding to be quasi-legislative as the term is defined in Rule 5(d). We likewise confirm the preliminary determination that a hearing is unnecessary.

This rulemaking is being conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. The *ex parte* restrictions for this category of proceeding, previously set forth in the OIR, are confirmed. This

proceeding has been conducted solely through a written record as no relevant requests for a hearing have been made and a hearing is indeed unnecessary. Since all procedural issues have been addressed, we waive the requirement for a scoping memo. This proceeding conforms to the statutory case management deadline for quasi-legislative matters set forth in Code Section 1701.5.

6. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Code section 311 and comments were allowed under Rule 14.3 of the Commissioners Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

This proceeding is assigned to Commissioner Michael Picker and to Administrative Law Judge Kimberly H. Kim.

Findings of Fact

1. GO 156, first adopted in 1988, sets forth the general framework and guidelines for the Utilities' Supplier Diversity Program and the Commission rules for implementing Code sections 8281 *et seq.* toward meeting the statutory goals outlined in those Code sections.
2. On September 26, 2014, Governor Brown signed AB 1678, which further amended Code sections 8281 *et seq.* and extended the provisions of the Utilities' Supplier Diversity Program under GO 156 to the LBEs.
3. The attached amended GO 156, Attachment A, reflects the updates and revisions necessary to comply with and implement AB 1678 requirements and Code sections 8281 *et seq.* and also reflects minor corrections.

4. AB 1678 requires that the Commission adopt the LGBT status verification documents of majority business owners (also known as LGBT status qualifiers) created and used by the NGLCC.

5. In view of the transitioning status of the Clearinghouse vendor/operator contracts, the best approach for implementing the amended GO 156 would be to phase in the Clearinghouse's role and responsibilities during this contract-to-contract transition period.

6. Concerns associated with the NGLCC's proposal (that it should be the verifying/certifying agency for the LBEs) can be addressed by memorializing the NGLCC's willingness and agreement to enter into an MOU between the Commission and the NGLCC that establishes general guidelines and an operating framework for the responsibilities and roles of the NGLCC and the Clearinghouse in implementing the amended GO 156 pursuant to AB 1678.

7. This decision rejects the portion of the NGLCC's proposal that it should verify/certify the LBEs instead of the Clearinghouse as the sole certifying/verifying entity.

8. At this time, it is too early for the Commission to set a target percentage goal for LBEs procurement without additional foundational information on the LBEs.

9. Comcast's Second Proposal regarding how the Commission should approach the issue of setting a target percentage goal(s) for LBE procurement is well-reasoned and properly balances the operational needs and limitations of the utilities, the need for additional foundational information on the LBE, and the need to smoothly and effectively integrate and implement AB 1678 related updates to the GO 156 program for the Clearinghouse and the utilities.

10. The OIR did not contemplate a prehearing conference or an evidentiary hearing; and similarly, the OIR also did not contemplate a need for a separate scoping ruling.

11. No party objected to the preliminary categorization of this rulemaking or to the preliminary determination that no hearing is needed.

12. This proceeding conforms to the statutory case management deadline for quasi-legislative matters set forth in Code section 1701.5.

Conclusions of Law

1. The Commission should adopt the amended GO 156, attached to this decision as Attachment A.

2. The Commission must adopt the LGBT status verification documents of majority business owners (also known as LGBT status qualifiers) created and used by the NGLCC to comply with AB 1678.

3. The Commission should authorize both the Clearinghouse and the NGLCC to verify/certify and renew/recertify the LBEs.

4. During phase I, under the current Clearinghouse vendor/operator contract, due to expire on June 30, 2015, the Commission should direct the utilities that contract with the current Clearinghouse vendor/contractor to amend the current contract to (1) authorize and direct the Clearinghouse to immediately begin data sharing to receive downloads of verified/certified and renewed/recertified LBEs from the NGLCC, and (2) authorize and direct the Clearinghouse to maintain the database associated with the LBEs.

5. During phase II, for the upcoming Clearinghouse vendor/operator contract (to start on July 1, 2015), the utilities that enter into that contract with the Clearinghouse vendor/contractor must ensure that the upcoming contract:

- (a) Authorizes and directs the Clearinghouse vendor/operator to continue the data sharing effort to receive downloads of verified/certified and renewed/recertified LBEs from the NGLCC;
- (b) Authorizes and directs the Clearinghouse vendor/operator to continue to maintain the database associated with the LBEs; and
- (c) Authorizes and directs the Clearinghouse vendor/contractor, by or before September 1, 2015, to collaborate with NGLCC, then develop and implement verification/certification and renewal/recertification processes for the LBEs that (i) comply with GO 156 we adopt today and (ii) substantially conform to the NGLCC's processes to minimize any procedural inconsistencies for the LBE applicants.

6. The Commission should enter into an MOU with the NGLCC to clearly establish general guidelines and an operating framework for the responsibilities and roles of the NGLCC and the Clearinghouse in implementing GO 156 pursuant to AB 1678.

7. The MOU, at a minimum, should include the following provisions:

- (a) The NGLCC's agreement to collaboratively develop and implement a data sharing program to share the NGLCC's database of verified/certified LBEs with the Clearinghouse including immediately facilitating download of all of its verified/certified and renewed/recertified LBEs;
- (b) The NGLCC's agreement to follow GO 156 in verifying/certifying and renewing/recertifying LBEs for GO 156 purposes;
- (c) The NGLCC's agreement to use the LGBT status qualifiers adopted in this decision to certify/verify and renew/recertify the LBEs for purposes of GO 156;
- (d) The NGLCC's agreement to waive all fees to the LBEs for verifying/certifying and renewing/recertifying any LBEs

- for purposes of GO 156 Supplier Diversity Program participation;
- (e) The NGLCC's agreement to follow Section 7 of GO 156 to implement the complaint and appeal processes relating to any NGLCC decisions verifying/certifying and renewing/recertifying of the LBEs for purposes of GO 156;
 - (f) The NGLCC's agreement to align its verification/certification and renewal/recertification periods to the Clearinghouse's verification/certification and renewal/recertification periods;
 - (g) The NGLCC's agreement to continue to use the status qualifiers adopted in this decision and notify the Commission if there are any changes to its LBE status qualifiers or verification/certification and renewal/recertification status qualifiers and processes;
 - (h) The NGLCC's agreement to maintain regular communication with the Commission staff, at least once each quarter and four times each calendar year, to review and coordinate, as appropriate, on all issues concerning the LBEs and their participation in the opportunities afforded them under GO 156;
 - (i) The Commission's designation of the NGLCC as an entity authorized to conduct the LBE verification/certification and renewal/recertification for purposes of this General Order; and
 - (j) The Commission's agreement to direct and authorize the Clearinghouse to accept the verifications/certifications by the NGLCC as though the LBE firm has been verified/certified by the Clearinghouse and include such LBE firm in the Clearinghouse's database of the certified WMDVLBE firms.

8. In the event of any unforeseen delay in finalizing of the MOU, the Commission should authorize the Executive Director to grant reasonable extensions to complete the MOU.

9. Once the MOU between the Commission and the NGLCC is executed, we should authorize the NGLCC to conduct verifications/certifications and renewals/recertifications of the LBEs for purposes of the Utilities' Supplier Diversity Program under GO 156.

10. Pursuant to AB 1678 requirements, the utilities must, starting with their 2016 annual reports and plans, begin reporting annually on their procurement purchases from the LBEs, and their progress in meeting the procurement goals for the LBEs.

11. The Commission should adopt Comcast's Second Proposal regarding how the Commission should approach the issue of setting a target percentage goal(s) for LBE procurement with minor modifications.

12. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. We amend the General Order 156, as reflected in Attachment A to this decision, and adopt the attached amended General Order 156.

2. The amended General Order 156, Attachment A to this decision, shall be posted on the Commission's website and shall supersede all prior versions of the General Order 156.

3. We adopt the following list of the Lesbian, Gay, Bisexual and/or Transgender (LGBT) status qualifiers created by the National Gay and Lesbian Chamber of Commerce (NGLCC). An applicant for LGBT status must present at least one of the status qualifying documents or status qualifiers listed below:

- (a) Copy of valid, municipal or state license/certificate of marriage, civil union, or domestic partnership;

- (b) Proof of domestic partnership health insurance utilization;
- (c) Copy of petition for same-sex partner hospital visitation rights;
- (d) Evidence of completed or attempted parenting or family building efforts with same-sex partners including surrogacy, adoption, or in-vitro fertilization procedures;
- (e) Joint living arrangement paperwork naming same-sex partner and reference to same-sex partner status must be made in the document. Examples of acceptable documents include: property, deeds/titles, lease or rental agreement, insurance (auto, health, home, etc.), phone/utility bills, wills, retirement plans, loans, lines of credit, investment holdings, etc.;
- (f) One letter from the NGLCC affiliate chamber leader attesting to LGBT status of each business owner;
- (g) Three letters of reference from personal contacts on their company letterhead or stationery who: (a) have known owner for over one year; and (b) can vouch / attest to LGBT status;
- (h) One letter from a recognized LGBT organization attesting to LGBT status and signed by the organization leader or board member;
- (i) Physician carry letter evidencing gender reassignment or related medical procedures (for transgender applicants);
- (j) Proof of media coverage, including publications, newspapers, or articles, explicitly stating LGBT status of owner(s);
- (k) Physician or attorney letter establishing LGBT status of owner(s);
- (l) Certificates, awards, recognition of owners as outstanding members of LGBT community; and/or
- (m) Legal petition for name/gender change (for transgender applicants).

4. We authorize and direct the Clearinghouse to begin data sharing with the National Gay and Lesbian Chamber of Commerce as soon as practicable and comply with the memorandum of understanding ordered in the Ordering Paragraph 7 of this decision.

5. We authorize and direct the Clearinghouse to implement amended General Order (GO) 156 and to phase in the Clearinghouse's development and implementation of its verification/certification and renewal/recertification processes for the Lesbian, Gay, Bisexual and/or Transgender (LGBT) business enterprises (LBEs) for purposes of the Utilities' Supplier Diversity Program under the amended GO 156.

6. The utilities are directed to take the following actions to set the foundations necessary for the Clearinghouse's phased implementation of the amended GO 156 as follows:

- (a) During phase I, under the current Clearinghouse vendor/operator contract, due to expire on June 30, 2015, we direct the utilities that contract with the current Clearinghouse vendor/contractor to amend the current contract to (1) authorize and direct the Clearinghouse to immediately begin data sharing to receive downloads of verified/certified and renewed/recertified Lesbian, Gay, Bisexual and/or Transgender (LGBT) business enterprises (LBEs) from the National Gay and Lesbian Chamber of Commerce; and (2) authorize and direct the Clearinghouse to maintain the database associated with the LBEs; and
- (b) During phase II, for the upcoming Clearinghouse vendor/operator contract (to start on July 1, 2015), the utilities that enter into that contract with the Clearinghouse vendor/contractor must ensure that the upcoming contract:
 - (i) Authorizes and directs the Clearinghouse vendor/operator to continue the data sharing effort

to receive downloads of verified/certified and renewed/recertified LBEs from the NGLCC;

- (ii) Authorizes and directs the Clearinghouse vendor/operator to continue to maintain the database associated with the LBEs; and
- (iii) Authorizes and directs the Clearinghouse vendor/contractor, by or before September 1, 2015, to collaborate with NGLCC, then develop and implement verification/certification and renewal/recertification processes for the LBEs that comply with GO 156 we adopt today and substantially conform to the NGLCC's processes to minimize any procedural inconsistencies for the LBE applicants.

7. By or before April 30, 2015, the Executive Director of the Commission, on behalf of the Commission, is authorized and directed to enter into the memorandum of understanding (MOU) with the National Gay and Lesbian Chamber of Commerce (NGLCC). The MOU, at a minimum, must include the following provisions:

- (a) The NGLCC's agreement to collaboratively develop and implement a data sharing program to share the NGLCC's database of verified/certified business enterprises owned by Lesbian, Gay, Bisexual and/or Transgender (LGBT) person(s) (LBEs) with the Clearinghouse including immediately facilitating download of all of its verified/certified and renewed/recertified LBEs;
- (b) The NGLCC's agreement to follow the amended General Order (GO) 156 in verifying/certifying and renewing/recertifying LBEs for the amended GO 156 purposes;
- (c) The NGLCC's agreement to use the LGBT status qualifiers adopted in this decision to certify/verify and renew/recertify the LBEs for purposes of the amended GO 156;

- (d) The NGLCC's agreement to waive all fees to the LBEs for verifying/certifying and renewing/recertifying any LBEs for purposes of the amended GO 156 Supplier Diversity Program participation;
- (e) The NGLCC's agreement to follow Section 7 of GO 156 to implement the complaint and appeal processes relating to any NGLCC decisions verifying/certifying and renewing/recertifying of the LBEs for purposes of the amended GO 156;
- (f) The NGLCC's agreement to align its verification/certification and renewal/recertification periods to the Clearinghouse's verification/certification and renewal/recertification periods;
- (g) The NGLCC's agreement to continue to use the status qualifiers adopted in this decision and notify the Commission if there are any changes to its LBE status qualifiers or verification/certification and renewal/recertification status qualifiers and processes;
- (h) The NGLCC's agreement to maintain regular communication with the Commission staff, at least once each quarter and four times each calendar year, to review and coordinate, as appropriate, on all issues concerning the LBEs and their participation in the opportunities afforded them under the amended GO 156;
- (i) The Commission's designation of the NGLCC as an entity authorized to conduct the LBE verification/certification and renewal/recertification for purposes of this General Order; and
- (j) The Commission's agreement to direct and authorize the Clearinghouse to accept the verifications/certifications by the NGLCC as though the LBE firm has been verified/certified by the Clearinghouse and then include such LBE firm in the Clearinghouse's database of the certified woman-owned, minority-owned, disabled veterans-owned and LGTB-owned firms.

8. The Commission's Executive Director may grant reasonable time extensions for compliance with the Ordering Paragraph 7 of this decision and Section 5.2. of the amended General Order 156.

9. Once the National Gay and Lesbian Chamber of Commerce (NGLCC) and the Commission enter into the memorandum of understanding (MOU) ordered in this decision:

- (a) The NGLCC is authorized and directed to comply with the MOU in implementing the amended General Order (GO) 156 pursuant to Assembly Bill 1678 and to conduct verifications/certifications and renewals/recertifications of the business enterprises owned by Lesbian, Gay, Bisexual and/or Transgender (LGBT) person(s) (LBEs) for purposes of the Utilities' Supplier Diversity Program under the amended GO 156.
- (b) The NGLCC will be authorized to conduct the LBE verification/certification and renewal/recertification.
- (c) The Clearinghouse is authorized and directed to:
 - (1) Accept the verifications/certifications by the NGLCC as though the LBE firm has been verified/certified by the Clearinghouse and then include such LBE firm in the Clearinghouse's database of the certified woman-owned, minority-owned, disabled veterans-owned and LGTB-owned firms;
 - (2) Collaboratively develop and implement a data sharing program to share the NGLCC's database of verified/certified LBEs with the Clearinghouse; and
 - (3) Collaborate, coordinate and provide support, as appropriate, to the NGLCC for its compliance with the MOU and this amended GO 156.

10. The utilities shall, starting with their 2016 annual reports and plans, begin reporting annually on their procurement purchases from Lesbian, Gay, Bisexual

and/or Transgender business enterprises (LBEs) and their progress in meeting the procurement goals for the LBEs.

11. We adopt Comcast's Second Proposal toward setting the target percentage goal(s) for the Lesbian, Gay, Bisexual and/or Transgender business enterprises (LBEs) participation in procurement programs of the participating utilities, as modified herein, and set forth below to establish a three-year plan and framework to gather data and experience to set a meaningful target goal for LBE procurement for purposes of the Utilities' Supplier Diversity Program under the amended General Order (GO) 156 and direct the utilities participating in the amended GO 156 Program to comply with the following:

- (a) In 2015, the first year of implementation of the LBEs' inclusion in the GO 156 Program, the utilities shall focus on integrating AB 1678 requirements by identifying the LBEs, services, and areas of need for which there are such qualifying LBEs;
- (b) Starting in 2016, each utility shall prepare and submit the required detailed annual plan and report with its proposed short- and long-term goals and timetables required by Section 9 and 10 of the amended GO 156 and Public Utilities Code Section 8283, subsections (a), (b) and (c); and
- (c) In 2017 and annually thereafter, in the annual plan and report, each utility shall update its previously proposed short- and long-term goals and timetables from its prior year's annual report and plan for the utility's Lesbian, Gay, Bisexual and/or Transgender (LGBT) business enterprise (LBE) procurement, based on the utility's experience to date, the database of qualifying entities and the utility's particular needs.

12. The Commission's staff overseeing the amended General Order 156 program shall monitor the annual reports, plans and Clearinghouse activities, and by January 1, 2018 or as soon as practicable thereafter, present to the Commission, during its 2018 en banc session, a report and a recommendation for setting a meaningful target goal for the utilities' Lesbian, Gay, Bisexual and/or

Transgender (LGBT) business enterprise (LBE) procurement based on those reports, plans and experiences.

13. We confirm the preliminary determination of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure.

14. We confirm the preliminary determination that a hearing is unnecessary.

15. This rulemaking has been conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure, and we confirm the *ex parte* restrictions for this category of proceeding, previously set forth in this rulemaking.

16. We waive the requirement for a separate scoping memo ruling.

17. Rulemaking 14-10-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
(AMENDED GENERAL ORDER 156)

General Order 156 (Current as of _____)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS TO INCREASE PARTICIPATION OF WOMEN, MINORITY, DISABLED VETERAN AND LESBIA, GAY, BISEXUAL AND TRANSGENDER (LGBT) BUSINESS ENTERPRISES IN PROCUREMENT OF CONTRACTS FROM UTILITIES AS REQUIRED BY PUBLIC UTILITIES CODE SECTIONS 8281-8286

**Adopted April 27, 1988. Effective May 30, 1988.
Decision 88-04-057 in R.87-02-026.**

Modified by Decisions 88-09-024, 89-08-041, 9011-053, 90-12-027, 92-06-030, 95-12-045, 96-12-081, 98-11-030, 03-11-024, 05-12-023, D.06-08-031, D.11-05-019 and D._____.

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¹ Former Section 5 has been deleted per Decision 98-11-030.

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 - 8.11.1. Fuel to be included in standard procurement base used to establish goals
 - 8.11.2. Fuel procurement base must include all purchases of natural gas from domestic onshore natural gas markets
 - 8.11.3. Purchases from WMDVLBE suppliers fuels other than domestic onshore natural gas
 - 8.11.4. Exclude purchases of fuel other than domestic on-shore natural gas
- 8.12. Encouragement of WMDVLBEs entry into marketplace
- 8.13. No penalties for failure to meet goals
- 8.14. Utility reporting of goals

9. ANNUAL REPORT

- 9.1. Contents of Report

- 9.1.1. Description of WMDVLBE program activities
- 9.1.2. Summary of WMDVLBE purchases/ contracts
- 9.1.3. Itemization of WMDVLBE program expense
- 9.1.4. Description of progress in meeting or exceeding set goals
- 9.1.5. Summary of prime contractor utilization of WMDVLBE subcontractors
- 9.1.6. List of WMDVLBE complaints
- 9.1.7. Summary of purchases/contracts for products/services in excluded categories
- 9.1.8. Description of efforts to recruit WMDVLBE suppliers
- 9.1.9. Justification for continued existence of any "excluded category"
- 9.1.10. Summary of purchases in product and service categories that include renewable and non-renewable energy, wireless communications, broadband, smart grid, and rail projects, in addition to their current reporting categories.
- 9.1.11. File verifiable report on WMDVLBE participation in fuel markets
- 9.2. General Order not intended to permit erosion of WMDVLBE programs
- 9.3. Further breakdown of reporting statistics authorized

10. ANNUAL PLAN

- 10.1. Contents of Plan
 - 10.1.1. Goals
 - 10.1.2. Description of WMDVLBE program activities
 - 10.1.3. Plans for recruiting WMDVLBE suppliers where WMDVLBE utilization has been low
 - 10.1.4. Plans for recruiting WMDVLBE suppliers in any "excluded category"
 - 10.1.5. Plans for encouraging prime contractors and grantees to engage WMDVLBEs
 - 10.1.6. Plans for complying with WMDVLBE program guide-lines

11. COMMISSION REPORT

- 11.1. Program recommendations for carrying out policy
- 11.2. Recommendations to utilities
- 11.3. Annual en banc

1. GENERAL

1.1. Intent

- 1.1.1. Purpose - These rules implement California Public Utilities Code (Code) sections 8281-8286 which require the Commission to establish a procedure for gas, electric, and telephone utilities with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates to submit annual detailed and verifiable plans for increasing women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' (WMDVLBEs) procurement in all categories.
- 1.1.2. Revisions of Scope - These rules may be revised on the basis of experience gained in their application and/or changes in legislation. Utilities and other interested parties may individually or collectively file an application with the Commission for the purpose of amending these rules. Any such application shall clearly set forth the changes proposed and the supporting rationale.
- 1.1.3. Relief for Hardship - 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.

1.2. Applicability

These rules apply to all gas, electric, water, and telephone (including wireless) utilities under the Commission's jurisdiction with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates.

1.3. Definitions

- 1.3.1. "Commission" means the California Public Utilities Commission as provided for in Article XII of the California Constitution.
- 1.3.2. "Women-owned business" means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more of those individuals.
- 1.3.3. "Minority-owned business" means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.
- 1.3.4. "LGBT-owned business" means (1) a business enterprise (a) that is at least 51% owned by a lesbian, gay, bisexual, or transgender person or persons or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and (2) whose management and daily business operations are controlled by one or more of those individuals.

- 1.3.5. "WMLBE" means a women-owned, minority-owned and/or LGBT-owned business enterprise. Under these rules, a woman, a minority and/or an LGBT person owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.
- 1.3.6. Disabled veteran refers to a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.
- 1.3.7. Disabled veteran-owned business enterprise is defined in detail in Section 4 of this General Order.
- 1.3.8. "WMDVLBE" means a women-owned, minority-owned, disabled veteran-owned and/or LGBT-owned business enterprise.
- 1.3.9. African American person, for purposes of this General Order, refers to a person having origins in any black racial groups of Africa.
- 1.3.10. Hispanic American person, for purposes of this General Order, refers to a person of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.
- 1.3.11. Native American person, for purposes of this General Order, refers to a person having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.
- 1.3.12. Asian Pacific American person, for purposes of this General Order, refers to a person having origin in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.
- 1.3.13. Other groups, or individuals, found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of Small Business Act as amended (15 U.S.C. 637 (a)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.
- 1.3.14. "Control" means exercising the power to make policy decisions.
- 1.3.15. To "operate" means to be actively involved in the day-to-day management. It is not enough to merely be an officer or director.
- 1.3.16. "Goal" means a target which, when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.
- 1.3.17. "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 WMDVLBEs capable of supplying those products or services.
- 1.3.18. "Short-term goal" means a goal applicable to a period of one (1) year.
- 1.3.19. "Mid-term goal" means a goal applicable to a period of three (3) years.
- 1.3.20. "Long-term goal" means a goal applicable to a period of five (5) years.
- 1.3.21. "Utility" means all electric, gas, water, and telephone corporations (including wireless telephone corporations, with gross annual revenues exceeding

twenty-five million dollars (\$25,000,000) and their Commission-regulated subsidiaries and affiliates.

- 1.3.22. The "Clearinghouse" means a Commission-supervised program that shall conduct WMLBE verifications and maintain a database of WMDVLBEs for the use of utilities and the Commission.
- 1.3.23. "Subcontract" means any agreement or arrangement between a contractor and any party or person (in which the parties do not stand in the relationship of an employer and an employee):
- 1.3.23.1. For the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or
- 1.3.23.2. Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.
- 1.3.24. "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.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of women-owned, minority-owned and LGBT-owned business enterprises (WMLBEs) for participation in utility WMDVLBE procurement programs.

- 2.1. The Clearinghouse described in Section 3 of this General Order shall supply a verification form to applicants. An applicant may complete the verification forms and return them to the Clearinghouse for processing and inclusion in the database. For an applicant for LGBT-owned business enterprise (LBE) status, the Clearinghouse shall also apply the additional rules applicable to LBEs set forth in Section 5 of this General Order and conduct verifications/certifications and renewals/recertifications of LBEs in compliance with the phased directives set forth in Decision _____.
- 2.2. In assessing the suitability of a WMDVLBE to bid for procurement contracts, a utility may require additional information or the completion of additional forms to comply with specific requirements created by the unique character of its business, such as insurance requirements, product and service codes, bonding limits, and so on. A utility may not, however, require such additional information in order to verify that a business is in fact a WMDVLBE.
- 2.3. WMLBEs shall be required to submit verification forms at least once every three years.
- 2.4. Completion of the verification application only initiates a verification of the business's WMLBE status. Filing of an application does not guarantee verification.
- 2.5. The fact that a verified WMDVLBE is included in the Clearinghouse database shall neither be construed as an endorsement of its ability to perform nor shall such inclusion guarantee it business with the utilities.
- 2.6. WMLBE verification forms shall be available for inspection by the Commission.
- 2.7. Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code section 8285.

3. CLEARINGHOUSE

The Commission shall provide a clearinghouse for the sharing of WMDVLBE identification and verification information.

- 3.1. The Commission may establish and operate such a clearinghouse internally or authorize, by decision or resolution, a utility-formed entity or arrangement to fund the operation of such a clearinghouse. In authorizing a utility-formed entity or arrangement, the Commission will specify sufficient terms and conditions to specify how verifications and audits shall be performed and to ascertain and ensure that the Clearinghouse is operated in accordance with this General Order, Public Utilities Code sections 8281-8286, and other applicable legal requirements.
- 3.2. The primary purpose of the Clearinghouse shall be to audit and verify the status of WMLBEs, and to establish and maintain a database of WMDVLBEs that is accessible to the Commission and to participating utilities.
- 3.3. The Clearinghouse auditing and verification program shall preclude the need for an individual utility to audit and verify the status of the WMLBEs it does business with.
- 3.4. The Clearinghouse shall distribute renewal verification forms to the WMLBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the Clearinghouse shall notify the WMLBE and utilities that the WMBE will not be listed as a verified WMBE in the shared database until the renewal is completed.
- 3.5. The Clearinghouse shall post on its internet site a calendar of utility procurement-related information sharing and educational events and activities scheduled by utilities in furtherance of legislative policy and this general order, and may post additional information, or links to information, regarding procurement and/or educational opportunities.

4. DISABLED VETERANS

The following rules and guidelines shall apply to service disabled veteran business enterprises (DVBE). "Disabled veteran" is defined in Section 1.3.6 of this General Order.

- 4.1. "Disabled veteran-owned business enterprise" means a business enterprise certified by the California Department of General Services as meeting all of the following requirements.
 - 4.1.1. It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
 - 4.1.2. The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
 - 4.1.3. It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.
- 4.2. In order to qualify as a DVBE, businesses must meet the criteria in Section 4.1 and

must present a current certificate from the California State Department of General Services verifying that such criteria have been met.

6. LESBIAN, GAY, BISEXUAL AND/OR TRANSGENDER²

The following additional rules and guidelines shall apply to LGBT-owned business enterprises (LBEs).

- 5.1. A business enterprise seeking verification/certification or renewal/recertification of its LBE status may seek verification/certification or renewal/recertification through the Clearinghouse process, as soon as it is developed and implemented pursuant to Decision _____, or the National Gay and Lesbian Chamber of Commerce (NGLCC) process, as soon as the below Memorandum of Understanding (MOU) is executed by and between the Commission and the NGLCC.
- 5.2. By or before April 30, 2015, the NGLCC and the Commission shall enter into an MOU that sets general guidelines and an operating framework for the responsibilities and roles of the NGLCC and the Clearinghouse in implementing the amended GO 156 pursuant to Assembly Bill 1678. The MOU, at a minimum, must include the following provisions:
 - (1) The NGLCC's agreement to collaboratively develop and implement a data sharing program to share the NGLCC's database of verified/certified LBEs with the Clearinghouse including immediately facilitating download of all of its verified/certified and renewed/recertified LBEs;
 - (2) The NGLCC's agreement to follow GO 156 in verifying/certifying and renewing/recertifying LBEs for GO 156 purposes;
 - (3) The NGLCC's agreement to use the LGBT status qualifiers adopted in this decision to certify/verify and renew/recertify LBEs for purposes of GO 156;
 - (4) The NGLCC's agreement to waive all fees to LBEs for verifying/certifying and renewing/recertifying any LBEs for purposes of GO 156 Supplier Diversity Program participation;
 - (5) The NGLCC's agreement to follow Section 7 of GO 156 to implement the complaint and appeal processes relating to any NGLCC decisions verifying/certifying and renewing/recertifying of LBEs for purposes of GO 156;
 - (6) The NGLCC's agreement to align its verification/certification and renewal/recertification periods to the Clearinghouse's verification/certification and renewal/recertification periods;
 - (7) The NGLCC's agreement to continue to use the status qualifiers adopted in this decision and notify the Commission if there are any

² Former Section 5 has been deleted per Decision 98-11-030.

changes to its LBE status qualifiers or verification/certification and renewal/recertification status qualifiers and processes;

- (8) The NGLCC's agreement to maintain regular communication with the Commission staff, at least once each quarter and four times each calendar year, to review and coordinate, as appropriate, on all issues concerning LBEs and their participation in the opportunities afforded them under GO 156;
 - (9) The Commission's designation of the NGLCC as an entity authorized to conduct LBE verification/certification and renewal/recertification for purposes of this General Order; and
 - (10) The Commission's agreement to direct and authorize the Clearinghouse to accept the verifications/certifications by the NGLCC as though the LBE firm has been verified/certified by the Clearinghouse and then includes such LBE firm in the Clearinghouse's database of the certified WMDVLBE firms.
- 5.3. Once the NGLCC and the Commission enter into the MOU described in section 5.2 above, the NGLCC shall comply with the MOU in implementing this General Order pursuant to Assembly Bill 1678.
- 5.4. Once the NGLCC and the Commission enter into the MOU described in section 5.1 above, the Clearinghouse shall:
- 1 Accept the verifications/certifications by the NGLCC as though the LBE firm has been verified/certified by the Clearinghouse and then includes such LBE firm in the Clearinghouse's database of the certified woman-owned, minority-owned, disabled veterans-owned and LGTB-owned firms;
 - 2 Collaboratively develop and implement a data sharing program to share the NGLCC's database of verified/certified LBEs with the Clearinghouse; and
 - 3 Collaborate, coordinate and provide support, as appropriate, to the NGLCC for its compliance with the MOU and this amended GO 156.
- 5.5. Once the NGLCC and the Commission enter into the MOU described in section 5.2 above, in order to qualify as an LBE and be included in the Clearinghouse database, businesses must have been verified/certified and/or renewed/recertified by the Clearinghouse or the NGLCC, and if the LBE was verified/certified and/or renewed/recertified by the NGLCC, that LBE must present to the Clearinghouse a current certificate or verification from the NGLCC.
- (9) The Commission's Executive Director may grant reasonable time extensions for compliance with section 5.2 of this General Order.

7. UTILITY IMPLEMENTATION

Each utility's WMDVLBE program shall be designed to ensure that WMDVLBEs are encouraged to become potential suppliers of products and services to the utilities subject to GO 156. Nothing in GO 156 authorizes or permits a utility to utilize set-asides, preferences, or quotas in administration of its WMDVLBE program. The utility retains its authority to use its

legitimate business judgment to select the supplier for a particular contract.

6.1. Internal Utility Program Development

Each utility shall maintain an appropriately sized staff to provide overall WMDVLBE program direction and guidance and to implement WMDVLBE program requirements.

6.1.1. Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMDVLBE program.

6.2. External Outreach

Each utility shall implement an outreach program to inform and recruit WMDVLBEs to apply for procurement contracts.

6.2.1. Outreach activities may vary for each utility depending on its size, service territory, and specific lines of business. However, each utility shall at a minimum:

- (1) Actively seek out opportunities to identify WMDVLBE contractors and to expand WMDVLBE source pools;
- (2) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVLBE contractors;
- (3) Work with WMDVLBE contractors to facilitate contracting relationships by explaining utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures;
- (4) At the request of any unsuccessful WMDVLBE bidder, provide information concerning the relative range/ranking of the WMDVLBE contractor's bid as contrasted with the successful bid. Information on additional selection criteria, such as warranty periods, maintenance costs, and delivery capability, shall be provided when requested if disclosure would not violate the proprietary nature of the specific contract element;
- (5) To the extent possible, make available to WMDVLBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;
- (6) Encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMDVLBEs;
- (7) Summarize this General Order in its outreach program handouts. Such summaries shall state that WMDVLBEs will be furnished a complete copy of this General Order upon request; and
- (8) Offer the same assistance set forth in Section 6.2 to non-WMDVLBEs, upon request.

6.3. Subcontracting Program

Each utility shall establish and maintain a subcontracting program for the purpose of encouraging its prime contractors to utilize WMDVLBE subcontractors.

6.3.1. The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMDVLBE prime contractor outreach program.

- 6.3.2. The subcontracting program shall apply to the following:
- (1) Purchases/contracts exceeding \$500,000 for products and services;
 - (2) Construction contracts exceeding \$1,000,000; and
 - (3) Purchases/contracts which offer WMDVLBE subcontracting opportunities, regardless of value, where appropriate.
- 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.
- 6.3.4. Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMDVLBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMDVLBEs as subcontractors. These plans may be incorporated into the contract between the utility and the prime contractor. The prime contractor may submit periodic reports on its compliance with the plan to the utility.
- 6.3.5. Each utility is encouraged to incorporate in all purchase orders, requests for bid proposals, and other appropriate procurement documents related to procurement efforts subject to the subcontracting program, a statement similar to the following:

**UTILIZATION OF BUSINESS ENTERPRISES
OWNED BY WOMEN, MINORITY, DISABLED VETERAN AND LGBT
PERSON**

- (1) It is the policy of the utility that business enterprises owned by women, minority, disabled veteran and LGBT person shall have the maximum practicable opportunity to participate in the performance of contracts. However, this policy shall not be used to exclude qualified non-WMDVLBEs from participating in utility contracting.
 - (2) The contractor agrees to use his or her best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract.
 - (3) The contractor agrees to inform all prospective WMDVLBE subcontractors of their opportunity to request from the Clearinghouse a verification application form and to return the completed form to the Clearinghouse for processing and inclusion in the database.
- 6.3.6. Each utility is encouraged to inform suppliers of products and services that suppliers' good faith efforts to subcontract with WMDVLBEs is a factor that will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.
- 6.3.7. Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMDVLBE subcontractors.
- 6.3.8. Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and grantees to engage WMDVLBE subcontractors in all procurement categories which provide subcontracting opportunities.

- 6.3.9. Each utility may include awards to verified WMDVLBE subcontractors in its WMLBE results.

7. COMPLAINT PROCESS

- 7.1 Complaints relating to this General Order shall be filed and appealed only pursuant to the procedure set forth in this Section 7. The Commission will not, however, entertain complaints which do not allege violations of any law, Commission rule, order, or decision, or utility tariff resulting from such Commission action, but which instead involve only general contract-related disputes, such as failure to win a contract award.

7.2. Complaints Concerning WMLBE Verification Decisions

All complaints concerning a WMLBE verification decision of the Clearinghouse or an LBE verification decision by the NGLCC, for purposes of this General Order, will be governed by the following procedures.

- 7.2.1. Business enterprises whose WMLBE status has been denied by the Clearinghouse or the NGLCC, or who have been deverified by the Clearinghouse or the NGLCC, may appeal the decision to the Commission after exhausting their remedies under the internal appeal process implemented by the Clearinghouse or the NGLCC, a copy of which will be provided by the Clearinghouse or the NGLCC upon request by the affected business enterprise.

- 7.2.2. Third parties may file complaints challenging the WMLBE status of businesses whose WMLBE verification is pending, or who have already been verified by the Clearinghouse or the NGLCC. Such complaints must: 1) be in writing and be addressed to the decision making body, be it Clearinghouse or the NGLCC; 2) set forth with specificity the grounds for the challenge in ordinary and concise language; 3) include the name and address of the complainant; and 4) be served on the affected WMLBE. Such complaints may include supporting documentation.

The decision making body, the Clearinghouse or the NGLCC, will review third party complaints to determine whether there appears to be a factual basis for questioning the challenged party's WMLBE status. If the decision making body (the Clearinghouse or the NGLCC) determines that there appears to be an insufficient factual basis for the complaint, it shall (a) inform the complainant and affected WMLBE of this determination in writing within 20 business days of the receipt of the complaint and (b) inform the complainant of its right to appeal this determination to the Commission.

- 7.2.3. If the decision making body, the Clearinghouse or the NGLCC, determines that there appears to be a sufficient factual basis for questioning the challenged party's WMLBE status, it shall require the challenged party to provide the Clearinghouse or the NGLCC information sufficient to permit the evaluation of its WMLBE status. Following a thorough review and evaluation of the information presented by both parties, and an opportunity for each party to respond to the Clearinghouse's or the NGLCC's proposed resolution of the verification challenge, the decision making body, the Clearinghouse or the NGLCC, shall notify the parties of its final verification decision and of their right to appeal this decision to the Commission.
- 7.2.4. During the pendency of a third party challenge of a verified WMLBE, the presumption that the challenged party is a WMLBE will remain in effect.
- 7.2.5. If a third party complaint does not include the minimum criteria set forth

above, or if the third party rescinds its complaint, the Clearinghouse or the NGLCC may review the complaint to determine whether it merits unilateral consideration by the Clearinghouse or the NGLCC.

7.3. Commission Review of WMLBE Verification Complaints

- 7.3.1. The complainant, within 20 days after the service of the final decision on the complaint by the applicable decision making body, the Clearinghouse or the NGLCC, may serve a Notice of Appeal on the Clearinghouse or the NGLCC, indicating the grounds for the appeal. The complainant shall also serve the Chief Administrative Law Judge and the appropriate Commission director. The appeal will not be docketed as a formal proceeding.
- 7.3.2. The complainant and the Clearinghouse or the NGLCC shall be the only parties to the appeal.
- 7.3.3. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the appeal of the complaint.
- 7.3.4. Appeals of complaints will be heard in the Commission's San Francisco or Los Angeles courtrooms as scheduled by the assigned Administrative Law Judge.
- 7.3.5. The Administrative Law Judge shall schedule and notice the appeal for hearing between 10 and 20 days after being assigned to hear the complaint. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- 7.3.6. A party may order a transcript of the hearing, but the party shall pay the cost of the transcript in accordance with the Commission's usual procedures.
- 7.3.7. A party shall be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned Administrative Law Judge no less than three business days prior to the hearing.
- 7.3.8. A party may be represented at the hearing by an attorney or other representative, but such representation will be at the party's sole expense.
- 7.3.9. At the hearing, the complainant shall open and close. The Administrative Law Judge may, in his or her discretion, alter the order of presentation. Formal rules of evidence do not apply, and all relevant and reliable evidence may be received in the discretion of the Administrative Law Judge.
- 7.3.10. Ordinarily, the appeal shall be submitted at the close of the hearing. In the Administrative Law Judge's discretion, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.
- 7.3.11. The Administrative Law Judge shall issue an order resolving the appeal no later than 30 days after the appeal is submitted, and the order will be placed on the Commission's first available agenda, consistent with the Commission's applicable rules.
- 7.3.12. From the date the Notice of Appeal is served to and including the date the Commission's final order is mailed, neither party (or an attorney or agent acting in behalf of a party) shall engage in an ex parte communication with a Commissioner, a Commissioner's advisor, or an Administrative Law Judge except for procedural or scheduling purposes.

8. GOALS

Each utility shall set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMLBEs. Goals shall be set annually for each major product and service category which provides opportunities for procurement. "Substantial Goals" mean goals which are realistic and clearly demonstrate a utility's commitment to encourage the participation of WMDVLBEs in utility purchases and contracts.

- 8.1. The utilities shall consider the following factors in setting their goals:
 - 8.1.1. Total utility purchasing and/or contracting projections;
 - 8.1.2. Availability of WMDVLBEs and competitiveness in the geographical area served by the utility;
 - 8.1.3. Market dynamics based on historical data and trends; and
 - 8.1.4. Other appropriate factors which would increase the WMDVLBEs' share of utility business.
- 8.2. Each utility shall establish initial minimum long-term goals for each major category of products and services the 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. For the purposes of this section, contracts with minority women-owned business enterprises can be counted toward either the minority-owned business enterprise goal or the women-owned business enterprise goal, but not toward both. Similarly, contracts with disabled veteran business enterprises can be counted either as disabled veteran business enterprise procurement or the appropriate women or minority business enterprise goal, but not toward both. The goal for Disabled Veteran Business Enterprise (DVBE) participation in procurement programs of the participating utilities is set at 1.5%, effective January 1, 1997. In setting the target percentage goal(s) for the LBEs' participation in procurement programs of the participating utilities, each utility shall do the following:
 - 8.2.1. the first year of implementation of the LBEs' inclusion in the GO 156 Program, the utilities shall focus on integrating AB 1678 requirements by identifying the LBEs, services, and areas of need for which there are such qualifying LBEs;
 - 8.2.2. Starting in 2016, each utility shall prepare and submit the required detailed annual plan and report with its proposed short- and long-term goals and timetables required by Section 9 and 10 of the amended GO 156 and Code Section 8283, subsections (a), (b) and (c); and
 - 8.2.3. In 2017 and annually thereafter, in the annual plan and report, each utility shall update its previously proposed short- and long-term goals and timetables from its prior year's annual report and plan for the utility's LBE procurement, based on the utility's experience to date, database of qualifying entities and the utility's particular needs.
- 8.3. The specification of initial long-term goals in this section shall not prevent the utilities from seeking to reach parity with public agencies, which the Legislature found in Public Utilities Code section 8281(b)(1)(B) are awarding 30% or more of their contracts to WMLBEs.
- 8.4. Goals shall also be established for both minority women-owned business enterprises and non-minority women-owned business enterprises. These goals are to be a subset of the overall goal for WMBEs established by Section 8.2 (initially 20% for

- both women-owned business enterprises and minority-owned business enterprises). These goals are intended to ensure that utilities do not direct their WMBE procurement programs toward non-minority women- and minority men-owned business enterprises to the detriment or exclusion of minority women-owned business enterprises.
- 8.5. Goals shall be set for each major category of products or services. Goals need not be set for products or services which fall within an "excluded category" created by a utility pursuant to Section 8.6.
- 8.6. A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, for each major category of products and services where the minimum long-term goals required by Section 8.2 are not met, the utility shall include a comprehensive discussion and detailed description of any efforts made to find or recruit WMDVLBE suppliers of products or services in areas where WMDVLBE suppliers are currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its WMDVLBE goals are affected because WMDVLBE's capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. In this explanatory section, the utility may also include data with exclusions pursuant to former Section 8.5. If such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility's report must contain the data without exclusions in the first sentence.
- 8.7. A utility which is presently purchasing products or services from affiliates may, subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing goals for purchases from WMDVLBEs of these categories of products or services, provided that the utility encourages the affiliate to establish an appropriate subcontracting program where such affiliate employs subcontractors. Any utility which takes advantage of this section must in its annual report to the Commission state whether the affiliates have established a subcontracting program and describe the results of any such program. The utility's annual plan must describe any future plans to encourage such a subcontracting program. This section applies only to those utilities which are purchasing products or services from affiliates as of the effective date of the General Order adopted on May 30, 1988.
- 8.8. Goals for each specific product or service category shall be expressed as a percentage of total dollars awarded by a utility to outside vendors in that category; however, where appropriate, non-numeric goals may also be included.
- 8.9. 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 8.11.
- 8.10. Payments to other utilities and franchise tax fees, other taxes and postage need not be included in the standard procurement base used to establish goals.
- 8.11. Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMDVLBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:
- 8.11.1. Fuel used to power vehicles, heat utility facilities, and supply emergency generators may not be included in the fuel procurement base. Such fuel must be

included in the standard procurement base used to establish goals, unless the fuel is purchased from another utility and thus subject to the exclusion authorized herein;

- 8.11.2. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas markets;
 - 8.11.3. Utilities which purchase from WMDVLBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.5 does not permit utilities to exclude product and services categories for which there are available WMDVLBEs; and
 - 8.11.4. Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under former Section 8.5 and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMDVLBEs.
- 8.12. Each utility shall make special efforts to increase utilization and encourage entry into the marketplace of WMDVLBEs in product or service categories where there has been low utilization of WMDVLBEs, such as legal and financial services, fuel procurement, and areas that are considered technical in nature.
 - 8.13. No penalty shall be imposed for failure of any utility to meet and/or exceed goals.
 - 8.14. Utilities shall report their goals in their annual plans.

9. ANNUAL REPORT

Utilities shall serve an electronic copy on the on the Executive Director, by March 1 of each year, an Annual Report on their WMDVLBE Program.

- 9.1. The Annual Report shall contain at least the following elements:
 - 9.1.1. A description of WMDVLBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities, and include the approximate amount of funding, to the extent available, directly expended on development and distribution of technical assistance to small and diverse businesses.
 - 9.1.2. A summary of WMDVLBE 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, and with information regarding the total number of WMDVLBEs with contracts, and the dollars awarded to such WMDVLBEs. Each utility shall report the number of WMDVLBEs who have the majority of their workforce working in California, to the extent such information is readily accessible. Each utility shall also report the number of WMDVLBEs that received direct spend during the reporting year.
 - 9.1.3. An itemization of WMDVLBE program expenses provided in the format required by Attachment A to Decision 95-12-045.
 - 9.1.4. A description of progress in meeting or exceeding set goals and an explanation of any circumstances that may have caused the utility to fall short of its goals.
 - 9.1.5. A summary of prime contractor utilization of WMDVLBE subcontractors.
 - 9.1.6. A list of WMDVLBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status.

- 9.1.7. A description of any efforts made to recruit WMDVLBE suppliers of products or services in procurement categories where WMDVLBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- 9.1.8. Utilities shall retain all documents and data they rely on in preparing their WMDVLBE annual report for the longer of either three years or in conformance with the utilities' individual document retention policies, and shall provide these documents and data to the Commission upon request.
- 9.1.9. Utilities shall summarize WMDVLBE purchases and/or contracts in product and service categories that include renewable and nonrenewable energy, wireless communications, broadband, smart grid, rail projects and electronic procurement, in addition to their current reporting categories. Utilities have discretion to segregate overlapped dollars. Utilities shall report renewable and nonrenewable energy procurement in a manner similar to their reporting of fuel procurement.
- 9.1.10. The Commission's Division of Water and Audits, shall commence an audit program in 2012 wherein at least one annual GO 156 report will be randomly selected every two years for one industry group and audited to confirm that the most recently reported WMDVLBE spend is accurate. The Audit Division will determine a random selection process and audit methodology to perform the audit, commencing with the energy industry, followed by telecommunications, then water, in subsequent two-year periods, to be repeated in that order.
- 9.1.11. Each utility which elects to report fuel procurement separately must file with the Executive Director by March 1 of each year, a separate detailed and verifiable report on WMDVLBE participation in fuel markets. These reports must include, at a minimum, the results of purchases in each fuel category.
- (a) Each utility shall report purchases by:
- (1) Market origin and fuel type;
 - (2) Volume and dollar magnitude;
 - (3) Term of sale, *e.g.*, spot, intermediate, long term; and
 - (4) Ethnicity and gender of the supplier.
- (b) Each utility shall provide:
- (1) An explanation of how existing and/or changing market conditions are affecting the utility's ability to meet or exceed its WMDVLBE goals for fuel;
 - (2) A comprehensive description of the specific out-reach programs used to seek WMDVLBE fuel suppliers in each market in which fuel is purchased; and
 - (3) A justification for any exclusion of a specific fuel category from the utility's fuel procurement base.
- 9.2. This General Order is not intended to permit erosion of WMDVLBE programs and reporting presently engaged in by a utility.
- 9.3. Nothing in this General Order shall prohibit any utility from breaking down specific categories further than presently required (for example, reporting contracts awarded to Filipino Americans separately from those awarded to Asian Pacific Americans, or reporting male and female results within minority-owned classifications).

10. ANNUAL PLAN

Utilities shall serve an electronic copy of its Annual Plan on the Executive Director, by March 1 of each year, a detailed and verifiable plan for encouraging women, minority, disabled veteran and LGBT business enterprises procurement in all categories.

10.1. The Annual Plan shall contain at least the following elements:

- 10.1.1. Short, mid, and long term goals set as required by Section 8, *supra*;
- 10.1.2. A description of WMDVLBE program activities planned for the next calendar year. This description shall include both internal and external activities;
- 10.1.3. Plans for recruiting WMDVLBE suppliers of products or services where WMDVLBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- 10.1.4. Plans for seeking and or recruiting WMDVLBE suppliers of products or services where WMDVLBE suppliers are currently unavailable.
- 10.1.5. Plans for encouraging both prime contractors and grantees to engage WMDVLBEs in subcontracts in all categories which provide subcontracting opportunities.
- 10.1.6. Plans for complying with the WMDVLBE program guidelines established by the Commission as required by Public Utilities Code section 8283(c). The Executive Director's Office will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

11. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities under-taken by each utility to implement Public Utilities Code sections 8281 through 8286 and this General Order, as required by Section 8283 (e).

- 11.1. In this report, the Commission shall recommend a program for carrying out the policy declared in the above-mentioned sections of the Public Utilities Code, together with recommendations for legislation it deems necessary or desirable to further that policy.
- 11.2. This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this General Order.
- 11.3. The Commission shall hold an annual en banc hearing or other proceeding in order to provide utilities and members of the public, including community based organizations, the opportunity to share ideas and make recommendations for effectively implementing legislative policy and this General Order.

Approved and dated _____, at San Francisco, California.

PUBLIC UTILITIES COMMISSION STATE OF CALIFORNIA

By Timothy Sullivan, *Acting Executive Director*

(End of Attachment A)

ATTACHMENT B

(CURRENT VERSION OF GENERAL
ORDER 156, AMENDED THROUGH
MAY 6, 2011, DECISION 11-05-019)

General Order 156 (Current as of May 5, 2011)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS
TO INCREASE PARTICIPATION OF WOMEN, MINORITY AND
DISABLED VETERAN BUSINESS ENTERPRISES IN PROCUREMENT OF CONTRACTS
FROM UTILITIES AS REQUIRED BY PUBLIC UTILITIES CODE SECTIONS 8281-8286
Adopted April 27, 1988. Effective May 30, 1988.

Decision 88-04-057 in R.87-02-026.

Modified by Decisions 88-09-024, 89-08-041, 9011-053, 90-12-027, 92-06-030,
95-12-045, 96-12-081, 98-11-030, 03-11-024, 05-12-023, D.06-08-031, and D1105019.

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1. GENERAL

- 1.1. Intent
 - 1.1.1. Purpose-These rules implement PU Code Sections 8281-8286 which require the Commission to establish a procedure for gas, electric, and telephone utilities with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates to submit annual detailed and verifiable plans for increasing women, minority and disabled veteran business enterprises' (WMDVBE) procurement in all categories.
 - 1.1.2. Revisions of Scope-These rules may be revised on the basis of experience gained in their application and/or changes in legislation. Utilities and other interested parties may individually or collectively file an application with the Commission for the purpose of amending these rules. Any such application shall clearly set forth the changes proposed and the supporting rationale.
 - 1.1.3. 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.
- 1.2. Applicability-These rules are applicable to all gas, electric, water, and telephone (including wireless) utilities under the Commission's jurisdiction with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates.
- 1.3. Definitions
 - 1.3.1. "Commission" means The California Public Utilities Commission as provided for in Article XII of the California Constitution.
 - 1.3.2. "Women-owned business" means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more of those individuals.
 - 1.3.3. "Minority-owned business" means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.
 - 1.3.4. "WMBE" means a women-owned or minority-owned business enterprise; under these rules, the women and/or minorities owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

- 1.3.5. Black Americans-persons having origins in any black racial groups of Africa.
- 1.3.6. Hispanic Americans-all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.
- 1.3.7. Native Americans-persons having origin in any of the original peoples of North America or the Hawaiian Is-lands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.
- 1.3.8. Asian Pacific Americans-persons having origins in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.
- 1.3.9. Other groups, or individuals, found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of Small Business Act as amended (15 U.S.C. 637 (a)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.
- 1.3.10. Disabled Veteran-a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.
- 1.3.11. "Control" means exercising the power to make policy decisions.
- 1.3.12. "Operate" means being actively involved in the day-to-day management and not merely acting as officers or directors.
- 1.3.13. "Goal" means a target which, when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.
- 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.
- 1.3.15. "Short-term goal" means a goal applicable to a period of one (1) year.
- 1.3.16. "Mid-term goal" means a goal applicable to a period of three (3) years.
- 1.3.17. "Long-term goal" means a goal applicable to a period of five (5) years.
- 1.3.18. "Utility" means all electric, gas, water, and telephone corporations (including wireless telephone corporations), with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their Commission-regulated subsidiaries and affiliates.
- 1.3.19. "Clearinghouse" means a Commission-supervised program that shall conduct WMBE verifications and maintain a database of WMDVBEs for the use of utilities and the Commission.
- 1.3.20. "Subcontract" means any agreement or arrangement between a contractor and any party or person (in which the parties do not stand in the relationship of an employer and an employee):
 - 1.3.20.1. For the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

- 1.3.20.2. Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.
- 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.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of women and minority business enterprises (WMBEs) for participation in utility WMDVBE procurement programs.

- 2.1. The clearinghouse described in Section 3 of this General Order shall supply a verification form to applicants. An applicant may complete the verification forms and return them to the Clearinghouse for processing and inclusion in the database.
- 2.2. In assessing the suitability of a WMDVBE to bid for procurement contracts, a utility may require additional information or the completion of additional forms to comply with specific requirements created by the unique character of its business, such as insurance requirements, product and service codes, bonding limits, and so on. A utility may not, however, require such additional information in order to verify that a business is in fact a WMDVBE.
- 2.3. WMBEs shall be required to submit verification forms at least once every three years.
- 2.4. Completion of the verification application only initiates a verification of the business's WMBE status. Filing of an application does not guarantee verification.
- 2.5. The fact that a verified WMDVBE is included in the clearing-house database shall neither be construed as an endorsement of its ability to perform nor shall such inclusion guarantee it business with the utilities.
- 2.6. WMBE verification forms shall be available for inspection by the Commission.
- 2.7. Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code Section 8285.

3. CLEARINGHOUSE

The Commission shall provide a clearinghouse for the sharing of WMDVBE identification and verification information.

- 3.1. The Commission may establish and operate such a clearinghouse internally or authorize, by decision or resolution, a utility-formed entity or arrangement to fund the operation of such a clearinghouse. In authorizing a utility-formed entity or arrangement, the Commission will specify sufficient terms and conditions to specify how verifications and audits shall be performed and to ascertain and ensure that the clearinghouse is operated in accordance with this general order, Public Utilities Code sections 8281-8286, and other applicable legal requirements.
- 3.2. The primary purpose of the clearinghouse shall be to audit and verify the status of WMBEs, and to establish and maintain a database of WMDVBES that is accessible to the Commission and to participating utilities.
- 3.3. The clearinghouse auditing and verification program shall preclude the need for an individual utility to audit and verify the status of the WMBEs it does business with.
- 3.4. The clearinghouse shall distribute renewal verification forms to WMBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the clearinghouse shall notify the WMBE and utilities that the WMBE will not be listed as a verified WMBE in the shared database until the renewal is completed.
- 3.5. The Clearinghouse shall post on its internet site a calendar of utility procurement-related information sharing and educational events and activities scheduled by utilities in furtherance of legislative policy and this general order, and may post additional information, or links to information, regarding procurement and/or educational opportunities.

4. DISABLED VETERANS

The following rules and guidelines shall apply to service disabled veteran business enterprises (DVBE). "Disabled veteran" is defined in Section 1.3.10 of this General Order.

- 4.1. "Disabled veteran business enterprise" means a business concern certified by the California Department of General Services as meeting all of the following requirements.
 - 4.1.1. It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.

- 4.1.2. The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
- 4.1.3. It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.
- 4.2. In order to qualify as a DVBE, businesses must meet the criteria in Section 4.1 and must present a current certificate from the California State Department of General Services verifying that such criteria have been met.

5. SECTION 5 DELETED PER D.98-11-030.

6. UTILITY IMPLEMENTATION

Each utility's WMDVBE program shall be designed to ensure that WMDVBEs are encouraged to become potential suppliers of products and services to the utilities subject to GO 156. Nothing in GO 156 authorizes or permits a utility to utilize set-asides, preferences, or quotas in administration of its WMDVBE program. The utility retains its authority to use its legitimate business judgment to select the supplier for a particular contract.

6.1. Internal Utility Program Development

Each utility shall maintain an appropriately sized staff to provide overall WMDVBE program direction and guidance and to implement WMDVBE program requirements.

- 6.1.1. Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMDVBE program.

6.2. External Outreach

Each utility shall implement an outreach program to inform and recruit WMDVBEs to apply for procurement contracts.

- 6.2.1. Outreach activities may vary for each utility depending on its size, service territory, and specific lines of business. However, each utility shall at a minimum:
 - (1) Actively seek out opportunities to identify WMDVBE contractors and to expand WMDVBE source pools;
 - (2) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVBE contractors;
 - (3) Work with WMDVBE contractors to facilitate contracting relationships by explaining utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures;
 - (4) At the request of any unsuccessful WMDVBE bidder, provide information concerning the relative range/ranking of the WMDVBE contractor's bid as contrasted with the successful bid. Information on

additional selection criteria, such as warranty periods, maintenance costs, and delivery capability, shall be provided when requested if disclosure would not violate the proprietary nature of the specific contract element;

- (5) To the extent possible, make available to WMDVBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;
- (6) Encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMDVBEs;
- (7) Summarize this General Order in its outreach program handouts. Such summaries shall state that WMDVBEs will be furnished a complete copy of this General Order upon request.
- (8) Each utility is directed to offer the same assistance set forth in Section 6.2 to non-WMDVBEs, upon request.

6.3. Subcontracting Program

Each utility shall establish and maintain a subcontracting program for the purpose of encouraging its prime contractors to utilize WMDVBE subcontractors.

- 6.3.1. The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMDVBE prime contractor outreach program.
- 6.3.2. The subcontracting program shall apply to the following:
 - (1) Purchases/contracts exceeding \$500,000 for products and services;
 - (2) Construction contracts exceeding \$1,000,000;
 - (3) Purchases/contracts which offer WMDVBE subcontracting opportunities, regardless of value, where appropriate.
- 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.
- 6.3.4. Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMDVBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMDVBEs as subcontractors. These plans may be incorporated into the contract between the utility and the prime contractor. The prime contractor may

submit periodic reports on its compliance with the plan to the utility.

- 6.3.5. Each utility is encouraged to incorporate in all purchase orders, requests for bid proposals, and other appropriate procurement documents related to procurement efforts subject to the subcontracting program, a statement similar to the following:

UTILIZATION OF WOMEN, MINORITY AND
DISABLED VETERAN OWNED BUSINESS
ENTERPRISES

- (1) It is the policy of the utility that women, minority and disabled veteran owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. However, this policy shall not be used to exclude qualified non-WMDVBEs from participating in utility contracting.
 - (2) The contractor agrees to use his or her best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract.
 - (3) The contractor agrees to inform prospective WMDVBE subcontractors of their opportunity to request from the clearinghouse a verification application form and to return the completed form to the clearinghouse for processing and inclusion in the database.
- 6.3.6. Each utility is encouraged to inform suppliers of products and services that suppliers' good faith efforts to subcontract with WMDVBEs is a factor that will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.
- 6.3.7. Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMDVBE subcontractors.
- 6.3.8. Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and grantees to engage WMDVBE subcontractors in all procurement categories which provide subcontracting opportunities.
- 6.3.9. Each utility may include awards to verified WMDVBE subcontractors in its WMBE results.

7. COMPLAINT PROCESS

- 7.1 Complaints relating to this general order shall be filed and appealed only pursuant to the procedure set forth in this section 7. The Commission will not, however, entertain complaints which do not allege violations of any law, Commission rule, order, or decision, or utility tariff resulting from such Commission action, but which instead involve only general contract-related disputes, such as failure to win a contract award.
- 7.2. Complaints Concerning WMBE Verification Decisions All complaints concerning a verification decision of the clearinghouse will be governed by the following procedures.
- 7.2.1. Business enterprises whose WMBE status has been denied by the clearinghouse, or who have been deverified by the clearinghouse, may appeal the clearinghouse's decision to the Commission after exhausting their remedies under the internal appeal process implemented by the clearinghouse, a copy of which will be provided by the clearinghouse upon request by the affected business enterprise.
- 7.2.2. Third parties may file complaints challenging the WMBE status of businesses whose WMBE verification is pending, or who have already been verified by the clearinghouse. Such complaints must: 1) be in writing and be addressed to the clearinghouse; 2) set forth with specificity the grounds for the challenge in ordinary and concise language; 3) include the name and address of the complainant; and 4) be served on the affected WMBE. Such complaints may include supporting documentation.
- The clearinghouse will review third party complaints to determine whether there appears to be a factual basis for questioning the challenged party's WMBE status. If the clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall inform the complainant and affected WMBE of this determination in writing within 20 business days of the receipt of the complaint. The clearinghouse shall inform the complainant of its right to appeal this determination to the Commission.
- 7.2.3. If the clearinghouse determines that there appears to be a sufficient factual basis for questioning the challenged party's WMBE status, it shall require the challenged party to provide the clearinghouse information sufficient to permit the evaluation of its WMBE status. Following a thorough review and evaluation of the information presented by both parties, and an opportunity for each party to respond to the clearinghouse's proposed resolution

of the verification challenge, the clearinghouse shall notify the parties of its final verification decision and of their right to appeal this decision to the Commission.

- 7.2.4. During the pendency of a third party challenge of a verified WMBE, the presumption that the challenged party is a WMBE will remain in effect.
 - 7.2.5. If a third party complaint does not include the minimum criteria set forth above, or if the third party rescinds its complaint, the clearinghouse may review the complaint to determine whether it merits unilateral consideration by the clearinghouse.
- 7.3. Commission Review of WMBE Verification Complaints
- 7.3.1. The complainant, within 20 days after the service of the clearinghouse's final decision on the complaint, may serve a Notice of Appeal on the clearinghouse, indicating the grounds for the appeal. The complainant shall also serve the Chief Administrative Law Judge and the appropriate Commission director. The appeal will not be docketed as a formal proceeding.
 - 7.3.2. The complainant and clearinghouse shall be the only parties to the appeal.
 - 7.3.3. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the appeal of the complaint.
 - 7.3.4. Appeals of complaints will be heard in the Commission's San Francisco or Los Angeles courtrooms as scheduled by the assigned Administrative Law Judge.
 - 7.3.5. The Administrative Law Judge shall schedule and notice the appeal for hearing between 10 and 20 days after being assigned to hear the complaint. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
 - 7.3.6. A party may order a transcript of the hearing, but the party shall pay the cost of the transcript in accordance with the Commission's usual procedures.
 - 7.3.7. A party shall be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned Administrative Law Judge no less than three business days prior to the hearing.
 - 7.3.8. A party may be represented at the hearing by an attorney or other representative, but such representation will be at the respondent's sole expense.

- 7.3.9. At the hearing, the complainant shall open and close. The Administrative Law Judge may, in his or her discretion, alter the order of presentation. Formal rules of evidence do not apply, and all relevant and reliable evidence may be received in the discretion of the Administrative Law Judge.
- 7.3.10. Ordinarily, the appeal shall be submitted at the close of the hearing. In the Administrative Law Judge's discretion, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.
- 7.3.11. The Administrative Law Judge shall issue an order resolving the appeal no later than 30 days after the appeal is submitted, and the order will be placed on the Commission's first available agenda, consistent with the Commission's applicable rules.
- 7.3.12. From the date the Notice of Appeal is served to and including the date the Commission's final order is mailed, neither party (or an attorney or agent acting in behalf of a party) shall engage in an ex parte communication with a Commissioner, a Commissioner's advisor, or an Administrative Law Judge except for procedural or scheduling purposes.

8. GOALS

Each utility shall set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBEs. Goals shall be set annually for each major product and service category which provides opportunities for procurement. "Substantial Goals" mean goals which are realistic and clearly demonstrate a utility's commitment to encourage the participation of WMDVBEs in utility purchases and contracts.

- 8.1. The utilities shall consider the following factors in setting their goals:
 - 8.1.1. Total utility purchasing and/or contracting projections;
 - 8.1.2. Availability of WMDVBEs and competitiveness in the geographical area served by the utility;
 - 8.1.3. Market dynamics based on historical data and trends;
 - 8.1.4. Other appropriate factors which would increase the WMDVBEs' share of utility business.
- 8.2. Each utility shall establish initial minimum long-term goals for each major category of products and services the 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. For the purposes of this section, contracts with minority women-owned business enterprises can be counted toward either the minority-owned business enterprise goal or the women-owned business

enterprise goal, but not toward both. Similarly, contracts with disabled veteran business enterprises can be counted either as disabled veteran business enterprise procurement or the appropriate women or minority business enterprise goal, but not toward both. The goal for Disabled Veteran Business Enterprise (DVBE) participation in procurement programs of the participating utilities is set at 1.5%, effective January 1, 1997.

- 8.3. The specification of initial long-term goals in this section shall not prevent the utilities from seeking to reach parity with public agencies, which the Legislature found in Public Utilities Code Section 8281(b)(1)(13) are awarding 30% or more of their contracts to WMBEs.
- 8.4. Goals shall also be established for both minority women-owned business enterprises and non-minority women-owned business enterprises. These goals are to be a subset of the overall goal for WMBEs established by Section 8.2 (initially 20% for both women-owned business enterprises and minority-owned business enterprises). These goals are intended to ensure that utilities do not direct their WMBE procurement programs toward non-minority women- and minority men-owned business enterprises to the detriment or exclusion of minority women-owned business enterprises.
 - 8.4.1. Goals shall be set for each major category of products or services. Goals need not be set for products or services which fall within an "excluded category" created by a utility pursuant to Section 8.5.
- 8.5. A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, for each major category of products and services where the minimum long-term goals required by Section 8.2 are not met, the utility shall include a comprehensive discussion and detailed description of any efforts made to find or recruit WMDVBE suppliers of products or services in areas where WMDVBE suppliers are currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its WMDVBE goals are affected because WMDVBE's capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. In this explanatory section, the utility may also include data with exclusions pursuant to former Section 8.5. If such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility's report must contain the data without exclusions in the first sentence.
- 8.6. A utility which is presently purchasing products or services from affiliates may, subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing goals for

purchases from WMDVBEs of these categories of products or services, provided that the utility encourages the affiliate to establish an appropriate subcontracting program where such affiliate employs subcontractors. Any utility which takes advantage of this section must in its annual report to the Commission state whether the affiliates have established a subcontracting program and de-scribe the results of any such program. The utility's annual plan must describe any future plans to encourage such a sub-contracting program. This section applies only to those utilities which are purchasing products or services from affiliates as of the effective date of this General Order (May 30, 1988).

- 8.7. Goals for each specific product or service category shall be expressed as a percentage of total dollars awarded by a utility to outside vendors in that category; however, where appropriate, non-numeric goals may also be included.
- 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.
- 8.9. Payments to other utilities and franchise tax fees, other taxes and postage need not be included in the standard procurement base used to establish goals.
- 8.10. Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMDVBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:
 - 8.10.1. Fuel used to power vehicles, heat utility facilities, and supply emergency generators may not be included in the fuel procurement base. Such fuel must be included in the standard procurement base used to establish goals, unless the fuel is purchased from another utility and thus subject to the exclusion authorized herein;
 - 8.10.2. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas markets;
 - 8.10.3. Utilities which purchase from WMDVBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.5 does not permit utilities to exclude product and services categories for which there are available WMDVBEs;
 - 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.

- 8.11. Each utility shall make special efforts to increase utilization and encourage entry into the marketplace of WMDVBEs in product or service categories where there has been low utilization of WMDVBEs, such as legal and financial services, fuel procurement, and areas that are considered technical in nature.
- 8.12. No penalty shall be imposed for failure of any utility to meet and/or exceed goals.
- 8.13. Utilities shall report their goals in their annual plans.

9. ANNUAL REPORT

Utilities shall serve an electronic copy on the on the Executive Director, by March 1 of each year, beginning in 1989, an Annual Report on their WMDVBE Program.

- 9.1. The Annual Report shall contain at least the following elements:
 - 9.1.1. A description of WMDVBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities, and include the approximate amount of funding, to the extent available, directly expended on development and distribution of technical assistance to small and diverse businesses.
 - 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, and with information regarding the total number of WMDVBEs with contracts, and the dollars awarded to such WMDVBEs. Each utility shall report the number of WMDVBEs who have the majority of their workforce working in California, to the extent such information is readily accessible. Each utility shall also report the number of WMDVBEs that received direct spend during the reporting year.
 - 9.1.3. An itemization of WMDVBE program expenses provided in the format required by Attachment A to D.95-12-045.
 - 9.1.4. A description of progress in meeting or exceeding set goals and an explanation of any circumstances that may have caused the utility to fall short of its goals.
 - 9.1.5. A summary of prime contractor utilization of WMDVBE subcontractors.

- 9.1.6. A list of WMDVBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status.
- 9.1.7. A summary of purchases and/or contracts for products and services in excluded categories.
- 9.1.8. A description of any efforts made to recruit WMDVBE suppliers of products or services in procurement categories where WMDVBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- 9.1.9. Utilities shall retain all documents and data they rely on in preparing their WMDVBE annual report for the longer of either three years or in conformance with the utilities' individual document retention policies, and shall provide these documents and data to the Commission upon request.
- 9.1.10. Utilities shall summarize WMDVBE purchases and/or contracts in product and service categories that include renewable and non-renewable energy, wireless communications, broadband, smart grid, and rail projects, in addition to their current reporting categories. Utilities have discretion to segregate overlapped dollars. Utilities shall report renewable and non-renewable energy procurement in a manner similar to their reporting of fuel procurement.
- 9.1.11. The Commission's Division of Water and Audits, shall commence an audit program in 2012 wherein at least one annual GO 156 report will be randomly selected every two years for one industry group and audited to confirm that the most recently reported WMDVBE spend is accurate. The Audit Division will determine a random selection process and audit methodology to perform the audit, commencing with the energy industry, followed by telecommunications, then water, in subsequent two-year periods, to be repeated in that order.
- 9.1.12. Each utility which elects to report fuel procurement separately must file with the Executive Director by March 1 of each year, beginning in 1991, a separate detailed and verifiable report on WMDVBE participation in fuel markets. These reports must include, at a minimum, the results of purchases in each fuel category.
 - a. Each utility shall report purchases by:
 - 1. Market origin and fuel type;
 - 2. Volume and dollar magnitude;

3. Term of sale, *e.g.*, spot, intermediate, long term;
 4. Ethnicity and gender of the supplier.
- b. Each utility shall provide:
1. An explanation of how existing and/or changing market conditions are affecting the utility's ability to meet or exceed its WMDVBE goals for fuel;
 2. A comprehensive description of the specific out-reach programs used to seek WMDVBE fuel suppliers in each market in which fuel is purchased;
 3. A justification for any exclusion of a specific fuel category from the utility's fuel procurement base.
- 9.2. This General Order is not intended to permit erosion of WMDVBE programs and reporting presently engaged in by a utility.
- 9.3. Nothing in this General Order shall prohibit any utility from breaking down specific categories further than presently required (for example, reporting contracts awarded to Filipino Americans separately from those awarded to Asian Pacific Americans, or reporting male and female results within minority-owned classifications).

10. ANNUAL PLAN

Utilities shall serve twelve (12) copies on the Executive Director, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for encouraging women, minority, and disabled veteran business enterprises procurement in all categories.

- 10.1. The Annual Plan shall contain at least the following elements:
- 10.1.1. Short, mid, and long term goals set as required by Section 8, *supra*;
 - 10.1.2. A description of WMDVBE program activities planned for the next calendar year. This description shall include both internal and external activities;
 - 10.1.3. Plans for recruiting WMDVBE suppliers of products or services where WMDVBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
 - 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.
10. 1.4 Plans for seeking and or recruiting WMDVBE suppliers of products or services where WMDVBE suppliers are currently unavailable.

- 10.1.5. Plans for encouraging both prime contractors and grantees to engage WMDVBEs in subcontracts in all categories which provide subcontracting opportunities.
- 10.1.6. Plans for complying with the WMDVBE program guidelines established by the Commission as required by Public Utilities Section 8283(c). The Executive Director's Office will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

11. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities under-taken by each utility to implement Public Utilities Code Sections 8281 through 8286 and this General Order, as required by Section 8283 (e).

- 11.1. In this report, the Commission shall recommend a program for carrying out the policy declared in the above-mentioned sections of the Public Utilities Code, together with recommendations for legislation it deems necessary or desirable to further that policy.
- 11.2. This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this General Order.
- 11.3. The Commission shall hold an annual en banc hearing or other proceeding in order to provide utilities and members of the public, including community based organizations, the opportunity to share ideas and make recommendations for effectively implementing legislative policy and this general order.

Approved and dated November 5, 1998 to become effective November 5, 1998, at San Francisco, California.

PUBLIC UTILITIES COMMISSION STATE OF

CALIFORNIA By Steve Larson, *Executive Director*

(End of Attachment B)