



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

FILED

08/04/21
03:40 PM

Order Instituting Rulemaking to Revise General Order 156 to Include Certain Electric Service Providers and Community Choice Aggregators and Encourage Voluntary Participation by Other Non-Utility Entities Pursuant to Senate Bill 255; Consider LGBT Business Enterprise Voluntary Target Procurement Percentage Goals; Incorporate Disabled Business Enterprises; Modify the Required Reports and Audits; and Update Other Related Matters.

Rulemaking 21-03-010
(Filed March 18, 2021)

**COMMENTS OF BUILD-OUT CALIFORNIA
ON STAFF PROPOSAL ISSUED JULY 16, 2021,
AND ON MATTERS RAISED AT THE PUBLIC WORKSHOP
ON JULY 21, 2021**

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Dated: August 4, 2021

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In accordance with the Scoping Memo issued June 25, 2021, and in response to the Administrative Law Judge’s Ruling Issuing Staff Proposal and Entering the Staff Proposal into the Record, issued July 16, 2021, BuildOUT California respectfully submits these comments. The specific issue of concern to BuildOUT California is the establishment of an aspirational voluntary target for contracting by utility companies and other jurisdictional entities with Lesbian, Gay, Bisexual and Transgender (“LGBT”)-owned business enterprises in the Commission’s Supplier Diversity Program under General Order No. 156.

Founded in 2020 as a not-for-profit organization, BuildOUT California is the world’s first LGBTQ Industry Association dedicated to the sustainable growth of LGBT-owned and certified businesses and their allies, in the fields of architecture, engineering, construction services, real estate development, and related industries. We are grateful for this opportunity to participate in the Commission’s deliberations in this important matter.

I. INTRODUCTION AND OVERVIEW

Nearly seven years ago, in September 2014, California Governor Jerry Brown signed Assembly Bill 1678 (Stats. 2014, Ch. 633) (“AB 1678”), sponsored by then-Assemblymember Richard Gordon. This legislation required the Commission to include LGBT-owned business enterprises in the Supplier Diversity Program under General Order 156.

The enactment of AB 1678 was an historic moment in the movement to extend equal rights to the LGBTQ community, which has suffered severe discrimination and hostility. Unfortunately, however, from the perspective of the LGBTQ community, the Commission’s progress in implementing the mandate of AB 1678 has been intolerably slow.

The evidence before the Commission, consisting of utility company data collected and analyzed by Commission staff, shows that, notwithstanding the enactment of AB 1678, approximately one-third of the utility companies and other jurisdictional entities under General Order 156 are not awarding any contracts whatsoever to LGBT-owned business enterprises. This is a shocking and disturbing pattern of underperformance by the utilities.

The poor performance by the utilities in the area of LGBT contracting cannot be attributed to a shortfall of qualified LGBT-owned business enterprises. There is no shortfall. Nor, the data confirm, is the underperformance in LGBT contracting attributable to any sort of mismatch between the skills the utilities need and the skills the LGBT-owned business enterprises are able to offer. These businesses have the right skills.

The root cause for the conspicuous shortfall in LGBT contracting by the utility companies is the lack of a meaningful, aspirational goal. Absent such a goal, the LGBT business community is forced to suffer the effects of continuing animosity and discrimination. The best descriptive term for this persistent, insidious and deeply harmful social phenomenon is

“homophobia.” It exists, not only in society at large, and in workplaces generally, but also within the ranks of the utility companies.

Respectfully, the fact that the Commission – nearly seven years after the enactment of AB 1678 – has yet to establish any goal for utility contracting with LGBT-owned business enterprises, is contributing to this problem. This a failure of the Commission’s statutory duties under AB 1678. It is an ongoing injustice that cries out for correction.

The solution we propose is this: **The Commission should adopt an aspirational goal of at least 1.5% for contracts with LGBT-owned businesses under General Order 156.**

This aspirational goal has been endorsed by an extraordinary body of statements submitted to the Commission by current and former elected public officials. These include U.S. Senators Diane Feinstein and Alex Padilla. The statements of support also include two strong letters from former Assemblymember Richard Gordon, the author of AB 1678.

The 1.5%-or-greater goal is based on rigorous empirical analysis. When the methodologies previously used by the Commission under General Order 156 to establish aspirational goals for other minority and disadvantaged communities are fairly applied to the LGBTQ business community, as they should be, these methodologies support an aspirational goal of at least 1.5% for LGBT-owned business enterprises.

We ask that the Commission expressly reject the proposal by the so-called Joint Utilities to set a goal of only 0.5% for LGBT-owned business enterprises. As former Assemblymember Gordon stated in his letter to the Commission of March 26, 2021, the “meager procurement goal” reflected in the Joint Utilities’ proposal “is an insult to the LGBTQ community.” He confirmed that such a low goal “was certainly not my intent as the author of the legislation.”

Likewise, we respectfully urge the Commission to *not accept* the recommendation in the Staff Report dated July 16, 2021, which would postpone for at least another four years the adoption of any goal for LGBT-owned enterprises. In a second letter to the Commission dated July 23, 2021, former Assemblymember Gordon again admonished that this would violate the legislative intent of AB 1678. “As the author of AB 1678,” he wrote, “I can assure you that no member of the Legislature in 2014 could have conceived that it might take the Commission more than a decade to adopt an aspirational goal for LGBT-owned business enterprises.”

The remainder of these comments consists of three segments:

- The first segment discusses the data and methodologies that support the establishment of a 1.5% or greater contracting goal for LGBT-owned business enterprises.
- The second segment recounts the exceptional outpouring of support for this goal from current and former elected public officials.
- The third and final segment contains a discussion of and citations to credible studies and other sources documenting that, while LGBTQ people and businesses are a huge, positive contributor to our economy, there is still widespread, persistent discrimination against LGBTQ persons in the workplace.

In summary, we believe BuildOUT California makes a compelling case for the adoption of an aspirational goal of at least 1.5% for contracts with LGBT-owned business enterprises under General Order 156. We are grateful for the opportunity to submit these Comments, and we appreciate the Commission’s kind attention and consideration.

II. DISCUSSION

The time is now overdue for the Commission to establish an aspirational goal for utility contracts with LGBT-owned enterprises under General Order 156. For the reasons discussed herein, the Commission should adopt an aspirational goal of at least 1.5% for LGBT-owned business enterprises.

A. **A Fair Application of the Normal Methodologies Used by the Commission to Establish Aspirational Goals Under General Order 156 Yields a Target Percentage of at Least 1.5% for LGBT-Owned Business Enterprises**

The Commission over the years has developed empirical, data-based methodologies that it uses to establish procurement targets under General Order 156. These methodologies are familiar to the Commission and its staff, and should be used in this case to establish an aspirational goal of at least 1.5% for LGBT-owned business enterprises. On July 20, 2021, in advance of the Public Workshop, BuildOUT California submitted a letter to the Commission containing its analysis, which was served on all the parties on the Service List. A copy of the BuildOUT California letter is included with these Comments as Appendix A.

1. **There Are Sufficient LGBT Businesses, With the Right Skills, to Meet the 1.5% Procurement Goal**

It has been asserted, especially by the Joint Utilities, that there are not enough LGBT-owned businesses in the pipeline to justify a goal of 1.5% or higher, as advocated by BuildOUT California and the many supporters from the LGBTQ community. However, this assertion is readily disproven by the data supplied by the utilities themselves.

Simply put, the assertion that there are not enough LGBT-owned enterprises in the pipeline is a myth. It should not be given credence by the Commission.

BuildOUT California utilized and reviewed the Joint Utilities LGBTBE Spend Analysis (distributed by the Joint Utilities on Thursday, July 30, 2020). The data set distributed by the Joint Utilities covered the period from 2016 through 2019. According to the Joint Utilities, the 2016-2019 data set was intended to provide a basis to “leverage data-driven insights to discuss challenges, opportunities, roles/responsibilities, and next steps to further advance LGBT supplier inclusion, targeted programs, and appropriate goals/metrics.”

BuildOUT California was able to aggregate the figures to establish a baseline, with a combined procurement goal of 20% for women and minority-owned businesses enterprises. According to the Joint Utilities’ Spend Analysis (2016-2019), women and minority-owned businesses account for 6,140 firms for the pool of companies to reach the 20% procurement goal (2,529 MBEs, 2,444 WBEs, and 1,167 WMBEs). While women- and minority-owned businesses commendably exceeded the 20% procurement goal, BuildOUT California treated the 6,140 count as the “floor” needed to reach a 20% goal. Using this as the scale, BuildOUT California extrapolated the numbers and determined that there must be at least 461 business enterprises needed to reach a 1.5% procurement goal. The Utility Spend Analysis report states that LGBTBEs represent 509 firms— a figure that clearly exceeds the number of businesses required to achieve a 1.5% procurement goal.

BuildOUT California also examined the top 10 utility spending categories, using the same comparative analysis to determine that women and minority-owned businesses account for 4,043 Business Enterprises in the top 10 categories the utilities need. Given that 4,043 business enterprises provide 20% of the procurement needs in the top 10 utility categories, it follows that only 303 businesses enterprises are needed to cover a 1.5% procurement goal. According to the

utilities' own analysis, there are 303 qualified LGBT-owned businesses in the top ten sectors. Once again, LGBT-owned business enterprises show they can meet a 1.5% procurement goal.

2. The Data Confirm that the Utilities as a Group Have Not Been Working in Good Faith with LGBT Businesses

Embedded in the data collected by Commission staff from the utility companies is a conspicuous underperformance in their contracting with LGBT businesses, for which the utilities have offered no reason or justification. It is by extrapolating from this poor performance that the Joint Utilities have developed their proposal for an unreasonably low goal of only 0.5%.

The Commission should not, in effect, reward bad behavior, by adopting the meager 0.5% goal proposed by the Joint Utilities for LGBT-owned business enterprises.

The stark reality is this: Nearly one third of the utilities effectively have boycotted LGBT businesses since the enactment of AB 1678. Based on data from the Commission's Diversity Spend Annual Reports to the Legislature under General Order 156 for the years 2015 to 2019, eight utilities have not procured a single contract over the past five years. Two other utilities have procured less than \$10,000 in contracts over the past five years.

The pertinent data from the Commission's Annual Reports for the years 2015 through 2019 are reproduced by BuildOUT California in Appendix B to these Comments.

When asked by Commissioner Rechtschaffen about this underperformance at the Public Workshop, a spokesperson for the Joint Utilities was unable to provide an explanation:

“When we looked at the analysis, and I know that BuildOUT just summarized and took all of our reports and summarized the spend over the last five years, there were twenty-one companies/utilities that did not have spend. But we did not specifically ask why.”

– GO 156 Public Workshop (July 21, 2021), 1:11:40 into the tape
<http://www.adminmonitor.com/ca/cpuc/workshop/20210721/>

Even utilities that have performed well in other areas of their diverse spend have had dismal results with respect to their LGBT spend. For example, most of the nine utilities that did not award a single contract to an LGBT-owned business enterprise in 2019 nevertheless highlighted their efforts to meet the goals of General Order 156. Indeed, one such utility touted in its annual diversity report: “For the 14th consecutive year, ... [we] exceeded the 21.5 percent minimum goal established by General Order (GO) 156 for procurement with California Clearinghouse-Verified diverse suppliers.” With an otherwise exemplary record at meeting the Commission’s overall supplier diversity goals, this same company did not procure from a single LGBT-owned firm. Yet, there were no repercussions, essentially because the company was not given any goal for LGBT-owned business enterprises.

When it comes to LGBTE spend, the utilities literally have no goal against which to benchmark their performance. This needs to change.

There is, moreover, anecdotal evidence suggesting that at least part of the reason for the poor performance among the utility companies is attributable to homophobia. At the Public Workshop on July 21, the Commission’s former General Counsel, Frank Lindh (the undersigned representative of BuildOUT California) recounted an incident that occurred at the Commission’s headquarters in San Francisco roughly nine years ago. A utility company executive was present as a speaker on a panel of executives assembled before the Commission. Also present in the auditorium was a Commission employee, who happened to be a sibling of the utility company executive. It came to Mr. Lindh’s attention that the executive had refused to speak with his sibling for over ten years, because he disapproved of the fact that his sibling was “out” and living in a same-sex relationship. As Mr. Lindh said, “this incident . . . shows that homophobia exists, and is tolerated, even in the officer ranks of the utility companies.”

B. There Has Been an Extraordinary Outpouring of Support from Elected Public Officials for a 1.5% Procurement Target for LGBT Businesses

The Commission, in this case, has received an impressive set of letters from influential current and former elected officials in support of the 1.5% goal for LGBT-owned business enterprises. A packet of these letters is included as Appendix C to these Comments.

Among the most significant of these public officials are both of California's sitting U.S. Senators, Diane Feinstein and Alex Padilla. It is unusual and very significant to hear from the State's U.S. Senators on an issue before the Commission.

Senator Padilla and former Assemblymember Richard Gordon speak with special authority on this issue, as both were members of the California Legislature in 2014 when AB 1678 was enacted. Former Senator Mark Leno likewise held office in 2014 when the legislation was under consideration, and actively supported the bill. The Commission owes deference to the clear and definitive statements of these three elected officials, who cast their votes in favor of AB 1678 when it was enacted in 2014. Foremost among these is former Assemblymember Gordon, the author of the legislation.

The LGBT Caucus of the California Legislature, consisting of members of both the Senate and the Assembly, also sent the Commission a letter on this topic. The members of the LGBT Legislative Caucus are: Senator Toni Atkins (President Pro Tem of the California State Senate), Senator Susan Talamantes-Eggman (Vice Chair of the LGBT Caucus), Senator John Laird, Senator Scott Weiner, Assemblymember Evan Low (Chair of the LGBT Caucus), and Assemblymembers Sabrina Cervantes, Alex Lee and Chris Ward.

Also submitting letters of support, to date, were State Controller Betty Yee, State Insurance Commissioner Ricardo Lara, and the Mayors of San Diego and Palm Springs, Todd Gloria and Christie Holstege, respectively.

We ask that the Commission take note of the fact that most of the elected public officials who have addressed the Commission have specifically opposed the Joint Utilities' proposed goal of only 0.5% for LGBT-owned business enterprises. This "meager" goal, as former Assemblymember Gordon said forcefully, "is an insult to the LGBTQ community."

We are providing below some excerpts from these letters from elected public officials, both current and former.

**EXCERPTS OF LETTERS
FROM ELECTED PUBLIC OFFICIALS
(Current and Former)**

"With over fifty years of public service, I have personally witnessed the discrimination the LGBT community has faced... By promoting diversity, there are more economic opportunities for everyone, and more competition among suppliers... The aspirational goal should be set at a level that will have a positive impact on public utility industry contracting with the State's LGBT community."

– U.S. Senator Dianne Feinstein

"Supplier diversity initiatives across the state, and those like them around the nation, have already demonstrated that greater access to procurement opportunities leads to greater competition, which will lead to lower prices for the utility companies and ratepayers of California. I have every confidence that by implementing this initial 1.5 percent goal from LGBTBE'S, will create greater competition and empower greater participation by the LGBT business community."

– U.S. Senator Alex Padilla

"I am requesting that the Commission please take a hard look at what the joint utilities have proposed and be prepared to adopt a much more ambitious goal for LGBT-owned business enterprises under G.O. 156. By

doing so, the Commission will be making a meaningful first step towards inclusion for a community that has suffered terrible prejudice.

* * *

“I earnestly request that the Commission please do the right thing, by adopting an aspirational goal of at least 1.5% for LGBT-owned business enterprises. There are ample LGBTBEs in the pipeline to justify such a goal, and these businesses possess the diversity of skill the utilities need.”

– Former Assemblymember Richard Gordon (Author of AB 1678)

“The goal should reflect the LGBT community as a whole. According to UCLA's Williams Institute, California's LGBT community represents more than five percent of the state's population. The procurement goal should be closer to the overall population base... I am urging the CPUC to establish a procurement utilization goal of at least 1.5 percent for LGBT business enterprises.”

-- Former State Senator Mark Leno

“For decades, the LGBTQ community has faced discrimination. A 1.5 percent goal would more effectively reward and encourage the Utilities to work with the LGBTQ community, establish some equality, and avoid ongoing unintended discrimination.”

– California State Controller Betty Yee

“I urge the Commission to establish an aspirational procurement goal that goes beyond the utilities’ proposed 0.5% goal for LGBT-owned business enterprises. Given that this goal is aspirational, the benchmark procurement goal for LGBT-owned businesses should also represent something that utility companies must strive to reach for and achieve... I believe that a supplier pool that reflects the diverse population of our state is meaningful and necessary.”

– State Insurance Commissioner Ricardo Lara

“National LGBT Chamber of Commerce reports that LGBT business enterprises contribute an estimated \$1.7 trillion to the economy... With a 1.5 percent procurement goal, the CPUC can both acknowledge and benefit from these contributions... This will increase competition, lower prices for all California ratepayers, and help to fulfill the laudable goals of the Utility Supplier Diversity Program.”

– San Diego Mayor Todd Gloria

“Aspirational goals need to be set and encouraged. That starts by setting a Utility Supplier Diversity goal of at least 1.5 percent for the LGBT community.”

– Palm Springs Mayor Christy Holstege

“The joint utility proposal of a 0.5 percent planning goal for LGBT businesses is not forward thinking and is not representative of the LGBT community impact... By establishing an aspirational goal, the Commission can provide equity for the LGBT community while spurring economic growth throughout our great state.”

– El Cerrito Mayor Pro Tem Gabriel Quinto, President of the
LGBTQ Caucus, California League of Cities

C. LGBTQ Individuals and Businesses Make Huge Contributions to Our Economy and Our Society, But Continue to Face Widespread Animosity and Discrimination

1. Progress Towards Equality for LGBTQ Persons

Less than 45 days ago, “Pride Month” in the United States – the month of June – ended with a powerful acknowledgement by President Joe Biden about the struggles as well as the positive influence of the LGBTQ community. In his proclamation, President Biden said:

During LGBTQ+ Pride Month, we recognize the resilience and determination of the many individuals who are fighting to live freely and authentically. In doing so, they are opening hearts and minds, and laying the foundation for a more just and equitable America. This Pride Month, we affirm our obligation to uphold the dignity of all people, and dedicate ourselves to protecting the most vulnerable among us.

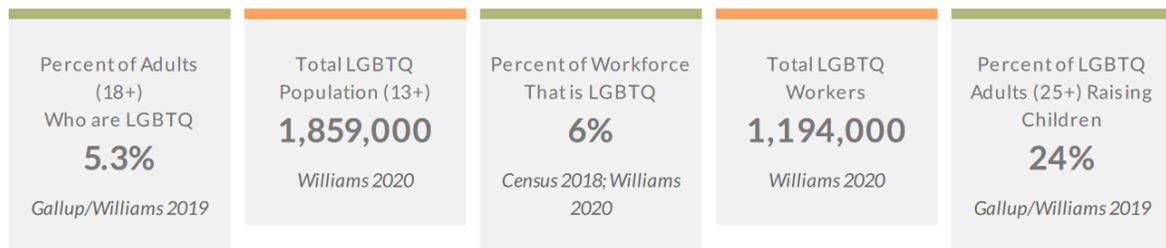
“Living freely” is illustrated in the first active NFL player who came out as gay. The first openly transgender Olympic athlete will compete in the Olympics in Tokyo within the next few days. Milestones that seemed unfathomable a decade ago are happening today.

Here in California, the LGBTQ community is a formidable presence in society. The chart below, prepared by a non-profit research firm known as the Movement Advancement

Project (“MAP”), documents key facts about California’s LGBTQ population as a whole, and the presence of LGBTQ people in California’s workforce.¹

CALIFORNIA'S EQUALITY PROFILE

Quick Facts About California



According to a report prepared by the National LGBT Chamber of Commerce, LGBT-owned businesses contribute over \$1.7 trillion to the U.S. economy, and the LGBT community holds an estimated purchasing power of \$917 billion.²

California can point with pride to the fact that it has by far the largest number of LGBTQ elected officials than any other state in the Union. With 157 LGBTQ elected officials, California has more than three times the next highest state, Pennsylvania.³

¹ An on-line version of the chart below, with links to the studies cited, can be found on MAP’s website at the following link: https://www.lgbtmap.org/equality_maps/profile_state/CA

² The National LGBT Chamber of Commerce Report is available at the following link: <https://nglcc.org/report>

³ See *Sacramento Bee*, Capitol Alert (July 29, 2021), at the following link: <https://www.sacbee.com/news/politics-government/capitol-alert/article253095863.html>

An October 2020 “American Values Survey” conducted by the Public Religion Research Institute found that more than eight in ten Americans (83%) favor laws that would protect gay, lesbian, bisexual, and transgender people against discrimination in jobs, public accommodations, and housing.⁴ The same survey report found that support for same-sex marriage among people in the U.S. is at 70%, an all-time high.

These anecdotes and statistics, along with President Biden’s strong affirmational statement, show signs of opening “hearts and minds” to members of the LGBTQ community, both throughout the United States, and in California in particular.

2. The Persistence of Animosity, Discrimination and Violence Against LGBTQ Persons

Despite the progress described above, discrimination against LGBTQ people still exists. A 2013 Study Report by the National Bureau of Economic Research paper found that anonymous survey respondents were 67% more likely to disapprove of an openly gay manager, and 71% more likely to say it should be legally acceptable to discriminate in hiring based on sexual orientation, compared to when survey respondents were not anonymous.⁵ A scholarly article in the Spring 2021 issue of the Journal of Economic Perspectives found that LGBTQ job candidates were significantly less likely to be invited for an interview or offered a job.⁶

⁴ The October 2020 American Values Survey Report can be found at the following link: https://www.ppri.org/wp-content/uploads/2020/10/PRRI-Oct_2020_AVS.pdf
An article about the Survey by NBC News can be found at the following link: <https://www.nbcnews.com/feature/nbc-out/support-gay-marriage-reaches-all-time-high-survey-finds-n1244143>

⁵ The NBER Study Report can be found at the following link: <https://www.nber.org/papers/w19508>

⁶ The above-referenced article can be found at the following link: <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.35.2.141>

A 2011 survey of the scholarly literature conducted by the Williams Institute at the University of California Los Angeles School of law documented that “widespread and continuing employment discrimination against LGBT people has been documented in scientific field studies, controlled experiments, academic journals, court cases, state and local administrative complaints, complaints to community-based organizations, and in newspapers, books, and other media.”⁷ Some of the studies surveyed by the Williams Institute found that “discrimination, fear of discrimination, and concealing one’s LGBT identity can negatively impact the well-being of LGBT employees, including their mental and physical health, productivity in the workplace, and job satisfaction.”

Yet another study by the Williams Institute found that “LGBT people are nearly four times more likely than non-LGBT people to experience violent victimization, including rape, sexual assault, and aggravated or simple assault.”⁸

Aside from statistics and surveys, a perusal of the news illustrates the continual indignity the LGBTQ community suffers. To choose one recent tragic example, on July 30, 2021, Shai Vanderpump, a Black, 23-year-old transgender woman and a well-known LGBT advocate, was

⁷ The UCLA Williams Institute survey of numerous studies regarding workplace discrimination against LGBTQ persons can be found at the following link: <https://escholarship.org/uc/item/03m1g5sg>

⁸ The Williams Institute Study about violence against LGBTQ persons can be found at the following link: <https://williamsinstitute.law.ucla.edu/press/news-lgbt-violence-press-release/>

murdered in Trenton, New Jersey.⁹ A rapper named DaBaby recently made disparaging comments about gay people at a concert in Miami, in an effort to excite the crowd.¹⁰

It is an inescapable fact that LGBTQ-identified persons continue to face insidious and widespread animosity, discrimination, abuse and even physical violence, simply because of their sexual and gender identity. This is the harsh reality faced to some degree by every LGBTQ-identified person, as well as every LGBTQ business owner.

The Commission cannot fix every manifestation of animosity and discrimination. The Commission cannot eliminate bias in our society. The Commission does, however, have an opportunity to begin to turn the tide, by setting an aspirational procurement goal of 1.5% for LGBT-owned business enterprises.

By exerting leadership on this issue, the Commission not only will reward those utilities that are working in good faith with LGBT-owned business enterprises, it also will send a message that the Commission supports equity, and does not tolerate utility companies and other enterprises under its jurisdiction that do not even try.

D. BuildOUT California Respectfully But Strongly Opposes Staff's Proposal to Postpone for Four More Years the Establishment of an Aspirational Goal for LGBT-Owned Business Enterprises Under General Order 156

In its Report issued on July 12, 2021, the Commission Business and Community Outreach Staff in the Office of the Executive Director recommended a four-year extension before adoption of a voluntary procurement goal for LGBT-owned enterprises.

⁹ See: <https://www.hrc.org/news/hrc-mourns-shai-vanderpump-black-transgender-woman-killed-in-new-jersey>

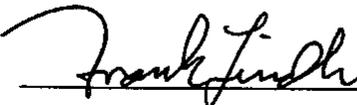
¹⁰ See: <https://www.nytimes.com/2021/08/01/arts/music/dababy-lollapalooza-canceled-homophobic-comments.html>

We respectfully urge the Commission to reject this proposal. The Commission would defy the intent of the Legislature in AB 1678 if it were to defer for another four years – more than 10 years after enactment AB 1678 – the adoption of an aspirational goal for LGBT-owned business enterprises. Such an exceedingly long delay is not warranted by the data-based methodology, which demonstrates that a 1.5% or greater goal is reasonable and achievable for LGBT-owned business enterprises. In effect, the Staff Proposal would reward the utilities for their woeful underperformance in the area of LGBT contracting.

III. CONCLUSION

BuildOUT California appreciates the opportunity to submit these Comments. We urge the Commission to adopt an aspirational goal of at least 1.5% for LGBT-owned business enterprises under General Order 156.

Respectfully submitted,

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