

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



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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)

**REPLY COMMENTS OF BUILDOUT CALIFORNIA
ON ASSIGNED COMMISSIONER'S PROPOSED DECISION**

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Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, BuildOUT California hereby replies to a handful of parties that opposed the Proposed Decision’s endorsement of an aspirational goal of 1.5% for LGBT-owned business enterprises (“LGBTEs”) under the Supplier Diversity Program: AT&T, California Water Association (“CWA”), Charter Fiberlink, et al. (“Charter”), and Southern California Edison Company (“SCE”).

DISCUSSION

A. Record Evidence for the 1.5% Goal for LGBTEs

The basic claim of the utilities opposing the 1.5% goal for LGBT businesses is that there are not enough LGBT-owned business enterprises, and therefore that the adoption of such a goal is unrealistic and sets them up for failure.

SCE argues, for example, that “the fundamental barrier to utilities to meet a 1.5% voluntary procurement goal is due to the dearth of certified LGBT business enterprises in the Clearinghouse.” (SCE Comments, p. 2.) Similarly, CWA claims that its member companies are “disappointed to see the Commission adopt the unrealistic procurement goal of 1.5% in 2024 that is

not supported by the data and would set many utilities up for failure as procurement from LGBTEs is still ramping up.” (CWA Comments, pp. 1-2.)

Charter goes a step further, alleging that the Proposed Decision “commits legal error and factual error by citing non-record materials, including ex parte letters, to support the proposed procurement target of 1.5%.” (Charter Comments, pp. 4-5.) Charter accuses the Proposed Decision of relying upon “extra-record findings.” (Id., p. 5.)

AT&T makes a similar argument, asserting that the Proposed Decision “adopts a voluntary procurement goal for LGBT business enterprises that is not supported by the data in the record.” (AT&T Comments, p. 2.)

All of these allegations are disproven by empirical evidence and analysis submitted by BuildOUT California on the record in this case. Our evidence was provided in a letter and oral statement by Paul Pendergast, BuildOUT California’s founder and CEO, at the Public Workshop on July 21, 2021, and in our Post-Workshop Comments and Reply Comments on August 4 (at pages 5-7), and Reply Comments on August 18, 2021 (at pages 7-8).

To briefly summarize the evidence submitted by BuildOUT California, there are – by several different measures – ample LGBT-owned businesses, with the right skill sets, to enable the utility companies meet a 1.5% goal for LGBT-owned business enterprises.

The opposition by CWA is perplexing. The member companies of CWA are among the best performers in their contracting activity with LGBTEs. Of the seven water utilities that currently participate in the Supplier Diversity Program, five of them have exceeded 1.5% in contracting with LGBT-owned businesses over the past five years. It is odd that CWA is opposing a goal that its member companies have already demonstrated the ability to meet.

Charter's opposition is easier to understand. As BuildOUT California pointed out in Reply Comments on August 4, 2021, over the prior six years the Charter telecommunications companies (Charter, Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC) had a combined LGBTE spend of only \$4,008.00 – virtually nothing for such major companies.

B. Annual Supplier Diversity Reports – Showing What The Utility Companies Can Do When They Try

Coincident with the filing of Opening Comments on the Proposed Decision, the utility companies also submitted to the Commission their respective 2021 Supplier Diversity Annual Reports. These reports demonstrate commendable efforts by the utilities in their contracting with qualified diverse businesses – not only with LGBTEs, but also with Disabled Veteran Owned, Minority Owned, and Women Owned Business Enterprises.

Taking SCE as an example, in just three years this major California electric utility was able to increase its LGBTE spend from \$875,000 in 2019 to \$3.7 million in 2020, and then by almost 200% in 2021 to a total of \$10.7 million.

These are truly impressive gains. They mirror what SCE was able to achieve with Disabled Veteran Owned Enterprises (“DVBES”) in earlier years, which increased from \$19,954,586 in 2011 (0.48% of SCE's overall spend) to \$88,460,600 in 2014 (well above 1.5%). Working with DVBES, SCE achieved an astonishing 387% increase in only three years.

Can SCE achieve similar success in its contracting with LGBTEs? The answer surely is “yes.” By way of comparison, San Diego Gas & Electric Company (“SDG&E”), SCE's neighbor to the south, is substantially smaller in size than SCE. In 2021, SDG&E's total procurement spend was \$2.4 billion, roughly a third of SCE's total spend of \$6.4 billion. Yet,

SDG&E's spend in 2021 on LGBTE contracts (\$9.3 million) was within the range of SCE's LGBTE spend (\$10.5 million). For SDG&E, this represented 0.5% of its total procurement, whereas for SCE its LGBTE spend was only 0.06%. There is every reason to think that SCE can do better, given its prior history of success in the Supplier Diversity Program.

To its credit, Pacific Gas and Electric Company ("PG&E"), in its Opening Comments on the Proposed Decision, has supported the 1.5% goal for LGBTEs. BuildOUT California salutes PG&E for its leadership in taking this stance. Like SCE, PG&E has demonstrated impressive gains in its contracting with DVBEs in recent years. Indeed, PG&E's procurement from DVBEs has been *at least double the 1.5% goal since 2016*. Having committed to a good-faith effort to achieve 1.5% in its contracting with LGBTEs, it is reasonable to expect that PG&E can accomplish this goal, in light of its achievements in working with the DVBE community.

C. The Need For Greater Efforts By The Utilities To Overcome Bias Against LGBT People and LGBT Enterprises

The Proposed Decision at page 58 includes Finding of Fact 9, reading as follows:

Historical data reflects past barriers to full participation in the utility industry and *may also reflect too little effort by some utilities* to increase opportunities to contract with LGBT business enterprises. (Emphasis added.)

At the Public Workshop on July 21, 2021, then-Commissioner Martha Guzman Aceves asked the spokesperson for the utility companies a straightforward question about their work with LGBTEs: "Could you speak a little bit," she asked, "to the reasons why there is no utility spend with certain companies. Is there any sort of explanation you could provide us?"¹

¹ The question from Commissioner Guzman Aceves starts in the recording at 1:11:00. <https://www.adminmonitor.com/ca/cpuc/workshop/202107212/>

The utility spokesperson was unable to provide an answer, saying:

“Unfortunately, I would have to go back to those individual companies. I did not ask specifically. I know when we looked at the analysis and I know BuildOUT just summarized, just took all of our reports and summarized 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 ask specifically why. We did not do the analysis, even in our meeting last year. We did not ask specifically, unfortunately.”

It has now been more than seven months since Commissioner Guzman Aceves asked why so many of the utility companies have performed so poorly in the area of LGBT contracting. Her question was perfectly justified, in light of the data. And yet, in all of this time, from last July until now, the utilities still have not come forward with any response.

The Proposed Decision is on the right track in setting an aspirational goal of 1.5% for LGBT-owned business enterprises under General Order 156.

We respectfully urge the Commission to adopt it.

Respectfully submitted,

By:  _____

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