



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

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TO PARTIES OF RECORD IN RULEMAKING 21-03-010:

This is the proposed decision of Administrative Law Commissioner Douglas. 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 September 26, 2024 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/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC:hma
Attachment

Decision **PROPOSED DECISION OF COMMISSIONER DOUGLAS**

(Mailed 8/27/2024)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

PHASE TWO DECISION UPDATING GENERAL ORDER 156 SUPPLIER DIVERSITY PROGRAM

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PHASE TWO DECISION UPDATING GENERAL ORDER 156 SUPPLIER DIVERSITY PROGRAM

Summary

On March 21, 2021, the California Public Utilities Commission (Commission) initiated the instant rulemaking proceeding to implement Senate Bill (SB) 255 (Bradford, Chapter 407, 2019). As a result, the Commission issued Decision (D.) 22-04-035 revising General Order (GO) 156 (the Supplier Diversity Program) to adopt a voluntary procurement goal for lesbian, gay, bisexual and transgender business enterprises, incorporate persons with disabilities business enterprises, as well as other updates.

This decision updates General Order 156 the Supplier Diversity Program by establishing non-confidential reporting of certain information for annual reports. Covered entities shall submit non-confidential workforce data that is already reported to other state and federal agencies as part of their annual filings. Covered entities shall also provide a brief description of their board diversity data and any publicly available board data in their annual report submissions. This decision makes no other changes at this time.

This proceeding is closed.

1. Historical Background of General Order 156

The Supplier Diversity Program¹ has a long history in California beginning with Assembly Bill (AB) 3678² in 1986. The core principle of the Supplier Diversity Program declares that the economic well-being of the state of California “cannot be realized unless the actual and potential capacity of women,

¹ Information about the Supplier Diversity Program, General Order 156, as well as relevant resources can be found, as of this writing, at [Supplier Diversity Program \(ca.gov\)](#).

² Assem. Bill (AB) No. 3678 (Moore, Stats. 1986, Ch. 1259).

minority, disabled veteran, and LGBT [lesbian, gay, bisexual and transgender] business enterprises is encouraged and developed.”³

Since 1988, the California Public Utilities Commission (Commission) has implemented this state policy through its Supplier Diversity Program set forth in General Order 156 (GO 156).⁴ The Supplier Diversity Program, administered by the Commission, promotes supplier diversity in utility practices by identifying diverse and eligible businesses for contracting opportunities for supplier diversity in procurement by covered entities⁵ by providing these businesses with contracting opportunities and benefits. The Supplier Clearinghouse⁶ (Clearinghouse) verifies the eligibility of prospective utility suppliers seeking certification as a Women Business Enterprise (WBE), Minority Business Enterprise (MBE), Lesbian, Gay, Bisexual, and Transgender Business Enterprise⁷ (LGBTBE), and/or Persons with Disabilities Business Enterprise⁸ (PDBE). Disabled Veterans Business Enterprises⁹ (DVBE) are certified by the Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS), a unit

³ California Public Utilities (Cal. Pub. Util.) Code Section 8281(a).

⁴ *Id.* See generally Cal. Pub. Util. Code Sections 8281-8286.

⁵ For purposes of this decision, the term “covered entity” includes all entities, including utilities, required to participate in the Supplier Diversity Program including the entities added by Senate Bill 255 (Sen. Bill (SB) No. 255 (Bradford, Stats. 2019, Ch. 407)) (SB 255).

⁶ The Clearinghouse evaluates, verifies, and certifies business enterprises owned by women; minorities; lesbian, gay, bisexual and transgender (LGBT); and persons with disabilities. The Clearinghouse maintains a database of certified business enterprises, including disabled veteran business enterprises for use by participating covered entities. Information about the Clearinghouse is currently available at [Clearinghouse \(ca.gov\)](http://Clearinghouse.ca.gov).

⁷ Decision (D.) 15-06-007 (2015) updated GO 156 to add LGBTBE as an entity eligible following AB 1678 (Gordon, Stats. 2014, Ch. 633) that amended Cal. Pub. Util. Code Sections 8281-8286.

⁸ Added by D.22-04-035.

⁹ D.92-06-030, added DVBE following SB 2398 (Dills, Stats. 1990, Ch. 516) that amended Cal. Pub. Util. Code Sections 8281-8286.

of the California Department of General Services (DGS). The Commission has revised GO 156 several times to update the program, add new business enterprises, and adjust the voluntary percentage goals.¹⁰

In October 2019, SB 255 updated the Supplier Diversity Program by amending Cal. Pub. Util. Code Sections 366.2 and 8283.¹¹ The Bill:

1. Changed the participation requirement threshold from \$25,000,000 gross annual revenue to \$25,000,000 gross annual California revenues;
2. Extended the requirements to electric service providers;
3. Required electrical corporations, gas corporations, water corporations, wireless telecommunications service providers, electric service providers, and telephone corporations with gross annual California revenues exceeding \$15,000,000, but not more than \$25,000,000, to annually submit data on procurement from WBE, MBE, DVBE, and LGBTBE;
4. Required community choice aggregators with gross annual revenues exceeding \$15,000,000 to annually submit a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises; and a report regarding procurement from WBE, MBE, DVBE, and LGBTBE; and
5. Encouraged exempt wholesale generators selling electricity to retail sellers, distributed energy resource contractors, energy storage system companies, and exempt Community Choice Aggregators (CCA) to voluntarily adopt a plan for increasing WBE, MBE, DVBE, and LGBTBE procurement and to voluntarily report activity in this area.¹²

¹⁰ D.15-06-007 established voluntary procurement goals of 1.5 percent for DVBE.

¹¹ Cal. Pub. Util. Code Sections 366.2, 8238.

¹² *Id.* (See also Section 366.2 discussing the implementation and responsibilities of community choice aggregators.)

Most recently, D.22-04-035 updated GO 156 to incorporate changes resulting from SB 255, as discussed in detail below.

2. Procedural Background Phase 1

On March 23, 2021, the Commission issued Rulemaking (R.) 21-03-101 opening the instant rulemaking to serve as a forum for considering amendments to GO 156 consistent with SB 255. During Phase 1, a draft proposal to revise GO 156 for the Supplier Diversity Program initiated consideration of the primary issues and solicited party input.¹³ The Commission conducted public workshops in furtherance of the resolution of Phase 1.¹⁴ Parties provided input by filing comments and reply comments on the Staff Proposal¹⁵ and by participating in workshops regarding reporting required by GO 156, specifically, the reporting for the new non-utility entities added to GO 156 by SB 255, CCAs and ESPs. Members of the public commented on these workshops and proposals made in this proceeding. A detailed procedural background of Phase 1 can be found in D.22-04-035.

On April 18, 2022, the Commission issued D.22-04-035 revising GO 156 to implement changes required by SB 255 including adopting a procurement goal for LGBTBE, adding PDBE to the Supplier Diversity Program, and adding reporting requirements on workforce and board diversity. D.22-04-035 also requires CCAs with gross annual revenues exceeding \$15,000,000 to annually

¹³ The Staff Proposal was prepared by the Commission's Executive Director and the Business and Community Outreach Group.

¹⁴ Workshop topics addressed the Staff Proposal, an overview of the methodology used by the Commission to establish prior voluntary procurement goals, proposals for a goal for LGBT business enterprises, presentations of what other states are considering concerning requiring utilities to report on workforce and board diversity, and inclusion of people with disabilities in the Commission's Supplier Diversity Program.

¹⁵ See Opening and Reply comments, and separately, Public Comments.

submit a plan or report for increasing procurement in the following year from small, local, and diverse business enterprises. CCAs must also annually submit a report regarding procurement from WBEs, MBEs, DVBES, and LGBTBEs in the previous year. The newly adopted GO 156 was attached to D.22-04-035 as Attachment B.¹⁶

3. Procedural Background Phase 2

On August 30, 2022, the Assigned Commissioner issued the Amended Scoping Memo soliciting input on the following issues: 1) whether to increase the percentage for voluntary procurement goals for eligible business enterprises, 2) whether to review the Clearinghouse “guidelines” used to determine certification as an eligible supplier; 3) whether to develop forms for workforce and board diversity reporting that consider public disclosure, and 4) whether to update the definition of minority.

On November 30, 2022, the ALJ issued the *Administrative Law Judge’s Ruling Regarding Phase 2* (Ruling Regarding Phase 2) which posed detailed questions to obtain responsive information on the scoped issues identified in the Amended Scoping Ruling. The Ruling Regarding Phase 2 also provided a proposed reporting template, the Clearinghouse Eligibility Standards, and the Clearinghouse Comparable Agency Verification Application as attachments to the ruling. Parties were asked to file responsive comments addressing the following questions:

1. How should the Commission implement the workforce and board diversity reporting requirements adopted in D.22-04-035?
2. Whether the Commission should increase the percentages goals for the voluntary procurement from eligible business

¹⁶ The revised GO 156 is available as of this writing at [GO-156-D22-04-035.pdf \(ca.gov\)](#).

- enterprises under GO 156 and, if so, what should be the amount of such increases?
3. Whether the Commission should update the “guidelines” used by the Supplier Clearinghouse to certify eligible suppliers under the Supplier Diversity Program and, if so, the specific revisions that the Commission should consider?
 4. Whether the Commission should revise the definition of “minority” set forth in GO 156? Should the Commission add alternative criteria by which an applicant may meet the definition, and if so, what specific criteria should the Commission consider?

Between January 13, 2023 and January 17, 2023, the following parties filed Opening Comments: Small Business Utility Advocates (SBUA); California Water Association (CWA); National Diversity Coalition (NDC); Southern California Edison Company (SCE); Southwest Gas Corporation (Southwest Gas); San Diego Gas & Electric Company (SDG&E); Southern California Gas Company (SoCal Gas); Shell Energy North America (Shell); Pacific Gas and Electric Company (PG&E); Alliance for Retail Energy Markets (AREM); Comcast Phone of California, LLC (Comcast); Charter Fiberlink California, Time Warner Cable Information System California, Brighthouse Network Information Systems (collectively referred to as Charter); California Community Choice Association (CalCCA); CTIA; T Mobile West LLC, Sprint Spectrum LLC (jointly T-Mobile); Pacific Bell Telephone Company, AT&T Corp., SBC Long Distance LLC, AT&T Mobility Wireless Operations Holdings, Inc., New Cingular Wireless PCS LLC, Santa Barbara Cellular Systems, Ltd. (collectively AT&T); Center for Accessible Technology (CforAT); and Hispanics in Energy (HIE).¹⁷

¹⁷ On January 26, 2023, the ALJ granted permission for late filing of comment by HIE.

On January 30, 2023, Reply Comments on the Ruling Regarding Phase 2 were filed by SCE, CforAT, Comcast, CalCCA, California Efficiency + Demand Management Council (Council), jointly by SoCal Gas and SDG&E (Joint Utilities), Charter, AReM, HIE, CWA, AT&T, NDC, and SBUA.

4. Submission Date

This matter was submitted on January 30, 2023, upon submission of reply comments.

5. Implementation of Workforce Diversity Reporting Requirements

During Phase 2, some parties argued that the Commission should revisit the requirement to report on workforce and board diversity by covered entities.¹⁸ After consideration of party and stakeholder input on this issue in Phase 1, the Commission required covered entities to report annually on both workforce and board diversity.¹⁹ In adopting these reporting requirements, the Commission took into consideration the concerns raised by the parties in Phase 1 and deferred only the limited issue of implementation of these reporting requirements to Phase 2.²⁰ Whether to report on workforce and board diversity is not an issue within the scope of Phase 2.²¹ Rather, this decision focuses on implementation of this requirement.

5.1. Workforce Reporting Requirements

The Commission directed staff to work with stakeholders, utilities, and covered entities to implement the new reporting requirements, specify data to be

¹⁸ Opening Comments filed by CWA, Shell, AReM, CTIA, and AT&T. AT&T Reply Comments.

¹⁹ D.22-04-035, at 14-21 and GO 156, Section 14.

²⁰ D.22-04-035, at 48, 52.

²¹ August 20, 2022 Amended Scoping Memo, *supra*, at 3.

reported, and develop collection protocols.²² The Commission instructed staff to consider requiring information that would be informative, not overly burdensome, while protecting confidential employee information.²³ To guide both Commission staff and parties, the Commission identified two existing forms developed by the U.S. Equal Employment Opportunity Commission (EEOC), EEO-1²⁴ and EEO-4,²⁵ as potentially useful guides when developing the reporting template.²⁶

Commission staff drafted a proposed reporting form as a starting point for seeking party input towards developing the final reporting form. This proposed reporting form was provided to parties and the public for their input through comments and reply comments.²⁷ Party comments addressing this issue identified areas of common concern including, but not limited to, the specific data that the Commission will require, confidentiality of certain data, and the burden of reporting different data to multiple agencies.²⁸

²² D.22-04-035, at 48, 52.

²³ *Id.*

²⁴ The EEO-1 Component 1 report is a mandatory annual data collection requirement imposed on all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, for submission of demographic workforce data, including data by race/ethnicity, sex, and job categories by the federal government.

²⁵ D.22-04-035, *supra*, at 48. (See also [EEO-4 \(State and Local Government Information Report\) Statistics | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)). The EEO-4 is a mandatory biennial data collection that requires all state and local governments with 100 or more employees to submit workforce demographic data including data by race/ethnicity, sex, job category, and salary band by the federal government.)

²⁶ D.22-04-035, at 48.

²⁷ November 30, 2022 Ruling Regarding Phase 2, Attachment A.

²⁸ Opening Comments addressing this issue were filed by Southwest Gas, AReM, AT&T, CalCCA, CTIA, Charter, CWA, Comcast, CTIA, CforAT, HIE, NDC, PG&E, Shell, Joint Utilities, SCE, and T-Mobile. Reply Comments addressing this issue were filed by SCE, CforAT, Comcast, CalCCA, Joint Utilities, Charter, AReM, NDC, CWA, AT&T, and SBUA.

Parties expressed general support for reporting data that the covered entities are already required to report to minimize the burden on the covered entities. Most of these parties supported using form EEO-1²⁹ or a Commission form that mirrored EEO-1.³⁰ Some of these parties asked the Commission to hold workshops before implementing reporting requirements. SCE added that in addition to providing information to the EEOC, it also provides workforce diversity data in its California Pay Data Report to the California Civil Rights Department (CRD) and suggested it could provide that data.³¹ A few parties supported the staff's proposed reporting template or advocated for requiring additional data.³²

Some parties identified a difference in the categories for ethnicity between the proposed reporting form and the categories for race/ethnicity reported on EEO-1.³³ As a result, these parties also urge the Commission to use the race/ethnicity categories from EEOC and/or CRD in reporting to the Commission to further reduce the burden on covered entities.³⁴

²⁹ Opening Comments addressing this issue were filed by AT&T, CWA, Charter, Comcast, Joint Utilities, and T-Mobile. Reply Comments were filed by SCE, Joint Utilities.

³⁰ *Id.*

³¹ SCE Opening Comments and Reply Comments.

³² CforAT disagreed with limiting reporting to data to EEOC forms and supported the staff's proposed template (NDC Reply Comments at 1-5). NDC requested more granular data such as disaggregating the Asian category and that Workforce and Board Diversity policies should be reported (NDC Opening Comments at 2-6).

³³ Opening Comments filed by CWA, Joint Utilities, Comcast, Charter, CTIA, and T-Mobile.

³⁴ SCE Opening Comments at 3; AReM Opening Comments at 3. AT&T supports only using the data categories reported on EEO-1, Opening Comments at 3. Charter Opening Comments at 3.

Several parties commented that LGBT and disabled status of employees is not currently collected or reported.³⁵ These parties were concerned that the fear of discrimination based on those attributes could make collection of the information extremely challenging and burdensome.³⁶ AReM argues that because SB 255 does not mention LGBT reporting for either workforce or board diversity, that it should be deleted from the proposed reporting form.³⁷

Next, several parties argued that salary data should be removed because it was outside the Commission's jurisdiction and was not relevant to the Supplier Diversity Program's purpose.³⁸ SCE recommended reporting of workforce diversity by job categories instead of salary.³⁹

Parties stated that EEO-1 forms are submitted to the EEOC confidentially and asked that the Commission also extend confidential treatment to the data reported to the Commission.⁴⁰ Finally, comments submitted by Shell and CalCCA identified additional concerns specific to their respective business structures. CalCCA represents Community Choice Aggregators (CCAs) that are not investor-owned public utilities and that, as public entities, CCAs are prohibited from granting preferential treatment in hiring. Shell argued that

³⁵ Opening Comments filed by CWA, SCE, PG&E, AReM.

³⁶ Opening Comments filed by CWA, Joint Utilities.

³⁷ AReM Opening Comments at 3.

³⁸ Comcast similarly argued that salary data was not useful or relevant to the Supplier Diversity program (Opening Comments at 1-2). CTIA Opening Comments at 4, Charter Opening Comments at 4. T-Mobile Opening Comments at 3.

³⁹ SCE Opening and Reply Comments.

⁴⁰ CWA Opening Comments.

Energy Service Providers (ESPs) should be exempt from reporting or reporting should be limited to covered entities with more than 100 employees.⁴¹

5.2. Discussion

We seek to balance implementation of GO 156, Section 14 reporting requirements efficiently with the value of information it provides to the Commission. The Commission acknowledges concerns regarding certain data required in the proposed reporting form, how that data should be reported, the burdens placed on covered entities if reporting to multiple agencies requires tracking, and collection of specific data for each agency. The Commission shares the parties' concerns that confidential personal and business information be protected. While some parties requested that the Commission hold additional workshops to receive party and stakeholder input, Phase 2 was intended as the vehicle for such engagement.

The Commission proactively received reports pending guidance in the Phase 2 ruling, including workforce diversity data from six (6) GO 156 participating entities in the 2022 and 2023 filing years.⁴² The data submitted by these energy, water, and communications entities included existing reports and electronic links to workforce diversity data submitted in other jurisdictions, including any data provided to the EEOC.

In their GO 156 program oversight role, CPUC supplier diversity staff conducted analysis and review of workforce data submitted in GO 156 annual reports. Staff found the submitted data showed no direct correlation between workforce diversity and supplier diversity procurement results. However, it

⁴¹ Shell Opening Comments at 2.

⁴² See GO 156 Annual reports by PGE, SCE, SoCal Gas, SDGE, ATT, and California Water Service.

serves to increase transparency and disclosure of workforce diversity data.

Based on this, the Commission finds the data submitted during the two-year period adequately satisfies Commission data requirements and the Commission declines to provide a template by which entities must report workforce diversity data.

Instead, consistent with data received during the 2022 and 2023 period, we will require participating entities to share existing publicly available, non-confidential reports and electronic links to data submitted in other jurisdictions pertaining to workforce diversity. This includes and is not limited to data provided to the EEOC⁴³ in all future GO 156 annual reports. This requirement is effective on a permanent basis starting with the 2024 GO 156 annual reports due on March 1, 2025 per the specifications of GO 156, Rule 9, et seq., submission of annual reports.⁴⁴

We agree that aligning the data currently reported to state and federal agencies will reduce the burden on covered entities in reporting workforce

⁴³ For example, the EEO-1 form. Covered entities may simultaneously submit their filed EEO-1 forms in conjunction with the required information to the Commission.

⁴⁴ See GO 156 rule 9 (Annual Report), et seq.:

Utilities and other covered entities shall provide an electronic copy of their Annual Report to the Commission's Executive Director on or before March 1 of each year. The Annual Report must provide details on the utilities' or other covered entities' programs created to comply with the Commission's Supplier Diversity Program. Section 9 does not apply to utilities and electric service providers with gross annual California revenues of \$15 million or less or community choice aggregators with gross annual revenues of \$15 million or less. Entities added to the Commission's Supplier Diversity Program by Senate Bill 255 (2019), e.g., certain community choice aggregators, electric service providers, and utilities, shall submit their first annual reports in March 2023. Annual reports shall include data on person with disabilities business enterprises starting March 2024.

diversity to the Commission. Thus, workforce reporting requirements should match data that is already reported to other state and federal agencies such as the EEOC on the EEO-1 Component 1 form.

The Commission further recognizes the importance of protecting confidential information such as salary information, race, gender, and sexual orientation. Protection of confidential data requires not only a determination of what data should be protected, but also a process for submission of that data with identification of what portions are confidential, the period of time that the data will be protected, and a mechanism to request extensions of time that data will be protected.

The reporting covered entities must include the non-confidential workforce data that is already reported to other state and federal agencies such as the EEOC on the EEO-1 Component in their annual GO 156 reports. At present, covered entities submit annual reports directly by email to the Executive Director and include a copy to the External Affairs Division through the Business and Community Outreach Manager of the Commission.

The Commission is deeply committed to the Supplier Diversity program and encourages covered entities to support this program through the submission of data included in EEO-1 that is not confidential. The Commission also encourages covered entities to submit diversity data that EEO-1 does not require such as information on LGBT and disabled employees. The Commission welcomes voluntary inclusion of this data in reporting on both workforce and board diversity, thereby promoting the Pub. Util. Code Section 8282(b) goal of “free, open, and transparent competition.”⁴⁵ The Commission also encourages

⁴⁵ The Legislature hereby finds and declares that:

Footnote continued on next page.

covered entities, but does not require, submission of all internally produced annual diversity reports the utilities create for their own recordkeeping and purposes, of their own accord. Voluntary reporting of diversity and inclusion initiatives is also welcome.

6. GO 156, Section 14 Board Diversity Reporting Requirements

The Commission looked to the legislature's goal of increasing representation on corporate boards as instructive when it required covered entities to report annual data on board diversity.⁴⁶ The Commission directed, at a minimum, all covered entities to provide a brief description of existing reports and electronic links to data submitted in other jurisdictions pertaining to board diversity, including any data provided to the Secretary of State.⁴⁷ The Commission deferred implementation of the reporting requirement to Phase 2 to

[T]he essence of the American economic system of private enterprise is free, open, and transparent competition. Only through free, open, and transparent competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be ensured. The preservation and expansion of that competition are basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of women, minority, disabled veteran, and LGBT business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, are awarded to women, minority, disabled veteran, and LGBT business enterprises, and to maintain and strengthen the overall economy of the state.

Cal. Pub. Util. Code, § 8281(a) (2024).

⁴⁶ D.22-04-035, at 50-52.

⁴⁷ *Id.*, at 53.

provide additional time for parties to provide more detailed input on this requirement.

Party input regarding implementation and the data specific to board diversity that should be required was very limited. CalCCA comments focused on the limitations faced by CCAs, as public entities, to control board makeup.⁴⁸ CCA Board members are elected officials or are appointed.⁴⁹ PG&E proposes reporting the same level of information reported in its annual proxy statement.⁵⁰ SCE recommended the Commission adopt a template based on the board diversity information it publishes on its website.⁵¹ NDC comments suggest editing the Draft Template form to include Board Diversity reporting.⁵² The limited input addressing implementation of the Board Diversity reporting requirements is insufficient to set mandatory data required to comply with this reporting requirement.

The Commission proactively received reports pending guidance in Phase 2 ruling, including board diversity data from six (6) GO 156 participating entities in the 2022 and 2023.⁵³ In their GO 156 program oversight role, Commission supplier diversity staff conducted analysis and review of board diversity data submitted in GO 156 annual reports. Staff found the data received from energy, water and communications entities during the two-year period showed no direct correlation between board diversity data and supplier diversity procurement

⁴⁸ CalCCA Opening Comments at 3-4.

⁴⁹ *Id.* at 4.

⁵⁰ PG&E Opening Comments at 2.

⁵¹ SCE Opening Comments at 11.

⁵² NDC Opening Comments at 2-5.

⁵³ See 2022-2023 GO 156 Annual reports submitted by PGE, SCE, SoCal Gas, SDGE, ATT, and California Water Service.

results. Consequently, based on this data and staff findings, the Commission declines to provide a board diversity data template by which entities must report this information. This is consistent with what was reported during the 2022 and 2023 periods. The Commission will require participating entities to provide a brief description of their board diversity data that will be publicly available in their annual GO 156 report submissions on a permanent basis effective with the 2024 reporting year. The GO 156 annual reports are due on or before March 1, 2025.

7. Voluntary Procurement Goals

In Phase 1 of this proceeding, the Commission modified the long-term procurement goals for each major category of products and services purchased from eligible suppliers as follows: 21.5% should be purchased from eligible businesses. This breaks down to 15% of products and services procured should be from MBEs; 5% from WBEs; and at least 1.5% from DVBE. LGBTBE procurement goals were initiated starting at 0.5% for 2022, 1% for 2023, and 1.5% for 2024 and beyond.⁵⁴ No procurement goals were added for PDBE.

The Commission found that information available in Phase 1, did not necessarily show that increasing the goals would translate to an increase in spending on those goals. The Commission determined that additional data was required for further expansion of these procurement goals and moved consideration of this issue to Phase 2. The Commission asked parties to provide comprehensive proposals for the Commission to consider in determining

⁵⁴ GO 156 D.22-04-035, at 25-44.

whether to change existing procurement goals, including both the rationale and methodology for proposals submitted.⁵⁵

Several parties favored increasing percentage goals for eligible business enterprises.⁵⁶ SBUA argues that the goals set for MBE and WBE should be increased because these goals have not kept pace with the increasing numbers of these business entities, in particular. SBUA also argues that because the goals are aspirational they should be at least 30% for MBE and 15% for WBE because reporting entities have already exceeded existing goals.⁵⁷ CforAT agrees that current goals are too low citing the increasing diverse ownership of businesses and pointing out that the industry as a whole regularly exceeds exiting goals.⁵⁸ CforAT further argues that current goals should be increased because existing goals are not sufficient to encourage reporting companies to increase their diverse spending higher than the 32% level of the past decade.⁵⁹

NDC favors increasing percentage goals and argues that percentage goals need to be tied to objective metrics to ensure that fair proportions are calculated for each diverse business category, as well as to ensure fair opportunities and fair treatment for all stakeholders.⁶⁰ NDC comments also outline a possible methodology to calculate a proportionate share to use as a voluntary goal for each category.⁶¹

⁵⁵ November 30, 2022 Administrative Law Judge's Ruling at 4.

⁵⁶ Opening Comments filed by SBUA, CforAT, NDC. CforAT Reply Comments at 8.

⁵⁷ SBUA Opening Comments at 3-6. Reply Comments at 4-5.

⁵⁸ CForAT Opening Comments at 6-7. Reply Comments at 8.

⁵⁹ *Id.*

⁶⁰ NDC Opening Comments at 5, 10.

⁶¹ NDC Reply Comments at 3-10.

Although some parties generally support changes to procurement goals, they asserted that additional data is needed to support such changes.⁶² Parties opposing changes proposed additional workshops and study before changing the voluntary procurement goals⁶³ or that modifications are not needed currently.⁶⁴ Although several parties urged the Commission to increase the voluntary percentage goals, comments lacked data or evidence warranting changes at this time. Similarly, those that asked the Commission to increase voluntary percentage goals failed to put forward a methodology for our consideration. Only NDC provided an initial methodology proposal.

While it is understandable to hope that raising procurement goals by percentages at this juncture would also result in procurement increases, there is insufficient evidence to support this assertion. In short, additional spending is not captured in actual percentages procured. An entity may spend more money in general, while their percentage goals decrease. As a result, we do not find the argument that raising percentage goals now would result in increased procurement without data to support this conclusion.

At this time, the Commission will not change the voluntary procurement goals. We stated our intent to open a rulemaking in approximately two years to

⁶² See generally Opening Comments filed by CTIA, Charter, Comcast, PG&E, CWA, and AT&T. See also Reply Comments filed by Comcast, PG&E, Charter, Joint Utilities, and AT&T.

⁶³ Charter Opening Comments at 7 (“Charter further recommends that the Commission hold workshops or other public forums to facilitate greater connection between participants and their suppliers and to generate further solutions to increase participation in the Supplier Diversity Program.”) See generally Opening Comments by PGE&, AT&T, CWA. Charter Reply Comments at 5, CalCCA Reply Comments at 4, Charter Reply Comments at 4, 7; and SCE Reply Comments at 3-4.

⁶⁴ Comcast Opening Comments at 4.

set voluntary procurement goals for PDBE.⁶⁵ We also added that we would consider different methods for setting this goal, as well as other modifications to enhance the Supplier Diversity Program.⁶⁶ In light of our intent to address other modifications, we may address increasing the voluntary percentage goals for each type of business entity at that time makes sense.

8. Clearinghouse Eligibility Standards

The Commission decided it would review the Clearinghouse Eligibility Standards used to determine whether a supplier is eligible for certification in Phase 2. To facilitate party input on this issue, the Ruling on Phase 2 provided information used by the Clearinghouse to parties as follows: Attachment B provided the Clearinghouse Eligibility Standards, Attachment C provided the four different applications for requesting certification by the Suppliers Clearinghouse, and required supporting documents were provided at Attachment D.⁶⁷

Parties were then asked to provide comments on the Eligibility Standards, Application(s), and required documents as well as whether it is reasonable to:

1. Define the Eligibility Standards as guidelines and rules used by the Supplier Clearinghouse to verify eligibility of businesses owned and controlled by women, minority LGBT, and/or persons with disabilities; and
2. Authorize the Supplier Clearinghouse, an entity that contracts with utilities, but is supervised by the Commission to rely on those guidelines and standards to make its eligibility determination.⁶⁸

⁶⁵ D.24-01-035, at 43.

⁶⁶ *Id.*

⁶⁷ November 30, 2022 Administrative Law Judge's Ruling at 5, and Attachments A-D.

⁶⁸ *Id.*

Several parties commented that they either took no position, the guidelines were helpful, or did not have any suggestions at this time.⁶⁹ Party comments and reply comments did not specifically address the use of the Eligibility Standards as rules or guidelines for use by the Clearinghouse to verify eligibility or the reliance on the Eligibility Standards to make eligibility determinations. CWA⁷⁰ and PG&E,⁷¹ suggested that the Commission seek input through workshops, and input from stakeholders who may not be parties.

NDC suggested updating the Eligibility Standards to address the “ownership” structure of non-profits and that the requirement of ownership not apply to nonprofits whose daily business operations are controlled by a member or members of the covered diverse communities.⁷² Comcast also limited their comments to recommending that the Eligibility Standards be updated to permit certification of MBEs that have secured equity investments from non-minority professional institutional investors provided the MBE retains management and control and a percentage of economic equity.⁷³ Council asked that the Eligibility Standards be updated to add a new category for “Disadvantaged Business Enterprise”⁷⁴ though no definition was provided for this proposed category, the proposal was similar to Comcasts proposal focusing on equity investments and

⁶⁹ Shell Opening Comments at 6; *see also* Opening Comments filed by the Joint Utilities, PG&E, Charter, SBUA, Southwest Gas, and SCE.

⁷⁰ CWA Opening Comments at 5-7.

⁷¹ PG&E Opening Comments at 3.

⁷² NDC Opening Comments at 10-13.

⁷³ Comcast Opening Comments at 5.

⁷⁴ Council Reply Comments at 2.

requiring more weight to the management and independence criteria to allow for more flexibility with the ownership criteria.⁷⁵

After consideration of party comments and reply comments, we find insufficient data to support revision of the Eligibility Standards at this time. The Supplier Clearinghouse has already certified non-profit businesses as eligible “business enterprises” under GO 156.⁷⁶ The Commission cannot eliminate the California domicile requirements for DVBE because it is required by the Military and Veterans Code Section 999⁷⁷ and Pub. Util. Code Section 8284. The Commission may revisit the Eligibility Standards or the Clearinghouse application process in a subsequent rulemaking to update GO 156.

9. GO 156 Definition of Minority

The Commission deferred the issue of whether the definition of “minority” should be updated for consideration to Phase 2 of this proceeding.⁷⁸ The Ruling on Phase 2 posed the following question to parties:

Whether the Commission should revise the definition of minority” set forth in GO 156? Should the Commission add alternative criteria by which an applicant may meet the definition, and if so, what specific criteria should the Commission consider?

Currently, GO 156, Section 1.3.4 Minority Business Enterprise defines an MBE as follows:

(1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly

⁷⁵ Council Reply Comments at 2; Comcast Opening Comments at 5.

⁷⁶ Twelve (12) nonprofits are currently certified by the Clearinghouse, as of this writing. See [https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/business-and-community-outreach/supplier-diversity-program.](https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/business-and-community-outreach/supplier-diversity-program))

⁷⁷ Cal. Mil. and Vet. Code § 999 *et seq.*

⁷⁸ D.22-04-035 at 59.

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 or other covered entity 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.

The Ruling on Phase 2 proposed that the definition of minority be based on California Government (Cal. Govt.) Code Section 14839(a)(10) and AB 2019 (Stats. 2022, Petrie-Norris), and proposed the following definition:

1.3.4. Minority Business Enterprise "Minority business enterprise" 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 or other covered entity 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.⁷⁹

The Ruling on Phase 2 proposed updating GO 156 Section 1.3 Definitions as follows:

1.3.9. Black (a person having origins in any of the Black racial groups of Africa).

1.3.10. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean, or other Spanish or Portuguese culture or origin regardless of race).

⁷⁹ November 30, 2022 Administrative Law Judge's Ruling at 6-7.

1.3.11. Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian).

1.3.12. Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including North Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh).⁸⁰

The Joint Utilities, Southwest Gas, and Comcast supported the proposed definition of the word “minority” without additional input or comment.⁸¹ SBUA recommended the Commission change its definition of minority to align with the United States Office of Management and Budget.⁸² CalCCA asserted that the proposed definition should be updated to be aligned with minority group names in the proposed definitions and that the proposed definitions (1.3.9 through 1.3.12) should be updated to replace African American with Black, Hispanic Americans with Hispanic, Asian Pacific Americans with Pacific-Asian and to add a new section 1.3.13 for “Other Groups and Individuals” to add groups identified as disadvantaged by Federal guidelines. CalCCA believes this would allow GO 156 definitions to keep pace with the federal definition of minority as it evolves.⁸³ SCE comments proposed similar modifications to sections 1.3.9-1.3.10.⁸⁴ NDC comments similarly offered modifications to the proposed definition including the addition of titles to the introductory paragraph that would match specific the

⁸⁰ *Id.* at 7-8.

⁸¹ Comcast Opening Comments at 7. Comcast noted that some ethnic categories require additional clarification (i.e. it is unclear how people of Middle Eastern and North African descent should be categorized within the proposed categories provided).

⁸² SBUA Opening Comments at 7.

⁸³ CalCCA Opening Comments at 7.

⁸⁴ SCE Opening Comments at 13.

specific definitions (1.3.9-1.3.12) and suggested the addition of two categories; Asian-Indian and Other Groups and Individuals.⁸⁵ Finally, CWA understood the proposal as basing the definition of minority on Cal. Govt. Code Section 14839 (a)(10)⁸⁶ and did not propose an alternative.

After a review of party input, the Commission does not have sufficient evidence or information that a change is needed or that the definition should be narrowed or expanded. The Commission views CalCCA's proposal that the definition of 'minority' be based on Cal. Govt. Code Section 14839, as a narrowing of the definition of 'minority' as the statute makes no specific mention of LGBT members of the community or disabled people in the delineated definitions. The Commission's experience gained through adjudication of appeals of eligibility determinations made by the Supplier Clearinghouse also do not lead us to believe modifications to the definition of minority are warranted at this time. Very few appeals are filed annually seeking to overturn a Supplier Clearinghouse denial of eligibility. Removal of the "other" category was not a scoped issue. Therefore, the Commission makes no changes to the definition of the term "minority." This issue may be revisited in a successor proceeding updating GO 156.

10. Procedural Matters

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

⁸⁵ NDC Opening Comments at 15-16.

⁸⁶ CWA Opening Comments at 8.

11. Comments on Proposed Decision

The proposed decision of Commissioner Karen Douglas in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

12. Assignment of Proceeding

Karen Douglas is the assigned Commissioner and Lena Afary is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Commission issued D.22-04-035 on April 18, 2022, updating GO 156 and that initiated Phase 2 of R.21-03-010.
2. The Supplier Diversity Program, administered by the Commission, promotes supplier diversity in utility practices by identifying diverse and eligible businesses for contracting opportunities for supplier diversity in procurement by covered entities by providing these businesses with contracting opportunities and benefits.
3. The Clearinghouse verifies eligibility of prospective utility suppliers seeking certification as WBE, MBE, LGBTBE, and PDBE.
4. OSDS verifies eligibility of DVBE.
5. D.22-04-035 revised GO 156 to require annual reporting of Workforce Diversity and Board Diversity by the covered entities but deferred implementation of these requirements to Phase 2.
6. Revisiting the requirement to report on workforce and board diversity is not a scoped issue in Phase 2.

7. Commission staff considers information from the EEOC form EEO-1 as a starting point for party and stakeholder input on implementation for both workforce and diversity reporting.

8. Aligning the data received as required to satisfy Workforce and Board Diversity reporting requirements with that currently reported to state and federal agencies reduces the burden of reporting diversity data to the Commission.

9. Confidential data such as salary information, disability status of employees, employees' gender and sexual orientation should be protected.

10. A reporting program will allow the Commission to collect and analyze non-confidential data.

11. Limiting workforce reporting to the non-confidential workforce data that is already reported to other state and federal agencies such as the EEOC on the EEO-1 Component in their annual GO 156 reports will allow the Commission to receive sufficient data while minimizing the burden on covered entities and avoiding any confidentiality concerns.

12. board diversity data and descriptions of board diversity bodies are publicly available and can be provided by reporting entities.

13. Party input on Board Diversity Reporting implementation was limited.

14. In Phase 1, the Commission updated voluntary procurement goals as follows: 15% from MBEs, 5% from WBEs, 1.5% from DVBE

15. In Phase 1, LGBTBE goals were initiated at 0.5% for 2022, 1% for 2023 and 1.5% beginning in 2024.

16. In Phase 1, no procurement goals were added for PDBE.

17. No data or evidence was presented to warrant changes to the voluntary percentage goals.

18. No data or evidence was presented to warrant changes to the Clearinghouse Eligibility Standards.

19. The term “minority” is defined in Section 14 of GO 156.

20. The Commission does not have sufficient evidence or information to support changing the definition of the term “minority.”

21. Commission experience gained through examining the few appeals filed annually seeking to overturn Clearinghouse determinations of eligibility does not support the need to modify the definition of “minority.”

22. Reporting both Workforce and Board Diversity data will allow the Commission to collect information that does not require confidential treatment, analyze the data reported, review the correlation of the data to the goals of the Supplier Diversity Program, determine whether additional data is needed, and refine implementation of these reporting requirements.

23. The Commission regularly initiates rulemaking proceedings to update GO 156.

Conclusions of Law

1. Allowing GO 156 covered entities to report non-confidential workforce diversity data that is currently reported to other Federal and State agencies to comply with Section 14 is reasonable because it will not be overly burdensome and will provide sufficient data for the Commissions’ needs.

2. Including a brief description of board governance and publicly available data in annual reports will provide sufficient information for the Commission’s needs.

3. Data and information supporting modification of voluntary procurement goals is not sufficient to make changes at this time.

4. Data and information warranting modification of the Clearinghouse Eligibility Standards is insufficient to make changes at this time.

5. Data and information supporting modification of the definition of minority in GO 156, Section 1.3.4 is not sufficient to make changes at this time.

O R D E R

IT IS ORDERED that:

1. General Order (GO) 156 covered entities shall submit non-confidential workforce data that is already reported to other state and federal agencies such as the Equal Employment Opportunities Commission on the EEO-1 as part of their annual GO 156 filings commencing with the 2024 reporting year in their GO 156 annual reports that are due on or before March 1, 2025.

2. General Order (GO) 156 covered entities shall provide a brief description of their board diversity data and any publicly available board data in their annual GO 156 report submissions commencing with 2024 GO 156 reporting due on March 1, 2025.

3. As part of their annual submissions set forth in Ordering Paragraph 2, General Order (GO) 156 covered entities are encouraged to voluntarily report other information already reported to other State or Federal agencies.

4. Rulemaking 21-03-010 is closed.

This order is effective today.

Dated _____, 2024, at San Francisco, California.