

PROPOSED DECISION

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6/11/2015 Item 18

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**

(Mailed 5/12/2015)

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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**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 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 (LGBT) business enterprises (LGBTBEs);¹
- (2) Adopt the LGBT status qualifiers created by the National Gay and Lesbian Chamber of Commerce;
- (3) Authorize and direct the Clearinghouse to implement the amended GO 156 we adopt today and to develop and implement its verification/certification and renewal/recertification processes for the LGBTBEs for purposes of the Utilities' Supplier Diversity Program;
- (4) Direct the Utilities² to take the necessary actions to set the foundations for the Clearinghouse's implementation of the amended GO 156 we adopt today; and
- (5) Adopt a five-year plan and framework for (a) the Utilities to gather data and experience and (b) the Commission to

¹ The amended GO 156, Attachment A, also reflects minor corrections including some clarifying updates. 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.

² In this decision, Commission-regulated electrical, gas, water and telephone corporations with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates are referred to as the Utilities.

consider setting meaningful target goals for the LGBTBEs for purposes of the Utilities' Supplier Diversity Program.

1. Background

Beginning in 1986, the California Legislature enacted a series of statutes, the Public Utilities Code³ 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).⁴ These Code sections lay the legislative foundation for the Utilities' Supplier Diversity Program.

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

³ Unless otherwise indicated, all references to "Code" in this decision refer to the Public Utilities Code.

⁴ The Legislature passed Assembly Bill (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 AB 3678, the Commission issued GO 156, which established guidelines for the utilities to follow in meeting these requirements. (Code sections 8281 *et seq.*).

Program and have expanded their procurement programs to achieve the statutory purposes of these Code sections.

In this decision, Commission-regulated electrical, gas, water and telephone corporations with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates covered by these Code sections are referred to as the Utilities.

General Order (GO) 156, first adopted in 1988, sets forth the 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 (LGBTBEs);
- (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 reports⁵ and plans (including goals and timetables, not quotas) for increasing procurement from the LGBTBEs in all categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.⁶

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.⁷

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 Program to the LGBTBEs and to make other minor corrections to the most

⁵ 2016 Report refers to Report due in March of 2016, covering 2015 activities. 2017 Report refers to Report filed in March of 2017, covering 2016 activities, and so on.

⁶ Code section 8283(a). *See also* Code section 8283(b) which 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."

⁷ Code section 8281(b)(2).

current version of GO 156, presently in effect, reflecting only the amendments through May 6, 2011.⁸

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 initial set of 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
- California Water Association (CWA)

⁸ Attachment B to this decision is the version of GO 156, presently in effect, reflecting only the amendments through May 6, 2011.

- 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)

On January 14, 2015, the proposed decision (the January PD) in this proceeding was mailed for comment. Opening comments to the January PD were subsequently filed by NGLCC, PG&E, AT&T and SCE. No reply comment was filed by any party.

On February 25, 2015, the January PD was withdrawn. In this decision which supercedes the January PD, all the comments filed in this proceeding, including the comments to the January PD, have been examined thoroughly and 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**3.1. Comments to the OIR**

Comments, including one reply comment,⁹ 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 LGBTBEs. Many noted that additional foundational information should first be collected before the Commission sets a goal for the LGBTBEs. Several parties also 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 LGBTBEs 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. Some of the Utilities support the NGLCC's proposal that it should be the sole verifying/certifying entity instead of the Clearinghouse.

⁹ On November 12, 2014, SDG&E and SoCalGas filed a Joint Reply Comment to the OIR.

3.2. Comments to the ALJ's Ruling

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 LGBTBEs 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 comments filed by the NGLCC and other parties demonstrate that the NGLCC currently 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 LGBTBEs. The NGLCC notes that it has verified/certified 189 LGBTBEs in the last two years. The NGLCC confirmed that it is ready, willing and able to begin verifying/certifying LGBTBEs 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 LGBTBEs in its current database and has the necessary capacity to data share with the Clearinghouse on those verified/certified LGBTBEs.

The NGLCC, in its comments to the ALJ's Ruling, proposed to address some of the concerns raised by the ALJ and indicated that, as part of the Commission's consideration of the NGLCC as a potential verifying/certifying/renewing entity, the NGLCC would be willing to (1) waive fees for verifications/certifications and renewals/recertifications of the LGBTBEs for purposes of GO 156 Supplier Diversity Program participation, (2) find ways to align its verification/certification and renewal/recertification periods with those of the Clearinghouse's periods, if needed, and (3) work with and notify the

Commission if there are any changes to the LGBTBE status qualifiers and verification/certification/renewal processes and to communicate with the Commission on all issues concerning the LGBTBEs and their participation in the opportunities afforded them under GO 156.

3.3. Comments to the January PD

In its opening comment to the January PD, the NGLCC urges that the Commission modify the January PD to exclusively authorize the NGLCC to certify LGBTBEs. The NGLCC reiterates that a reciprocal certification for LGBTBEs through the Clearinghouse *and* the NGLCC is unnecessary, costly, redundant, and will create discrepancies in the standard of service accorded to the certified LGBTBEs. Some of the utilities agree with this comment by the NGLCC. The NGLCC contends that it is unwilling to waive fees to the LGBTBEs or make other changes to its business model to align its processes with that of the Clearinghouse, unless the NGLCC is authorized by the Commission as the exclusive certification body.

The NGLCC asserts that the use of the acronym LBE in the January PD to refer to LGBT business enterprise is inaccurate and not properly inclusive. The NGLCC contends that the established industry, national standard acronym for certified LGBT business enterprise is LGBTBE and that acronym LBE sends the wrong message to members of the gay, bisexual, and transgender communities.

AT&T and PG&E contend that the January PD should be modified and should take into consideration certain implementation constraints anticipated by the utilities. Specifically, PG&E and other commenting utilities contend that, given the limited number of known LGBTBEs in the utility industry, more time than three years set forth in the January PD is needed to understand the market of eligible LGBTBEs, educate the businesses about the Utilities' Supplier

Diversity Program's advantages and focus on their outreach efforts. Other commenting utilities generally echo this comment.

SCE contends that the January PD contains some factual and legal errors.¹⁰

4. Discussion

4.1. Existing GO 156 Supplier Diversity Program

Currently, the Commission contracts with an outside vendor for the work of verifying/certifying/renewing the women-owned business enterprises (WBEs) or minority-owned business enterprises (MBEs) (collectively WMBEs) and maintenance of the Clearinghouse database of WMDVBE identification and verification/certification/renewal 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/certifies 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.

As an alternative to the Clearinghouse processes noted above, WMBEs may choose to secure a verification/certification/renewal through an approved comparable third party agency.¹¹ Thus, if a WMBE has a certification from an approved third party agency, the Clearinghouse's stream-lined comparable

¹⁰ We discuss these issues in Section 6 of this Decision.

¹¹ By Resolution Exec 001, dated, July 9, 2009, the Commission established that "going forward we give businesses the choice of either certifying through our Clearinghouse or through one of two CAV agencies...." The Commission also adopted a policy to accept only the CAVs that fully demonstrate that the applicant (1) meets the 51% women or minority ownership requirements [in the case of publicly owned businesses, 51% of the stock]; (2) the applicant meets the requirements concerning control of management and daily business operations pursuant to Code sections 8282 *et seq.* and GO 156; and (3) any other program requirements. *Id.* at 11.

agency verification (CAV) process¹² would be triggered and such business would not need to complete a full Clearinghouse verification/certification or renewal but instead complete a much simpler Clearinghouse process.¹³

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) because the statute mandates that only DGS is authorized to verify/certify the DVBEs.¹⁴ Therefore, 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, the 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 are required to submit verification/certification forms at least once every three years to the Clearinghouse for renewal/recertification process.

¹² By Resolution Exec 001, dated, July 9, 2009, the Commission adopted the recommendation that the Clearinghouse accept the certifications/verifications/renewals Women's Business Enterprise National Council (WBENC) and National Minority Supplier Development Council (NMSDC) through a stream-lined Clearinghouse process without any time limitation as erroneously suggested by SCE, in its opening comment to the January PD. Since 2009, the practice of the Clearinghouse includes acceptance the CAVs from WBENC and NMSDC through stream-lined Clearinghouse CAV processes.

¹³ *Ibid.*

¹⁴ Code section 8283(e)(2).

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 and:

- (1) Update the provisions of GO 156 to extend the Utilities' Supplier Diversity Program to the LGBTBEs;
- (2) Establish the verification/certification, renewal/recertification, complaint and appeal processes for the LGBTBEs and incorporate and/or update the attendant roles and responsibilities of the Clearinghouse;
- (3) Direct the establishment and maintenance of applicable database;
- (4) Establish the related reporting, monitoring, oversight and auditing requirements; and
- (5) Make other amendments to 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 including some clarifying updates.

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 LGBTBE 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. NGLCC'S Request

The NGLCC, in its opening comment to the OIR, requested that it should be authorized to verify/certify/renew the LGBTBEs instead of the Clearinghouse, as the sole verifying/certifying/renewing entity.

The NGLCC, in its comments to the ALJ's Ruling, proposed to address some of the concerns raised by the ALJ and indicated that, as part of the Commission's consideration of the NGLCC as a potential verifying/certifying/renewing entity, the NGLCC would be willing to (1) waive its fees for verifications/certifications and renewals/recertifications of the LGBTBEs for purposes of GO 156 Supplier Diversity Program participation, (2) find ways to align NGLCC's verification/certification and renewal/recertification periods with those of the Clearinghouse's periods, if needed, and (3) work with and notify the Commission if there are any changes to the LGBTBE status qualifiers and verification/certification/renewal processes and to communicate with the Commission on all issues concerning the LGBTBEs and their participation in the opportunities afforded them under GO 156.¹⁵

Then, in its comment to the January PD, the NGLCC clarifies that it is unwilling to waive the fees to the LGBTBEs or make other changes to NGLCC's business model to align its processes with that of the Clearinghouse, unless the NGLCC is authorized by the Commission as the **exclusive** certification body. After careful consideration and as discussed below, we reject NGLCC's request

¹⁵ The NGLCC's December 5, 2014 Responsive Comments to the ALJ's Ruling.

to be authorized as the exclusive certification body. Instead we decide in favor of preserving the current Clearinghouse processes.

First, the current Clearinghouse verification/certification and renewal processes present several important and positive design features that would be beneficial to the LGBTBEs entering the GO 156 Programs. The LGBTBEs would not have to pay any fees. Such processes would also be subject to the Commission's direct oversight and review, including additional procedural safeguards before the Commission. With the exception of the NGLCC's willingness to waive fees, NGLCC processes do not offer comparable design features.

Second, in D.06-08-031, the Commission carefully evaluated and rejected a proposal very similar to what the NGLCC is requesting here. We find that decision therefore to be highly instructive. In that decision, the Commission examined the prudence of the current Clearinghouse processes for the business enterprises and rejected a utility's proposal to (1) create a process in which the Commission would rely entirely on third parties such as Women's Business Enterprise National Council (WBENC) or National Minority Supplier Development Council (NMSDC) for verification/certifications and renewals and (2) remove the Clearinghouse from the role of verifying/certifying/renewing the WMBEs for the Utilities' Supplier Diversity Program. In rejecting that similar proposal, the Commission stressed the importance of its oversight over the entities that are authorized to verify/certify and renew the business enterprises in the GO 156 programs.¹⁶ The Commission also emphasized that its oversight is essential to

¹⁶ *Id.* at 11.

preserving and maintaining the highest level of integrity in ensuring that verification and certification of GO 156 suppliers is not compromised and explained:

... while other verifying agencies and organizations may provide excellent services, we do believe that unbridled comparable verification will lead to a lack of uniformity and a general weakening in [the Commission's] rigorous standards.¹⁷

Here, the NGLCC's request is nearly identical to what was proposed, deliberated and rejected in D.06-08-031. By authorizing the NGLCC as the only certifying entity and excluding all others, we would be granting unbridled comparable verification authority to the NGLCC. And without Commission oversight and control, there would be great potential for lack of uniformity and a general weakening in our rigorous standards, as feared and noted in D.06-08-031. The rationales applied in D.06-08-031 apply to the NGLCC's request today, and our approval of the NGLCC's request (to be the sole entity the Commission would rely on for verifications/certifications and renewals of LGBTBEs) would not be in the public interest.

Third, for those business enterprises that are already in the Clearinghouse process for WBEs and/or MBEs, it is both convenient and efficient to process their LGBTBE status applications concurrently through the Clearinghouse as they process their WMBE status applications. To require an applicant to process their WBE and MBE status applications through the Clearinghouse while also

¹⁷ *Ibid.*

requiring the same business to start a different process through the NGLCC for LGBTBE status application is inconvenient and inefficient.

Fourth, an approach similar to our current approach to the Clearinghouse processes for WMBEs would afford LGBTBEs more flexibility and greater access to the GO 156 Program than if we were to authorize the NGLCC as the sole entity the Commission would rely on for verifications/certifications and renewals of LGBTBEs. WMBEs currently enjoy the choice of either certifying through the Clearinghouse or through one of the approved comparable third party agencies.¹⁸ If a WMBE has a certification from an approved third party agency, the Clearinghouse's stream-lined CAV process would be triggered¹⁹ and such business would not need to complete a full Clearinghouse verification/certification or renewal process. The LGBTBEs should also be afforded the option of potential multiple entry points consistent with the CAV process we adopted in Resolution Exec. 001 for WMBEs.

On a related note, the reason the DVBEs do not have the option/choice of being verified/certified through the Clearinghouse or other third parties is because the statute mandates that the DGS is the only body authorized to verify/certify the DVBEs.²⁰ Here, we note, there is no statutory mandate that NGLCC be the only body authorized to verify/certify the LGBTBEs. Therefore,

¹⁸ See *supra*, fn. 12.

¹⁹ Resolution Exec 001, dated, July 9, 2009, the Commission modified D.06-08-031 and updated the Commission's GO 156 CAV policies and authorized WMBEs the choice of either certifying through the Clearinghouse or through one of the two approved comparable agencies, WBENC or NMSDC.

²⁰ Code section 8283(e)(2).

we could extend that option to the LGBTBEs, if they so choose, and find that the LGBTBEs should be afforded the same options afforded to the WMBEs.

Fifth, another reason why we reject the NGLCC's request is that by authorizing the NGLCC as the exclusive verifying/certifying/renewing entity, the Commission and LGBTBEs in the GO 156 Program could potentially be left in a precarious position without a contingency plan. For instance, unlike the Clearinghouse, the Commission has no direct control or oversight over the NGLCC and its security, future and policy directions. In the unfortunate event that the NGLCC subsequently becomes defunct or otherwise changes its course inconsistent with the Commission's policies and directions for GO 156, LGBTBEs would have no alternative processes to enter the GO 156 Utilities' Supplier Diversity Program. Similarly, in the unfortunate event that the NGLCC changes its certification/verification/renewal processes or requirements or implements its certification/verification/renewal processes in manner that the Commission finds problematic or otherwise objectionable, the Commission would lack effective control and oversight over the NGLCC to timely respond to those and other similar issues. Therefore, the Clearinghouse's certification/verification/renewal processes should remain in place as the basic processes, irrespective of whether NGLCC decides to participate in the comparable agency application process to begin certifying/verifying/renewing the LGBTBEs for purposes of the Utilities' Supplier Diversity Program, in addition to the Clearinghouse's certification/verification/renewal processes.

Finally, the Commission has already rejected nearly identical proposals by other groups (e.g. NMSDC and WBENC). Under the circumstances, authorization of the NGLCC as the only certifying entity for the LGBTBEs would

be preferential treatment of the NGLCC. Such preferential treatment of the NGLCC would be contrary to public policy.

Based on the above considerations, we reject the NGLCC's request that it be authorized as the exclusive verifying/certifying/renewing entity for the LGBTBEs for the GO 156 Program.

4.5. The Clearinghouse Authorization and Implementation Guidance

We authorize the Clearinghouse to verify/certify and renew/recertify the LGBTBEs as discussed below and as authorized in this decision and the attached amended GO 156 being adopted today.

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 to implement 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.

With only a couple months left until the contract expiration, it is operationally impractical for the Utilities to interrupt the current contract to amend it to begin implementing all of the changes being adopted in the attached amended GO 156. Thus, these Utilities' implementation of the attached GO 156 will be suspended very briefly until July 1, 2015 when the upcoming

Clearinghouse vendor/operator contract (New Contract) begins. Meanwhile, the Utilities that enter into the New Contract with the Clearinghouse vendor/contractor must ensure that the New Contract:

- (1) Authorizes and directs the Clearinghouse vendor/operator to maintain the database associated with the LGBTBEs; and
- (2) Authorizes and directs the Clearinghouse vendor/contractor, by or before September 1, 2015, to develop and implement verification/certification and renewal/recertification processes for the LGBTBEs that comply with this decision and GO 156 we adopt today.

4.6. 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.]*

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 LGBTBEs also.²¹ 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 reports²² and plans detailing, *inter alia*, program challenges, accomplishments, goals, timetables and progress towards the goals. This issue and what the Utilities therefore should do are further elaborated in our discussion of the five-year plan in latter part of this section of the decision.

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.²³ To date, the

²¹ Code section 8283, subsection (d).

²² 2016 Report refers to Report due in March of 2016, covering 2015 activities. 2017 Report refers to Report filed in March of 2017, covering 2016 activities, and so on.

²³ 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 WMDVLGBTBE program and utilities retain the authority to use legitimate business judgment to select a supplier for a particular contract.

Utilities have reported annually on their procurement purchases from WMDVBEs, and their progress in meeting the procurement goals.

We recognize that, at this time, there is no Commission set percentage or numerically-based goal for the LGBTBEs, 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 LGBTBEs and that additional foundational information on the LGBTBEs should first be collected. To that end, we have considered all of the parties' proposals and find that Comcast's second alternative proposal to be the preferred approach here, as discussed below.²⁴

Comcast correctly observes, in its opening comments to the OIR, that the Clearinghouse has no LGBTBEs in its database at this time and has yet to implement the LGBTBE certification procedures or certify any such businesses. As such, Comcast reasons it will be very difficult for the Utilities to find an adequate pool of qualified and certified LGBTBEs and enter into procurement contracts with them immediately.

Under the circumstances, Comcast's first proposal is that the Commission should allow the Utilities to include LGBTBE 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 LGBTBE procurement over a reasonable period of time in order

²⁴ Comcast's Opening Comment to OIR, dated November 5, 2014, at 3-4.

to ensure that they are able to find qualified LGBTBEs and establish contracts with them on a reasonable basis (Comcast's Second Proposal).

We reject Comcast's First Proposal, without prejudice. There is insufficient basis to justify simply lumping in the LGBTBEs within the existing percentage 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 LGBTBE procurements as part of the percentage goals for the minority-owned businesses and/or the women-owned businesses. Without knowing more about the LGBTBEs, 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 modifications 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 LGBTBEs, and after a period of three years, the Commission should review the issue to establish a meaningful Commission established target goal, as appropriate, for LGBTBE procurement.

The Utilities have raised concerns about prematurely setting numerically-based targets and/or goals for LGBTBEs. We share those concerns and believe that the initial implementation efforts, associated with AB 1678 and the amended GO 156 we adopt today, should focus less on the numerical targets and/or goals but instead the focus should be on smoothly integrating AB 1678 requirements to their GO 156 programs by identifying the LGBTBEs, services, and areas of need for which there are such qualifying LGBTBEs as well as any and all other effective outreach efforts to build the LGBTBE pool. During this time and with so many unknown variables, the Utilities will require some flexibility to set their

own targets and goals in accordance with different Utilities' experiences, operations, needs for services, and available LGBTBE contracting opportunities.

Recognizing all of these concerns, the below outlined five-year plan/approach effectively balances the operational needs and limitations of the Utilities, the need for additional foundational information on the LGBTBEs, 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 and outlined below:

- (1) In setting the numerically-based target percentage goal(s) for the LGBTBEs' participation in procurement programs of the participating utilities, each utility shall do the following:
 - (a) In 2015, the first year of implementation of the LGBTBEs' inclusion in the GO 156 Program, the Utilities shall focus on integrating Assembly Bill 1678 requirements by identifying the LGBTBEs, services, and areas of need for which there are such qualifying LGBTBEs;
 - (b) During the first three years of implementing the attached amended GO 156 upon issuance of this decision and for the 2016, 2017 and 2018 annual reports and plans, the Utilities shall be excused from setting their own numerically-based goals and targets for LGBTBEs and instead focus their efforts on the following foundational and outreach activities:
 - (i) Updating corporate supplier diversity policy to include LGBTBEs and affirming the Utilities' commitment to this policy.
 - (ii) Establishing a process for recruiting and utilizing LGBTBEs.
 - (iii) Integrating LGBTBEs into their corporate talent pool of suppliers.

- (iv) Working with NGLCC, local chapters, and/or any other groups, as appropriate, in developing an enhanced understanding on how to conduct effective outreach to the LGBTBE community for the Utilities' procurement and supplier diversity staff.
 - (v) Developing targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the Utilities' Supplier Diversity Program.
 - (vi) Monitoring the progress and effectiveness of the Utilities' targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the Utilities' Supplier Diversity Program.
 - (vii) Ensuring LGBTBEs suppliers are informed of available technical assistance and capacity building programs for enhancing the supplier's business acumen.
 - (viii) Working with NGLCC, local chapters, and/or any other groups, as appropriate, to identify areas of the Utilities' program where the program is underperforming or underutilized in contracting LGBTBE and continually improving ways to enhance performance and increase the LGBTBE talent pool.
 - (ix) Updating processes, procedures and systems to support LGBTBE inclusion in procurement.
- (c) For the 2016, 2017 and 2018 annual reports and plans, the Utilities shall prepare and submit the required detailed annual plans and reports with the proposed short- and long-term goals and timetables required by Sections 9 and 10 of the amended GO 156 and Code section 8283, subsections (a), (b) and (c), and set non-numerically-based targets and goals which track the above activities (outlined

above in subsection (b)) and report on the related program challenges, accomplishments, timetables and progress towards those targets and goals;

(d) After the first three years and starting annually with the 2019 annual reports and plans, the Utilities shall:

- (i) Report on the non-numerically-based targets and goals including reports on the above activities (outlined above in subsection (1)(b));
- (ii) Establish numerically-based targets and goals for LGBTBE procurement;
- (iii) Provide updates to the previously proposed short- and long-term goals and timetables from the prior year's annual report and plan for the LGBTBE procurement; and
- (iv) Update those numerically-based targets/goals based on the experience to date, database of qualifying entities and needs of the Utilities.

(e) By January 1, 2021, the Utilities shall:

- (i) Hold a publically noticed workshop seeking input and comment from the Utilities to review the Utilities' annual reports and LGBTBE procurement challenges, accomplishments, and progress; and
- (ii) Based thereon file a joint report and recommendation for the Commission's review of whether the Commission should, going forward, set a numerically-based percentage target goal, as appropriate, for LGBTBE procurement and seek relief, if appropriate, from the requirement to annually report on the non-numerically-based targets and goals including reports on the above activities (outlined above in Section (1)(b)).

(2) The Commission's Supplier Diversity Program staff overseeing the amended GO 156 program shall continuously monitor the annual

reports, plans and Clearinghouse activities, and at or before the 2021 en banc session, present to the Commission, a report and a recommendation for setting a meaningful target goal for the Utilities' LGBTBEs procurement based on those reports, plans and experiences.

- (3) Five years after the issuance of this decision and in its 2021 annual en banc session,²⁵ or in any subsequent en banc session thereafter, the Commission should review the issue of whether the Commission should, going forward, set a percentage target goal, as appropriate, for LGBTBE procurement.

Lastly, Attachment C to this decision is the annual report form ordered by D.95-12-045 and currently used by the Utilities to submit the utilities' annual reports for the GO 156 Program. This form was previously titled "Attachment A" to D.95-12-045. It has now been nearly 20 years since the Commission issued the decision adopting that form, and we recognize that it requires updates to conform to the directives of this decision and others changes to the Utilities' Supplier Diversity Program and GO 156 since D.95-12-045. For instance, in 2009, Code sections 8281 *et seq.* was updated to include Commission-regulated water corporations with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates to be covered by those Code sections and GO 156 Utilities Supplier Diversity Program, and this

²⁵ GO 156, Section 11.3 provides:

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.

decision sets forth numerous reporting requirements as it relates to the LGBTBEs.

The Utilities are directed to work with the Commission's staff to draft an updated form for the Commission staff's approval. The updated form must conform to the directives of this and other decisions which updated different aspects of GO 156 since 1995, including D.96-12-081, D.98-11-030, D.03-11-024, D.05-12-023, D.06-08-031, and D.11-05-019. Once the Utilities' proposed updated form is approved in writing by the Commission staff, the Utilities shall submit their annual reports itemizing woman-owned, minority-owned, disable veteran-owned and LGBT-owned business enterprises (WMDVLGBTBE) program expenses pursuant to Section 9.1.3 of the amended GO 156 and do so using that approved and updated form of the report.

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 6 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. All procedural issues have been addressed. 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 January PD of President Michael Picker 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 February 3, 2015, and no reply comments were filed. Although the January PD has been withdrawn, this current proposed decision of President Michael Picker (Current PD) considers and addresses all of the comments filed in this proceeding, including the comments to the January PD.

The majority of the comments on the January PD have been considered, discussed and otherwise addressed in the applicable sections of this Current PD and/or the attachments. Below, we also separately address comments that requires some discussion but were not otherwise addressed in the previous sections of this Current PD or the attachments.

SCE, in its opening comment to the January PD, raised some concerns of factual and legal errors in the January PD. SCE contends the January PD contains a factual error and contends that the WMDVBEs do not have two entry points for certification/verifications/renewals for purposes of GO 156 stating: "... except for the first year, WMBEs have only one entry point, and ... DVBEs have always had only one entry point."²⁶

As for WMBEs, SCE is incorrect on the premise and also misguided that the NGLCC should therefore be authorized as the sole entity the Commission

²⁶ SCE's Opening Comment to the January PD, at 1.

would rely on for certification/certifications and renewals of LGBTBEs. As discussed in Section 4.4 of this Current PD, WMBEs have multiple entry points for verification/certification as well as renewals. Specifically, as an alternative to the Clearinghouse processes, WMBEs currently may choose to secure a verification/certification/renewal through an approved comparable third party agency. Thus, if a WMBE has a certification from an approved third party agency, the Clearinghouse's stream-lined CAV process is triggered and such business would not need to complete a full Clearinghouse verification/certification or renewal but instead complete a much simpler Clearinghouse process.

As for DVBES, SCE is factually correct but fails to note an important distinction between DVBES and other business enterprises such as WBEs, MBEs and also the LGBTBEs. The sole reason why DVBES have only one entry point through DGS is that it is statutorily mandated.²⁷ Code section 8293(e)(2) provides that only DGS can certify DVBES. There is no such mandate for WBEs, MBEs and LGBTBEs, as discussed in Section 4.4 of this decision.

SCE also contends the January PD contains a legal error because, by not incorporating an LGBTBE target goal within the existing target goal of 21.5 percent for WMDVBES, the Commission would be reversing a prior Commission decision without providing a legal or rationale basis for such reversal. That argument and the underlying assertions are erroneous. The prior decision SCE refers to appears to be D.11-05-019 which was a decision in proceeding, R.09-07-027, that, *inter alia*, examined and set the current

²⁷ Code Section 8283(e)(2).

Commission target goal of 21.5 percent for WMDVBEs. When the Commission issued D.11-05-019, AB 1678 was not even conceived. Thus, the new legislative mandate resulting from AB 1678 that now requires inclusion of LGBTBEs in the GO 156 Program was not part of the scope and consideration in that prior proceeding and D.11-05-019 setting that 21.5 percent target goal. Thus, any future decision to set a target goal for LGBTBEs, *in addition to* the 21.5 percent target goal set by the Commission for WMDVBEs, in D.11-05-019, would not be a reversal of D.11-05-019.

Finally, any issue, comment, proposal or motion pending but not expressly addressed in this Current PD and reflected in revisions to the Attachment A to this Current PD is deemed denied.

The Current PD of President Michael Picker 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. Three comments to the May 12, 2015 proposed decision has been filed by PG&E, SCE and the NGLCC.

In their comments, PGE and the NGLCC renew their prior recommendations that the Commission approve the NGLCC as the sole certifying agency.²⁸ These recommendations were fully considered and discussed in this decision. No additional information and arguments, not

²⁸ While noting its disappointment that it is not being authorized as the sole certification body for LGBTBEs, the NGLCC reemphasizes its concern that the Clearinghouse may not have the “cultural competency” to process and manage the highly sensitive and personal information that are at the core of LGBTBE certifications. (NGLCC Comment to May 12, 2015 PD, p. 3.) In recognition of these very concerns, the implementation schedule this decision sets out affords the Clearinghouse the time needed to develop processes that will take into consideration all those sensitive and difficult concerns.

previously considered, has been raised. Therefore, these renewed recommendations will not be revisited and further discussed here.

Alternatively, if the NGLCC is not approved as the sole certifying agency, the NGLCC's comment seeks clarification on how the NLGCC could receive the Commission's approval as a comparable verifying agency, similar to the WBENC and the NMSDC.

In 2009, the Commission granted the WBENC and the NMSDC the comparable verifying agency statuses upon full evaluation of those agencies.²⁹ For any other similarly situated agency to become an approved comparable verifying agency, the Commission must also review the verifying agency's request to become a comparable verifying agency (Request) to determine whether that agency's objectives, eligibility requirements, required documentation, review and certification processes and those of the Clearinghouse are substantially similar.

If the NGLCC wishes to initiate that review, its Request should be made in writing to the Commission's GO 156 Staff who shall evaluate the Request and make a recommendation to the Commission within 60 days of receiving a completed written Request. The Request must include a detailed explanation showing that the NGLCC's objectives, eligibility requirements, required documentation, review and certification processes are substantially similar to those of the Clearinghouse. Upon review of the Request by GO 156 Staff and the Commission's consideration GO 156 Staff's Recommendation, if the NGLCC's

²⁹ See Resolution Exec 001, dated July 9, 2009.

Request is approved, the Commission will issue a resolution granting the NGLCC its comparable verifying agency status.

Finally, SCE contends that:

In rejecting the NGLCC as the exclusive certifier for LGBT business enterprises, the May PD is unclear whether this means that (a) both the NGLCC and Clearinghouse can perform certifications for purposes of GO 156, and the utilities can accept certifications from the NGLCC or the Clearinghouse, or (b) the utilities can accept certifications from the Clearinghouse only for purposes of GO 156, and that a LGBT business enterprise that is certified by NGLCC must still be certified through the Clearinghouse's stream-lined CAV process. SCE believes the Commission intends the latter.

Both of the above interpretations by SCE are incorrect. At this point, only the Clearinghouse is being authorized to perform certifications for the LGBTBEs purposes of GO 156 under this decision. Accordingly, at the present time, the Utilities should only accept LGBTBE certifications from the Clearinghouse.

As discussed in Section 4.4 of this decision, the stream-lined CAV process applies only when a third party verifying agency has first been approved by the Commission as an approved comparable verifying agency.³⁰ Here, the NGLCC is not an approved comparable verifying agency nor has NGLCC requested to become one.

In the preceding paragraphs of this Section of the decision, we clarify the process for the NGLCC to become an approved comparable verifying agency. If and once the NGLCC becomes an approved comparable verifying agency through that process, then a LGBT business enterprise may choose to be certified

³⁰ See *supra* at 17.

though (1) the full Clearinghouse process or (2) if they possess an NGLCC certificate, such an LGBT business enterprise will have the choice to be certified through the Clearinghouse's stream-lined CAV process.

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 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 LGBTBEs.

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 including some clarifying updates.

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. At this time, it is too early for the Commission to set a target percentage or numerically-based goal for LGBTBE procurement without additional foundational information on the LGBTBEs.

6. Comcast's Second Proposal regarding how the Commission should approach the issue of setting a target percentage goal(s) for LGBTBE

procurement, with some modifications discussed in this decision, balances the operational needs and limitations of the Utilities, the need for additional foundational information on the LGBTBE, 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.

7. Attachment C to this decision is the annual report form ordered by D.95-12-045 and currently used by the Utilities to submit the Utilities' annual reports for the GO 156 Program. This form was previously titled "Attachment A" to D.95-12-045.

8. The Commission has previously granted the comparable verifying agency statuses to two agencies (the WBENC and the NMSDC, in Resolution Exec 001, dated July 9, 2009); and those approvals were based upon full and careful evaluation of those agencies and based upon conclusion that those agencies' objectives, eligibility requirements, required documentation, and review and certification processes are substantially similar to those of the Clearinghouse.

9. To date, the Commission has not clearly outlined its process on how an agency may become an approved comparable verifying agency.

10. The NGLCC is not an approved comparable verifying agency under the GO 156.

11. 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.

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

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 the Clearinghouse to verify/certify and renew/recertify the LGBTBEs.
4. By July 1, 2015, the Commission should direct the Utilities that enter into the New Contract with the Clearinghouse vendor/contractor, which would begin July 1, 2015, to ensure that the New Contract:
 - (a) Authorizes and directs the Clearinghouse vendor/operator to maintain the database associated with the LGBTBEs; and
 - (b) Authorizes and directs the Clearinghouse vendor/contractor, by or before September 1, 2015, to develop and implement verification/certification and renewal/recertification processes for the LGBTBEs that comply with this decision and GO 156 we adopt today.
5. Pursuant to AB 1678 requirements, the Utilities should, starting with their 2016 annual reports and plans, begin reporting annually on their procurement purchases from the LGBTBEs, and their progress in meeting the procurement goals for the LGBTBEs as discussed in this decision.
6. The Commission should adopt Comcast's Second Proposal regarding how the Commission should approach the issue of setting a target percentage goal(s) for LGBTBE procurement with some modifications as discussed in this decision and adopt a five-year plan and framework for (a) the Utilities to gather data and experience and (b) the Commission to consider setting meaningful target goals

for the LGBTBEs for purposes of the Utilities' Supplier Diversity Program under the amended GO 156.

7. Attachment C to this decision is outdated and should be updated to conform to the directives of this decision, including the numerous reporting requirements we establish relating to the LGBTBEs, and others changes to the Utilities' Supplier Diversity Program and GO 156 since D.95-12-045.

8. The Utilities should collaborate and work with the Commission's staff to draft an updated form (Attachment C to this decision) for the Commission staff's approval, and the updated form should conform to the directives of this and other decisions which updated different aspects of GO 156 since 1995, including D.96-12-081, D.98-11-030, D.03-11-024, D.05-12-023, D.06-08-031, and D.11-05-019.

9. Once the Utilities' proposed updated form is approved in writing by the Commission staff, the Utilities should submit their annual reports itemizing WMDVLGBTBE program expenses pursuant to Section 9.1.3 of the amended GO 156 and do so using that approved and updated form of the report.

10. Until the NGLCC becomes an approved comparable verifying agency, a utility may not accept NGLCC's certificate of LGBTBE for purposes of GO 156.

11. Once and only after the Commission approves an agency as a comparable verifying agency, a utility should accept that approved comparable verifying agency's certificate of LGBTBE for purposes of GO 156 and the LGBTBE may be certified through the Clearinghouse's stream-lined CAV process.

12. The Commission should clarify its process on how an agency may become an approved comparable verifying agency.

13. This proceeding complied with the statutory case management deadline for quasi-legislative matters set forth in Code Section 1701.5.

14. 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. By July 1, 2015, each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) shall take all actions necessary to enter into the New Contract with the Clearinghouse vendor/contractor, which would start no later than July 1, 2015, and to ensure that the New Contract:

- (a) Authorizes and directs the Clearinghouse vendor/operator to maintain the database associated with the Lesbian, Gay, Bisexual and/or Transgender business enterprises (LGBTBEs) for purposes of the Utilities' Supplier Diversity Program under the amended General Order (GO) 156; and
- (b) Authorizes and directs the Clearinghouse vendor/contractor, by or before September 1, 2015, to develop and implement verification/certification and renewal/recertification processes for the LGBTBEs that comply with this decision and attached amended GO 156 we adopt today.

5. Each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000), including their commission-regulated subsidiaries and affiliates, shall, starting with their 2016 annual reports (filed in March 2016 to report on the prior year's activities) and plans, begin reporting annually on their procurement purchases from Lesbian, Gay, Bisexual and/or Transgender business enterprises (LGBTBEs) and their progress in meeting the procurement goals for the LGBTBEs as directed in this decision.

6. We adopt Comcast's Second Proposal, with some modifications, by adopting the below outlined five-year plan and framework toward setting the numerically-based target percentage goal(s) for the Lesbian, Gay, Bisexual and/or Transgender business enterprises (LGBTBEs) and direct each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000), including their commission-regulated subsidiaries and affiliates (collectively Utilities), as follows:

- (a) In 2015, the first year of implementation of the LGBTBEs' inclusion in the General Order (GO) 156 Program, the Utilities shall focus on integrating Assembly Bill 1678 requirements by identifying the LGBTBEs, services, and areas of need for which there are such qualifying LGBTBEs;
- (b) During the first three years of implementing the attached amended GO 156 upon issuance of this decision and for the 2016, 2017 and 2018 annual reports and plans, the Utilities shall be excused from setting their own numerically-based goals and targets for LGBTBEs and instead focus their efforts on the following foundational and outreach activities;

- (i) Updating corporate supplier diversity policy to include LGBTBEs and affirming the Utilities' commitment to this policy.
 - (ii) Establishing a process for recruiting and utilizing LGBTBEs.
 - (iii) Integrating LGBTBEs into their corporate talent pool of suppliers.
 - (iv) Working with NGLCC, local chapters, and/or any other groups, as appropriate, in developing an enhanced understanding on how to conduct effective outreach to the LGBTBE community for the Utilities' procurement and supplier diversity staff.
 - (v) Developing targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the Utilities' Supplier Diversity Program.
 - (vi) Monitoring the progress and effectiveness of the Utilities' targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the Utilities' Supplier Diversity Program.
 - (vii) Ensuring LGBTBEs suppliers are informed of available technical assistance and capacity building programs for enhancing the supplier's business acumen.
 - (viii) Working with NGLCC, local chapters, and/or any other groups, as appropriate, to identify areas of the Utilities' program where the program is underperforming or underutilized in contracting LGBTBE and continually improving ways to enhance performance and increase the LGBTBE talent pool.
 - (ix) Updating processes, procedures and systems to support LGBTBE inclusion in procurement.
- (c) For the 2016, 2017 and 2018 annual reports and plans, the Utilities shall prepare and submit the required detailed annual plans and reports with the proposed short- and long-term goals and timetables required by Section 9 and 10 of the amended GO 156 and California Public Utilities Code section 8283, subsections (a),

- (b) and (c), and set non-numerically-based targets and goals which track the above activities (outlined above in this Ordering Paragraph No. 6, subsection (b)) and report on the related program challenges, accomplishments, timetables and progress towards those targets and goals;
- (d) After the first three years and starting annually with the 2019 annual reports and plans, the Utilities shall:
- (i) Report on the non-numerically-based targets and goals including reports on the above activities (outlined above in this Ordering Paragraph No. 6, subsection (b));
 - (ii) Establish numerically-based targets and goals for LGBT procurement;
 - (iii) Provide updates to the previously proposed short- and long-term goals and timetables from the prior year's annual report and plan for the LGBTBE procurement; and
 - (iv) Update those numerically-based targets/goals based on the experience to date, database of qualifying entities and needs of the Utilities.
- (e) By January 1, 2021, the Utilities shall :
- (i) hold a publically noticed workshop seeking input and comment from the Utilities to review the Utilities' annual reports and LGBTBE procurement challenges, accomplishments, and progress; and
 - (ii) based thereon file a joint report and recommendation for the Commission's review of whether the Commission should, going forward, set a numerically-based percentage target goal, as appropriate, for LGBTBE procurement and seek relief, if appropriate, from the requirement to annually report on the non-numerically-based targets and goals including reports on the above activities (outlined above in Ordering Paragraph No. 6, subsection (b)).
7. The Commission's Supplier Diversity Program staff overseeing the amended General Order 156 program shall continuously monitor the annual

reports, plans and Clearinghouse activities, and at or before the 2021 en banc session, present to the Commission, a report and a recommendation for setting a meaningful target goal for the Utilities' Lesbian, Gay, Bisexual and/or Transgender business enterprise procurement based on those reports, plans and experiences.

8. On or before March 1, 2016, the electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) shall:

- (a) Collaborate with the Commission's Supplier Diversity Program staff in preparing an updated form to supersede the Attachment C to this decision, previously titled Attachment A to Decision (D.) 95-12-045, to conform to the directives of this and other Commission decisions concerning GO 156 since 1995 including the inclusion of Lesbian, Gay, Bisexual and/or Transgender business enterprises (LGBTBEs), the numerous reporting requirements we establish relating to the LGBTBEs in this decision, and others changes to the Utilities' Supplier Diversity Program since 1995, including the directives of D.96-12-081, D.98-11-030, D.03-11-024, D.05-12-023, D.06-08-031, and D.11-05-019; and
- (b) Submit a draft proposed updated form to the Commission's Supplier Diversity Program staff for review and written approval.

9. Once the Utilities' proposed updated form ordered in Ordering Paragraph No. 8 of this decision, which updates the Attachment C to this decision, is approved by the Commission staff in writing, the 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 shall submit their

annual reports itemizing women-owned, minority-owned, disabled veteran-owned and lesbian, gay, bisexual and/or transgender person-owned business enterprise program expenses pursuant to Section 9.1.3 of the amended General Order 156 and do so using that approved and updated form of the report.

10. We adopt the following clarified process for any verifying agency seeking to become a comparable verifying agency under General Order (GO) 156:

- (a) The requesting agency shall submit a detailed written request (Request) to the Commission's GO 156 Staff;
- (b) The written Request shall include a detailed explanation showing that the requesting agency's objectives, eligibility requirements, required documentation, and review and certification processes are substantially similar to those of the Clearinghouse;
- (c) The Commission's GO 156 Staff must evaluate the Request and make a recommendation to the Commission within 60 days of receiving a completed written Request; and
- (d) Upon review of the Request by GO 156 Staff and the Commission's consideration GO 156 Staff's Recommendation, if the Request is approved, the Commission will issue a resolution granting the requesting agency its comparable verifying agency status.

11. 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.

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

13. We confirm the *ex parte* restrictions for this category of proceeding, previously set forth in this rulemaking.

14. 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. 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 the 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 annual detailed and verifiable plans for increasing women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' (WMDVLGBTBEs) 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 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.

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. "WMLGBTBE" 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. "WMDVLGBTBE" 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 former Section 8.5 of this General Order, because of the established unavailability of WMDVLGBTBEs 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 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.

- 1.3.22. The "Clearinghouse" means a Commission-supervised program that shall conduct WMLGBTBE verifications and maintain a database of WMDVLGBTBEs 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 or as defined by any other updated classification system that supersedes the SIC system.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of women-owned, minority-owned and LGBT-owned business enterprises (WMLGBTBEs) for participation in utility WMDVLGBTBE 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 (LGBTBE) status, the Clearinghouse shall also comply with additional rules applicable to LGBTBEs set forth in Section 5 of this General Order and conduct verifications/certifications and renewals/recertifications of LGBTBEs in compliance with the directives set forth in Decision _____.
- 2.2. In assessing the suitability of a WMDVLGBTBE 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 WMDVLGBTBE.
- 2.3. WMLGBTBEs 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 WMLGBTBE status. Filing of an application does not guarantee verification.
- 2.5. The fact that a verified WMDVLGBTBE is included in the Clearinghouse database shall neither be construed as an endorsement of its ability to perform nor shall such inclusion guarantee its business with the utilities.
- 2.6. WMLGBTBE 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 WMDVLGBTBE 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 WMLGBTBEs, and to establish and maintain a database of WMDVLGBTBEs 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 WMLGBTBEs it does business with.
- 3.4. The Clearinghouse shall distribute renewal verification forms to the WMLGBTBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the Clearinghouse shall notify the WMLGBTBE and utilities that the WMLGBTBE will not be listed as a verified WMLGBTBE 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.
- 3.6. In addition to the Clearinghouse, the Commission may approve third party agencies to perform verifications of WMLGBTBEs. The Clearinghouse is authorized to accept certifications by approved third party agencies, as appropriate, and to develop and implement a streamlined comparable agency verification process for any WMLGBTBE that already has a certification through an approved third party agency.¹ Once the Commission has approved applicable third party agency(ies), WMLGBTBE may choose between the options of either going directly to the Clearinghouse for verification or through an approved third party agency, followed by a streamlined comparable agency verification process with the Clearinghouse. If a WMLGBTBE already has a certification through an approved third party agency, they should apply to the Clearinghouse through a streamlined comparable agency verification process.

¹ See *e.g.* Decision (D.) 06-08-031, and Resolution Exec. 001, dated July 9, 2009.

- 3.7. The following shall be the process for any verifying agency seeking to become a comparable verifying agency under this General Order:
- (a) The requesting agency shall submit a detailed written request (Request) to the Commission's GO 156 Staff;
 - (b) The written Request shall include a detailed explanation showing that the requesting agency's objectives, eligibility requirements, required documentation, and review and certification processes are substantially similar to those of the Clearinghouse;
 - (c) The Commission's GO 156 Staff must evaluate the Request and make a recommendation to the Commission within 60 days of receiving a completed written Request; and
 - (d) Upon review of the Request by GO 156 Staff and the Commission's consideration GO 156 Staff's Recommendation, if the Request is approved, the Commission will issue a resolution granting the requesting agency its comparable verifying agency status.

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. Pursuant to Public Utilities Code section 8283(e)(2), DVBEs are verified/certified by the California State Department of General Services, Office of Small Business and Disabled Veterans Business Enterprise Services, and the Clearinghouse shall 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.
- 4.3. 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. LESBIAN, GAY, BISEXUAL AND/OR TRANSGENDER²

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

- 5.1. By or before September 1, 2015, the Clearinghouse shall begin maintaining the database associated with the LGBTBEs for purposes of the Utilities' Supplier Diversity Program under this General Order.
- 5.2. By or before September 1, 2015, the Clearinghouse shall develop and implement verification/certification and renewal/recertification processes for the LGBTBEs that comply with Decision _____ and this General Order.
- 5.3. A business enterprise seeking verification/certification or renewal/recertification of its LGBTBE status may seek verification/certification or renewal/recertification through the Clearinghouse process, as soon as it is developed and implemented pursuant to Decision _____ and this General Order.

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

6. UTILITY IMPLEMENTATION

Each utility's WMDVLGBTBE program shall be designed to ensure that WMDVLGBTBEs 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 WMDVLGBTBE 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 WMDVLGBTBE program direction and guidance and to implement WMDVLGBTBE program requirements.

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

6.2. External Outreach

Each utility shall implement an outreach program to inform and recruit WMDVLGBTBEs 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 WMDVLGBTBE contractors and to expand WMDVLGBTBE source pools;
- (2) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVLGBTBE contractors;
- (3) Work with WMDVLGBTBE 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 WMDVLGBTBE bidder, provide information concerning the relative range/ranking of the WMDVLGBTBE 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 WMDVLGBTBE 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 WMDVLGBTBEs;
- (7) Summarize this General Order in its outreach program handouts. Such summaries shall state that WMDVLGBTBEs 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-WMDVLGBTBEs, 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 WMDVLGBTBE subcontractors.

- 6.3.1. The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMDVLGBTBE 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 WMDVLGBTBE 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 WMDVLGBTBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMDVLGBTBEs 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-WMDVLGBTBEs 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 WMDVLGBTBE 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 WMDVLGBTBEs 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 WMDVLGBTBE 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 WMDVLGBTBE subcontractors in all procurement categories which provide subcontracting opportunities.
- 6.3.9. Each utility may include awards to verified WMDVLGBTBE subcontractors in its WMLGBTBE 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 WMLGBTBE Verification Decisions

All complaints concerning a WMLGBTBE verification decision of the Clearinghouse for purposes of this General Order will be governed by the following procedures.

- 7.2.1. Business enterprises whose WMLGBTBE status has been denied by the Clearinghouse, or who have been deverified by the Clearinghouse, may appeal the 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 WMLGBTBE status of businesses whose WMLGBTBE 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 WMLGBTBE. 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 WMLGBTBE status. If the Clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall (a) inform the complainant and affected WMLGBTBE 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 Clearinghouse determines that there appears to be a sufficient factual basis for questioning the challenged party's WMLGBTBE status, it shall require the challenged party to provide the Clearinghouse information sufficient to permit the evaluation of its WMLGBTBE 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 WMLGBTBE, the presumption that the challenged party is a WMLGBTBE 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 WMLGBTBE Verification Complaints
 - 7.3.1. The complainant, within 20 days after the service of the final decision on the complaint by the Clearinghouse 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 the 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 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 WMLGBTBEs. 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 WMDVLGBTBEs in utility purchases and contracts.

Each utility shall comply with all general requirements set forth in this section 8.

For the LGBTBEs, additional LGBT-specific requirements are set forth in section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between general requirements of the utilities under section 8 and LGBTBE requirements specific to LGBTBEs under section 8.3, the utilities are excused from the general requirements of section 8 and shall instead comply with the LGBT-specific requirements of section 8.3. If there is any additional guidance required, the utilities shall confer with the Commission's General Order 156 staff.

- 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 WMDVLGBTBEs 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 WMDVLGBTBEs' 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. In setting the target percentage goal(s) for the LGBTBEs' participation in procurement programs of the participating utilities, we establish a five-year plan, starting the date of the issuance of D._____, and framework to gather data and experience to set a meaningful target goal for LGBTBE procurement under this General Order. The utilities shall do the following:
 - 8.3.1. In 2015, the first year of implementation of the LGBTBEs' inclusion in this General Order 156 Program, the utilities shall focus on integrating Assembly Bill 1678 requirements by identifying the LGBTBEs, services, and areas of need for which there are such qualifying LGBTBEs as well as any and all other effective outreach efforts to build the LGBTBE pool;
 - 8.3.2. During the first five years of implementing the LGBTBEs' inclusion in this General Order 156 Program, the Commission should not set any numerically-based goals and targets for LGBTBE procurement;

- 8.3.3. During the first three years of implementing the LGBTBEs' inclusion in the General Order 156 Program, the utilities shall be excused from setting their own numerically-based goals and targets for LGBTBEs and instead focus their efforts on the following foundational and outreach activities:
- (1) Updating corporate supplier diversity policy to include LGBTBEs and affirming the utilities' commitment to this policy.
 - (2) Establishing a process for recruiting and utilizing LGBTBEs.
 - (3) Integrating LGBTBEs into their corporate talent pool of suppliers.
 - (4) Working with NGLCC, local chapters, and/or any other groups, as appropriate, in developing an enhanced understanding on how to conduct effective outreach to the LGBTBE community for the utilities' procurement and supplier diversity staff.
 - (5) Developing targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the utilities' supplier diversity program.
 - (6) Monitoring the progress and effectiveness of the utilities' targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the utilities' supplier diversity program.
 - (7) Ensuring LGBTBEs suppliers are informed of available technical assistance and capacity building programs for enhancing the supplier's business acumen.
 - (8) Working with NGLCC, local chapters, and/or any other groups, as appropriate, to identify areas of the utilities' program where the program is underperforming or underutilized in contracting LGBTBE and continually improving ways to enhance performance and increase the LGBTBE talent pool.
 - (9) Updating processes, procedures and systems to support LGBTBE inclusion in procurement.
- 8.3.4. For the 2016, 2017 and 2018 annual reports and plans, the utilities shall prepare and submit the required detailed annual plans and reports with the proposed short- and long-term goals and timetables required by Section 9 and 10 of this e amended GO 156 and Code section 8283, subsections (a), (b) and (c), and set non-numerically-based targets and goals which track the above outlined activities (outlined above in section 8.3.3.) and report on the related program challenges, accomplishments, timetables and progress towards those non-numerically-based targets and goals.
- 8.3.5. After the first three years and starting annually with the 2019 annual reports and plans, the utilities shall, for LGBTBEs:
- (1) Report on the non-numerically-based targets and goals including reports on the above activities (outlined above in section 8.3.3);
 - (2) Establish numerically-based targets and goals for LGBTBE procurement;
 - (3) Provide updates to the previously proposed short- and long-term goals and timetables from the prior year's annual report and plan for the LGBTBE procurement; and

- (4) Update those numerically-based targets/goals based on the experience to date, database of qualifying entities and needs of the utilities.
- 8.3.6. By January 1, 2021, the utilities shall hold a public workshop and based thereon file a joint report and recommendation for the Commission's review of whether the Commission should, going forward, set a numerically-based percentage target goal, as appropriate, for LGBTBE procurement and seek relief, if appropriate, from the requirement to annually report on the non-numerically-based targets and goals including reports on the above activities (outlined above in section 8.3.3).
- 8.3.7. The Commission's Supplier Diversity Program staff overseeing the amended General Order 156 program shall continuously monitor the annual reports, plans and Clearinghouse activities, and by January 1, 2021 or as soon as practicable thereafter, present to the Commission, during its 2021 en banc session, a report and a recommendation for setting a meaningful target goal for the utilities' LGBTBE procurement based on the utilities' reports, plans and experiences.
- 8.4. 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 WMLGBTBEs.
- 8.5. 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.

- 8.6. 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 former Section 8.5.³
- 8.7. 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 WMDVLGBTBE suppliers of products or services in areas where WMDVLGBTBE 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 WMDVLGBTBE goals are affected because WMDVLGBTBE'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 8.5.⁴ 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.
- 8.8. 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 WMDVLGBTBEs 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 sub-contracting 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.

³ Pursuant to D.03-11-024, the Commission previously revised GO 156 and, in part, added the current modified version of the section 8.7 above. The former Section 8.5, referred above, refers to prior section 8.5 of GO 156, before the Commission adopted D.03-11-024, which provided:

A utility may create an "excluded category" of products or services where it is clearly evident that WMDVBEs do not provide a specific product or service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMDVBEs capable of supplying such products or services. Because there may in the future be WMDVBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of is excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMDVBE program progress and future plans.

⁴ See *supra*, footnote 3.

- 8.9. 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.
- 8.10. 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.
- 8.11. 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.
- 8.12. Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMDVLGBTBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:
- 8.12.1. 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;
- 8.12.2. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas markets;
- 8.12.3. Utilities which purchase from WMDVLGBTBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.7 of this amended General Order does not permit utilities to exclude product and services categories for which there are available WMDVLGBTBEs; and
- 8.12.4. Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under former Section 8.5⁵ and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMDVLGBTBEs.
- 8.13. Each utility shall make special efforts to increase utilization and encourage entry into the marketplace of WMDVLGBTBEs in product or service categories where there has been low utilization of WMDVLGBTBEs, such as legal and financial services, fuel procurement, and areas that are considered technical in nature.
- 8.14. No penalty shall be imposed for failure of any utility to meet and/or exceed goals.
- 8.15. Utilities shall report their goals in their annual plans.

⁵ *Ibid.*

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 WMDVLGBTBE Program.

9.1. The Annual Report shall contain at least the following elements:

- 9.1.1. A description of WMDVLGBTBE 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 WMDVLGBTBE 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 WMDVLGBTBEs with contracts, and the dollars awarded to such WMDVLGBTBEs. Each utility shall report the number of WMDVLGBTBEs 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 WMDVLGBTBEs that received direct spend during the reporting year.
- 9.1.3. An itemization of WMDVLGBTBE program expenses provided in the format required by Attachment A to Decision 95-12-045 or in an approved updated format in compliance with Decision _____.
- 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 WMDVLGBTBE subcontractors.
- 9.1.6. A list of WMDVLGBTBE 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 WMDVLGBTBE suppliers of products or services in procurement categories where WMDVLGBTBE 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 WMDVLGBTBE 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 WMDVLGBTBE purchases and/or contracts in product and service categories that include renewable and non-renewable 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 WMDVLGBTBE 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 WMDVLGBTBE 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 WMDVLGBTBE goals for fuel;
 - (2) A comprehensive description of the specific out-reach programs used to seek WMDVLGBTBE 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 WMDVLGBTBE 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).
- 9.4. In the annual reporting of the LGBTBE procurement, the utilities shall comply with all general requirements set forth in this section 9 and the additional LGBT-specific requirements set forth in section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between general reporting requirement of the utilities under section 9 and reporting requirements specific to LGBTBEs under section 8.3, the utilities are excused from the general requirements of section 9 and shall instead comply with the LGBT-specific requirements of section 8.3. If there is any additional guidance required, the utilities shall confer with the Commission's General Order 156 staff.

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 WMDVLGBTBE program activities planned for the next calendar year. This description shall include both internal and external activities;
 - 10.1.3. Plans for recruiting WMDVLGBTBE suppliers of products or services where WMDVLGBTBE 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 WMDVLGBTBE suppliers of products or services where WMDVLGBTBE suppliers are currently unavailable.
 - 10.1.5. Plans for encouraging both prime contractors and grantees to engage WMDVLGBTBEs in subcontracts in all categories which provide subcontracting opportunities.
 - 10.1.6. Plans for complying with the WMDVLGBTBE 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.
- 10.2. In the annual plans for the LGBTBE procurement, the utilities shall comply with all general requirements set forth in this section 10 and the additional LGBT-specific requirements set forth in section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between general requirement for the utilities under section 10 and LGBT-specific requirements under section 8.3, the utilities shall also refer to section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between this section's requirement and requirements specific to LGBTBEs under section 8.3, the utilities are excused from the general requirements of section 10 and shall instead comply with the LGBT-specific requirements of section 8.3. If there is any additional guidance required, the utilities shall confer with the Commission's General Order 156 staff.

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 beset 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)