

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

R. _____

**ORDER INSTITUTING RULEMAKING TO REVISE GENRAL
ORDER 156 – SUPPLIER DIVERSITY PROGRAM**

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**ORDER INSTITUTING RULEMAKING TO REVISE GENRAL
ORDER 156 – SUPPLIER DIVERSITY PROGRAM****Summary**

California Public Utilities Code §§ 8281-8286 declares that the economic well-being of the state of California “cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed.”¹ Over the past several decades, the Commission has implemented this state policy through its *Supplier Diversity Program*² set forth in General Order 156.³ This rulemaking will serve as the forum for considering amendments to General Order 156 consistent with the requirements of recent legislation, Senate Bill 255 (Bradford, Stat. 2019, Ch. 407), which, among other things, extends the parameters of the Commission’s *Supplier*

¹ Public Utilities Code § 8281(a), which provides, in full: “The Legislature hereby finds and declares that the essence of the American economic system of private enterprise is free, open, and transparent competition. Only through free, open, and transparent competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be ensured. The preservation and expansion of that competition are basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of women, minority, disabled veteran, and LGBT business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, are awarded to women, minority, disabled veteran, and LGBT business enterprises, and to maintain and strengthen the overall economy of the state.”

² The Commission’s supplier diversity program under General Order 156 has historically been referred to as the *Utility Supplier Diversity Program*. The Commission refers to this program herein as the *Supplier Diversity Program*, without a reference to utility, to reflect the change in Senate Bill 255 to incorporate non-utility entities into the program.

³ The current version of General Order 156 is available as of February 25, 2021, on the Commission’s website at: <https://www.cpuc.ca.gov/generalorders/>.

Diversity Program to include two non-utility entities, community choice aggregators and electric service providers, and encourages participation in the *Supplier Diversity Program* by certain additional non-regulated entities that regularly transact business with utilities, including exempt wholesale electric generators, distributed energy resource contractors, and energy storage system companies. In addition, and in furtherance of our directives in Decision (D.) 15-06-007, this rulemaking will serve as the forum for considering voluntary target percentage goals for procurement from LGBT-owned business enterprises.⁴ We will also consider expanding General Order 156 and the *Supplier Diversity Program* to include businesses owned and controlled by people with disabilities in response to suggestions received at the September 29, 2020 Commission's annual *En Banc* hearing.⁵ Lastly, we will consider modifying and clarifying certain annual reporting requirements, audit requirements, the complaint procedure, the *En Banc* hearing procedure, and the term "owned business enterprises" in General Order 156.

⁴ The applicable business enterprises are referred to with slightly different terms in the statutory law and the Commission's General Order. For example, statutory law relies on the term LGBT "business enterprises," but the Commission's General Order 156 relies on the term minority "-own business enterprises." The Commission proposes to clarify the use of these terms in this rulemaking.

⁵ General Order 156, Section 11.3 sets forth the requirement that the Commission hold *En Banc* hearings annually so that the public may provide input on implementing the state's policy, as follows: "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."

1. Background

1.1. Assembly Bill 3678 – Legislative Foundation - Women-Owned Business Enterprises and Minority-Owned Business Enterprises

Approximately 35 years ago, in 1986, the California Legislature enacted Assembly Bill (AB) 3678 (Moore, Stats. 1986, Ch. 1259) to encourage utilities to award a proportionate share of total utility procurement contracts to women business enterprises and minority business enterprises.⁶ AB 3678 is the legislative foundation for the California Public Utilities Commission's (Commission) *Supplier Diversity Program*.

In AB 3678, the Legislature declared in 1986 that: "[the] well-being [of the state] cannot be realized unless the actual and potential capacity of women and minority business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of women and minority business enterprises ... to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities...." are awarded to these businesses enterprises and "to maintain and strengthen the overall economy of the state."⁷

As adopted in 1986, AB 3678 applied to three classes of utilities, electric, gas, and telephone utilities, with gross annual revenues above \$25,000,000. The provisions of the legislation pertaining to increased procurement from women

⁶ General Order 156, Section 1.1.3, defines minority as follows: "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." (Emphasis added.)

⁷Public Utilities Code (Pub. Util. Code) § 8281.

and minority suppliers were voluntary, and these provisions remain voluntary today.⁸ The statutory provisions relating to submitting annual plans and reporting on diversity goals, as set forth in § 8283 of the Pub. Util. Code, are mandatory.

Since adopting AB 3678 in 1986, the Legislature has expanded the goals of supplier diversity in utility procurement to include additional classes of utilities and also some non-utility companies. The Legislature has also adopted other types of expansions to the program. A brief chronology follows describing some of the relevant legislation and the Commission's development of its *Supplier Diversity Program* in General Order 156.⁹

1.2. General Order 156 - the Commission's *Supplier Diversity Program*

In 1988, the Commission adopted General Order 156 to implement AB 3678.¹⁰ General Order 156 established the Commission's *Supplier Diversity Program* framework and guidelines. At that time, General Order 156 applied to Commission-regulated investor-owned electrical, gas, and telephone utilities and their regulated subsidiaries and affiliates, with gross annual revenues exceeding

⁸ Pub. Util. Code § 8283(b), which states that "These annual plans shall include short- and long-term goals and timetables, but not quotas..."

⁹ The Legislature has acted on numerous occasions to expand the scope of Pub. Util. Code §§ 8281-8286 and, therefore, all legislation is not summarized.

¹⁰ General Order 156 (adopted April 27, 1988), Decision 88-04-057 in Rulemaking 87-02-026. *Rules Governing the Development of Programs to Increase Participation of Women, Minority, Disabled Veteran and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises in Procurement of Contracts from Utilities as Required by Public Utilities Code Sections 8281-8286*. General Order 156 is available on the Commission's website.

\$25 million.¹¹ Now, as further discussed below, General Order 156 includes additional utilities and other non-utility entities.

As set forth in General Order 156 and Pub. Util. Code §§ 8281-8286, the Commission's *Supplier Diversity Program* includes voluntary target procurement goals. Currently, the Commission's voluntary target procurement goals encourage utilities and other entities to procure at least 21.5% from diverse business enterprises, as follows: 5% from women-owned business enterprises, 15% from minority-owned business enterprises, and 1.5% from disabled veterans-owned business enterprises.¹²

As set forth in General Order 156 and Pub. Util. Code §§ 8281-8286, the Commission's *Supplier Diversity Program* also requires utilities and other entities to submit (1) annual plans and (2) annual reports pertaining to these voluntary target procurement goals.¹³ The annual plans provide the Commission with information on the utilities' voluntary diversity procurement performance, progress in meeting short-term, mid-term, and long-term supplier diversity goals, and future program enhancement plans.¹⁴ The annual plans also address procurement in all categories of businesses identified in the statute, which currently include, but are not limited to, renewable energy, wireless

¹¹ Since 1986, the Legislature has expanded the classes of utilities falling within §§ 8281-8286 of the Pub. Util. Code to include are electrical corporations, gas corporations, water corporations, wireless telecommunications service providers, and telephone corporations. (General Order 156, Section 1.1.1.).

¹² General Order 156, Sections 8.3.6 and 8.3.7.

¹³ Pub. Util. Code § 8283(d); General Order 156, Section 10, which sets for the annual plan requirements, as follows: "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."

¹⁴ Pub. Util. Code § 8283 (b); General Order 156, Section 10.1.

telecommunications, broadband, smart grid, and rail projects.¹⁵ The annual reports provide details on implementation of the utility's annual plans.¹⁶

The Commission relies on the information provided in these annual plans and reports to monitor progress and provide an annual report to the Legislature on the progress of activities undertaken by each utility to implement the policy set forth in Pub. Util. Code §§ 8281- 8286 and General Order 156. The annual report to the Legislature also serves to make the information accessible to the public. This annual report to the Legislature is required by Pub. Util. Code § 8283(e).¹⁷

General Order 156 also includes a certification clearinghouse to identify all qualifying suppliers, which is known as the Supplier Clearinghouse.¹⁸ Currently, approximately 8,000 diverse suppliers are included in the Supplier Clearinghouse's database and these diverse suppliers are available to conduct business with the utilities.

In 2019, the Commission's *Supplier Diversity Program* set forth in General Order 156 included more than \$12.66 billion in utility spending with diverse suppliers.

¹⁵ Pub. Util. Code § 8283(b); Senate Bill (SB) 255 added additional categories, which are discussed in more detail later in this rulemaking.

¹⁶ Pub. Util. Code § 8283(d).

¹⁷ General Order 156, Section 11. These annual reports by the Commission to the Legislature pursuant to § 8283(e) are available on the Commission's website as this writing at <https://www.cpuc.ca.gov/supplierdiversity/>.

¹⁸ General Order 156, Section 1.3.22 provides as follows: The Supplier Clearinghouse is a Commission-supervised program that verifies women, minority, disabled veteran, and LGBT-owned business status and maintains a public database of these entities for use by utilities and the Commission. More information regarding the Supplier Clearinghouse is available in General Order 156, Section 3 and on the website: www.thesupplierclearinghouse.com.

1.3. Senate Bill 2398 – Disabled Veterans-Owned Business Enterprises

SB 2398 (Dills, Stats. 1990, Ch. 516) amended Pub. Util. Code §§ 8281-8286 to include disabled veteran business enterprises as an additional entity eligible under the Commission's *Supplier Diversity Program*. In a subsequent Commission decision in 1992, Decision (D.) 92-06-030, the Commission incorporated disabled veteran-owned business enterprises into General Order 156.¹⁹ In 1995, the Commission established a 1.5% target procurement goal for disabled veteran-owned businesses.²⁰

1.4. Assembly Bill 873 - Water Utilities

Commission-regulated water utilities were not originally included in Public Utilities Code §§ 8281-8286 or in the Commission's *Supplier Diversity Program* under General Order 156 but many water utilities voluntarily complied with General Order 156 starting in 2005 under a Memorandum of Intent. In 2008, the Legislature enacted AB 873 (Davis, Stat. 2008, Ch. 316) to amend to §§ 8281, 8283, 8284, and 8285 of the Pub. Util. Code to extend to water utilities with gross annual revenues of more than \$25,000,000 the voluntary procurement goals for minority-owned business enterprises, women-owned business enterprises, and disabled veteran-owned business enterprises. In addition, over the years, smaller water utilities have voluntarily chosen to expand their procurement programs to achieve the statutory goals and purpose of the Commission's *Supplier Diversity Program*.

¹⁹ D.92-06-030 (June 3, 1993).

²⁰ D.95-12-045 (December 18, 1995); General Order 156, Section 4 and Section 8.2: "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."

1.5. Assembly Bill 1678 – LGBT-Owned Business Enterprises

On June 11, 2015, the Commission adopted D.15-06-007, which revised General Order 156 to implement AB 1678 (Gordon, Stats. 2014, Ch. 633), adding LGBT-owned business enterprises to the Commission's *Supplier Diversity Program*.²¹

As stated above, an important element of the Commission's *Supplier Diversity Program* is the voluntary target procurement percentage goals. In accordance with General Order 156, the Commission's current *Supplier Diversity Program* encourages utilities to meet certain voluntary target percentage goals and procure at least 21.5% from the diverse business enterprises, as follows: 5% from women-owned business enterprises, 15% from minority-owned business enterprises, and 1.5% from disabled veterans-owned business enterprises.²²

Currently, no voluntary target procurement percentage goal exists in General Order 156 for LGBT-owned business enterprises. As more fully discussed below, the Commission will consider adopting such a voluntary target percentage goal for LGBT-owned business enterprises in this proceeding.

2. Senate Bill 255 – Further Expansion of *Supplier Diversity Program*

On October 2, 2019, Governor Newsom signed SB 255 (Bradford, Stat. 2019, Ch. 407), which expanded the scope of the state's diversity goals for utility procurement and made other changes to promote supplier diversity in the

²¹ D.15-06-007, *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* (June 11, 2015). In D.15-06-007, the Commission added LGBT-owned business enterprises to the *Supplier Diversity Program*. Additional modifications were made D.11-05-019, with minor corrections in D.12-01-030 and D.12-01-031.

²² General Order 156, Sections 8.3.6 and 8.3.7.

entities that regularly conduct business with utilities. Specifically, SB 255 amended §§ 366.2 and 8283 of the Pub. Util. Code, as follows:

1. Modified the \$25,000,000 annual gross utility²³ revenue threshold for the applicability of the program, plan, reporting requirement, and guidelines to utilities to \$25,000,000 “annual gross *California* revenues.”²⁴
2. Extended the program to “electric service providers”²⁵ with more than \$25,000,000 in annual gross California utility revenues.²⁶ Those electric service providers with annual gross California revenues less than \$25,000,000 are encouraged to voluntarily adopt a plan to increase diversity in procurement suppliers.²⁷
3. Included “energy storage system and vegetation management projects” within the procurement categories to which the program requirements explicitly apply.²⁸
4. Included certain smaller investor-owned utilities and electric service providers in the program, by providing that every electrical utility, gas utility, water utility, wireless telecommunications service provider, electric service provider, and telephone utility with gross annual California revenues above \$15,000,000 but less than \$25,000,000 to submit to the Commission data annually in a simplified form on procurement from women,

²³ The utilities included are electrical corporations, gas corporations, water corporations, wireless telecommunications service providers, and telephone corporations. (General Order 156, Section 1.1.1.)

²⁴ Pub. Util. Code § 8283(a) –(d).

²⁵ Electric service provider is defined in Pub. Util. Code § 394 as a non-utility entity that offers electric service to customers within the service territory of an electric utility. The Commission addresses electric service providers in D.03-12-015.

²⁶ Pub. Util. Code § 8283(a).

²⁷ Pub. Util. Code § 8283(e)(1).

²⁸ Pub. Util. Code § 8283(b).

minority, disabled veteran, and LGBT-owned business enterprises in all categories of procurement.²⁹

5. Required each “community choice aggregator” (1) to submit, as part of their implementation plan, methods for ensuring procurement from “small, local, and diverse business enterprises in all categories,” including, but not limited to, renewable energy, energy storage system, and smart grid projects³⁰ and (2) with gross annual revenues above \$15,000,000, to annually submit (i) a plan to the Commission for increasing procurement from “small, local, and diverse business enterprises in all categories,” including, but not limited to, renewable energy, energy storage system, and smart grid projects³¹ and (ii) a report to the Commission regarding procurement from “women, minority, disabled veteran, and LGBT business enterprises” in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects.³² Those community choice aggregators with less than \$15,000,000 are encouraged to voluntarily adopt such plan.³³
6. Encouraged exempt wholesale generators, distributed energy resource contractors, and energy storage system companies to participate in the program and voluntarily submit plans for increasing “women, minority, disabled veteran, and LGBT business enterprise procurement” and report to the Legislature.³⁴ (The statute already includes a request for voluntary participation by cable television corporations, direct broadcast satellite providers.)³⁵

²⁹ Pub. Util. Code § 8283(f).

³⁰ Pub. Util. Code § 366.2(c)(3)(H).

³¹ Pub. Util. Code § 366.2(m)(1).

³² Pub. Util. Code § 366.2(m)(2)(A).

³³ Pub. Util. Code § 366.2(m)(3).

³⁴ Pub. Util. Code § 8283(e)(2).

³⁵ Pub. Util. Code § 8283(e)(2).

As set forth in SB 255, the purposes of the Commission's program and related legislation remains unchanged; it continues to be (a) encouraging greater economic opportunity for women, minority, disabled veteran, and LGBT business enterprises; and (b) promoting competition among regulated utility suppliers to enhance economic efficiency in the procurement of contracts. In this rulemaking, the Commission will modify General Order 156 to implement SB 255 and further promote the Commission's *Supplier Diversity Program* objectives.

3. Proposal to Add a Voluntary Target Procurement Percentage Goals to General Order 156 for LGBT-Owned Business Enterprises

As mentioned above, the current General Order 156 establishes the following voluntary target procurement percentage goals: 5% for woman-owned business enterprises, 15% for minority-owned business enterprises, and 1.5% for disabled veteran-owned business enterprises.³⁶ Because these are voluntary procurement goals, no penalty exists for failure of any utility to meet these annual targets. The Commission expanded General Order 156 to include LGBT-owned business enterprises in its *Supplier Diversity Program*, data collection, plan, and reporting requirements, consistent with AB 1678.³⁷

However, the Commission did not adopt a voluntary target procurement percentage goal for LGBT-owned business enterprises.³⁸ Instead, the Commission in D.15-06-007 directed utilities to submit, consistent with the process previously used by the Commission, a recommendation to Commission

³⁶ General Order 156, Section 8.2.

³⁷ D.15-06-007 at 39-46.

³⁸ D.15-06-007 at 23-24.

staff by January 1, 2021 for a voluntary procurement percentage goal for LGBT-owned business enterprises to be incorporated into General Order 156.³⁹ In addition, in D.15-06-007, the Commission directed its staff to review these recommendations and submit findings to the Commission for consideration in a future forum.⁴⁰ After consulting with interested stakeholders during several workshops, some organized by the utilities and some by the Commission, the utilities submitted a recommendation via email to the Commission on December 31, 2020, which proposes a 0.5% target procurement percentage goal for LGBT-owned business enterprises.⁴¹ This December 31, 2020 recommendation (with supporting documents) is attached hereto.⁴² The Commission will review this recommendation in this proceeding with any input from parties and staff. Any target procurement percentage goal adopted for LGBT-owned business enterprises would increase the total target procurement percentage goal under the program. For example, if the Commission adopts the recommended 0.5% for LGBT-owned business enterprises, the total target would increase to 22% (from the current total target of 21.5%).

Importantly, under the proposed amendments to General Order 156, the target procurement percentage goals for all applicable business enterprises, including LGBT-owned business enterprises, would remain voluntary. Nothing

³⁹ D.15-06-007 at 27.

⁴⁰ D.15-06-007 at 28. The exact nature of the forum specified by the Commission in D.15-06-007 is unclear. D.15-06-007 provides for staff to present recommendations to the Commission “at or before the 2021 en banc session,” while General Order 156, Section 8.3.7 provides that staff “present to the Commission, during its 2021 en banc session....”

⁴¹ These utility workshops were held on October 31, 2019, January 14, 2020, July 29, 2020, and October 28, 2020.

⁴² Attachments A-E, December 31, 2020 *LGBTBE Spend Goal Recommendation – Joint Utility Group* and supporting documents.

in the current version of General Order 156 or any proposed amendments authorizes or permits a utility or other applicable entity to use set-asides, preferences, or quotas in the administration of its *Supplier Diversity Program* and the utility or other applicable entity retains authority to use legitimate and reasonable business judgment to select a supplier for a particular contract.⁴³

In this rulemaking, the Commission will consider proposed amendments to General Order 156 to incorporate a target procurement percentage goal of 0.5% for LGBT-owned business enterprises.

4. Proposal to Add Business Enterprises Owned and Controlled by the Disabled to the General Order 156 Supplier Diversity Program

Currently, eligible businesses included woman, minority, disabled veteran, and LGBT-owned business enterprises.⁴⁴ The possible addition of business enterprises owned and controlled by the disabled was raised at the Commission's September 29, 2020 *En Banc* hearing, which the Commission convened to discuss all topics related to the *Supplier Diversity Program*.

A proposal to amend General Order 156 to incorporate business enterprises owned and controlled by disabled persons will be considered in this rulemaking.

5. Modifications to Reports & Plans, Annual Audits, Complaint Process, *En Banc* Hearing for the Supplier Diversity Program and Other Revisions

Currently, Pub. Util. Code §§ 8281-8286 and General Order 156 require all classes of utilities falling within the *Supplier Diversity Program* to submit annual

⁴³ Pub. Util. Code § 8283(b) providing that: "These annual plans shall include short- and long-term goals and timetables, but not quotas...."

⁴⁴ General Order 156, Section 8.2.

plans and reports.⁴⁵ These annual plans and reports are described above. In addition, all classes of utilities falling within the *Supplier Diversity Program* are subject to audit requirements.⁴⁶ In this rulemaking, we will consider amending General Order 156 to provide more detail on the information required in the annual reports submitted pursuant to § 8283(d) and Section 9 of General Order 156 to include, for example, the economic impact of the program and work force and corporate board diversity data.⁴⁷ The Commission may also consider clarifying and adding additional components to the required annual plans.⁴⁸ The Commission will also consider revisions to reporting and plans requirements to incorporate community choice aggregators and electric service providers pursuant to SB 255.⁴⁹

General Order 156 also requires the Commission to perform an audit every two years of one class of utilities.⁵⁰ In this rulemaking, the Commission will

⁴⁵ Pub. Util. Code § 8283(a) (plans) and § 8283(d) (reports).

⁴⁶ General Order 156, Section 9.1.10.

⁴⁷ The phrase “economic impact” refers to the impact that doing business has on the economy, and, in the case of the *Supplier Diversity Program*, the phrase refers to, generally, the measurement of how doing business with small and diverse companies generates revenue, income, and jobs and how that activity impacts the economy.

⁴⁸ General Order 156, Section 10, providing: “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.”

⁴⁹ Pub. Util. Code § 366.2(m)(1) and § 366.2(m)(2)(A); Pub. Util. Code § 8283(b) and § 8283(d).

⁵⁰ General Order 156, Section 9.1.10, provides: “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, water, in subsequent two-year periods, to be repeated in that order.”

re-visit this audit requirement to consider any necessary changes based on SB 255, such as whether the audit requirement should apply to community choice aggregators and electric service providers, whether the Commission should increase the number of audits, and perhaps other issues raised by parties.

In addition, in the rulemaking, the Commission will seek to clarify the complaint process set forth in Section 7 and the *En Banc* hearing requirements set forth in Section 11.3 of General Order 156.

Lastly, due to industry confusion pertaining to the use of the term “business enterprise” in statutory law and the use of a different term, “-owned business enterprises, in General Order 156, we will consider revising General Order 156 to conform to the term used in the statute. Such a revision may also serve to more accurately reflect the statutory directive that these business enterprises be both owned and controlled by the relevant diverse supplier.

6. Preliminary Scoping Memo

As required by Rule 7.1(d) of the Commission’s Rules of Practice and Procedure, this rulemaking includes a Preliminary Scoping Memo. In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding. In response to this rulemaking, parties will have the opportunity to provide comments on the issues raised in the Preliminary Scoping Memo. After the review of these comments, the Assigned Commissioner will issue a scoping memo and ruling setting forth the issues and procedural path for this proceeding in greater detail. The Commission makes the following preliminary determinations:

6.1. Preliminary Issues

The purpose of this proceeding is to amend General Order 156 consistent with SB 255 and make other revisions to improve the Commission’s *Supplier*

Diversity Program set forth in General Order 156. As such, the Commission intends to address the following issues in this proceeding:

1. *Senate Bill 255.* How should the Commission revise the *Supplier Diversity Program* set forth in General Order 156 to implement SB 255?
2. *LGBT-Owned Business Enterprises.* Whether the utility proposed target procurement percentage goal for LGBT-Owned business enterprises of 0.5% for LGBT-Owned business enterprises should be included in the *Supplier Diversity Program* set forth in General Order 156 or whether a different percentage should be included?
3. *Disabled Business Enterprises.* Whether to expand the *Supplier Diversity Program* to include business enterprises owned and controlled by disabled persons? If the Commission includes disabled business enterprises, should the Supplier Clearinghouse (1) certify disabled business enterprises, (2) accept a disability certification, and (3) add disabled business enterprises to comparable agency verification processes? Should the Commission adopt a voluntary target procurement percentage goal for disabled business enterprises? What process should the Commission rely upon to consider such a target?
4. *Other Revisions.* Whether the Commission should consider other revisions to General Order 156, including additions to the required contents of the utility annual reports regarding the *Supplier Diversity Programs*, such as quantifying economic impact and work force and corporate board diversity data, increasing the number of internal Commission audits of the *Supplier Diversity Program*, and clarifying the complaint and *En Banc* hearing process set forth in General Order 156?

6.2. Preliminary Schedule

Consistent with Pub. Util. Code § 1701.5, the Commission intends to complete this proceeding within 18 months of the date the rulemaking is adopted. As permitted by Pub. Util. Code § 1701.5, this deadline may be extended by decision of the Commission.

The following preliminary schedule is suggested and may be revised by the Assigned Commissioner or Administrative Law Judge as required to promote the efficient and fair resolution of the rulemaking:

Preliminary Schedule

Comments on Rulemaking	On or before 20 days after the issuance date of this Rulemaking
Issuance of Assigned Commissioner's Scoping Memo with Staff Proposal Attached	2 nd quarter 2021
Workshop on the Possible Addition of Disabled Business Enterprises	2 nd quarter 2021
Comments on Issues in Scoping Memo, Staff Proposal, and Workshop	2 nd quarter 2021
Reply Comments on Issues in Scoping Memo, Staff Proposal, and Workshop	2 nd quarter 2021
Proposed Decision	3 rd quarter 2021
Commission Vote (within 60 days of Proposed Decision – Rule 15.4)	3 rd quarter 2021

Specific dates for most of the above scheduled items will be set forth in the scoping memo and ruling. However, above, we set a due date for filing comments on the rulemaking.

In comments on the rulemaking, we request parties address the preliminary schedule set forth above, the preliminary scope of issues set forth herein, and the proposed process for this proceeding set forth above. We provide further instructions for comments below.

The process outlined for this proceeding, set forth above in the preliminary schedule, includes comments on the rulemaking, a scoping memo and ruling issued by the Assigned Commissioner with a staff proposal attached, and comments on the issues set forth in the scoping memo and ruling (with the staff proposal). We include a workshop in this proceeding and request parties comment on the possible issues to be discussed at a workshop and whether such a workshop should be held before or after comments on the issues set forth in the scoping memo and ruling (with the staff proposal.)

In addition, we are considering including, as part of this proceeding, a process to consider the merits of adopting a voluntary target procurement percentage goal for disabled business enterprises, if we decide to add these entities to the program. We are also considering a timeline for achieving this possible objective. Therefore, we request that, as part of comments submitted on the rulemaking, parties comment on a process and timeline the Commission might rely upon to engage the community, utilities, and other stakeholders in a discussion of the merits of adopting a voluntary target procurement percentage goal for disabled business enterprises, the timeline for adopting such a target goal, and the percentage amount of such a target goal.

Any person or entity may file comments on the rulemaking in accordance with the schedule above. Parties may wish to review the most recent Commission annual report to the Legislature inform their comments.⁵¹

To promote efficiency, parties are encouraged to jointly file comments. Parties will be invited to address the substance of the proposals to amend General Order 156, as set forth in greater detail in the Assigned Commissioner's scoping memo and ruling to be issued at a later date.

All the information provided by parties in the comments on the rulemaking will be used to inform the Assigned Commissioner's scoping memo and ruling. The issues and the specific dates/events for the schedule for the remainder of the proceeding will be adopted in the Assigned Commissioner's scoping memo and ruling.

6.3. Preliminary Category and Determination of Need for Hearings

Rule 7.1(a) of the Commission's Rules of Practice and Procedure require the Commission to preliminarily determine the category of this rulemaking proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is categorized as quasi-legislative, as defined in Rule 1.3(e) and (f) because this proceeding seeks to establish policy or rules, not rates, affecting a class of regulated entities. Accordingly, under Article 8 of the Commission's Rules of Practice and Procedure, *ex parte* communications are

⁵¹ The Commission's most recent Annual Report submitted to the Legislature, *Year 2019 Utilities Procurement of Goods, Services, and Fuel from Women-, Minority-, Disabled Veteran-, and LGBT-owned Business Enterprises*, is available as of this writing, on the Commission's website at:

https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2020/2020%20GO%20156%20Leg%20Report%20Final.pdf.

permitted without restriction or reporting requirement, until and unless the Assigned Commissioner changes the category of the proceeding.

We are also required to preliminarily determine if hearings are necessary. We preliminarily determine that hearings are not needed. The record of this proceeding will be composed of written comments by interested parties.

Any person who objects to the preliminary categorization of this rulemaking as ratesetting or to the preliminary hearing determination shall state their objections in the comments on the Rulemaking.

After considering the comments, the Assigned Commissioner will issue a scoping memo and ruling making, among other things, a final category determination, and this final category determination is subject to appeal as specified in Rule 7.6.

7. Named Respondents

This proceeding may impact all Commission-regulated utilities and entities required to adhere to Pub. Util. Code §§ 8281-8286. Under the SB 255, this rulemaking may impact some community choice aggregators and electric service providers. Therefore, the named respondents to this proceeding shall include all the Commission-regulated electrical, gas, water, and telephone corporations (including wireless service providers) and electric service providers that fall within the gross California revenue amounts, either above \$25 million or \$15 million, as identified Pub. Util. Code §§ 8281-8286, and, in addition, community choice aggregators that fall within the gross revenue amounts, above \$15 million, as identified Pub. Util. Code §§ 8281-8286.

The named respondents will be designated as parties to the proceeding pursuant to Rule 1.4(d) but must notify the Process Office to be placed on the official service list and provide the name of the representative of the respondent.

All the specified entities in Pub. Util. Code §§ 8281-8286 are bound by the outcome of this proceeding.

We also note that, pursuant to Pub. Util. Code §§ 8281-8286, as amended by SB 255, exempt wholesale generators, distributed energy resource contractors, and energy storage system are encouraged to voluntarily comply with the noted statutory provisions. The Legislature has previously included cable television corporations and direct broadcast satellite providers as entities that are encouraged to voluntarily comply. These entities will not be named respondents. All these entities are encouraged to participate in this proceeding so that the Commission may craft a program that appropriately encourages compliance with the state's policy objectives on diversity in Pub. Util. Code §§ 8281-8286. Only the entities that notify the Commission that they want to be placed on the official service list will be included thereon.

8. Service of Rulemaking

The Commission's Executive Director shall serve this rulemaking on all named respondents.

In the interest of broad notice of this rulemaking, we also direct the Executive Director to serve this rulemaking on all parties on the service lists of the most recent Commission proceedings that revised General Order 156, R.14-10-009⁵² and the listed regulated utilities.

All the above noted service list will constitute the temporary service list for this rulemaking proceeding and should be used for service of all filings until an official service list for this proceeding is established.

⁵² R.14-10-009 (October 16, 2014), *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*.

The Commission's Process Office is directed to post the temporary service list on the Commission's website at www.cpuc.ca.gov at the Docket Card for this proceeding and to post the official service list as soon as practicable. Stakeholders must use the most current service list by checking the Commission's website prior to each filing.⁵³

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Service of the rulemaking does not confer party status or function to place any person or entity receiving this rulemaking on the official service list for this proceeding, other than respondents.

9. Filing and Service of Comments and Other Documents

The filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure.

10. Addition to Official Service List

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Pursuant to Rule 1.4(d), named respondents will be designated as parties to the proceeding but must notify the Commission's Process Office to be placed on the official service list.

Any person or entity will, upon request to the Process Office, be added to the Information Only category of the official service list for electronic service of all documents in the proceeding. The request must be sent to the Process Office

⁵³ In addition, pursuant to Rule 1.4 (a), persons and entities seeking party status may (a) file a response to this rulemaking; or (b) file a motion to become a party at a later date. If you do not provide your information to Process Office in advance of filing a response, you will not receive service of responses by parties.

by e-mail at process_office@cpuc.ca.gov or letter at Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102. Include the Docket Number of this rulemaking in the request.

Pursuant to Rule 1.4(a)(2), persons or entities who file responsive comments to this rulemaking thereby become a party to the proceeding and are added to as a party to the official service list. To ensure uninterrupted service of comments and any other documents in advance of obtaining party status, persons and entities always should promptly request that the Process Office add them to the Information Only category of the service list, as described above, pending placement on the official service list as a party.

11. Commission's Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the official service list to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at: <http://subscribecpuc.cpub.ca.gov/>.

12. Intervenor Compensation

Intervenor Compensation is permitted in this proceeding. Intervenor compensation rules are governed by §§ 1801 et seq. of the Pub. Util. Code. Pursuant to Pub. Util. Code § 1804(a)(1), any party that intends to seek an award of intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation within 30 days of a prehearing conference (*See* Rule 17.1(a)(1).) or, if no prehearing conference is held, within 30 days of the issuance of the Assigned Commissioner's scoping memo and ruling (*See* Rule 17.1(a)(2).) Parties new to participating in Commission

proceedings may contact the Commission's Public Advisor for additional information. The Public Advisor's contact information is below.

13. Commission's Public Advisor

Any person or entity interested in participating in this rulemaking that is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or 1-(866) 849-8390 or the e-mail public.advisor@cpuc.ca.gov. The TTY number is 1-(866) 836-7825.

O R D E R

IT IS ORDERED that:

1. Pursuant to Rule 6.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Commission adopts this Order Instituting Rulemaking on its own motion to revise General Order 156 to be consistent with the directives set forth in Senate Bill 255 (Bradford, Stat. 2019, Ch. 407) and to consider a voluntary target procurement percentage goal for LGBT-owned business enterprises, expand the *Supplier Diversity Program* to include business enterprises owned and controlled by disabled persons, and consider other issues or revisions to General Order 156, including, among others, clarification of the term "-owned business enterprises," relied upon in General Order 156, additions to the required contents of the annual reports regarding the *Supplier Diversity Programs*, modification to the time intervals for the Commission's audits of the program, and clarifications to the complaint and *En Banc* hearing process set forth in General Order 156.

2. All California Public Utilities Commission regulated electric, gas, water, telephone corporations (including wireless service providers) and community choice aggregators and electric service providers, as described herein, are named as respondents to this Order Instituting Rulemaking.

3. The Executive Director shall cause this Order Instituting Rulemaking to be served on all regulated electric, gas, water, and telephone (including wireless service providers) corporations and on electric service providers and community choice aggregators, as described herein, required to participate in the General Order 156 *Supplier Diversity Program* pursuant to Public Utilities Code § 8283. Any error or omission in service shall not excuse any applicable regulated utility, electric service provider, or community choice aggregator from being bound by the outcome of this rulemaking proceeding. All named respondents are parties to the proceeding. Even if a party is a named respondent and receives service of this Order Instituting Rulemaking, this does not result in placement on the official service list. All respondents must request placement on the party service list.

4. The Executive Director shall cause this Order Instituting Rulemaking to be served on all parties on the service list of the most recent rulemaking proceedings to revise General Order 156, Rulemaking 14-10-009, and the list of regulated utilities. Service of this Order Instituting Rulemaking does not confer party status or place a person or entity receiving such service on the official service list for this proceeding. All persons and entities seeking party status or placement on the information-only service list must follow the Commission's Rules of Practice and Procedure.

5. Exempt wholesale generators, distributed energy resource contractors, energy storage system, cable television corporations, and direct broadcast satellite providers are encouraged to voluntarily comply with the relevant statutory provisions in Public Utilities Code §§ 8281-8286 and, while these entities will not be named respondents, all these entities are encouraged to participate in this proceeding.

6. The temporary service list for this proceeding shall consist of all the named respondents, persons, and entities referred to herein, including all the service lists referenced. All interested persons or entities shall use this temporary service list to serve of all filing in this proceeding until an official service list for this proceeding is established by the California Public Utilities Commission's Process Office.

7. Comments on the preliminary scoping memo of this Order Instituting Rulemaking may be filed no later than 20 days after the issuance of this rulemaking. Comments on the Rulemaking shall be limited to 25 pages.

8. Pursuant to Rule 6.2 of the California Public Utilities Commission's Rules of Practice and Procedure, persons or entities filing comments shall state any objections to the preliminary scoping memo set forth in this Order Instituting Rulemaking regarding the preliminary category, need for hearing, issues to be considered, or schedule.

9. Any person or entity interested in being added to the official service list for this Order Instituting Rulemaking must follow the procedures set forth in Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

10. Any person or entity interested in participating as a party or in monitoring this Order Instituting Rulemaking shall follow the procedure set forth herein.

11. The preliminary scope and schedule of this Order Instituting Rulemaking is set forth herein, above.

12. The category of this Order Instituting Rulemaking is preliminarily determined to be quasi-legislative and is subject to the *ex parte* communication rules stated in Article 8 of the California Public Utilities Commission's Rules of Practice and Procedure.

13. Evidentiary hearings in this Order Instituting Rulemaking are preliminarily determined not to be needed.

14. Pursuant to Rule 17.1(a)(2) of the California Public Utilities Commission's Rules of Practice and Procedure, any party that intends to claim intervenor compensation for its participation in this Order Instituting Rulemaking shall file a notice of intent to claim intervenor compensation within 30 days of the prehearing conference or, if no prehearing conference is held, within 30 days of the issuance of the scoping memo.

15. The Assigned Commissioner or Administrative Law Judge may make any revisions to the preliminary schedule and the filing determinations made herein as necessary to facilitate the efficient management of the proceeding.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A-E

Attachment A-E – December 31, 2020 Recommendation for Voluntary
Target Procurement Percentage Goal for LGBT-Owned Business Enterprises
and Related Attachments