

Decision 22-04-035 April 7, 2022

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

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

Rulemaking 21-03-010

**DECISION REVISING GENERAL ORDER 156 SUPPLIER DIVERSITY PROGRAM TO IMPLEMENT SENATE BILL 255, ADOPT A VOLUNTARY PROCUREMENT GOAL FOR LGBT BUSINESS ENTERPRISES, INCORPORATE PERSONS WITH DISABILITIES BUSINESS ENTERPRISES, AND OTHER UPDATES**

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**Appendix A – Redlined Version of General Order 156**

**Appendix B – Adopted Version of General Order 156**

**DECISION REVISING GENERAL ORDER 156 SUPPLIER DIVERSITY PROGRAM TO IMPLEMENT SENATE BILL 255, ADOPT A VOLUNTARY PROCUREMENT GOAL FOR LGBT BUSINESS ENTERPRISES, INCORPORATE PERSONS WITH DISABILITIES BUSINESS ENTERPRISES, AND OTHER UPDATES**

**Summary**

In accordance with Senate Bill 255 (Bradford, Stat. 2019, Ch. 407), this decision revises the California Public Utilities Commission's (Commission) Supplier Diversity Program set forth in General Order 156 to incorporate community choice aggregators and electric service providers. The decision also incorporates a voluntary procurement goal for Lesbian, Gay, Bisexual, and Transgender (LGBT) business enterprises and adds a new group of business enterprises, those owned and controlled by persons with disabilities. Additionally, this decision adopts workforce and board diversity reporting and makes other program revisions to reflect recent Commission decisions on the Supplier Diversity Program. The newly adopted General Order 156 is attached as Appendix B. Additional issues may be considered by the Commission in a phase 2 of this proceeding.

This proceeding remains open.

**1. Background**

In 1986, the California Legislature approved Assembly Bill (AB) 3678 (Moore, Stats. 1986, Ch. 1259) to encourage utilities to award a proportionate share of total utility procurement contracts to women and minority business enterprises. In subsequent years and pursuant to Public Utilities Code (Pub. Util.) Code §§ 8281-8286, the California Public Utilities Commission (Commission) adopted a Supplier Diversity Program and expanded qualifying

business enterprises to include disabled veteran business enterprises<sup>1</sup> and Lesbian, Gay, Bisexual, and Transgender (LGBT) business enterprises.<sup>2</sup>

The core principle of the Commission's Supplier Diversity Program is set forth in Pub. Util. Code § 8281(a), which 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."<sup>3</sup> Since 1988, the Commission has implemented this state policy through its Supplier Diversity Program set forth in General Order 156 (GO 156). The Commission has revised GO 156 several times. Most

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<sup>1</sup> Senate Bill (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 1992, in Decision (D.) 92-06-030, the Commission incorporated disabled veteran business enterprises into General Order 156. In 1995, the Commission established a 1.5% target procurement goal for disabled veteran business enterprises.

<sup>2</sup> AB 1678 (Gordon, Stats. 2014, Ch. 633) amended Pub. Util. Code §§ 8281-8286 to include LGBT business enterprises. On June 11, 2015, the Commission adopted D.15-06-007, which revised the Supplier Diversity Program to begin implementation of AB 1678.

<sup>3</sup> Pub. Util. Code § 8281(a) 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."

recently, the Commission adopted revisions to GO 156 in D.15-06-007.<sup>4</sup> This version of GO 156 is referred to herein as the *2015 version of GO 156*.

On March 23, 2021, the Commission adopted Rulemaking (R.) 21-03-010 to serve as the forum for considering revisions to its Supplier Diversity Program.<sup>5</sup> One purpose of this rulemaking is to incorporate the requirements of SB 255 (Bradford, Stat. 2019, Ch. 407) into GO 156. SB 255 extended the scope of the Commission's Supplier Diversity Program to include certain non-utility entities, *i.e.*, community choice aggregators and electric service providers. This rulemaking also serves as the forum for adopting a voluntary procurement goal for LGBT business enterprises in furtherance of the Commission's directives in D.15-06-007<sup>6</sup> and for consideration of a number of issues, including (1) expanding the Supplier Diversity Program to include businesses owned and controlled by persons with disabilities; (2) modifying the annual reporting requirements and audit requirements; (3) adding reporting requirements on workforce and board diversity; (4) clarifying the complaint procedure at Section 7 of GO 156; (5) refining the methodologies used to set voluntary procurement goals; (6) reviewing the current *en banc* hearing procedures at Section 11.3 of GO 156; and (7) determining whether the use of the term *business enterprise* instead of *owned business enterprises* in GO 156 when referring to, for

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<sup>4</sup> On June 11, 2015, the Commission adopted D.15-06-007, which revised GO 156 to implement Assembly Bill (AB) 1678 (Gordon, Stats. 2014, Ch. 633), adding LGBT business enterprises to the Commission's *Supplier Diversity Program*. D.15-06-007, *Decision Adopting the Amended GO 156 with Amendments Necessary to Comply with AB 1678 by Extending the Provisions of the Utilities' Supplier Diversity Program to LGBT Business Enterprises* (June 11, 2015).

<sup>5</sup> All documents filed in this rulemaking can be found on the Commission's website at the *Docket Card* for this proceeding.

<sup>6</sup> D.15-06-007, *Decision Adopting the Amended GO 156 with Amendments Necessary to Comply with AB 1678 by Extending the Provisions of the Utilities' Supplier Diversity Program to LGBT Business Enterprises* (June 11, 2015).

example, women business enterprises, will better align with the terminology used in Pub. Util. Code § 366.2 and §§ 8281-8286.

After the Commission issued this rulemaking, parties filed comments on the preliminary scope of issues and the preliminary schedule presented. Parties filed comments on April 12, 2021 and reply comments on April 19, 2021. The following parties filed comments: Pacific Gas and Electric Company (PG&E), Southern California Electric Company (SCE), and, jointly, Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E), Bear Valley Electric Service, Inc., Liberty Utilities (CalPeco Electric) LLC, PacifiCorp dba Pacific Power, Southwest Gas Corporation (collectively, the Small and Multi-Jurisdictional Utilities or SMJUs), Southwest Gas Corporation (Southwest Gas), Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), LLC, Bright House Networks Information Services (California), LLC (collectively, Charter), Comcast Phone of California, LLC, Cox California Telecom, Pacific Bell Telephone Company, AT&T Corp., SBC Long Distance, LLC, AT&T Mobility, Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc. (collectively, Joint Telco Parties), California Choice Energy Authority (CalChoice),<sup>7</sup> California Community Choice Association (CalCCAs),<sup>8</sup>

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<sup>7</sup> CalChoice is a California joint powers authority that provides regulatory and support services to small cities that have elected to implement and operate Community Choice Aggregation programs. CalChoice submitted comments on its behalf and on behalf of the cities of Baldwin Park, Lancaster, Pico Rivera, Palmdale, Pomona, Rancho Mirage, San Jacinto, Santa Barbara and the Town of Apple Valley and their respective community choice aggregator programs.

<sup>8</sup> California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, Clean Power SF, Desert Community Energy, East Bay Community Energy, Lancaster

*Footnote continued on next page.*

California Water Association (CalWater Association), Great Oaks Water Company (Great Oaks Water), Shell Energy North America (U.S.), L.P. and Alliance for Retail Energy Market (Shell Energy and AReM), Sierra Telephone Company, Inc., BuildOUT California (BuildOUT CA), Center For Accessible Technology (CforAT), National Diversity Coalition,<sup>9</sup> National LGBT Chamber of Commerce, and Small Business Utility Advocates (SBUA).

On June 25, 2021, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo), which set forth the issues to be addressed and the schedule for the proceeding. The Scoping Memo sought to include most of the issues suggested by parties in the proceeding and indicated that any remaining issues may be considered in the future. We may consider some of these remaining issues in a phase 2 of this proceeding.

On July 16, 2021, the Commission staff issued a proposal (staff proposal) to provide parties with more information about the issues framed in the Scoping Memo and to serve as a starting point for consideration of all these issues.<sup>10</sup> The

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Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

<sup>9</sup> National Diversity Coalition members include the National Asian American Coalition, Advancing the Seed, Inc., African American Chamber of Commerce, African American Fire Fighter Museum, Asian Business Association, Asian Journal, Boys of Color of Santa Ana, Community Connections LLC, COR Community Development Corporation, El Mundo, Impact Southern California, Instituto de Avance Latino, Island Pacific Supermarkets, The Jesse Miranda Center for Hispanic Leadership, Korean American Coalition LA, Latino Coalition for Community Leadership, Los Angeles Latino Chamber of Commerce, Macedonia Community Development Corporation, Network of Myanmar American Association, Santa Maria Group, OASIS Center International, Templo Calvario CDC, and Youth Business USA.

<sup>10</sup> The staff proposal was provided to the service list of this proceeding via an ALJ ruling on July 16, 2021 and is available on the Commission's website at the *Docket Card* for this

*Footnote continued on next page.*



staff proposal presented ideas and recommendations on the following issues:

(1) a methodology to determine the voluntary procurement goal for LGBT business enterprises, (2) incorporating non-utility entities, specifically, community choice aggregators and electric service providers, into the mandatory reporting requirements of GO 156, (3) expanding GO 156 to include businesses owned and controlled by people with disabilities, (4) clarifying reporting and audit requirements, (5) adding workforce and board diversity reporting requirements, and (6) updating the complaint/appeals process at Section 7 of GO 156.<sup>11</sup>

On July 21, 2021, staff conducted a public workshop. The agenda for the workshop included the topics addressed in the staff proposal and also an overview of the methodology used by the Commission to establish prior voluntary procurement goals, proposals for a goal for LGBT business enterprises, presentations on how other states are considering directing utilities to report on workforce and board diversity, and discussions on the importance of including people with disabilities in the Commission's Supplier Diversity Program.

On August 4, 2021 and August 18, 2021, parties filed comments on staff proposal and the July 21, 2021 workshop. The following parties filed comments: PG&E, SCE, SoCalGas/SDG&E, Charter, AT&T Corp., AT&T Wireless Operations Holding, Inc., SBC Long Distance, LLC, Santa Barbara Cellular Systems, Ltd., New Cingular Wireless PCS, LLC, and Pacific Bell Telephone Company, California Community Choice Association, CalChoice, Comcast

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proceeding. The staff proposal was prepared by the Commission's Executive Director, the Business and Community Outreach Group.

<sup>11</sup> Out-of-state business enterprises may participate in the Supplier Diversity Program but must meet the statutory requirements and the requirements of GO 156.

Phone of California, LLC, National Diversity Coalition, California Water Association, BuildOUT CA, CforAT, Comcast Phone of California, LLC, Great Oaks Water, Cellco Partnership, XO Communications Services, and MCI Communications Services LLC, Charter, AT&T Corp., Pacific Bell Telephone Company, SBC Long Distance, LLC, Santa Barbara Cellular Systems, Ltd., AT&T Mobility Wireless Operations Holdings, Inc., New Cingular Wireless PCS, LLC., Hispanics In Energy, Southwest Gas Corporation, Cox California Telecom, LLC dba Cox Communications (Cox Telecom), Sierra Telephone Company, Inc., Shell Energy North America (US), L.P. and Alliance for Retail Energy Markets, SBUA, and California Choice Energy Authority.

On September 14, 2021 and September 22, 2021, the staff held small workshops to discuss the contents of the reporting required by GO 156, specifically, the reporting for the new non-utility entities added to GO 156 by SB 255, community choice aggregators and electric service providers. Parties attended and participated. No workshop was held regarding the reporting for smaller utilities but may be held in the future.

On the topic of establishing a voluntary procurement goal for LGBT suppliers, the Commission received a number of letters from public officials including the California Legislative LGBTQ Caucus,<sup>12</sup> U.S. Senator Feinstein, U.S. Senator Alex Padilla, Assemblymember (Retired) Richard Gordon, Former State Senator Mark Leto, Mayor of El Cerrito Pro Tem Gabriel Quinto, California League of Cities, Mayor of Palm Springs Christie Holstege,

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<sup>12</sup> Members of the California Legislative LGBTQ Caucus include Assemblymember Evan Low, Chair Senator Susan Talamantes Eggman, Vice Chair President Pro Tempore Toni Atkins, Assemblymember Sabrina Cervantes, Senator John Laird, Assemblymember Alex Lee, Assemblymember Chris Ward, and Senator Scott Wiener.

Mayor of San Diego Todd Gloria, State Controller Betty Yee, and State Insurance Commissioner Ricardo Lara.

These letters and the comments filed in the proceeding have been reviewed. The public comments submitted on the *Docket Card* of this proceeding have also been reviewed.

## **2. Issues**

The June 25, 2021 Scoping Memo identified the below issues to be determined in this proceeding:

1. SB 255. How should the Commission revise the Supplier Diversity Program to implement the provisions of SB 255?
  - 1.1. How should the Commission revise the Supplier Diversity Program to reflect the provisions in SB 255 which changed the application of Pub. Util. Code § 8283(a), (c), and (d) to entities with gross annual California revenues above \$25 million, rather than gross annual revenues above \$25 million?
  - 1.2. How should the Commission revise the Supplier Diversity Program pursuant to SB 255 to include community choice aggregators<sup>13</sup> with gross annual revenues above \$15 million as required by Pub. Util. Code § 366.2(m) and electric service providers<sup>14</sup> with gross annual California revenues above \$25 million as required by Pub. Util. Code § 8283(a), (c), and (d)?
  - 1.3. How should the Commission implement the annual reporting and annual plans requirement in SB 255 imposed on the newly added community choice aggregators pursuant to Pub. Util. Code § 366.2(m)

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<sup>13</sup> Community choice aggregator is an entity created by counties and cities under the authority of Pub. Util. Code § 366.2 to competitively procure electricity in the market for customers within the county or city.

<sup>14</sup> 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.

and that these requirements must be in “a form that the commission may require”?

- 1.4. When implementing the directive in SB 255 pursuant to Pub. Util. Code § 8283 to incorporate electric service providers into the Supplier Diversity Program, should the Commission require simplified reporting information compared to the reporting information currently required of utilities? If so, what reporting information should be included?
- 1.5. Pursuant to Pub. Util. Code § 366.2(m)(3) in SB 255, should the Commission revise the Supplier Diversity Program to reflect the provisions of SB 255 that “encourage” community choice aggregators with gross annual revenues under \$15 million “to voluntarily adopt a plan for increasing procurement from small, local, and diverse business enterprises in all categories”?
- 1.6. How should the Commission implement the directive in SB 255 to revise the Supplier Diversity Program to include smaller utilities and electric service providers, *i.e.*, those with total annual California revenues between \$15 million and \$25 million as required by Pub. Util. Code § 8283(f), and how should the Commission implement the directive in Pub. Util. Code § 8283(f) for the Commission to adopt “simplified” reporting requirements for these smaller utilities and electric service providers?
- 1.7. When implementing the directives in SB 255 to incorporate community choice aggregators and electric service providers into the Supplier Diversity Program, should the Commission extend the audit requirements in Section 9.1.10 of GO 156 to any community choice aggregators and electric service providers?
- 1.8. Pursuant to Pub. Util. Code § 8283(e)(1), should the Commission revise the Supplier Diversity Program

to reflect the provisions of SB 255 that “encourage” certain smaller utilities and electric service providers, *i.e.*, those with gross annual California revenues under \$15 million, “to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement” and submit a report to the Legislature?

- 1.9. Pursuant to Pub. Util. Code § 8283(e)(2), should the Commission revise the Supplier Diversity Program to add exempt wholesale generators, distributed energy resource contractors, and energy storage system companies as “encouraged to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis”?
2. LGBT Business Enterprises. What is an appropriate target procurement percentage goal for LGBT business enterprises to be included in the Supplier Diversity Program considering existing methodologies and how should the target procurement percentage goal take into consideration the December 31, 2020 proposal by some utilities to the Commission’s staff to adopt a goal of 0.5 percent?
3. Person with Disabilities Business Enterprises. Should the Commission expand the Supplier Diversity Program to include business enterprises owned and controlled by persons with disabilities? If so, should the Commission designate an entity or entities for certifying a person or entity as a business enterprise owned and controlled by persons with disabilities and, in addition, should the Commission adopt a voluntary target procurement percentage goal for business enterprises owned and controlled by persons with disabilities and what process should the Commission rely upon to consider and adopt such a target?

4. Other Revisions to General Order 156. Should the Commission revise GO 156 to include economic impact of the Supplier Diversity Program and workforce and corporate board diversity data? Should the Commission modify GO 156 to authorize the Commission's staff to conduct audits, in addition to those audits described at Section 9.1.10 of GO 156, of any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Supplier Diversity Program? Should the Commission clarify the complaint process at Section 7 of GO 156 as it applies to any entity falling within the Supplier Diversity Program, including community choice aggregators, electric service providers, and utilities? Should the Commission refine the *en banc* hearing process at Section 11.3 of GO 156?

### **3. Discussion**

The Commission addresses the above issues in the following sequence:

(1) incorporating the directives in SB 255 into GO 156, (2) the voluntary procurement goal for LGBT business enterprises, (3) business enterprises owned and controlled by person with disabilities, and (4) other revisions to GO 156.

#### **3.1 Senate Bill 255**

##### **3.1.1 Non-Utility Entities, Smaller Utilities, and Revenue Thresholds**

SB 255 amended Pub. Util. Code § 366.2 and §§ 8281-8286 to add certain community choice aggregators, electric service providers, and smaller utilities to the Supplier Diversity Program. SB 255 also adopted thresholds based on revenues to determine whether a community choice aggregator, electric service provider, or small utility falls within the legislation.

According to SB 255, the revenue threshold for community choice aggregators is \$15 million in gross annual California revenues. SB 255 modified the revenue threshold applicable to larger utilities to gross annual California

revenues above \$25 million and adopted the same threshold for newly added electric service providers. SB 255 also added revenue thresholds to include smaller utilities and smaller electric service providers, those with gross annual California revenues between \$15 million and \$25 million.

In comments regarding potential revisions to GO 156 on these statutory changes, no parties oppose adding these new entities and modifying the revenue thresholds in GO 156. Parties do offer suggestions on how the Commission should implement the annual requirement to submit plans and reports by community choice aggregators, electric service providers, and smaller utilities. The Commission addresses these issues below.

In this decision, consistent with the statutory directives in SB 255 and in the absence of opposition, the Commission incorporates community choice aggregators, electric service providers, and smaller utilities together with the corresponding new and revised revenue thresholds into GO 156. We adopt March 2023 as the due date for the first submissions of the required documents to the Commission for all newly added entities.<sup>15</sup>

### **3.1.2 Annual Plans and Reports for Community Choice Aggregators**

SB 255 amended Pub. Util. Code § 366.2(m) to require annual plans and reports for the newly added community choice aggregators.

The Commission is directed to adopt rules for these annual reports in “a form that the commission may require.”<sup>16</sup> Reflecting more specific directive for annual plans, SB 255 requires that “each community choice aggregator with

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<sup>15</sup> Parties may file a request for an extension of time under Rule 16.6 of the Commission’s Rules of Practice and Procedure.

<sup>16</sup> Pub. Util. Code § 366.2(m)(2).

gross annual revenues exceeding fifteen million dollars (\$15,000,000) annually submit a detailed and verifiable plan to the commission for increasing procurement from small, local, and diverse business enterprises.”<sup>17</sup> Regarding annual reports, community choice aggregators are required to “submit a report to the commission regarding its procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories.”<sup>18</sup>

The staff proposal suggests that these newly added entities be subject to the same rules and requirements for annual reports and plans as currently exist for utilities.<sup>19</sup> National Diversity Coalition agrees, stating that community choice aggregators should submit the same information as the utilities and, in addition, use a standard reporting form to allow for straightforward comparisons between all participants.<sup>20</sup>

Other parties suggest the Commission should require no information or much less information from these entities. CalCCAs raise a potential legal conflict if community choice aggregators attempt to comply with both Proposition 209 and the GO 156 reporting requirements of procurement goals that now apply to utilities.<sup>21</sup> CalCCAs state that, to legally include community choice aggregators in the Supplier Diversity Program, GO 156 must be substantially revised to avoid legal conflicts with Proposition 209. CalCCAs

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<sup>17</sup> Pub. Util. Code § 366.2(m)(1).

<sup>18</sup> Pub. Util. Code § 366.2 (m)(2)(A).

<sup>19</sup> July 16, 2021 Staff Proposal at 11-12.

<sup>20</sup> National Diversity Coalition August 4, 2021 Comments at 16.

<sup>21</sup> Proposition 209 refers to a California ballot proposition which, upon approval in November 1996, amended the state constitution to prohibit state governmental institutions from considering race, sex, or ethnicity, specifically in the areas of public employment, public contracting, and public education.



point to further legal concerns, stating that the reporting requirements in the 2015 version of GO 156 do not reflect state and local directives and related contracting laws that apply to community choice aggregators as local government entities. Furthermore, CalCCAs point out that the Commission's reporting requirements for community choice aggregators must reflect the fact that, based on the business model of the typical community choice aggregator, a smaller pool of eligible suppliers exists, since procurement is almost entirely electricity supply - which accounts for 94% of spend by a typically community choice aggregator.<sup>22</sup>

Similarly, CalChoice suggests the Commission adopt lesser or no annual reporting and plan requirements for smaller community choice aggregators, such as those operating below 700 GWh.<sup>23</sup> For this reason, CalChoice urges the Commission not to adopt the staff proposal because it does not recommend different reporting requirements for small and large community choice aggregators.<sup>24</sup> CalChoice further offers support for the position of Shell Energy and AReM, Comcast, and CalWater Association that the Commission staff should collaborate with both electric service providers and community choice aggregators to develop less burdensome regulatory requirements.<sup>25</sup> Comcast states that any required information in the annual reports and plans should be created to facilitate easy participation by these newly added entities.<sup>26</sup> CalWater Association agrees, stating that the Commission should reduce the existing

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<sup>22</sup> CalCCAs August 4, 2021 Comments at 3-5.

<sup>23</sup> CalChoice August 4, 2021 Comments at 3.

<sup>24</sup> CalChoice August 4, 2021 Comments at 4 and 7-8

<sup>25</sup> CalChoice Reply Comments at 3.

<sup>26</sup> Comcast August 4, 2021 Comments at 9.

regulatory requirements, as applied to community choice aggregators, because they would be too burdensome.

Based on these comments, the Commission finds that Pub. Util. Code § 366.2(m)(1) requires community choice aggregators to submit annual plans that include opportunities for increasing procurement from “small, local, and diverse business enterprises,” but not necessarily from specific business enterprises.

Regarding the annual reports submitted by community choice aggregators, the Commission finds it reasonable to permit more limited reporting than currently required of utilities due to their business model but the annual reports must include all business enterprises under GO 156. In making this decision, the Commission relies on Pub. Util. Code § 366.2(m)(2)(B), which provides the Commission with discretion to create reporting requirements for community choice aggregators that are different from those applicable to utilities. More specifically, we find that the annual reports should reflect the fact that energy procurement represents the majority of expenses for a typical community choice aggregator, at approximately 94%. As such, the business model for community choice aggregators provides fewer opportunities to contract with all suppliers.

In addition, energy procurement historically has not included a large number of eligible suppliers. We want to see progress in this area of energy procurement and staff is currently working with relevant covered entities subject to GO 156 to increase spending with eligible suppliers in this area.

Staff will meet with community choice aggregators and other interested stakeholders, as needed, to gather information on the procurement areas where reporting would be meaningful. Staff will develop annual report requirements for community choice aggregators, which are more limited than those required

of utilities. Staff may modify the plan and report requirements (and any related forms). Staff will place these plan and report requirements (and any related forms) on the Commission's webpage for the GO 156 Supplier Diversity Program as well as send the plan and report requirements (and any related forms) and the website link to community choice aggregators, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156). If staff modifies the plan and report requirements (or any related forms), staff will provide a copy of these revisions to community choice aggregators, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156).

The Commission declines to carve out an exception for smaller community choice aggregators from the reporting requirements, such as those operating below 700 GWh, as suggested by some parties. All community choice aggregators with \$15 million in gross annual California revenues must comply with the reporting requirements.

### **3.1.3 Annual Reports and Plans for Larger Electric Service Providers**

SB 255 amended Pub. Util. Code § 8283 to incorporate electric service providers into the Supplier Diversity Program. The amendments to Pub. Util. Code § 8283 include a requirement that certain electric service providers submit annual plans and annual reports to the Commission.<sup>27</sup> SB 255 creates two general categories of electric service providers and permits different reporting based on revenues.<sup>28</sup> In this section, the Commission establishes requirements for annual reports and annual plans applicable to electric service providers with gross

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<sup>27</sup> Pub. Util. Code § 8283(a) and (d).

<sup>28</sup> Pub. Util. Code § 8283(f) instructs the Commission to rely on "*a simplified form*" for reporting purposes.

annual California revenues exceeding \$25 million.<sup>29</sup> Next, we address the requirements for smaller electric service providers, *i.e.*, those with gross annual California revenues between \$15 million and \$25 million.

The staff proposal makes general recommendations to modify the reporting requirements in GO 156.<sup>30</sup> Several parties provided comments on this topic, which largely align with the issues discussed above regarding the appropriate scope of the reporting requirements for community choice aggregators.

Regarding electric service providers, Shell Energy and AReM state that the majority of expenses of electric service providers are energy procurement contracts.<sup>31</sup> Shell Energy and AReM also state that, because electric service providers are not regulated by the Commission and do not have guaranteed cost recovery for expenses related to reporting, as do utilities, that electric service providers should be subject to lesser requirements.<sup>32</sup> Shell Energy and AReM suggest the Commission adopt a variety of limited reporting requirements, such as permitting electric service providers to report a summary of corporate (parent and affiliates) activity with eligible suppliers, provide copies of reports already submitted to other state agencies, or offer attestation by corporate officers of efforts to pursue procurement from eligible suppliers.<sup>33</sup> The Regents of the University of California state that some electric service providers are also public

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<sup>29</sup> Pub. Util. Code § 8283(a).

<sup>30</sup> July 16, 2021 Staff Proposal at 5-6.

<sup>31</sup> Shell Energy and AReM August 4, 2021 Comments at 4.

<sup>32</sup> Shell Energy and AReM August 4, 2021 Comments at 4.

<sup>33</sup> Shell Energy and AReM August 4, 2021 Comments at 6.

agencies and, as a result, must comply with Proposition 209 when collecting and submitting data regarding diversity matters.<sup>34</sup>

Based on these comments, the Commission finds it reasonable to adopt the same requirements applied to utilities with the same revenue threshold under the statute but that the required annual reports and annual plans for electric service providers with gross annual California revenues over \$25 million, may reflect the fact that energy procurement represents most of the expenses for a typical electric service provider.

To the extent that an electric service provider is also a public agency, the Commission acknowledges that additional legal restrictions on data collection may apply.<sup>35</sup> For these reasons, staff is directed to take into consideration both the limited scope of business of electric service providers and, in certain circumstances, legal constraints that may limit annual plans for public agencies when developing forms. Regarding annual reports, an electric service provider that is also a public agency is required to submit a report to the commission regarding its procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories. No other convincing reasons were presented to apply a different standard to larger electric service providers than apply to similarly sized utilities.

As acknowledged above, the business model for electric service providers provides fewer opportunities for contracts with suppliers beyond energy procurement and is a sector that historically does not include many eligible

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<sup>34</sup> Regents of University of California March 7, 2022 Comments to Proposed Decision at 1-3.

<sup>35</sup> Regents of University of California March 7, 2022 Comments to Proposed Decision at 2.

suppliers. Again, we want to see progress in this area and staff is currently working with stakeholders on this topic.

Staff will meet as needed with electric service providers with annual gross California revenue above \$25 million, including those electric service providers that are also public agencies, and interested stakeholders to gather information from these electric service providers and develop requirements for annual plans and annual reports (and any related forms) that include the information generally consistent with Section 9 and 10 of GO 156, while taking into consideration the more limited scope of business of an electric service provider and, in certain circumstances, the limited abilities of electric service providers that are public agencies to present data in annual plans.

Staff will place these reporting requirements (and any related forms) on the Commission's webpage for the GO 156 Supplier Diversity Program as well as send reporting requirements and the website link to electric service providers, stakeholders, and the service list of this proceeding (or a successor proceeding related to GO 156). Staff may modify the reporting requirements (and any related forms) for these electric service providers. If staff makes modifications, staff will provide these revisions to these electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156).

#### **3.1.4 Reporting for Smaller Electric Service Providers and Smaller Utilities**

SB 255 added subsection (f) to Pub. Util. Code § 8283, which includes a requirement that smaller utilities and electric service providers, *i.e.*, those with gross annual California revenues between \$15 million and \$25 million, provide the Commission with data regarding procurement from the identified business

enterprises. Pub. Util. Code § 8283(f) provides that the Commission must adopt a “simplified form” for these smaller utilities and electric service providers “to annually submit data ...to the commission on its procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories.” Unlike Pub. Util. Code § 8283(a), SB 255 does not direct the Commission to require that these smaller utilities and electric service providers to submit plans for “increasing procurement” from women, minority, disabled veteran, and LGBT business enterprises. Instead, SB 255 states at Pub. Util. Code § 8283(f) that the Commission direct smaller utilities and electric service providers to submit data on “procurement” from the eligible suppliers.

The staff proposal explains this aspect of SB 255 but does not offer a specific approach for the Commission to implement this statutory language.<sup>36</sup> Several parties provide comments interpreting the reference to “simplified form” for smaller utilities and electric service providers, as set forth in Pub. Util. Code § 8283(f). Great Oaks Water states that the Commission must, consistent with SB 255, adopt a “simplified form” for submission on an annual basis and that the Commission should direct staff to work with smaller utilities to develop this form.<sup>37</sup> Great Oaks Water suggests, for example, that the Commission adopt the same requirements that currently applies to larger utilities and then staff should hold workshops to refine the required materials into a more simplified format.<sup>38</sup> Additionally, Great Oaks Water offers to help create this form and requests that the first time the “simplified form” is presented for review, not be in the

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<sup>36</sup> July 16, 2021 Staff Proposal at 5-6.

<sup>37</sup> Great Oaks Water August 4, 2021 Comments at 7-8.

<sup>38</sup> Great Oaks Water August 4, 2021 Comments at 7-8.

proposed decision for this proceeding.<sup>39</sup> Sierra Telephone points out that Pub. Util. Code § 8283(f) directs the Commission to adopt a simplified form, which must mean a different form than exists to reflect the fact that small utilities have less resources to allocate to reporting.<sup>40</sup> Sierra Telephone suggests that, starting in 2022, the Commission adopt simplified requirements with only a narrative description of activities during the past calendar year regarding outreach and exploring procurement opportunities with eligible suppliers, with a list of contracts with eligible suppliers, including a general description of the procurement categories, the classification of the supplier, and the expected value of the contract.<sup>41</sup> CalWater Association states that the Commission should direct staff to work with smaller electric service providers and utilities to develop simplified reporting requirements that do not merely duplicate the existing requirements for larger utilities.<sup>42</sup> Similarly, Shell Energy and AReM state that the Commission should direct staff to meet with smaller utilities and electric service providers to develop “simplified” reporting requirements.<sup>43</sup>

We agree with parties and find that, while SB 255 does not expand upon the meaning of the term “simplified form” in Pub. Util. Code § 8283(f), the Commission interprets this term to mean simplified as compared to the existing requirements. For this reason, consistent with the recommendations of parties and the language in Pub. Util. Code § 8283(f), the Commission adopts less burdensome requirements. We direct staff to meet with these smaller utilities

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<sup>39</sup> Great Oaks Water August 4, 2021 Comments at 8.

<sup>40</sup> Sierra Telephone April 12, 2021 Comments at 1-2.

<sup>41</sup> Sierra Telephone April 12, 2021 Comments at 1-2.

<sup>42</sup> CalWater Association August 4, 2021 Comments at 7.

<sup>43</sup> Shell Energy and AReM August 4, 2021 Comments at 2.



and electric service providers to develop simplified annual reporting requirements.

Staff will meet, as needed, with smaller utilities and electric service providers, *i.e.*, those with annual gross California revenue between \$15 million and \$25 million and other interested parties in 2022 to gather information from parties on areas where annual reporting would be meaningful. We further authorize staff to develop reporting that is more limited than set forth in Section 9 and Section 10 of GO 156.

Staff will place these reporting requirements (and any related forms) on the Commission's webpage for the GO 156 Supplier Diversity Program as well as send these reporting requirements and the website link to smaller utilities and smaller electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156). Staff may modify the reporting requirements (and any related forms) and will provide any revisions to smaller utilities and smaller electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156).

### **3.1.5 Voluntary Plans by Other Entities**

SB 255 made several revisions to the provisions of Pub. Util. Code § 366.2 and §§ 8281-8286 to encourage other entities to increase procurement from eligible suppliers. No statutory directives require these entities to submit reports or plans to the Commission. Instead, these entities are encouraged by SB 255 to develop plans to increase procurement from eligible suppliers and submit reports to the Legislature on their progress. Below is a brief review of these voluntary provisions.

First, SB 255 added Pub. Util. Code § 366.2(m)(3) to "encourage" community choice aggregators with gross annual revenues under \$15 million "to

voluntarily adopt a plan for increasing procurement from small, local, and diverse business enterprises....”

Second, SB 255 modified Pub. Util. Code § 8283(e)(1) to “encourage” certain small utilities and electric service providers, *i.e.*, those with gross annual California revenues under \$25 million, “to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement.”

Third, SB 255 also revised Pub. Util. Code § 8283(e)(2) to add exempt wholesale generators, distributed energy resource contractors, and energy storage system companies to other already identified types of businesses that are “encouraged to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis.”

Parties did not offer comments on the addition or revisions related to these voluntary provisions of Pub. Util. Code §§ 8281-8286 for increasing procurement from eligible suppliers. The staff proposal did not address this aspect of SB 255.

In response, the Commission finds that adding a section to GO 156 that identifies those businesses encouraged by statute to voluntarily increase procurement from eligible suppliers and, in more limited instances, report to the Legislature, will serve to promote the state policy of increasing procurement from these eligible suppliers, as set forth in Pub. Util. Code §§ 8281-8286. Adding a section to GO 156 on this topic will also serve to memorialize the voluntary efforts of these smaller utilities, smaller community choice aggregators, smaller electric service providers, and other types of businesses to increase procurement from eligible suppliers and submit voluntarily reports of their efforts to the Legislature.

### **3.2 LGBT Business Enterprises – Voluntary Procurement Goal**

In compliance with Pub. Util. Code §§ 8281-8286, the Commission has adopted voluntary procurement goals for women, minority, and disabled-veteran business enterprises. No penalties or sanctions exists if these voluntary goals are not achieved. Currently, these voluntary procurement goals total 21.5% of contracts, divided as follows: women business enterprises at 5%, minority business enterprises at 15%, and disabled veteran business enterprises at 1.5%. In D.15-06-007, the Commission added LGBT business enterprises to the Supplier Diversity Program but not a voluntary procurement goal.<sup>44</sup> The Commission adopted a five-year process that involved gathering data to be used later to adopt a voluntary procurement goal. The Commission now seeks to adopt such a voluntary procurement goal. In the Scoping Memo, the assigned Commissioner asked parties to make recommendations on the appropriate voluntary procurement goal for LGBT business enterprises for the Supplier Diversity Program. In response, the parties presented the Commission with percentages ranging from 0.5% to at least 1.5%.

The staff proposal suggests that the goal for LGBT should be attainable and aspirational.<sup>45</sup> Based on the average utility historical spend over the past five years of 0.135%, the staff proposal recommends the Commission defer adopting a final goal and instead adopt a provisional goal of 0.5% with a

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<sup>44</sup> 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.

<sup>45</sup> July 16, 2021 Staff Proposal at 8-9.

4-year extension period, during which time the utilities and LGBT representatives work together to increase awareness and enrollment of LGBT business enterprises in the Supplier Clearinghouse, and then Commission should reevaluate the goal based on the new average utility spending.<sup>46</sup>

Some parties express disappointment that the Commission relied upon a five-year process, rather than a shorter process, for developing a goal. BuildOut CA states that the Commission should have acted much quicker.<sup>47</sup> In retrospect, a more streamlined means of establishing a goal would have been preferable.

Elected officials also sent letters to the Commission urging the Commission to adopt a goal of at least 1.5% for LGBT business enterprises.<sup>48</sup> These public officials state that, for example:

As you know, there is no penalty for failing to meet this goal. It is also important to note that these procurement goals are more than a matter of diversity — they are a statement of the CPUC's values. Setting the procurement goal for LGBTQ business so far below other participants sends a message that the CPUC does not value our community.<sup>49</sup>

BuildOUT CA and NGLCC, urge the Commission to adopt a goal of at least 1.5% because, they state, sufficient LGBT businesses enterprises exist and the goal

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<sup>46</sup> July 16, 2021 Staff Proposal at 8-9.

<sup>47</sup> BuildOut CA August 4, 2021 Comments at 2.

<sup>48</sup> The Commission received letters from the California Legislative LGBTQ Caucus, U.S. Senator Alex Padilla, Assemblymember (Retired) Richard Gordon, Former State Senator Mark Leto, Mayor of El Cerrito Pro Tem Gabriel Quinto, California League of Cities, Mayor of Palm Springs Christie Holstege, Mayor of San Diego Todd Gloria, State Controller Betty Yee, and State Insurance Commissioner Ricardo Lara. These public officials urged the Commission to adopt a percentage procurement goal of at least 1.5% for LGBT Business Enterprises.

<sup>49</sup> Letter of September 10, 2021 from the California Legislative LGBTQ Caucus.

should be aspirational.<sup>50</sup> BuildOUT CA characterizes the 0.5% goal as too low<sup>51</sup> and argues that LGBT business enterprises should be treated similarly to other diverse businesses, such as disabled veteran business enterprises, and provided with a 1.5% goal.<sup>52</sup> SBUA states that sufficient LGBT business enterprises exist to adopt a 1.5% goal.<sup>53</sup>

Meanwhile, some parties note that there are challenges in reaching 1.5% immediately. At a July 21, 2021 workshop, the Joint Utilities<sup>54</sup> and the Los Angeles LGBT Chamber of Commerce note that the Supplier Clearinghouse does not include many certified LGBT business enterprises in general nor in the Standard Industry Classification with available contract opportunities.<sup>55</sup> CalWater Association explains that to increase the pool of LGBT entities available for contracting, the Commission must establish an expedited and streamlined system for incorporating LGBT businesses already certified by national entities as recognized by the Supplier Clearinghouse so that contract spend can be recorded as diverse spend under the Commission's Supplier Diversity program.<sup>56</sup>

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<sup>50</sup> BuildOUT CA August 4, 2021 at 6 and NGLCC April 12, 2021 Comments at 3-4.

<sup>51</sup> BuildOUT CA April 12, 2021 Comments at 3-4.

<sup>52</sup> NGLCC April 14, 2021 Comments at 4.

<sup>53</sup> SBUA August 18, 2021 Reply Comments at 3.

<sup>54</sup> The Joint Utilities describe themselves as a group of industry professionals representing CPUC-regulated utilities that gather periodically to discuss issues and share best practices specific to supplier diversity program activities and advancing opportunities for diverse business enterprises.

<sup>55</sup> Standard Industry Classification (SIC) may include different business categories such as heavy construction contractors, communications, and depository institutions.

<sup>56</sup> CalWater Association March 1, 2022 Comments on Proposed Decision at 2-3.

Other groups argue for using existing data as the basis for developing targets that are attainable. The utilities, individually and through the “Joint Utilities,” recommend the Commission adopt a 0.5% goal based on historical data collected by various utilities over the past five years.<sup>57</sup> The recommendation of the Joint Utilities was prepared in response to a directive by the Commission in D.15-06-007, which set forth a multi-step and multi-year process for utilities to gather data on utility contracting with LGBT business enterprises and to use that historical data gathered over that five year period to support a recommendation for a goal that the Commission could consider adopting.<sup>58</sup> The Joint Utilities state that the average four-year (2016–2019) average spend totaled 0.135%.<sup>59</sup> Based on this average, the Joint Utilities state that an aspirational goal would be 0.5%. SDG&E/SoCalGas point out that the goal of 0.5% for LGBT would result in an overall goal for diverse spend of 22%.<sup>60</sup>

National Diversity Coalition does not offer a specific percentage for consideration but states that the goal must be reasonable and recommends the Commission consider both historical spend over the past five years and

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<sup>57</sup> The Joint Utilities recommendations was submitted to the Commission’s staff by email dated December 31, 2020.

<sup>58</sup> D.15-06-007, Ordering Paragraph 6(e)(ii) at 43, the Commission directed all covered utilities to “...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...” (LGBTBE is an acronym for LGBT Business Enterprises.)

<sup>59</sup> As evidence of the other efforts made to increase procurement, the Joint Utilities state that “Over the past four years, the utilities have contributed more than \$1.3 million in sponsorship funding to support development, outreach, and other program activities for LGBTBE firms. In addition, the utilities have attended and participated in multiple conferences, matchmaking sessions, and other events.”

<sup>60</sup> SDG&E and SoCalGas April 12, 2021 Comments at 2.

demographic data,<sup>61</sup> such as the estimated percentage of LGBT population in the relevant service territory.<sup>62</sup> National Diversity Coalition also suggests that the goals should be based on the LGBT proportion of population and the number of LGBT certified in the database of the Supplier Clearinghouse.<sup>63</sup>

Comcast suggests the Commission consider permitting the covered entities<sup>64</sup> to individually set goals beyond the 0.5% to “allow flexibility for entities with different operations, needs for services, and available contracting opportunities.”<sup>65</sup> Comcast also suggests that, after three years, the Commission could revisit whether to change the target goal of 0.5%.<sup>66</sup> Comcast argues that the goal of 0.5% is supported by data collected pursuant to the process adopted in D.15-06-007.

In response to the suggestion the Commission rely on historical data to set a goal, BuildOUT CA presented some limitations of using historical data for the LGBT goal. BuildOUT CA states that over the past several years, in the absence of any adopted goal, utilities were not sufficiently committed to increasing procurement from LGBT business enterprises which, in turn, is reflected in a lower procurement spend during the past five years. They reason that

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<sup>61</sup> BuildOUT CA August 4, 2021 Comments at 12-13, stating that demographic data suggests that LGBT workforce is approximately 6% of population in California and National Diversity Coalition August 4, 2021 Comments at 12 stating “available information indicates LGBT individuals comprise approximately 5% of the California population.”

<sup>62</sup> National Diversity Coalition August 4, 2021 Comments at 9 and 12.

<sup>63</sup> National Diversity Coalition March 1, 2022 Comments at 4.

<sup>64</sup> The terms “covered entities” is used herein to mean all the companies subject to the mandatory reporting requirements in Pub. Util. Code § 366.2 and §§ 8281-8286 and GO 156, including utilities, community choice aggregators, and electric service providers meeting certain revenue thresholds.

<sup>65</sup> Comcast April 12, 2021 Comments at 2.

<sup>66</sup> Comcast April 12, 2021 Comments at 2.

subsequent use of that procurement data to establish the LGBT goal would create an unreasonably low goal.<sup>67</sup> BuildOUT CA also reasons that historical data is inherently reflective of the past societal discrimination and should not be a sole determinate for setting goals.<sup>68</sup>

The Commission considers establishing LGBT procurement goals to be critical for increasing the engagement and participation of LGBT business enterprises in the Supplier Diversity Program. While the data collected during the intervening years is informative in establishing a goal, we are also persuaded that relying on historical data is not enough to implement the statutory directives in Pub. Util. Code § 8281(b)(2)(A) to “[e]ncourage greater economic opportunity” and increase procurement for LGBT business enterprises in Pub. Util. Code § 8283(a). Historical data reflects past barriers to full participation in the utility industry and may also reflect too little effort by some utilities to increase opportunities to contract with LGBT business enterprises. Our adopted voluntary procurement goal should promote greater engagement by utilities and other entities toward increasing participation by LGBT business enterprises in supplier procurement opportunities. In other words, the goal must be ambitious too.

For these reasons, we adopt the following voluntary procurement goals for LGBT business enterprises over the next three years: 2022 of 0.5%, 2023 of 1.0%, and 2024 of 1.5%. Our directive balances the reliance on historical data with our objective of increasing procurement from LGBT business enterprise amidst unique barriers to entry.

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<sup>67</sup> BuildOUT CA April 18, 2021 Reply Comments at 6.

<sup>68</sup> BuildOUT CA August 8, 2021 Comments at 2.



The Commission commits to work, alongside covered entities, to promote the 1.5% procurement goal, including reaching out to the community to identify LGBT businesses that can work with covered entities and encouraging more LGBT businesses to become certified with the Supplier Clearinghouse. We also direct the Supplier Clearinghouse to streamline certification of LGBT businesses already certified by national certification entities.

Lastly, the Commission notes that the recommendation provided on December 31, 2020 by the Joint Utilities includes next steps toward increasing procurement from LGBT business enterprises. We strongly encourage all utilities, community choice service providers, electric service providers, and relevant LGBT business enterprises and organizations to incorporate these next steps, or make similar efforts, to promote increased procurement from LGBT business enterprises set forth below:<sup>69</sup>

**(1) Joint Utilities, individually and/or collectively:**

- Continue to promote and publicize technical assistance and capacity building programs to facilitate LGBT Business Enterprises supplier awareness and drive attendance.
- Assess and identify sponsorship opportunities with LGBT advocacy, chamber, and community-based organizations, specifically to support the creation and development of enhanced programs – Joint Utilities member companies to support at least one LGBT organization in their area.
- Expand sharing of current and upcoming contracting opportunities with LGBT Business Enterprises suppliers and advocacy organizations.

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<sup>69</sup> R.21-03-010 at Attachment A-E, December 31, 2020 Joint Utilities Group: *LGBTBE Spend Goal Recommendation*.

**(2) LGBT Advocacy, Chamber, and Community-Based Organizations:**

- Develop engagement strategy to drive and increase LGBT Business Enterprises participation at outreach and other events.
- Establish a centralized email address (accessible by each LGBT advocacy, chamber, community-based organization) for Joint Utilities member companies to share their contracting opportunities and other information.
- Collaborate with Joint Utilities member companies to develop targeted technical assistance and capacity building events, including programs to address LGBT Business Enterprises' interest in working with regulated utilities and increase the number of LGBT Business Enterprises available across key purchasing categories - Continue Procurement Series: How to Get Certified (*i.e.*, Supplier Clearinghouse, NGLCC, other options), Contract Readiness, Requesting A Debrief or Feedback, Strategic Sourcing, Pre/Post Award, etc., and Tier 1 Educational Series.

**(3) Both Joint Utilities and LGBT Organizations:**

- Assess feasibility to recognize firms certified through agencies beyond the Supplier Clearinghouse and the CAV process; expand pool of LGBT Business Enterprise suppliers and opportunity for reportable spend.
- Partner on developing a strategy to increase Tier 2 subcontracting spend with LGBT Business Enterprises, including expanding engagement of Prime/Tier 1 suppliers.

**3.3 Persons with Disabilities Business Enterprises**

In R.21-03-010, the Commission announced its intention to consider adding business enterprises owned and controlled by persons with disabilities

into General Order 156.<sup>70</sup> The Commission noted that this topic was raised at the Commission's September 29, 2020 *En Banc* hearing, a public meeting the Commission convenes annually to discuss all topics related to the Supplier Diversity Program.<sup>71</sup> In the Scoping Memo for this proceeding, the assigned Commissioner presented a number of additional related issues, such as whether to designate an entity for certifying these business enterprises and whether to adopt a voluntary procurement percentage. The July 16, 2021 staff proposal addressed these issues. In addition, parties filed comments on these questions. We address each question, separately, below.

### **3.3.1 Incorporating Persons with Disabilities Business Enterprises into GO 156**

Most parties support including business enterprises owned and controlled by persons with disabilities, including PG&E, SCE, Comcast, Cox California Telecom, Joint Telco Parties, CforAT, Charter, Southwest Gas and SBUA.

CforAT explains 23% of Californians have some type of disability.<sup>72</sup> CforAT also addresses employment-related issues and explains that people with disabilities face barriers to participation in many areas of California's economy, are unrepresented or underrepresented in employment, and are disproportionately low income.<sup>73</sup> According to studies cited by CforAT, 22.8% of people with disabilities in California live in poverty, as compared to 10.7% without disabilities, a poverty gap of 12.1%.<sup>74</sup> SCE states that including this

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<sup>70</sup> R.21-03-010 at 3.

<sup>71</sup> R.21-03-010 at 3.

<sup>72</sup> CforAT April 12, 2021 Comments at 3.

<sup>73</sup> CforAT April 12, 2021 Comments at 3.

<sup>74</sup> CforAT April 12, 2021 Comments at 4.

group in the Commission's Supplier Diversity Program will serve to address these employment-related issues, further diversify in the supply chain, and provide more innovative ideas, unique perspectives, and collaborations.<sup>75</sup>

Some of the parties that support including persons with disabilities in the program nevertheless express reservations based on the fact that the underlying statutory framework for the Commission's Supplier Diversity Program, Pub. Util. Code §§ 8281-8286, does not include business enterprises owned and controlled by persons with disabilities, beyond disabled veterans.<sup>76</sup> These parties suggest the Commission wait to add this group until after the Legislature directs the Commission to make this modification. For example, Comcast "supports in principle the expansion of the Supplier Diversity Program to include business enterprises owned and controlled by non-veteran disabled persons, ultimately, the Commission may not have the legislative authority to do so. ... So far, there has been no legislative mandate...."<sup>77</sup> Cox California Telecom suggests the Commission wait but also proactively engage the Legislature to amend the statute to include business enterprises owned and controlled by persons with disabilities in the program.<sup>78</sup>

After considering the comments, we find now is the right time to incorporate persons with disabilities into the Supplier Diversity Program because incorporating persons with disabilities into our program is consistent with the

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<sup>75</sup> SCE August 4, 2021 Comments at 5.

<sup>76</sup> The Commission added disabled veterans to the Supplier Diversity Program by D.92-06-030, *Interim Opinion* (June 3, 1992) pursuant to 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*.

<sup>77</sup> Comcast April 12, 2021 Comments at 3. (fn. omitted.)

<sup>78</sup> Cox California Telecom August 4, 2021 Comments at 3.

intent of Pub. Util. Code §§ 8281-8286 and will further the goal of the program to include historically unrepresented or underrepresented groups in contracting with utilities, community choice aggregators and electric service providers. While in the past the Commission has added business enterprises to GO 156 pursuant to directives from the Legislature, the Commission is not prohibited from identifying a group to further enhance its Supplier Diversity Program.

In this regard, we find the comments by CforAT persuasive. The intent of the Commission's Supplier Diversity Program is to advance the well-being of the state by supporting the growth of business enterprises operated by members of groups that have faced historical disadvantages in certain aspects of the utility industry. People with disabilities, similar to women, minorities, disabled veterans, and LGBT persons, face barriers to participation in many areas of the state's economy. As a result, it is well documented that persons with disabilities are unrepresented or underrepresented in employment and are disproportionately low income. For all these reasons, the Commission finds that now is the appropriate time to include persons with disabilities in the Commission's Supplier Diversity Program even if this group is not included in a statutory directive. The Commission finds that including person with disabilities in the Supplier Diversity Program is consistent with the intent of the existing statutes to support persons who face historical disadvantages in certain areas of the utility industry.

Therefore, we expand the program to include the business enterprises owned and controlled by people with disabilities to further their inclusion in the utility-related business community. The Commission suggests this group be referred to as *persons with disabilities business enterprises* for purposes of General

Order 156, consistent with the suggestion by CforAT.<sup>79</sup> CforAT also suggests that all business enterprises currently certified as disabled veteran businesses enterprises be permitted to automatically be certified under this new group, persons with disabilities business enterprises.<sup>80</sup> We agree with CforAT and direct Supplier Clearinghouse to implement a process to automatically certify disabled veteran business enterprises as persons with disabilities business enterprises upon presentation of evidence of such certification by disabled veteran business enterprises from the Department of General Services.

### **3.3.2 Definition of Persons with Disabilities Business Enterprises**

Based on our decision to incorporate persons with disabilities business enterprises into the Supplier Diversity Program, the Commission now addresses implementation questions. First, we address how to define this group for purposes of GO 156.

The staff proposal suggests a definition, which is supported by Disability:IN, as follows: a for-profit business at least 51% owned, managed, and controlled by a person with a disability.<sup>81</sup>

In contrast, a definition that tracks the definitions for woman, minorities, and LGBT business enterprise would be the following: Persons with Disabilities Business Enterprise means (1) a business enterprise (a) that is at least 51% owned by a person or persons with a disability or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more persons with a

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<sup>79</sup> CforAT August 4, 2021 Comments at 4.

<sup>80</sup> CforAT August 4, 2021 Comments at 4 and 8.

<sup>81</sup> July 16, 2021 ALJ Ruling, Attachment - Staff Proposal at 9.

disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.<sup>82</sup>

We find that a definition that is consistent with the definitions adopted in the statute and for other business enterprise will create a more consistent approach when applying the requirements of this program to this new group. For this reason, we adopt the following definition for GO 156:

Persons with Disabilities Business Enterprise means (1) a business enterprise (a) that is at least 51 % owned by a person or persons with a disability or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more persons with a disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.

This definition does not include a requirement that the owner be domiciled in California.

### **3.3.3 Reporting Requirements for Persons with Disabilities Business Enterprises**

Next, we address whether the Commission should adopt reporting requirements and, if so, what should those requirements include. We agree with CforAT that reporting of procurement with persons with disabilities business enterprise should start as soon as possible. CforAT states that, “The Commission should require that reporting entities report their spending with business enterprises owned and controlled by persons with disabilities, which would create substantial, verifiable economic benefits for those business enterprises and the communities in which they operate.”<sup>83</sup> We find that reporting will provide the Commission and stakeholders with valuable information to further

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<sup>82</sup> The 2015 version of General Order 156 at Sections 1.3.4; Pub. Util. Code § 8283.

<sup>83</sup> CforAT August 4, 2021 Comments at 3.

understand how to encourage participation from persons with disabilities business enterprises. Therefore, we direct covered entities to submit information on Persons with Disabilities Business Enterprises in their annual reports and annual plans due in March 2024. This reporting will be done in a manner consistent with other eligible suppliers under GO 156.

### **3.3.4 Types of Proof to Establish Persons with Disabilities Business Enterprises**

The next question we address for purposes of implementing our decision to incorporate persons with disabilities business enterprises into GO 156 is what types of proof should be submitted to establish a company falls within this new group. Regarding the type of proof needed to establish that a business enterprise is owned and controlled by individuals with disabilities, CforAT provides suggestions based on the types of proof currently accepted by the Supplier Clearinghouse for other eligible persons or groups.<sup>84</sup>

We find the suggestions of the types of proof by CforAT, which are similar to the existing types of proof used by Supplier Clearinghouse to certify a woman, minority, and LGBT business enterprises, are reasonable.<sup>85</sup> Therefore, we adopt

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<sup>84</sup> CforAT August 4, 2021 Comments for 4-6.

<sup>85</sup> At this time, the Commission is aware of only one entity that certifies suppliers as owned and controlled by a person with a disability, Disability:IN. The website for Disability:IN is as follows: <https://disabilityin.org/resource/supplier-certification-checklist/>. The list of disability qualifiers appearing on its website include: (one required for each eligible owner): (1) Records issued from a licensed, registered, or certified vocational rehabilitation specialist (i.e., State or private) stating that the applicant individual is a person with a disability; (2) An Individualized Education Program (IEP) can also be submitted for an applicant who has a learning disability; (3) Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits stating that the applicant individual is a person with a disability; (4) Disability:IN Physician's Form from a licensed medical professional (e.g., a physician or other medical professional duly certified to practice medicine by a State, the District of Columbia, or a U.S. Territory) stating that the applicant individual is a person with a disability; and (5) Service-Disabled Veteran-Owned Business Enterprise, must

*Footnote continued on next page.*



the following and, in addition, authorize staff to add to this list so that the list reflects any appropriate changes in this area in a timely manner:

- documentation from a licensed, registered, or state or private certified vocational rehabilitation specialist affirming that the applicant/person is a person with a disability;
- documentation from a federal or state agency (including the District of Columbia or a U.S. territory) that issues or provides disability benefits confirming the owner has a disability;
- documentation from a licensed medical professional (*e.g.*, a physician or other medical professional duly certified to practice medicine by a state, the District of Columbia or a U.S. Territory) confirming the owner has a disability;
- an Individualized Education Program (IEP) for an owner who has a learning disability;
- a letter/written signed statement from a leader of the Disability Chamber of Commerce or an affiliate chamber confirming to the disability status of the owner;
- three letters of reference from personal contacts who:  
(a) have known the owner for over one year and (b) can attest, in a signed statement, to the owner's disability status;
- a letter/written signed statement by a leader or board member from a disability advocacy organization attesting to the owner's disability status;
- proof of media coverage, including publications, newspapers, or articles, explicitly stating the disability status of the owner;
- a letter/written signed statement from a physician or attorney establishing the disability status of the owner;

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submit a Department of Defense Form 214 (DD214), as well as their Disability Ratings Letter from the Veterans Administration.

- certificates, awards, recognition of the owner as outstanding members of the disability community; or
- documentation of participation in a program by owner that provides benefits based on disability.

### **3.3.5 Entity to Certify Persons with Disabilities Business Enterprises**

Another question we address for purposes of implementing our decision to incorporate persons with disabilities business enterprises into GO 156 is whether to designate a particular entity or entities, beyond the Supplier Clearinghouse, to serve the purpose of certifying or verifying a business enterprise is owned and controlled by a person with a disability.

The staff proposal recommends utilizing the Supplier Clearinghouse and/or a comparable agency to perform certification of eligibility to participate in the program, which the staff proposal states would also be consistent with the past practice of the Commission.<sup>86</sup> Likewise, several parties suggest adopting a process similar to the process relied upon by the Supplier Clearinghouse and also permit verification by a comparable agency. Some parties also specifically identify a certain agency for this purpose, Disability:IN (formerly known as US Business Leadership Network or USBLN), and suggest the Commission authorize it to perform this role.<sup>87</sup> Disability:IN is a non-profit organization that certifies business enterprises owned and controlled by persons with disabilities (also by disabled veterans) and links these businesses to organizations seeking

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<sup>86</sup> ALJ Ruling July 16, 2021, Attachment – July 16, 2021 Staff Proposal at 9.

<sup>87</sup> Comcast April 12, 2021 Comments at 3-5; CforAT April 12, 2021 Comments at 5; Charter August 4, 2021 Comments at 6; Comcast August 4, 2021 Comments at 6; CalWater Association August 4, 2021 Comments at 5-6.

diversity in their supply chains.<sup>88</sup> CforAT provides background information on Disability:IN and compares its certification process to the certification process used by Supplier Clearinghouse for women, minorities, and LGBT.<sup>89</sup> CforAT states that Supplier Clearinghouse provides a broader set of methods to establish certification for these groups, *i.e.*, women, minorities, and LGBT, than provided by Disability:IN for those with disabilities.<sup>90</sup> On that basis, CforAT suggests that, to ensure equitable treatment across all business enterprises, the Commission direct Supplier Clearinghouse to adopt certification methods for those with disabilities that are the same as for women, minorities, and LGBT. Beyond suggesting Disability:IN as a certifying entity, parties offer few other details on certification for those with disabilities but suggest that flexibility is needed for this certifying process.

Based on the comments presented and because the Commission currently functions in an oversight capacity (rather than a direct contracting relationship) with the Supplier Clearinghouse pursuant to D.06-08-031, the Commission finds that providing certification options to businesses owned and controlled by a person with a disability will facilitate expeditious inclusion of these businesses into the Supplier Diversity Program.<sup>91</sup> Therefore, businesses seeking to be certified as a persons with disabilities business enterprise may submit an application to the Supplier Clearinghouse, consistent with the existing process for women, minority, and LGBT applicants. Also, the Commission designates

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<sup>88</sup> CforAT April 12, 2021 Comments at 6 (fn. 17) providing as follows: “Disability:IN, Supplier Diversity Standards and Procedures, (Sept. 2020), available at <https://disabilityin.org/what-we-do/supplier-diversity/get-certified/> (last accessed April 8, 2021).”

<sup>89</sup> CforAT April 12, 2021 Comments at 5.

<sup>90</sup> CforAT April 12, 2021 Comments at 5.

<sup>91</sup> D.06-08-031, *Opinion Amending General Order 156* (August 24, 2006).

Disability:IN as a “third-party agency” under GO 156. All businesses certified by Disability:IN automatically qualify under GO 156. The Supplier Clearinghouse will develop a streamlined verification process for certification of any businesses already certified by Disability:IN. As a result, a business with an existing certification from Disability:IN will be able to submit a streamlined request to Supplier Clearinghouse for certification.

Furthermore, the Commission anticipates that the actual application processes relied upon by Supplier Clearinghouse may need to be revised to accommodate access by people with different types of disabilities and facilitate the submission of applications by this newly added group. Accordingly, the Commission directs Supplier Clearinghouse to begin this work immediately. The Commission’s expectation is that persons with disabilities will be provided with reasonable accommodations concerning all aspects of the application process currently administered by Supplier Clearinghouse under the framework adopted by the Commission in D.06-08-031. To further cultivate participation in the Supplier Diversity Program by persons with disabilities, the Commission directs all covered entities, *i.e.*, certain utilities, community choice aggregators, and electric service providers, to modify their education and outreach methods and materials to facilitate broad engagement with persons with disabilities on contracting opportunities.

### **3.3.6 Voluntary Procurement Goal for Persons with Disabilities Business Enterprises**

The last question we address regarding persons with disabilities business enterprises is whether to adopt a voluntary procurement goal for this new group now. The staff proposal does not offer a recommendation on this topic, and few parties comment upon it.

CforAT states that “There does not appear to be sufficient data currently available to immediately set a target procurement percentage goal for businesses owned by disabled individuals.”<sup>92</sup> CforAT further states that the Commission should rely on a methodology similar to that used to establish a goal for LGBT but that the five-year period used to gather data for consideration of a LGBT goal was too long.<sup>93</sup> Instead, CforAT recommends no more three years to gather data and adopt a goal.<sup>94</sup>

Based upon the comments, the Commission finds that setting a voluntary procurement goal for this newly added group should be resolved after data is collected and in approximately three years, as recommended by CforAT. Toward this end, the Commission intends to initiate a rulemaking proceeding in approximately two years to set this voluntary procurement goal and incorporate this goal into GO 156. At that time, the Commission may consider different methods for setting such a goal based on historical data and other inputs. The Commission may also consider other modifications to enhance the effectiveness of the Supplier Diversity Program.

Moreover, in response to parties seeking to improve notice of the utilities’ contracting opportunities and improve the exchange of information between the newly added group, persons with disabilities, and all eligible suppliers, we direct covered entities to include on their websites an email address and telephone

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<sup>92</sup> CforAT April 12, 2021 Comments at 10 and fn. 24. CforAT identifies the following as an example of reporting: “2019 Diversity Procurement Report and 2020 Plan of Cox Communications California, LLC and Cox California Telcom, LLC (March 2, 2020), available at [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/BusinessCommunityOutreach/GO156ProcurementPlans/2019/Supplier%20Diversity%202020-Cox.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/BusinessCommunityOutreach/GO156ProcurementPlans/2019/Supplier%20Diversity%202020-Cox.pdf) (last accessed April 11, 2021).”

<sup>93</sup> CforAT April 12, 2021 Comments at 10-11.

<sup>94</sup> CforAT April 12, 2021 Comments at 2, 11-12.

number to contact staff in response to questions about their internal programs. We also urge covered entities to modify their websites related to their supplier programs, as needed, to ensure these websites are widely accessible to persons with disabilities.

### **3.4 Other Revisions to General Order 156**

In the Scoping Memo, the following additional topics were framed:

- Should the Commission revise GO 156 to include economic impact of the Supplier Diversity Program and workforce and corporate board diversity data?
- Should the Commission modify GO 156 to authorize the Commission's staff to conduct audits, in addition to those audits described at Section 9.1.10 of GO 156, of any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Supplier Diversity Program?
- Should the Commission clarify the complaint process at Section 7 of GO 156 as it applies to any entity falling within the Supplier Diversity Program, including community choice aggregators, electric service providers, and utilities?
- Should the Commission refine the *en banc* hearing process at Section 11.3 of GO 156?

We address each topic below.

#### **3.4.1 Reporting on Economic Impact of the Supplier Diversity Program**

In R.21-03-010, the Commission stated the intention of potentially modifying the required content of the required annual reports submitted pursuant to Pub. Util. Code § 8283(d) and Section 9 of GO 156 to include the economic impact of

the Supplier Diversity Program.<sup>95</sup> This possibility was reflected in the June 25, 2021 Scoping Memo.<sup>96</sup>

In general, the parties did not present detailed comments on this topic. The SMJUs state that “[U]tilities do not have the information or expertise to evaluate additional economic impacts beyond the initial payments to those diverse suppliers.”<sup>97</sup> CalWater Association similarly points out that, while it is supportive of this effort, this information is not readily available and would be costly to collect, analyze, and report, stating “With respect to including information regarding the economic impact of the Supplier Diversity Program in annual reports, CWA does not oppose evaluating and providing some information to the Commission in general”<sup>98</sup> but “[G]iven the time and expense required to produce such information [CWA] recommend[s] providing it only once every three to five years...[It] would require water utilities to engage third party vendors with statistical, financial, tax and business analytics knowledge and experience. It would also require a significant investment of resources on the part of the water utility itself to gather data.”<sup>99</sup>

Based on the comments by parties, we find that the addition of economic impact data at this time will not measurably increase our efforts to improve the Supplier Diversity Program and could be overly burdensome in combination with the other new reporting requirements adopted today.

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<sup>95</sup> R.21-03-010 at 15 and 17.

<sup>96</sup> June 25, 2021 Scoping Memo at 7.

<sup>97</sup> SMJA April 12, 2021 Comments at 4.

<sup>98</sup> CalWater Association April 12, 2021 Comments at 3.

<sup>99</sup> CalWater Association April 12, 2021 Comments at 3.

### **3.4.2 Annual Reporting on Workforce Diversity**

The Scoping Memo requested that parties comment on whether the Commission should incorporate data on workforce diversity into the annual reports submitted under GO 156.<sup>100</sup> The comments filed by parties on this topic present a variety of opinions. Supportive parties include Comcast, Southwest Gas, SBUA, CforAT, National Diversity Coalition, and Hispanics In Energy. Parties in opposition include PG&E, SCE, SoCalGas/SDG&E, AT&T, CalCCAs, Cox California Telecom, Great Oaks Water, Verizon, CalChoice, and CalWater Association.

The staff proposal recommends that the Commission incorporate workforce diversity data into the annual reports required under GO 156 on the basis that such reporting would further the goals of Pub. Util. Code § 8281 to realize the economic well-being of the state of California by encouraging diversity and inclusion within the utility industry through transparent reporting.<sup>101</sup> In support of its recommendation, the staff proposal cites a number of initiatives by states and the federal government to track this data.<sup>102</sup> The staff proposal states that the U.S. Equal Employment Opportunity Commission (EEOC) requires reports on workforce data.

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<sup>100</sup> June 25, 2021 Scoping Memo at 3 and 7.

<sup>101</sup> July 16, 2021 ALJ Ruling at Attachment, Staff Proposal at 10-11.

<sup>102</sup> July 16, 2021 ALJ Ruling at Attachment, Staff Proposal at 9-11 (fn. omitted), stating: “Utility commissions in other states collect workforce diversity data or will soon start to collect this data. For example, since 2000, the Texas Public Utility Commission has required electrical and telecommunications utilities to annually report workforce diversity data under Texas Utilities Code (Tex. Util. Code) §§ 39.90949 and 52.256. In December 2020, the Pennsylvania Public Utility Commission voted to encourage major jurisdictional utilities to file annual diversity reports. More recently, in February 2021, the Wisconsin Public Service Commission announced that all water, sewer, gas, and electric utilities must report workforce and corporate board diversity data by June 1, 2021.”



Parties opposing this recommendation state that reporting on workforce diversity extends beyond the statutory mandates. These parties argue that such a requirement may be inconsistent with state law and would be duplicative, since similar data is begin reported to the California Secretary of State, EEOC, and U.S. Securities and Exchange Commission (SEC). Additionally, these parties argue that this reporting would detract from the existing efforts to expand contracting opportunities with eligible suppliers and would limit resources available to promote supplier contracts with diverse firms because the same staff and budgets would be assigned to implement this new reporting obligation. Lastly, these parties argue that this material could be confidential. The community choice aggregators and electric service provides additionally recommend that the Commission find their organizations exempt based on the related financial burdens of reporting and potential duplication of efforts.

In response, parties supporting this recommendation state that reporting on workforce diversity would not be burdensome because this information is largely collected already. These parties also present a number of recommendations to minimize any burdens, including allowing stakeholders to reference existing reports made to other government agencies or simply provide an update during the annual *en banc*. Others suggested that this reporting requirement be voluntary and limited to publicly available data.

We find that incorporating this data into the GO 156 annual reports submitted by all covered entities will increase the Commission's understanding of the composition of the relevant workforces. This reporting will not be overly burdensome, as it reflects information many of the covered entities already collect.

To implement this reporting requirement, the Commission in the next phase of this proceeding will develop and add provisions to the forms for the GO 156 annual reports to include workforce diversity and rely on a process that considers stakeholder input. Staff will develop forms for all covered entities and seek to include all business enterprises in the Supplier Diversity Program, including women, minorities, disabled veterans, person with disabilities, and LGBT. The Commission directs staff to develop annual reporting forms that are informative, not overly burdensome, and protect any confidential employee information. Staff will work with covered entities to develop reporting requirements and any collection protocols. Following staff development of these forms, covered entities will be required to submit workforce diversity data with their next annual reports. We identify EEO-1 and EEO-4 (forms developed by the EEOC) as a form that may serve as a useful guide when developing these reporting requirements. The Commission directs staff to provide the final version of these forms to the service list of this proceeding (or a successor proceeding) and place the final version of these forms on the Commission's webpage for GO 156.

Furthermore, all covered entities must include a brief description of any existing reports and electronic links to data submitted in other jurisdictions pertaining to workforce diversity, including any data provided to the EEOC, in all future annual reports, starting in March 2023, submitted under GO 156.

### **3.4.3 Annual Reporting on Corporate Board Diversity**

The Scoping Memo requested that parties comment on whether the Commission should require reporting on corporate board diversity as part of the reporting requirements under GO 156.<sup>103</sup>

In support, the staff proposal cites recent state legislation, SB 826 (Jackson, 2018) and AB 979 (Holden, 2020), requiring publicly held companies headquartered in California to include a minimum number of women and people from “underrepresented communities” on their corporate boards and requiring the California Secretary of State to ensure compliance with these requirements.<sup>104</sup>

In comments, some parties present strong opinions opposing a requirement for reporting on board diversity, stating, generally that the value of such data is minimal or perhaps nonexistent and that no legal basis exists for requiring such data. These parties include PG&E, SCE, SoCalGas/SDG&E, AT&T, CalCCAs, Cox California Telecom, Great Oaks Water, Verizon, CalChoice, and CalWater Association. These parties state that reporting on board diversity falls beyond the statutory mandates of §§ 8281-8286, is unnecessary, duplicative, will distract from the objective of GO 156, may include confidential information, is overly burdensome, and cannot be provided with the next annual reports due in March 2022 because it will take time to collect this data.

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<sup>103</sup> June 25, 2021 Scoping Memo at 3 and 7.

<sup>104</sup> July 16, 2021 ALJ Ruling at Attachment, Staff Proposal at 10-11; Corporations Code § 301.3 and § 301.4.

Other parties strongly support the inclusion of board diversity data in the annual reporting under GO 156. These parties included Comcast, Southwest Gas, SBUA, CforAT, National Diversity Coalition, and Hispanics In Energy. National Diversity Coalition summarizes its support for these additional reporting requirements, as follows:

Transparent reporting on workforce and Board diversity will encourage diversity and inclusion within the utility industries. NDC strongly supports comments made by Lori Murphy Lee, Manager of Regulatory Affairs for PJM Interconnection LLC at the GO 156 workshop for this proceeding held on July 21, 2021. “Utilities provide essential services; and therefore, their workforce should reflect the communities that they serve... diversity at all levels of utilities is essential because utilities provide good-paying middle-class jobs, many of which do not require a college degree. This means that utilities can have a significant impact on the local economy through their employment practices.”<sup>105</sup>

We find the recent legislative mandates in this area instructive. The intent of SB 826 (Jackson, 2018) was to proactively increase the representation of women on boards to improve the well-being of citizens of California, declaring, as follows:

More women directors serving on boards of directors of publicly held corporations will boost the California economy, improve opportunities for women in the workplace, and protect California taxpayers, shareholders, and retirees, including retired California state employees and teachers whose pensions are managed by CalPERS and CalSTRS. Yet studies predict that it will take 40 or 50 years to achieve gender parity, if something is not done proactively.<sup>106</sup>

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<sup>105</sup> July 21, 2021 Workshop on General Order 156 (Supplier Diversity Program) Order Instituting Rulemaking 21-03-010, starting at timestamp 1:40:45. Available at <http://www.adminmonitor.com/ca/cpuc/workshop/202107212/>.

<sup>106</sup> SB 826 (Jackson, 2018), Sec. 1(a).

Similarly, the intent of AB 979 (Holden, 2020) was to address the disproportionately low representation of directors from underrepresented communities,<sup>107</sup> including certain minorities, on corporate boards and create more balanced representation, declaring as follows:

- (a) According to the United States Bureau of Labor Statistics, only 31 percent of African Americans and 22 percent of Latinos worked in management, professional, and related occupations while 54 percent of Asians and 41 percent of Whites worked in the same occupation.
- (b) According to 2018 data from Deloitte and the Alliance for Board Diversity, the percentages of Fortune 500 company board seats held by people identified as African American/Black, Hispanic/Latino(a), and Asian/Pacific Islander were 8.6 percent, 3.8 percent, and 3.7 percent, respectively.
- (c) The United States Bureau of Labor Statistics also reported that in the year 2019, 90 percent of chief executives were White.
- (d) According to the Latino Corporate Directors Association, there are 662 publicly traded companies headquartered in California. Two hundred thirty-three of these companies have all White boards of directors as of this year.
- (e) Data from the Latino Corporate Directors Association also shows that in the boards of these 662 publicly traded companies, only 13 percent have at least one Latino board member, 16 percent have at least one African American board member, 42 percent have at least one Asian board member, and 6 percent have at least one non-White or Other board member as of May 2020. In contrast,

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<sup>107</sup> Corp. Code § 301.4(c)(1) (1) states: “Director from an underrepresented community” means an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.

100 percent of these boards have at least one White board member.<sup>108</sup>

Similar to the intent of this recent legislation, the Commission finds it reasonable to track diversity on boards by requiring all covered entities under GO 156, *i.e.*, utilities, community choice aggregators, and electric service providers with certain revenue thresholds, to report on the number of board members that correspond to the business enterprises defined in GO 156, *i.e.*, board members that identify as women, minorities, disabled veterans, persons with disabilities, and LGBT, in the GO 156 annual reports.

This is a reporting requirement and not a directive that boards of covered entities include a minimum number of persons who identify as women, minorities, disabled veterans, persons with disabilities, or LGBT.

Similar to the new reporting requirements for workforce diversity and to implement this board diversity reporting requirement, the Commission in the next phase of this proceeding will develop and add provisions to forms for GO 156 annual reports to include board diversity and rely on a process that considers stakeholder input. In addition, the same procedural steps set forth above regarding staff development of the workforce diversity forms will be followed. The Commission directs staff to develop forms that are informative, not overly burdensome, and protect any confidential information. Following staff development of these board diversity forms, covered entities will be required to submit board diversity data with their next annual reports. The Commission directs staff to provide the final version of these forms to the service

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<sup>108</sup> AB 979 (Holden, 2020) at Sec. 1(a)–(e).

list of this proceeding (or a successor proceeding) and place the final version of these forms on the Commission's webpage for GO 156.

Furthermore, all covered entities must include a brief description of any existing reports and electronic links to data submitted in other jurisdictions pertaining to board diversity, including any data provided to the Secretary of State, in all future annual reports, starting in March 2023, submitted under GO 156.

#### **3.4.4 Commission Audits**

The 2015 version of GO 156 permits the Commission staff to conduct audits to confirm the accuracy of the annual reports, annual plans, and other information related to the Commission's Supplier Diversity Program. This process is set forth in Section 9.1.10. of the 2015 version of GO 156.

Some parties state that the current scope of the staff's authority is not clear and this lack of clarity has resulted in confusion around staff's requests for these audits. At the same time, parties object to any clarifications that may increase the number of audits due to the time and expense consumed by such audits.

The Commission finds these audits are a valuable tool to verify the accuracy of the reporting and that additional clarity around the scope of the staff's authority would be useful to improve the audit process. The Commission modifies GO 156 to clarify that (1) the Commission's staff may conduct audits as they deem necessary, and (2) in addition to the audits described at Section 9.1.10. of GO 156, staff may conduct audits on any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Commission's Supplier Diversity Program. The Commission adopts revisions to GO 156 to reflect these clarifications.

### **3.4.5 Complaints, Notices of Appeal, and Internal Reviews by Supplier Clearinghouse**

The Scoping Memo included a review of the process set forth in Section 7 of GO 156 in the scope of this proceeding.<sup>109</sup> Section 7 address complaints, Notices of Appeal, and internal reviews of certification denials by the Supplier Clearinghouse. After review of the comments filed on these issues, we revise GO 156 to achieve the following: (1) clarify the use of the word “complaints” in GO 156, and (2) incorporate the recent revisions to the Notice of Appeal processes set forth in Resolution ALJ-377. These two topics are addressed below.

#### **3.4.5.1 Complaints and Related Processes**

Section 7 of GO 156 is titled “Complaints.” In Section 7 of the 2015 version of GO 156, the word “complaints” is used broadly to also include Notices of Appeal and requests to the Supplier Clearinghouse to review denials of certification. The revisions to GO 156 we adopt today seek to clarify the use of the word “complaints” by distinguishing it from Notices of Appeal and the internal review process within the Supplier Clearinghouse. Today’s revisions limit the use of the word “complaints” to mean complaints filed under Rule 4.1 through Rule 4.6 of the Commission’s Rules of Practice and Procedures. We also clarify that the meaning of the word “complaint” as used in Section 9.1.6. is different. In Section 9.1.6, the word complaint is used to describe the information required in annual reports and means any written or verbal statement from an eligible supplier or third-party that the program administered by the utility or other covered entity is unsatisfactory or unacceptable.

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<sup>109</sup> June 25, 2021 Scoping Memo at 3 and 7.



### **3.4.5.2 Resolution ALJ-377 and Notices of Appeal**

The current process for contesting a denial of certification by the Supplier Clearinghouse is set forth in a number of different documents, including Section 7 of GO 156, Resolution ALJ-377, and the Commission's Rules of Practice and Procedure. The Commission's goal is to provide a fair and efficient process for those that seek to contest a denial of certification by the Supplier Clearinghouse. Toward this end, the Commission adopts revisions to GO 156, Section 7 to promote a fair and efficient process.

The revisions we adopt today clarify that a distinction exists between the internal review process at the Supplier Clearinghouse, which an applicant can rely upon when it is denied certification, and the applicant's right to file a Notice of Appeal with the Commission for reconsideration of a denial by the Supplier Clearinghouse.

In addition, the Commission revises GO 156, Section 7 to incorporate reference to the provisions of Resolutions ALJ-377 which address Notices of Appeals under GO 156. The Commission last modified the provisions related to Notices of Appeal in 2006 through R.06-04-011, which stated as follows:

The proposed amendments to Section 7 set forth an expedited appeals process to the Commission. This process is fashioned after a process recently adopted for citation appeals set forth in Resolution ALJ-187.<sup>110</sup> This process is available for business enterprises contesting clearinghouse verification decisions and for third parties challenging the verification of other business enterprises. ...Because these complaints are not against utilities or

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<sup>110</sup> Resolution ALJ-187 (Sept. 22, 2005) *Procedures for Appeal of Citations Issued to Household Goods Carriers, Charter Party Carriers, and Passenger Stage Corporations*. (fn. not in original.)

other regulated entities, the Commission's formal complaint procedures are not available.<sup>111</sup>

In D.06-08-031, the Commission adopted revisions to GO 156 that largely reflected the process set forth in Resolution ALJ-187, which presented a more streamlined process. Since then, the Commission has further refined the process for filing Notices of Appeal as applied to the Supplier Diversity Program but without revisions to GO 156.

For example, the Commission revised this process in 2020 by Resolution ALJ-377, the decision by the Commission adopting procedure for citation appeals, Notice of Appeals under GO 156, and other matters. Because Resolution ALJ-377 addresses a number of topics related to Notices of Appeal under GO 156, we do not repeat these provisions here but we revise GO 156 to incorporate by reference the provisions of Resolution ALJ-377 (or a successor decision) pertaining to Notice of Appeals under GO 156.

#### **3.4.6 *En Banc* Hearing**

The Scoping Memo asked parties to comment on possible refinements to the *en banc* hearing process. Section 11.3 of the 2015 version of GO 156 provides that "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." As discussed below, this decision makes minor modifications to the *en banc* provisions of GO 156.

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<sup>111</sup> R.06-04-011, *Order Instituting Rulemaking for the Purpose of Amending General Order 156* (April 13, 2006) at 5. (fn. omitted.)

The staff proposal did not address this topic. Parties provided few comments on this topic. Hispanics in Energy suggest holding more *en banc* hearings, perhaps twice per year, in an effort to provide more frequent updates to the Commission.<sup>112</sup> SoCalGas/SDG&E suggest the existing process and current frequency, once per year, is sufficient and “valuable.”<sup>113</sup> SoCalGas/SDG&E do not recommend any changes to the *en banc* hearing process.<sup>114</sup>

Based on the comments, no parties raised issues that justify revising the frequency of the *en banc* hearings or the process at this time. We will maintain the current required frequency, once per year, but will considering holding additional hearings, if needed. However, to ensure as broad participation as possible at this annual hearing and engage newly interested stakeholders, the Commission clarifies the notice requirements related to this hearing and directs notice of the *en banc* hearing be provided broadly, in a manner that reaches as many stakeholders as possible, including to the service list for the most recent proceeding pertaining to GO 156 and any service lists pertaining to related topics.

### **3.5 Use of *Business Enterprise* Rather Than *Owned Business Enterprise***

In R.21-03-010, the Commission stated its intention to consider the use of the term *business enterprise*, rather than *owned business enterprise*, in GO 156 to better align with the statute<sup>115</sup> and reduce industry confusion. For example,

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<sup>112</sup> Hispanics In Energy August 4, 2021 Comments at 7.

<sup>113</sup> SoCalGas/SDG&E April 12, 2021 Comments at 4.

<sup>114</sup> SoCalGas/SDG&E April 12, 2021 Comments at 4.

<sup>115</sup> R.21-03-010 at 16.

currently, GO 156 uses the term *women-owned business enterprises* and statute uses the term *women business enterprises*.

Several parties state their support for this suggested revision. No parties oppose this suggestion.

The Commission finds the term *business enterprise* is consistent with the statute and would promote the understanding that the Supplier Diversity Program applies to a business enterprise both owned and controlled by women, minorities, disabled veterans, LGBT or persons with disabilities. The Commission revises GO 156 to reflect this modification.

### **3.6 Resolution Exec-001 and Annual Report by Commission to Legislature**

Our directive in Resolution Exec-001 provides that staff will monitor and evaluate the Supplier Clearinghouse “on a periodic basis.” As part of staff’s monitoring and evaluating of the Supplier Clearinghouse, staff will incorporate into the Commission’s Annual Report to the Legislature, which is required by Pub. Util. Code § 8283(e)(1), the results of its oversight, including, as we stated in Resolution Exec-001, an analysis of the existing contract between Supplier Clearinghouse and the utilities (*e.g.*, audits of revenues and expenditures associated with the certification program).

## **4. Phase 2 of Proceeding**

We intend to hold a phase 2 of this proceeding. The assigned Commissioner will issue an amended scoping memo pursuant to Rule 7.3 of the Rules of Practice and Procedure to initiate phase 2. This amended scoping memo will set the scope of issues to be considered in phase 2 and the schedule for the proceeding.

Based on this first phase of this proceeding, we suggest that proposals on the following issues be considered:

- (1) increase the percentages for the voluntary procurement goals for eligible business enterprises;
- (2) update the definition of minority;
- (3) review the Supplier Clearinghouse “guidelines” used to determine certification as an eligible supplier; and
- (4) develop forms for workforce and board diversity reporting and consider public disclosure.

## **5. Comments on Proposed Decision**

The proposed decision of Commissioner Rechtschaffen in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311 and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed by CalCCAs, California Efficiency and Demand Management Council, Pacific Bell Telephone Company dba AT&T California (U1001C), AT&T Corp. (U5002C), SBC Long Distance, LLC (U5800C), and AT&T Mobility<sup>116</sup> (collectively, AT&T), BuildOUT CA, National LGBT Chamber of Commerce, SMUA, CalWater Association, Cox California Telcom (U5684C), dba Cox Communications, Shell Energy and AReM, National Diversity Coalition, SoCalGas/SDG&E, Charter, MCI Communications Services LLC (U5378C), XO Communications Services, (U5553C), and Cellco Partnership (U3001C) on behalf of itself and its wireless affiliates (collectively, Verizon), Comcast Phone of California, LLC, PG&E, and CforAT on March 1, 2022. Reply comments were filed by Verizon, Regents of University of California, CforAT, AT&T, CalCCAs, Shell Energy and AReM, Comcast Phone of California, LLC

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<sup>116</sup> AT&T Mobility refers to, collectively, AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C); New Cingular Wireless PCS, LLC (U 3060 C) dba AT&T Mobility; and Santa Barbara Cellular Systems, Ltd. (U3015C).

(U5698C), BuildOUT CA, SMUA, National Diversity Coalition, SCE, and on March 7, 2022. The proposed decision is revised in response to these comments as follows:

1. Remove language that suggests that non-profits are included as eligible suppliers because the Commission has not determined that the ownership structure of non-profits is consistent with the statutory requirement that eligible suppliers be owned by a diverse supplier.
2. Clarify that the starting date is March 2023 for community choice aggregators, electric service providers, and smaller utilities to submit data to the Commission, which provides an opportunity to develop the format for reporting and gather information to meet this new reporting requirement.
3. Direct Supplier Clearinghouse to establish a streamlined system to certify LGBT businesses which are already certified by a national organization to increase the pool of available businesses.
4. Revise the starting date that covered entities must submit data on persons with disabilities to March 2024 (for 2023 results) because it is late in 2022 to start collecting 2022 data for reporting in 2023.
5. Clarify that the annual plans for community choice aggregators do not necessarily encompass specific information on all diverse business enterprises, consistent with the statute.
6. Clarify that the business models of community choice aggregators and electric service providers and, in certain circumstances, the legal limitations imposed on public entities, may be taken into consideration when staff develops reporting forms for annual plans and reports under GO 156.
7. Modify implementation of the reporting on workforce and board diversity to provide additional time to develop forms but also direct all covered entities in the

March 2023 annual reports to provide information included in existing reporting in other jurisdictions on workforce and board diversity.

8. Clarify statements and correct typographical errors.

## **6. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. SB 255 amended Pub. Util. Code § 366.2 and §§ 8281-8286 to add community choice aggregators, electric service providers, and smaller utilities with certain revenue thresholds to the mandatory annual reporting requirements in the Supplier Diversity Program set forth in GO 156.

2. The business model for community choice aggregators provides fewer opportunities than available to utilities to contract with eligible suppliers since energy procurement represents the majority of expenses for a typical community choice aggregator, at approximately 94%.

3. Energy procurement represents most of the expenses for a typical electric service provider.

4. Community choice aggregators and electric service providers may also be public agencies.

5. The term “simplified form” in Pub. Util. Code § 8283(f) regarding smaller electric service providers and smaller utilities means simplified as compared to the existing requirements in Sections 9 and 10 of the 2015 version of GO 156.

6. SB 255 encourages the following entities to voluntarily increase procurement from eligible suppliers and, in some instances, voluntarily report to the Legislature: (1) community choice aggregators with gross annual revenues under \$15 million, (2) utilities and electric service providers with gross annual

California revenues under \$15 million, (3) exempt wholesale generators, distributed energy resource contractors, and energy storage system companies.

7. Adding a section to GO 156 about the entities encouraged to voluntarily comply with Pub. Util. Code § 366.2(m)(3) and §§ 8281-8286 will promote the state policy of increasing procurement from eligible suppliers and serve to memorialize the voluntary efforts of smaller utilities, smaller community choice aggregators, smaller electric service providers, and other types of businesses to increase procurement from eligible suppliers.

8. Establishing a LGBT voluntary procurement goal is critical for increasing the engagement and participation of LGBT business enterprises in the Supplier Diversity Program set forth in GO 156.

9. The data collected over the past several years on LGBT business enterprises is informative in establishing a voluntary procurement goal but relying on historical data is not enough to implement the statutory directives in Pub. Util. Code § 8281(b)(2)(A) to “[e]ncourage greater economic opportunity” and in Pub. Util. Code § 8283 to increase procurement from LGBT business enterprises.

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

11. People with disabilities, similar to women, minorities, disabled veterans, and LGBT persons, face barriers to participation in many areas of the state’s economy, are unrepresented or underrepresented in employment, and are disproportionately low income.



12. Including persons with disabilities in the Supplier Diversity Program is consistent with the intent of Pub. Util. Code §§ 8281-8286 to support those who face historical disadvantages in certain areas of the utility industry.

13. In the past, the Commission has added eligible suppliers to GO 156 pursuant to directives from the Legislature, but the Commission is not prohibited from identifying and adding a group to GO 156 to further enhance the goals of its Supplier Diversity Program.

14. A definition for persons with disabilities similar to the definitions adopted in the statute for other business enterprise will create a consistent approach when applying the requirements of the Supplier Diversity Program to this new eligible supplier.

15. Including mandatory submissions of annual plans and annual reports will provide the Commission and stakeholders with valuable information to further understand how to encourage participation from persons with disabilities business enterprises in the Supplier Diversity Program.

16. To certify persons with disabilities business enterprises as eligible suppliers under GO 156, the types of proof accepted should be similar to those used by Supplier Clearinghouse to certify a woman, minority, and LGBT business enterprises.

17. Providing certification options to business enterprises owned and controlled by persons with disabilities will facilitate expeditious incorporation of these business enterprises into the Supplier Diversity Program.

18. Data should be collected and considered on the participation of persons with disabilities business enterprises before adopting a voluntary procurement goal for the Supplier Diversity Program.

19. Improvements in the methods used to publicize contracting opportunities within the Supplier Diversity Program are needed so that potential contracting opportunities are provided to this newly added group, persons with disabilities, and to all other eligible suppliers.

20. At this time, the addition of economic impact data in the mandatory reporting required under GO 156 will not measurably increase the Commission's efforts to improve the Supplier Diversity Program and could be overly burdensome in combination with the other new mandatory reporting requirements adopted in this decision.

21. Incorporating workforce data pertaining to women, minorities, disabled veterans, persons with disabilities, and LGBT into the GO 156 annual reports will increase the Commission's understanding of the composition of the workforce of the covered entities and will not be overly burdensome, as it reflects information many of these covered entities already collect.

22. SB 826 (Jackson, 2018) and AB 979 (Holden, 2020) require publicly held companies headquartered in California to include a minimum number of women and people from "underrepresented communities" on their corporate boards and requires the California Secretary of State to ensure compliance with these requirements.

23. SB 826 seeks to proactively increase the representation of women on corporate boards to improve the well-being of citizens of California.

24. AB 979 seeks to address the disproportionately low representation of certain underrepresented communities on corporate boards and promote more balanced representation.

25. Similar to the intent of this recent legislation, it is reasonable to track diversity on boards by requiring all covered entities under GO 156, *i.e.*, utilities,

community choice aggregators, and electric service providers with certain revenue thresholds, to report on the number of board members that correspond to the business enterprises defined in GO 156, *i.e.*, board members that identify as women, minorities, disabled veterans, persons with disabilities, and LGBT, in the GO 156 annual reports.

26. Commission audits are a valuable tool to verify the accuracy of the GO 156 reporting, and the audit process could improve by providing additional clarity around the scope of the Commission staff's authority in this area.

27. The use of the word "complaints" in Section 7 of the 2015 version of GO 156 has caused confusion because the word "complaints" is used to refer to Notices of Appeal, which are filed with the Commission, and also to refer to requests to the Supplier Clearinghouse to review denials of certification.

28. The current process for contesting a denial of certification by the Supplier Clearinghouse is set forth in a number of different documents, including Section 7 of GO 156, Resolution ALJ-377, and the Commission's Rules of Practice and Procedure.

29. No issues have been identified to justify revising the frequency of the *en banc* hearings under GO 156 or other processes pertaining to the *en banc* hearing at this time.

30. Currently, GO 156 uses the term *-owned business enterprises* but the statute uses the term *business enterprises*, which causes unnecessary confusion.

31. Resolution Exec-001 found that staff must monitor and evaluate the Supplier Clearinghouse "on a periodic basis."

32. A phase 2 of this proceeding may be initiated to address additional issues pertaining to GO 156.

## **Conclusions of Law**

1. Consistent with the statutory directives in SB 255, and in the absence of opposition, it is reasonable to incorporate into GO 156 those community choice aggregators, electric service providers, and additional utilities that meet certain revenue thresholds and set March 2023 as the due date for the first submissions.

2. More limited mandatory reporting requirements for community choice aggregators than those currently required of utilities is reasonable based on Pub. Util. Code § 366.2(m)(2)(B), which provides the Commission with discretion to create reporting requirements for community choice aggregators that are different from those applicable to utilities.

3. Adopting an exception to the mandatory reporting for smaller community choice aggregators, such as those operating below 700 GWh, is not reasonable since the statute's mandatory reporting requirements applies to all community choice aggregators with at least \$15 million in gross annual California revenues.

4. It is reasonable to adopt the same plan and report requirements for larger electric service providers, meaning those with annual gross California revenues over \$25 million, as applied to similarly sized utilities while also taking into consideration the more limited scope of business of an electric service provider and, in certain circumstances, the more limited ability to report by electric service providers that are public agencies.

5. Under Pub. Util. Code § 8283(f), it is reasonable to adopt less burdensome mandatory reporting requirements for smaller utilities and smaller electric service providers, meaning those with between \$15 million and \$25 million in annual gross California revenues, than apply to larger similar entities based on the more limited size of their businesses.

6. Adding a section to GO 156 that identifies those businesses encouraged by Pub. Util. Code § 366.2 and §§ 8281-8286 to voluntarily increase procurement from eligible suppliers and, in some instances, voluntarily report progress to the Legislature is reasonable as this addition will serve to promote the state policy of increasing procurement from eligible suppliers and to memorialize the voluntary efforts of these smaller utilities, smaller community choice aggregators, smaller electric service providers, and other types of businesses to increase procurement in these areas.

7. In balancing the Commission's reliance on historical data with the objective of increasing procurement from LGBT business enterprises amidst unique barriers to entry into utility procurement, it is reasonable to adopt the following voluntary procurement goals for LGBT business enterprises which increase over the next three years: 2022 of 0.5%, 2023 of 1.0%, and 2024 of 1.5%.

8. It is reasonable to expand the Supplier Diversity Program to include business enterprises owned and controlled by persons with disabilities because this group has historically faced disadvantages and to further their inclusion in utility-related procurement.

9. Based on existing definitions of eligible suppliers, it is reasonable to adopt the following similar definition for persons with disabilities and incorporate this definition into GO 156:

Persons with Disabilities Business Enterprise means (1) a business enterprise (a) that is at least 51% owned by a person or persons with a disability or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more persons with a disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.

10. It is reasonable to require covered entities under GO 156 to report on 2022 procurement from persons with disabilities business enterprises in a

manner consistent with other eligible suppliers in mandatory annual reports and annual plans due in March 2024.

11. It is reasonable to adopt the following types of proof to establish a business enterprise owned and controlled by a person with a disability as an eligible supplier, which are similar to those available to women, minority, and LGBT business enterprises, and staff is authorized to add to this list so that it timely reflects any appropriate changes in this area:

- documentation from a licensed, registered, or state or private certified vocational rehabilitation specialist affirming that the applicant/person is a person with a disability;
- documentation from a federal or state agency (including the District of Columbia or a U.S. territory) that issues or provides disability benefits confirming the owner has a disability;
- documentation from a licensed medical professional (*e.g.*, a physician or other medical professional duly certified to practice medicine by a state, the District of Columbia or a U.S. Territory) confirming the owner has a disability;
- an Individualized Education Program (IEP) for an owner who has a learning disability;
- a letter/written signed statement from a leader of the Disability Chamber of Commerce or an affiliate chamber confirming to the disability status of the owner;
- three letters of reference from personal contacts who:  
(a) have known the owner for over one year and (b) can attest, in a signed statement, to the owner's disability status;
- a letter/written signed statement by a leader or board member from a disability advocacy organization attesting to the owner's disability status;

- proof of media coverage, including publications, newspapers, or articles, explicitly stating the disability status of the owner;
- a letter/written signed statement from a physician or attorney establishing the disability status of the owner;
- certificates, awards, recognition of the owner as outstanding members of the disability community; or
- documentation of participation in a program by owner that provides benefits based on disability.

12. To expedite certifications as an eligible supplier, it is reasonable to designate Disability:IN as a “third-party agency” under GO 156 and direct Supplier Clearinghouse to develop a streamlined verification process for certification as an eligible supplier under GO 156 of any business already certified by Disability:IN.

13. To provide adequate notice of procurement opportunities, it is reasonable that covered entities under GO 156 modify their education and outreach methods and related materials to facilitate broad engagement with persons with disabilities.

14. To set a voluntary procurement goal for persons with disabilities business enterprises as part of the Supplier Diversity Program, it is reasonable to collect and consider data first and then adopt a goal in approximately three years.

15. To improve access to and notice of contracting opportunities to the newly added group, persons with disabilities, and to all other eligible suppliers, it is reasonable to direct covered entities under GO 156 to include on their websites the email address and telephone number to contact their staff to respond to questions about their internal supplier programs and covered entities are encourage to modify their websites related to their supplier programs, as needed, to ensure websites are widely accessible to persons with disabilities.

16. As this time, it is reasonable to not incorporate economic impact data in the reporting required under GO 156 because it will not measurably increase the Commission's efforts to improve the Supplier Diversity Program and could be overly burdensome in combination with implementing the other new reporting requirements adopted in this decision.

17. Requiring covered entities under GO 156 to provide workforce data pertaining to persons who identify as women, minorities, disabled veterans, persons with disabilities, and LGBT into their GO 156 annual reports is reasonable because it will increase the Commission's understanding of the composition of the workforce of the covered entities and will not be overly burdensome, as it reflects information many of these entities already collect, and is consistent with Commission authority. This reporting will commence after forms are developed in the next phase of this proceeding and, after development of these forms, this data will be included in all future annual reports.

18. Based on the intent of recent state legislation in SB 826 (Jackson, 2018) and AB 979 (Holden, 2020) to increase the diversity of board representation, it is reasonable to track the board diversity by requiring covered entities under GO 156, *i.e.*, utilities, community choice aggregators, and electric service providers that meet certain revenue thresholds, to report on the number of persons serving on their boards that identify as women, minorities, disabled veterans, persons with disabilities, and LGBT in the GO 156 annual reports after staff develops forms for reporting this data in the next phase of this proceeding. After forms are developed, board diversity data will be included all future annual reports.

19. Because additional clarity on the scope of the staff's authority pertaining to audits under GO 156 will improve the use of audits as a valuable tool to verify



the accuracy of the GO 156 reporting, the Commission modifies the audit provisions of GO 156 to clarify that (1) the Commission's staff may conduct audits as they deem necessary, and (2) in addition to the audits described at Section 9.1.10 of the 2015 version of GO 156, staff may conduct audits on any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Commission's Supplier Diversity Program.

20. Based on past confusion about the difference between the internal review process by the Supplier Clearinghouse to contest denials of certification, Notices of Appeal filed with the Commission, and complaints, it is reasonable to revise GO 156 to clarify that the word "complaints" usually means complaints filed under Rule 4.1 through Rule 4.6 of the Commission's Rules of Practice and Procedures but that the meaning of the word "complaint" as used in Section 9.1.6. is different.

21. The word "complaints" in Section 9.1.6 of the 2015 version of GO 156 is any written or verbal statement from an eligible supplier or third-party that the program administered by the utility or other covered entity is unsatisfactory or unacceptable.

22. It is reasonable to adopt revisions to the 2015 version of GO 156 at Section 7 to clarify the distinction between the internal review process within the Supplier Clearinghouse to contest denials of certification and Notices of Appeal filed with the Commission to promote a fair and efficient process for those that seek to contest a denial of certification by the Supplier Clearinghouse.

23. To ensure as broad participation as possible at the GO 156 *en banc* annual hearing and to engage newly interested stakeholders, GO 156 is clarified regarding the notice requirements related to this hearing to direct staff to provide

notice of the *en banc* hearing broadly, in a manner that reaches as many stakeholders as possible, including the service list for the most recent proceeding pertaining to GO 156 and any service lists pertaining to related topics.

24. Because the term *business enterprise* is consistent with the statute and would promote the understanding that the Supplier Diversity Program applies to a business enterprise both owned and controlled by women, minorities, disabled veterans, LGBT, or persons with disabilities, it is reasonable to revise GO 156 to reflect this modification.

25. As part of Commission staff's monitoring and evaluating of the Supplier Clearinghouse under Resolution Exec-001, it is reasonable for staff to incorporate into the Commission's Annual Report to the Legislature, a report already required by Pub. Util. Code § 8283(e)(1), meaning the results of its oversight of the Supplier Clearinghouse, including a response to the existing requirement in Resolution Exec-001 for a staff analysis of the existing contract between Supplier Clearinghouse and the utilities (*e.g.*, audits of revenues and expenditures associated with the certification program).

26. At the discretion of the Commission, a phase 2 of this proceeding would be reasonable to address additional issues and an amended scoping memo would set the scope of issues to be considered and the schedule for this phase 2.

## **O R D E R**

### **IT IS ORDERED** that:

1. General Order (GO) 156 is revised to reflect the determinations herein at Appendix A (redlined version) and Appendix B (adopted version). All rules and regulations set forth in Appendix B are adopted and effective immediately. Appendix B shall be placed on the Commission's website as the currently effective General Order 156.
2. The utilities, community choice aggregators, and electric service providers that meet the revenue thresholds set forth in Public Utilities Code § 366.2 and §§ 8281-8286 shall immediately conform their internal business practices to reflect the mandatory reporting requirements incorporated into General Order 156, as set forth herein.
3. The utilities, community choice aggregators, and electric service providers that meet the revenue thresholds set forth in Public Utilities Code § 366.2 and §§ 8281-8286 shall immediately add to their websites, at a minimum, an email address and telephone number to contact staff to respond to questions about the covered entity's own supplier diversity program.

4. Rulemaking 21-03-010 remains open.

This order is effective today.

Dated April 8, 2022, at San Francisco, California.

ALICE REYNOLDS  
President  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
DARCIE L. HOUCK  
JOHN R.D. REYNOLDS  
Commissioners

**APPENDIX A:**  
**Redlined Version of General Order 156**

**APPENDIX B:**  
**Adopted Version of General Order 156**