
PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 27, 2023

Agenda ID #21864

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-446:

This is the draft Resolution of Administrative Law Judge (ALJ) Alberto Rosas Resolving K.21-04-002. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution was mailed and published on the Commission's website, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served upon all persons on this proceeding's service list and on ALJ Rosas at alberto.rosas@cpuc.ca.gov.

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:nd3

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-446
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-446 Resolves Appeal K.21-04-002 by Mission City Rebar, Inc. from the Denial of its Status as a Minority-Owned Business issued by The Supplier Clearinghouse on March 12, 2021.

BACKGROUND

This proceeding involves the appeal by Mission City Rebar, Inc. (Appellant), a California corporation headquartered in Santa Clara, California, of the denial of certification as a Minority Business Enterprise (MBE) by the Supplier Clearinghouse (Clearinghouse or Respondent). Appellant requests the California Public Utilities Commission (Commission) review the evidence and verify¹ appellant qualifies as an MBE.

Appellant is a California corporation incorporated in 1971. On February 5, 1991, Respondent first certified Appellant as an MBE, classified as a Hispanic American-owned business.² Appellant's shares on that date were split equally amongst Ernest A. Gonzales and his adult children: John A. Gonzales, Michael A. Gonzales, and Cathy J. Parshall.³ Ernest A. Gonzales, and hence his children, are all Americans of Portuguese descent, through Ernest A. Gonzales' father (Bras Gonzales), who was born in Portugal's Azores islands. Moreover, Ernest A. Gonzales' father, Bras Gonzales, was

¹ The terms "verify" and "certify" and derivations thereof are terms of art utilized in connection with the Women, Minority, Disabled Veteran, and Lesbian, Gay, Bisexual and Transgender (Diverse Suppliers) program to indicate the process of certifying that a particular entity meets or has met the standards set forth in General Order (GO) 156 for designation as Diverse Suppliers of which MBE is included.

² Appellant's Reply Brief (December 7, 2021) at 2.

³ *Ibid.*

born in the Azores. Appellant renewed its MBE certification in 1996, 1999, 2002, 2005, 2008, 2011, 2014, and 2017.⁴

In January 2009, Ernest A. Gonzales passed away, resulting in redistribution of his shares among his children.⁵ Currently, Appellant's shareholders are John A. Gonzales (President), Michael A. Gonzales (Vice President), and Cathy J. Parshall (Secretary), all of whom own an equal interest.⁶

Following past MBE certification renewal processes, on May 15, 2020, Appellant submitted a renewal application to Respondent.⁷ After the submission of the application, Respondent found documentation indicating the Portuguese descent of Appellant's shareholders.⁸ Respondent then denied the 2020 renewal application, stating that it was unaware that Appellant was Portuguese American-owned in the previous reverification applications (as that information is not required to be listed on the renewal application).⁹

Appellants properly exhausted their administrative remedies as required by GO 156. Appellant appealed this denial internally with Respondent as required by GO 156 Section 7.1, and in its appeal letter, dated February 11, 2021, referenced external citations and research documents to support its claims.¹⁰ Respondent upheld the denial on March 12, 2021, counting Appellant among 27 Portuguese American-owned businesses similarly denied MBE certification between July 1, 2015, and October 28, 2021.¹¹

On April 1, 2021, Appellant filed a citation appeal with the Commission challenging Respondent's denial, under the requirements of GO 156 Sections 7.1-7.2. On April 12, 2021, Respondent filed a motion for filing of confidential documents in this proceeding per Rule 11.4 of the Commission's Rules of Practice and Procedure. The Commission

⁴ *Id.* at 3.

⁵ *Ibid.*

⁶ Appellant's Reply Brief (December 7, 2021) at 3; Respondent's Opening Brief (November 12, 2021) at 1.

⁷ Respondent's Opening Brief (November 12, 2021) at 1.

⁸ *Id.* at 1-2.

⁹ *Ibid.*

¹⁰ Respondent's Opening Brief (November 12, 2021) at 2.

¹¹ *Id.* at 7.

held an Evidentiary Hearing on September 27, 2021. Appellant submitted a supporting brief on November 9, 2021.

On May 18, 2023, the Commission held a virtual Status Conference Hearing. The presiding Administrative Law Judge ruled for re-opening the record in this citation appeal and required the parties address six inquiries:

1. Should Portuguese Americans be considered a Minority in California for purposes of GO 156?
2. Whether the Azores, which is a region of Portugal, has any ties to Spanish culture?
3. Whether a Portuguese American person having origin in the Azores meets the definition of "Hispanic American person," for purposes of GO 156?
4. [...] ¹²
5. [...] ¹³
6. Whether K.21-04-002 should be stayed, pending resolution of the Commission's rulemaking proceeding in Rulemaking (R.) 21-03-010 (Rulemaking to Revise GO 156)?

Appellant and Respondent responded timely to the inquiries.

With respect to the confidential material under seal, the Commission has granted similar requests for confidential treatment in the past and does so again here. We agree the information involves both personal and market-sensitive information. We therefore authorize the confidential treatment of all confidential materials as ordered in the ordering paragraphs below.

¹² The fourth inquiry: "Although the doctrine of equitable estoppel is not directly applicable to this citation appeal, whether the spirit of equitable estoppel should apply, and whether the Clearinghouse should be prevented from taking a position that is inconsistent with its prior conduct?" However, because the doctrine of equitable estoppel is not directly applicable to this citation appeal, and because of the Commission's conclusions on the other issues herein, we find no reason to discuss the issue of equitable estoppel.

¹³ The fifth inquiry: "GO 156 section 1.1.2. states that 'The Commission may revise GO 156 on the basis of experience gained in the application and/or changes in legislation.' Should the Commission revise GO 156 to provide for a grandfather clause or a legacy clause?" The parties were informed that their responses to this inquiry will not affect the resolution of this current citation appeal. Thus, this issue is not relevant to this resolution and will not be addressed.

PARTY POSITIONS

GO 156 clarifies Hispanic American persons as those of “Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.”¹⁴

Appellant argues that based on the history of Portugal and the Iberian Peninsula, persons of Portuguese American persons meet GO 156’s definition of “Hispanic American persons” because of Portuguese American persons’ ties to “Spanish culture or origin.” Respondent contends that Portuguese American persons do not qualify as Hispanic American persons, that Respondent should never have verified Appellant under the MBE certification, and, in support, Respondent points to numerous government agencies and court decision across the nation that do not consider Portuguese Americans to meet the definitions of Hispanic Americans.

RESOLUTION OF THE APPEAL

California Assembly Bill (AB) 3678, signed into law on September 26, 1986, now codified as California Public Utilities (Pub. Util.) Code Sections 8281-8286, requires every electric, gas, and telephone utility with gross annual revenues exceeding \$25 million to implement a program developed by the Commission to encourage, recruit, and utilize Diverse Suppliers. In response to AB 3678, the Commission issued GO 156, effective May 30, 1988, amended on June 11, 2015,¹⁵ to provide uniform rules and guidelines for California investor-owned utility companies to develop and implement programs for Diverse Suppliers. As relevant here, public utilities subject to GO 156 are obliged to seek to procure, at a minimum 15 percent of their long-term goals for each major category of products and services from minority-owned business enterprises.¹⁶

GO 156 also established Clearinghouse, as a separate entity, to verify that businesses credited toward the procurement goals are, in fact, owned and controlled by qualifying women, minorities, lesbian, gay, bisexual or transgender person or persons. GO 156 further authorized the Commission to approve third-party agencies to perform verifications of Diverse Suppliers. The primary purpose of Clearinghouse is to audit and verify the status of Diverse Suppliers and to establish and maintain a database of these businesses that is accessible to the Commission and participating utilities.

¹⁴ GO 156 § 1.3.10.

¹⁵ As amended by Decision (D.) 15-06-007 (June 11, 2015).

¹⁶ GO 156 § 8.

Standard of Review

The Commission applies the “substantial evidence test” as its standard of review in exercising its jurisdiction of review over Respondent’s verification decisions.¹⁷ In other words, the Commission will affirm the decision of Respondent if it is supported by the record when considered as a whole.¹⁸ Such a review necessarily entails an examination of Respondent’s findings and conclusions and the evidence upon which those findings are based.

Portuguese Americans Are a Minority in California for Purposes of GO 156

GO 156 Section 1.3.4 defines the term MBE and states the presumption that “minority includes, *but is not limited to*, African Americans, Hispanic Americans, Native Americans, and *other groups* as defined herein.” (Emphasis added.) The parties both focus on the issue of whether Portuguese Americans fall under the narrow definition of Hispanic Americans, but they ignore the question of whether Portuguese Americans fall under the broader definition of “minority” and, relatedly, “other groups.” As discussed below, we consider Portuguese Americans as a separate minority category in California for purposes of GO 156.

The general definition of “minority” in GO 156 includes African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans,¹⁹ and other groups and individuals defined by federal law.²⁰ In deferring to federal law to define “other groups and individuals,” the Commission looks to the Small Business Act, as amended in 15 U.S.C. Section 637(a), or to the U.S. Secretary of Commerce, pursuant to Executive Order 11625.²¹ These sources consider minority persons to include those that are found to be socially and economically disadvantaged individuals, and Executive Order 11625 further clarifies this as meaning socially *or* economically disadvantaged people.²² The Executive Order does not use race or ethnicity alone to classify social or economic disadvantage, but relies on a combination of socioeconomic factors instead.²³

¹⁷ See D.91-12-058 at 11.

¹⁸ See D.92-04-004 at 12.

¹⁹ Pub. Util. Code § 8282(d); GO 156 § 1.3.4.

²⁰ 15 U.S.C. § 637(a)(4)(A); Exec. Order No. 11625, 15 U.S.C. § 9597.

²¹ GO 156 § 1.3.13.

²² 15 U.S.C. §§ 637(a)(4)(A)(i)(I) and 637(a)(4)(A)(ii)(I).

²³ Exec. Order No. 11625 § 6 (stating that disadvantaged persons include African American, Spanish-speaking Americans, and Native Americans, but are not limited to these racial categories of people).

As of the 2020 U.S. census, only 311,750 Portuguese Americans live in California.²⁴ While much of the Portuguese American population of the State claims origins from the Azores, they nonetheless only make up less than a single percentage point of the State's overall headcount.²⁵ History has even shown that Portuguese immigrants and new Americans, especially from the Azores, have long experienced the ill-effects of systemic and institutionalized racism in this Nation.²⁶ The cascading effects of systemic otherness and exclusion experienced by the Azorean settlers and pioneers in America extended well into the 1970s and 1980s, and perhaps even to the present day.²⁷

The descendants of these Azorean immigrants still appear to bear the burdens imposed unjustly on them by their less-understanding fellow Americans in the past, and barring the affirmative protection afforded them by the State, there is a high likelihood that their financial and political liberties could yet be subject to the tyranny of the majority.²⁸ Their population's sheer infinitesimal nature and the accompanying disadvantages should make Portuguese Americans, especially those with Azorean origins, a socially and economically disadvantaged minority within California. Thus, GO 156 needs to extend the reach of equitable protection to Portuguese Americans and, under the Small Business Act, needs to recognize any business enterprises in which they hold more than 51-percent ownership, including Appellant, as minority business enterprises.²⁹

The Public Utilities Code facilitates the participation of minority-owned businesses in all procurement activities and contracts of the Commission in alignment with federal

²⁴ Ancestry Table for California, U.S. Census at: <https://data.census.gov/table?g=040XX00US06&tid=ACSDP1Y2021.DP02> (last accessed June 26, 2023).

²⁵ *New documentary highlights history of Central California's Portuguese American community*, ABC News (March 19, 2021) at: <https://abc30.com/azorean-immigration-highway-99-portuguese-american-central-valley/10433742/> (last accessed June 26, 2023); Ancestry Table for California, U.S. Census at: <https://data.census.gov/table?g=040XX00US06&tid=ACSDP1Y2021.DP02> (last accessed June 26, 2023); *see also* Robert L. Santos, *Azoreans to California* 87-88 (1976).

²⁶ *See in general* Sandra Knight Wolforth, *The Portuguese in America* (1976).

²⁷ Dulce Maria Scott, *Portuguese Americans' Acculturation, Socioeconomic Integration, and Amalgamation*, 61 *Sociologica Problemas E Practicas* 41, 41-64 (2009).

²⁸ Alexis de Tocqueville, *Democracy in America: Historical-Critical Edition, Vol. 2*. Liberty Fund at: <https://oll.libertyfund.org/title/schleifer-democracy-in-america-historical-critical-edition-vol-2> (last accessed June 27, 2023) (*see especially* Part II, Chapter 7).

²⁹ 15 U.S.C. § 637(a)(4)(A).

disadvantaged business enterprise standards.³⁰ Here, in pertinent part, the law presumes any individual of Portuguese culture or origin to be socially and economically disadvantaged, and hence a minority person.³¹ As all of Appellant's shareholders are descendants of Portuguese immigrants from the Azores, Appellant therefore is a minority-owned business enterprise in California. Furthermore, public contract law in California also explicitly considers individuals of Portuguese culture or origin as minority persons for purposes of contracts with any State agency, including the Commission,³² and requires the Commission, or any entity acting on its behalf, to certify businesses at least 51-percent owned by such persons as MBEs.³³ In certifying Appellant as an MBE, neither the Respondent nor the Commission will contradict established legal traditions and interpretations of the law. On the other hand, this certification will align with several other agencies within California and across the United States that currently certify majority-Portuguese American-owned businesses as MBEs.³⁴

This minority status of Portuguese Americans in California calls for their inclusion as a minority for purposes of GO 156. However, even if we did not consider Portuguese Americans as a separate minority category in California for this limited purpose related to GO 156, we do consider Azoreans to meet the GO 156 definition of "Hispanic American persons." Although we do not make any broad characterizations about whether all Portuguese Americans meet the definition of Hispanic Americans, our analysis narrowly shows that Azoreans meet GO 156's specific definition of Hispanic Americans because of the Azores' strong historical ties to "Spanish culture," as elaborated below.

Historical Ties to Spanish Culture

GO 156 defines Hispanic American persons as those of "Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and *other Spanish culture or origin*" (emphasis

³⁰ Pub. Util. Code § 130239 (relying on 49 C.F.R. § 23.3 to define minority-owned businesses and disadvantaged individuals).

³¹ 49 C.F.R. § 23.3.

³² Public Contract (Pub. Cont.) Code § 2051(c); *see also Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 714 (9th Cir. 1997).

³³ Pub. Cont. Code § 2053(a).

³⁴ Cal. Gov't Code § 14839(a)(10) (defining Portuguese Americans as minority persons for the California Office of Small Business and Disabled Veteran Business Enterprise Services); 15 U.S.C. § 637(d); *GEOD Corp. v. N.J. Transit Corp.*, 746 F.Supp.2d 642, 646 n.2 (D. N.J. 2010) (citing 49 C.F.R. § 26.67 to hold Portuguese Americans as minority persons for the U.S. Dep't of Transp.); *Keith v. Volpe*, 965 F.Supp. 1337, Exhibit C (C. D. Cal. 1996) (considering Portuguese Americans as minority persons for Caltrans).

added).³⁵ Appellant refers to the Merriam-Webster Dictionary. In general, lay terminology, the word “Spanish” refers to “the people of Spain”;³⁶ and the definition of the word “culture” includes “the customary beliefs, social forms, and material traits of a racial, religious, or social group” as well as “the characteristic features of everyday existence (such as diversions or a way of life) shared by people in a place or time.”³⁷

Contrary to Clearinghouse’s interpretation of GO 156’s definition of “Hispanic American persons,” the Commission will not assume that the words “other Spanish culture” means other Spanish-speaking culture. Despite Clearinghouse’s argument, the Commission notes that the words “Spanish-speaking” are absent from the GO 156 definition.

Appellant supplied a broad historical perspective about Hispania, arguing that because Hispania included both Spain and Portugal, it shared a common culture and origin that gave rise to both independent nations. We disagree. Though some of Hispania’s cultural aspects perhaps may have impacted the regions of what is now modern-day Portugal, the Commission agrees with Respondent that using an ancient civilization like Hispania to demonstrate that unique culture emerged within the geographical boundaries of Portugal and Spain may be somewhat unrealistic, considering that 700 years separates the end of the Hispania empire and the formation of Portugal.

Fast-forwarding from Hispania and focusing on Portugal and Spain, we note that the history of Portugal is the history of Spain. Until its independence in the early 12th century, Portugal was a part of Spain, in varying degree, for nearly a millennium and a half. The ruler of Portugal during their discovery of the Azores, John I, was the son of a noble Galician from northwest Spain.³⁸ It was his son, Henry the Navigator, uncle to later rulers of Castille, who claimed the Azores islands for the Kingdom of Portugal.³⁹ Since its discovery by Prince Henry (aided by a map made in Spanish Catalonia⁴⁰), the Azores islands, along with Madeira, the Canaries, and Cape Verde, have been settled by people from various regions across Europe. Recent genealogical studies reveal that the present population of these islands is most closely genetically related to people from

³⁵ GO 156 § 1.3.10.

³⁶ Merriam-Webster Dictionary at: <https://www.merriam-webster.com/dictionary/Spanish> (last accessed August 1, 2023).

³⁷ Merriam-Webster Dictionary at: <https://www.merriam-webster.com/dictionary/culture> (last accessed August 1, 2023).

³⁸ John I King of Portugal, Encyclopedia Britannica, <https://www.britannica.com/biography/John-I-king-of-Portugal> (last accessed June 30, 2023).

³⁹ Robert L. Santos, Azoreans to California 3-33 (1976).

⁴⁰ Evelyn Edson, The World Map 1300-1492 74-86 (2007).

mainland Portugal, along with those from Mallorca, Minorca, Ibiza, and the Basque Country, each a region or part of present-day Spain.⁴¹

In the Azores, the cultures of Portugal and Spain blend to create uniquely Azorean customs and traditions. Clearinghouse states that “no mentions of Spanish conquest or rediscovery were made for the Azores.” This is historically incorrect. Historically, not long after its European settlement, Spanish King Philip II conquered the Azores in 1583, as the last of the Portuguese territories to fall in the War of Succession.⁴² Spanish rule lasted until 1642 when the Spanish relinquished control and the Azores restored its agency under Portugal.⁴³ To put this into perspective, after Portugal had control of the Azores islands for just over a century, the Spanish reconquered the area for a significant period of time before the Azores and Portugal regained their autonomy over the region.

For 60 formative years, the Azores was part of the new Iberian Union, integrating the Spanish Empire with the absorbed Portuguese one.⁴⁴ This “Babylonian captivity” has left a noticeable impact on the Azorean culture to the present day, including the use of Spanish instruments in their folk music and the annual bullfight reminiscent of the ones in mainland Spain.⁴⁵

Bullfighting is a Spanish cultural tradition that originated in 711 AD.⁴⁶ In Terceira, one of the Azores islands, bullfighting is quite popular and one of the festivals involves rope bullfighting – guiding a bull through the streets using a rope. Today, with its unique style of rope bullfighting, the Azores bullfighting season starts in May and ends in

⁴¹ Paula Pacheco, *et al.*, HLA Class I and Class II profiles in São Miguel Island (Azores): genetic diversity and linkage disequilibrium, 3 BMC Rsch. Notes 134 (2010); C. Santos, *et al.*, Genetic structure and origin of peopling in the Azores islands (Portugal): the view from mtDNA, 67 Annals of Hum. Genetics 433 (2003); P. R. Pacheco, *et al.*, The Y-chromosomal heritage of the Azores Islands population, 69 Annals of Hum. Genetics 145 (2005); Claudia C. Branco, *et al.*, Assessment of Azorean ancestry by Alu insertion polymorphisms, 18 Am. J. Hum. Biology 223 (2006).

⁴² Geoffrey Parker, *The Spanish Armada* 73 (1999).

⁴³ Hugh Thomas, *World Without End: The Global Empire of Philip II* (2025) at 73; *see also* James Alan, *A French Armada? The Azores Campaigns, 1580-1583* *The Historical Journal*, 55(1) (2012) at 1-20.

⁴⁴ *See* Santos, *supra*, *Azoreans to California* 3-33 (1976).

⁴⁵ *Ibid.*; *see also* Charlotte Alice Baker, *A Summer in the Azores with a Glimpse of Madeira* (1882).

⁴⁶ Nina Chikanov, *Spain: The Art (?) of Spanish Bullfighting*, UCLA Study Abroad (2017).

October every year.⁴⁷ These annual bullfighting traditions in the Azores denote the customary diversions or a way of life with strong ropelike ties to Spanish culture. Azoreans and their descendants, therefore, derive key aspects of their culture from Spanish culture and influence.

For Purposes of GO 156, Portuguese American Persons with Origins in the Azores Meet the Definition of “Hispanic American Persons”

In addition to Appellant being minority-owned, it is also a Hispanic American-owned business enterprise. While GO 156 clarifies Hispanic Americans as being of “Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin,”⁴⁸ there is no indication in the text as to where people of Portuguese origin fall.

GO 156 defines Hispanic Americans as persons of “Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.” Notably, the text of GO 156 does not explicitly mention Portuguese Americans, and those claiming descent or origin from Portuguese culture. However, the extensive historical and cultural ties between Portugal and Spain should render Portuguese people as having a “Spanish culture or origin,” as detailed above. Even otherwise, the Commission, in the absence of clear guidelines, should look to existing federal and state laws and court decisions in including Portuguese Americans under the General Order’s definition of Hispanic Americans, as detailed below.

Where GO 156 spells out the lower bounds of national origins considered Hispanic, it does not clearly define the upper limits of persons included in this category. In this vacuum, the Commission can rely on the views of other courts and interpretations grounded in state and federal law. The Public Utilities Code allows the Commission to defer to federal disadvantaged business enterprise standards to fill in any gaps in understanding that may arise.⁴⁹ Here, Hispanic Americans include persons of Portuguese culture or origin, regardless of race.⁵⁰ All of Appellant’s current shareholders are descendants of Azorean Portuguese immigrants to the United States. Following federal regulations, they should therefore be Hispanic Americans, making Appellant a Hispanic American-owned business.

⁴⁷ The Azores, Learning Portuguese at: <https://www.learningportuguese.co.uk/countries/the-azores> (last accessed July 28, 2023).

⁴⁸ GO 156 § 1.3.10.

⁴⁹ Pub. Util. Code § 130239 (relying on 49 C.F.R. § 23.3 to define minority-owned businesses).

⁵⁰ 49 C.F.R. § 23.3.

No Good Cause to Stay Citation Appeal

Respondent raised the issue of whether K.21-04-002 should be stayed, pending resolution of the Commission's rulemaking proceeding in R.21-03-010 (Rulemaking to Revise GO 156). Respondent stated that if the Commission adds "Portuguese Americans" to the list of eligible minority groups in GO 156, this citation appeal would become moot. That is true. However, we cannot speculate about the potential end-result of an ongoing rulemaking proceeding. Also, Appellant filed this appeal on April 1, 2021, under current GO 156, as amended on June 11, 2015, not based on any potential speculative future amendments to GO 156. Moreover, it has been over two years since Appellant filed this citation appeal with the Commission. Our conclusions reached in this appeal include that Portuguese American persons with origins in the Azores meet GO 156's definition of Hispanic American persons. As such, based on our analysis and conclusions, we do not find good cause to prolong and stay this current appeal pending the rulemaking proceeding. Therefore, we deny Respondent's request to stay this citation appeal, as ordered in the ordering paragraphs below.

Conclusion

The Commission's founding and guiding documents justify its actions within the powers granted to it by the Constitution of California.⁵¹ The Constitution grants the Commission broad authority over public utilities,⁵² guided by the ideal of promoting equitable access to every section of Californian society in the related economic successes. That vision of economic well-being cannot be realized "unless the actual and potential capacity of women, minority, disabled veteran, disabled, and LGBT business enterprises is encouraged and developed."⁵³

Portuguese Americans' minority status in California calls for their inclusion as a minority for purposes of GO 156. However, even if we do not consider Portuguese Americans as minorities in California for purposes of GO 156, we do consider Azoreans to meet the definition of "Hispanic American persons," under GO 156, because of the Azores' strong ties to "Spanish culture."

In reaching this conclusion, ultimately, the Commission fulfills the noble legislative intent of preserving and promoting free competitive enterprise, grounded in fairness and equity, that maintains and strengthens the economic future of the State.⁵⁴ Moreover, in reaching this conclusion, the Commission also aligns itself with Governor Gavin

⁵¹ Cal. Const. Art. XII; *see especially* Cal. Const. Art. XII, §§ 3, 6.

⁵² *Ibid.*

⁵³ Pub. Util. Code § 8281(a).

⁵⁴ *Ibid.*

Newsom's views on diversity, that is, that "California doesn't succeed in spite of our diversity — our state succeeds because of it."⁵⁵

We conclude that Respondent erred in denying Appellant's recertification — for the first time in over 20 years — as an MBE.

SAFETY

The Commission has broad authority on safety concerns.⁵⁶ Although designation as an MBE does not pose any direct safety concerns, integrity in the contracting process for public utilities furthers safety through regulatory compliance.

COMMENTS

Pub. Util. Code Section 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. Accordingly, the draft Resolution was timely mailed for comments.

FINDINGS OF FACT

1. Appellant is a California corporation incorporated in 1971.
2. On February 5, 1991, Respondent first certified Appellant as an MBE, classified as a Hispanic American-owned business. Appellant's shares on that date were split equally amongst Ernest A. Gonzales and his adult children: John A. Gonzales, Michael A. Gonzales, and Cathy J. Parshall.
3. Ernest A. Gonzales and his children are all Americans of Portuguese descent, through Ernest A. Gonzales' father (Bras Gonzales), who was born in Portugal's Azores islands.
4. Appellant's MBE certification was renewed in 1996, 1999, 2002, 2005, 2008, 2011, 2014, and 2017.

⁵⁵ Governor Newsom, Office of Governor Gavin Newsom, "Newsom Administration Announces First-of-its-Kind Diversity Initiative for California State Government," published January 18, 2019, at: <https://www.gov.ca.gov/2019/01/18/inclusv/> (last accessed August 1, 2023).

⁵⁶ See, for example, Pub. Util. Code § 451, § 5382, and § 5387.

5. In January 2009, Ernest A. Gonzales passed away. Currently, Appellant's shareholders are John A. Gonzales (President), Michael A. Gonzales (Vice President), and Cathy J. Parshall (Secretary), all of whom own an equal interest.
6. On May 15, 2020, Appellant submitted a renewal application to Respondent, which Respondent then denied.
7. The Azores have strong historical ties to Spanish culture.

CONCLUSIONS OF LAW

1. Respondent is the duly appointed administrator of the Diverse Suppliers verification program established under the authority of Pub. Util. Code Sections 8281-8285 and GO 156.
2. The items that Respondent considers when investigating an applicant for MBE status are appropriate areas of inquiry, but no single item or specific combination of items is to be controlling on the issue of the applicant's eligibility for verification as an MBE.
3. Respondent erred in its determination that Appellant does qualify as an MBE under the definition of Hispanic Americans persons.
4. Respondent's denial of MBE certification is not supported by substantial evidence in the record when considered as a whole.
5. Respondent's motions to file confidential materials under seal should be granted.
6. There is no legal requirement that the Commission stay this citation appeal, pending resolution of the Commission's rulemaking proceeding in R.21-03-010 (Rulemaking to Revise GO 156).
7. For purposes of GO 156, because of the Azores' historical ties to Spanish culture, Portuguese American persons with origins in the Azores meet the definition of "Hispanic American persons."

THEREFORE, IT IS ORDERED that:

1. We find no good cause to stay the citation appeal in K.21-04-002 pending resolution of the Commission's rulemaking proceeding in Rulemaking 21-03-010 (Rulemaking to Revise General Order 156) and deny the Motion of the Supplier Clearinghouse to stay the proceeding.
2. The decision of the Supplier Clearinghouse denying verification as a Minority Business Enterprise to Mission City Rebar, Inc. is vacated.

3. The Supplier Clearinghouse is directed to verify Mission City Rebar, Inc. as a Minority Business Enterprise without further delay.
4. The Supplier Clearinghouse's motion to file confidential materials under seal is granted for a period of three years after the effective date of this Resolution. During this three-year period, this information shall not be disclosed publicly except on further California Public Utilities Commission order or Administrative Law Judge ruling. If Mission City Rebar, Inc. or The Supplier Clearinghouse believe it is necessary for this information to remain under seal for longer than three years, they may file a new motion showing good cause for extending this order by no later than 30 days prior to the expiration of this order.
5. This proceeding is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, 2023, the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director

N O T I C E

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

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Resolution ALJ-446 ALJ/ABT/nd3

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K2104002 LIST

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