
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

November 18, 2008

Agenda ID #8130

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-226

This draft resolution regarding the appeal of Residential Weatherization, Inc., will be on the agenda at the December 18, 2008, Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

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. Opening comments shall be served no later than December 8, 2008, and reply comments shall be served no later than December 12, 2008. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Prestidge at tom@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief
Administrative Law Judge

ANG:jt2

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-226
Appeal GO 156 2008 2
Administrative Law Judge Division
_____ 2008

R E S O L U T I O N

RESOLUTION ALJ-226. Granting the Appeal of Residential Weatherization, Inc. Pursuant to Clearinghouse Determination of Status Under General Order 156.

Summary

This Resolution grants the appeal of Residential Weatherization, Inc. (RWI) of the denial of its application for verification as a woman-owned business entity by the Supplier Clearinghouse (Clearinghouse) and finds that RWI qualifies for verification as a woman-owned business entity under General Order (GO) 156. We also find that the decision of the Clearinghouse was based on legal error and was not supported by substantial evidence. Administrative Law Judge (ALJ) Myra Prestidge adjudicated the appeal based on documentary evidence and briefs in lieu of an evidentiary hearing.

Background

GO 156, adopted in 1988,¹ implements Sections 8281-8286,² which require the Commission to establish a procedure to require gas, electric and telephone utilities that have gross annual revenues over \$25 million, as well as their

¹ The Commission has subsequently amended GO 156 on several occasions, including most recently in August 2006.

² All Code references are to the Public Utilities Code, unless otherwise stated.

Commission-regulated affiliates and subsidiaries, to adopt programs and submit annual plans to the Commission for increasing the participation of woman-, minority- and disabled veteran-owned business enterprises (WMDVBEs) in contracts for the provision of products or services to the utilities.³

Under GO 156, the utilities must set short-term (1-year), mid-term (3-year) and long-term (5-year) goals for the utilization of WMDVBEs in procurement contracts. These goals must be set annually for each major product and service category that provides opportunities for procurement,⁴ and must demonstrate the utility's commitment to encourage the participation of WMDVBEs in utility purchases and contracts as either prime contractors or subcontractors. If minimum long-term goals are not met, the utility's annual report to the Commission must discuss its efforts to find or recruit WMDVBE suppliers of products or services, or state that its inability to meet goals resulted from the unavailability of WMDVBEs to provide certain products or services, or occurred because sole source procurement was the only available procurement method for certain contracts.

The utilities are also encouraged to inform suppliers of products and services that the supplier's good faith efforts to subcontract with WMDVBEs will be a factor considered in the bid process.

However, GO 156 does not authorize or require utilities to utilize set-asides, preferences, or quotas in the administration of its WMDVBE program. The utility retains its authority to use its legitimate business judgment in selecting the supplier for a particular contract.

Under GO 156, the Commission utilizes a clearinghouse to audit and verify that business entities qualify as woman-owned or minority-owned businesses (WMBEs) and to establish and maintain a database of WMBEs for the Commission and utilities. Asian Inc. currently serves as the Clearinghouse. A business that wishes to contract with utilities as a WMBE under GO 156 must

³ Utilities may request relief from the requirements of GO 156 in cases of undue hardship or if compliance would result in unreasonable expense to the utility.

⁴ As an exception, the utility's subcontracting program need not apply to contracts for products manufactured for general consumption, such as pens or paper.

apply for verification by the Clearinghouse.⁵ In addition, WMBEs must submit updated verification forms to the Clearinghouse at least once every three years.

If the Clearinghouse denies an application for verification as a WMBE, the business may appeal the Clearinghouse's final decision to the Commission, by filing a Notice of Appeal with the Clearinghouse, with copies to the Chief ALJ and the applicable Division Director within 20 days of service of the Clearinghouse's final decision.⁶ The Chief ALJ shall then assign an ALJ to hear the appeal and to conduct a hearing, if needed. After the case is submitted, the assigned Administrative Law Judge (ALJ) shall issue an order resolving the appeal for consideration by the Commission. The Commission may approve, reject, or modify the ALJ's order on the appeal.

Statement of Facts and Procedural History

RWI applied to the Clearinghouse for verification as a woman-owned business enterprise under GO 156 on March 14, 2007.

Cristal Bedortha (Cristal) founded RWI in 2006. The company was incorporated in 2006 and began operations in 2007. RWI provides weatherization services for low-income households in order to promote energy efficiency and reduce customer utility bills. According to the record, RWI performs services only for the Pacific Gas and Electric (PG&E) Energy Partners Program.

The PG&E Energy Partners Program provides free weatherization measures and energy efficient appliances to qualified low-income customers. PG&E contracts with qualified contractors to carry out this program. Richard Heath and Associates (RHA) administers the Energy Partners Program for PG&E. Cristal has estimated that RWI's 2008 revenues, based on contracts with the PG&E Energy Partners Program, will be approximately \$2,385,000.⁷

Cristal is President and Chief Financial Officer of RWI and is a 35% shareholder. Melanie Bedortha (Melanie), who is Cristal's daughter, is Vice President of the company and is also a 35% shareholder. Joseph Bedortha (Joseph), who is

⁵ The Disabled Veteran Business Enterprise Participation Program, a unit of the State Department of General Services, certifies businesses that wish to contract as Disabled Veteran-Owned Business Entities (DVBES) under GO 156.

⁶ The business entity must exhaust any available internal appeal processes with the Clearinghouse before appealing to the Commission.

⁷ Declaration of Cristal Bedortha, paragraph 1.

Cristal's son, is Secretary of the company and is a 30% shareholder. According to the State Contractor's Licensing Board, Joseph is designated as the Responsible Managing Officer (RMO) on the company's contractor's license.

RWI's offices are located in Oroville, California, on property owned by Cristal and her husband. In addition, the residence of Cristal and her husband and Melanie's residence are located on the same property. Joseph resides at another address in Gridley, California, and has not lived with Cristal or Melanie for many years.

RWI shares the same business address and office phone number with Residential Wall Insulation (Residential Wall), a sole proprietorship owned and operated by Joseph.

According to Joseph's declaration, Residential Wall provides insulation services to paying customers. Residential Wall cannot compete with RWI for Energy Partners Program business, because RWI is operating under exclusive county franchises for this program.

According to the record, the roles and background of Cristal, Melanie, and Joseph at RWI are as follows:

A. Cristal

As the chief executive and operating officer of RWI, Cristal manages and controls the daily business operations of the company, has final authority over all hiring and firing decisions, and conducts all of RWI's contract negotiations and the company's business dealings with the PG&E Energy Partners Program.

Cristal had a long career in the energy efficiency field, including both management and hands-on experience, before founding RWI in 2007. She has been certified by PG&E as an Energy Specialist since 1997.

Cristal began her career in energy efficiency in 1982, when she managed a residential insulation program for Wayne Holland Construction (Wayne Holland) for the greater Los Angeles area. In this position, she installed attic insulation, door weather-stripping, caulking, and water-saving measures during the day, processed customer rebates, and managed the office in the evening. In 1996, Cristal was hired by Winegard Energy (Winegard) to install weatherization measures and to manage the Lancaster, California region for the company. In 1997, Winegard expanded its operations into the areas served by the PG&E Energy Partners Program. Cristal subsequently received several promotions and assumed increased responsibilities for Winegard, including management of

several offices, preparing Request for Proposals (RFPs) for jobs, customer relations, and working closely with the PG&E Energy Partners Program in Sutter, Yuba, Placer, Nevada, El Dorado, Sierra, Tehama, Butte, and Lassen Counties.

In 2001, Cristal moved to Wayne Holland as the Project Director for the Sutter County Energy Partners Program and the California Whole House Fan Pilot program. In this role, she managed Wayne Holland's operations for these programs, including hiring and training personnel, invoicing, and contract administration. In 2002, the Energy Partners Program was closed for a short time due to budget issues, and Cristal closed down the Wayne Holland offices in both Yuba City and Los Angeles.

In 2002, Cristal joined Joseph's company, Residential Wall, as Project Director of the Energy Partners Program for Sutter County and remained in that position until she founded RWI in 2006.⁸ Under Cristal's direction, Residential Wall grew from a 280 unit contractor to a 2100 unit contractor. She wrote RFPs for the Energy Partners Programs in Placer and Lake Counties, and Residential Wall was awarded the contracts for both counties. In 2003, Joseph was ordered to report to Iraq for U.S. military duty, and remained away on military duty for 18 months. During his absence, Cristal continued to manage Residential Wall.

Cristal continued to work for Residential Wall until RWI began operations in 2007. In May 2007, RHA awarded the Energy Partners Program contracts held by Residential Wall to RWI. Under Cristal's direction, RWI received the 2007 Customer Satisfaction Award, the 2007 Certificate of Recognition for No Out of Compliance Penalties, and the award for Best Overall Performance for its contributions to the 2007 Energy Partners Program.

B. Melanie

As Vice President, Melanie has primary responsibility for marketing, field inspections, and quality control at RWI. She is responsible for the quality of field work in the company's three-county region. Melanie is in charge of crew training and employee reviews. She has held a Weatherization Specialist certification since 2004 and an Energy Specialist certification since 1997. Melanie also received an Associate of Arts degree from Antelope Valley College.

⁸ Residential Wall had obtained authorization from RHA, which administers the Energy Partners Program for PG&E, to complete Wayne Holland's contract for the Energy Partners Program in El Dorado County.

Like Cristal, Melanie also had substantial experience in the energy efficiency and weatherization field before working for RWI. Beginning in 1996, she worked for Winegard in various roles which gave her experience in the field, management, and in marketing. In 2001, Wayne Holland Construction hired Melanie to design the marketing approach for the Go Back Program for the company. Melanie's duties for Wayne Holland also included training marketing and field personnel.

After the closing of Wayne Holland Construction, Melanie was hired by Residential Wall. At Residential Wall, she managed the marketing of the Energy Partners Program and trained and evaluated the performance of the energy specialists. After obtaining her Weatherization Specialist certification in 2004, Melanie assumed the responsibility for inspecting the weatherization crew's installations and was instrumental in finding more efficient installation methods and higher quality materials.

C. Joseph

As the RMO for RWI, Joseph holds a class B contractor's license with the California State Contractor's License Board. According to Joseph's declaration, he spends approximately half of his work day working for RWI, and divides the other half of his day between working for Residential Wall, and working on the completion of his bachelor's degree. Joseph's responsibilities as Secretary for RWI include accounts receivable and addressing customer complaints. One of his primary functions is to bill PG&E for completed work on the Energy Partners program. Joseph's declaration states that at RWI, he is answerable to Cristal, as President and Chief Executive Officer, for his work.

According to Joseph's declaration, Cristal manages Residential Wall, as well as RWI, and both Cristal and Melanie have many more years of experience in the energy efficiency and weatherization fields than does Joseph.

Joseph is not a member of any racial minority.⁹

At the time of filing its application for verification as a woman-owned business entity (WBE) on March 14, 2007, RWI had no existing tax returns or existing supplier agreements or contracts. After conducting a phone interview with RWI on May 2, 2007, the Clearinghouse denied the company verification as a WBE on May 10, 2007, on the grounds that RWI was not yet in operation and had been formed solely to obtain a contract with the PG&E Energy Partners Program. The Clearinghouse claimed that since RWI had not yet started its operations, the

⁹ See Clearinghouse Exhibits H and O.

Clearinghouse could not evaluate the structure, dynamics, or control of the company.

On May 22, 2007, RWI protested the denial of its application for verification as a WBE. RWI contended that the company had been engaging in organizational activities, such as staffing the office and warehouse, employment interviews, the opening of company bank accounts, the training of personnel, and the writing of company policies, procedures, and manuals. The Clearinghouse states that RWI did not mention that the company had received any contracts or performed work other than for PG&E contractors.

On October 17, 2007, the Clearinghouse requested quarterly wage and withholding reports (DE6)¹⁰ and payroll journals for RWI and Residential Wall for the period between December 20, 2006 and September 30, 2007. The DE6's for the quarters ending March 31, 2006 and December 31, 2006 show that RWI reported no wages or withholding by its employees for this time period. However, additional DE6's submitted by the Clearinghouse also show that RWI reported wages and withholding for 13 employees during the quarter ending on June 30, 2007 and 19 employees during the quarter ending on September 30, 2007.¹¹

The Clearinghouse points out that the DE6's show that RWI's withholding on behalf of employees was substantially less than for Residential Wall during these periods. For example, for the quarter ending June 30, 2007, RWI withheld only \$24,731.90 on behalf of its employees, but Residential Wall withheld \$128,704.84 for the same period. However, for the quarter ending on September 30, 2007, RWI reported wages for its employees in the amount of \$95,562.00, but Residential Wall reported wages in the amount of \$75,952.28 for the same period.

The DE6's also show that seven employees worked for both RWI and Residential Wall during the same time periods, and that five additional RWI employees, including Cristal and Melanie, have previously worked for Residential Wall.

In addition, the DE6's show that for the quarters ending December 31, 2006 and March 31, 2007, Cristal and Melanie were paid nothing by RWI, but Cristal and Melanie were paid \$25,000 and almost \$20,000, respectively, by Residential Wall during the same period. The Clearinghouse also notes that Cristal's resume,

¹⁰ The DE6 forms are used to report quarterly employee wages and withholding to the California Employment Development Department.

¹¹ Clearinghouse Exhibit M.

which was submitted with RWI's application for verification as a WBE, states that Cristal has been Residential Wall's project director from 2001 to the present. Similarly, Melanie's resume states that Melanie has been Residential Wall's quality assurance supervisor from 2002 to the present.

According to Cristal's supplemental declaration, a number of the employees of Residential Wall were hired by RWI after it was determined that Residential Wall would no longer continue in the PG&E Energy Partners Program and RWI became the assignee of the existing Energy Partners Program contracts. Cristal's declaration states that during this transition, employees continued to work for both RWI and Residential Wall on a part-time basis, in order to maintain their health insurance coverage.

On February 25, 2008, the Clearinghouse issued a letter which upheld the former determination of the Clearinghouse that RWI is not a WBE.

RWI filed a notice of appeal of the Clearinghouse's decision on March 18, 2008.

A prehearing conference was held before ALJ Myra J. Prestidge by conference call on May 1, 2008. The parties waived their right to a hearing under GO 156 and submitted briefs and documentary evidence in support of their positions.

Standard of Review

Although the Commission has delegated decision-making authority regarding the verification of businesses as WMBEs to the Clearinghouse, we retain jurisdiction to review the determinations of the Clearinghouse in order to ensure that the applicants for WMBE status are afforded due process and that the decisions of the Clearinghouse are supported by substantial evidence in light of the whole record.¹² Under this standard, the Commission does not substitute its collective judgment for that of the Clearinghouse.¹³ Instead, our goal is to ensure that no unsupported or clearly erroneous conclusion is reached to the prejudice of an applicant for verification as a WMBE.¹⁴

However, in order to review the decision of the Clearinghouse in light of the whole record, the Commission cannot "simply isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the

¹² D.91-12-058 (Scott Engineering v. Cordoba Corporation (Scott Engineering))

¹³ Id.

¹⁴ Id.

record.”¹⁵ Rather, the Commission must “consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to fairly estimate the worth of the evidence.”¹⁶ Substantial evidence has been defined as evidence having “ponderable legal significance...reasonable in nature, credible, and of solid value.”¹⁷ If the findings of the Clearinghouse are devoid of evidentiary support or are based on inferences made arbitrarily and without reasonable foundation, the Clearinghouse’s decision may be reversed as not being supported by substantial evidence in light of the whole record.¹⁸

In addition, the Commission must review the legal conclusions reached by the Clearinghouse independently to ensure that the Clearinghouse’s decision is not based on legal error.¹⁹

The Clearinghouse has developed eligibility guidelines (Guidelines) for the verification of businesses as WMBEs under GO 156, which set forth criteria for verification. We take official notice of the Guidelines.

Discussion

In this case, we review the determinations of the Clearinghouse that RWI is not a WBE on the following grounds:

- RWI is not an independent business, but functions together with a non-minority male-owned company, Residential Wall Inc. (Wall), as a family-owned business.
- The role of the non-minority male owner, Joseph, is disproportionate with his ownership interest, because RWI relies on Joseph to serve as the RMO because of his contractor’s license. Therefore, the women owners of RWI are dependent on Joseph to be primarily responsible for the firm’s daily construction operations.
- Since Joseph holds the contractor’s license necessary for RWI’s operations, the clearinghouse properly presumed that Joseph effectively controls RWI.

¹⁵ See Lucas Valley Homeowner’s Association v. County of Marin, 233 Cal.App.3d 130, 141-42 (1991) (Lucas Valley).

¹⁶ Id.

¹⁷ Id.

¹⁸ See Clerici v. Department of Motor Vehicles, 224 Cal.App.3d 1016 (1990)

¹⁹ See International Brotherhood of Electrical Workers v. Aubry, 42 Cal.App.4th 861 (1996); Howard v. County of Amador, 220 Cal.App.3d 962 (1990)

- Joseph plays a disproportionate role in RWI as compared to his ownership interest in the company.

A. Whether RWI Is an Independent Business Owned and Controlled by Women.

The Clearinghouse argues that the Clearinghouse Guidelines require that a WBE must be an independent business, as follows:

Management & Control

1. An eligible WME under this program shall be an independent business. The ownership and control by minorities or women shall be real, substantial and continuing and shall go beyond the pro forma ownership of the applicant concern as reflected in its ownership documents. It shall not rely upon non-WMBE individual(s) or entities for financial management, or technical assistance or other resources to the extent that it is not in control of its business destiny. (Emphasis added.)

RWI argues that the Guidelines do not require the company to be an independent business and that RWI clearly qualifies as a WBE because women control the management and operations of RWI.

We note that the authority of the Clearinghouse to make verification decisions is based on and limited by Sections 8281-8286, which authorize the Commission to establish the WMBDVE program, and GO 156. Therefore, the Clearinghouse Guidelines must be interpreted in a manner consistent with the relevant statutes and GO 156.

Under Section 8281, it is the public policy of this state to “aid the interests of women, minority, and disabled veteran 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 regulated utilities are awarded to women, minority and disabled veteran business enterprises, and to maintain and strengthen the overall economy of the state.”²⁰ In enacting Section 8281, the Legislative also made the finding that “It is in the state’s interest to expeditiously improve the economically disadvantaged position of women, minority, and disabled veteran business enterprises.”²¹

GO 156 further requires the Commission to “specify sufficient terms and conditions to specify how verifications and audits shall be performed” by the

²⁰ Section 8281(a)

²¹ Section 8281(b)(1)(D)

Clearinghouse, and to ascertain and ensure that the Clearinghouse is operated in accordance with GO 156, Sections 8281-8286, and other applicable legal requirements.²²

We agree with RWI that the applicable standard for determining whether RWI qualifies as a WBE is whether the company is owned and controlled by women. Under GO 156, a WBE is defined as a business enterprise that:

- (1) Is at least 51% owned by a woman or women or, if a publicly owned business, at least 50% of the stock is owned by one or more women;
and
- (2) Whose management and daily business operations are controlled by one or more of those individuals.²³

Here, the Clearinghouse does not dispute that Cristal and Melanie own 70% of the company's stock or that women control RWI's Board of Directors. Therefore, the relevant question under GO 156 and Section 8282(a) is whether women control the management and daily operations of the company.

GO 156 defines "control" to mean "exercising the power to make policy decisions,"²⁴ and "operate" to mean "being actively involved in the day-to-day management and not merely acting as officers or directors."²⁵ These definitions mirror the statutory definitions stated in Section 8282.²⁶

²² GO 156, Section 3.1

²³ GO 156 at § 1.3.2.

²⁴ See *id.* § 1.3.11.

²⁵ *Id.* § 1.3.12.

²⁶ Pub. Util. Code § 8282 states in pertinent part:

§ 8282. Definitions

For the purposes of this article, the following definitions apply:

(a) "Women business enterprise" means a business enterprise that is at least 51% owned by a woman or women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of those individuals.

(d) "Control" means exercising the power to make policy decisions.

Based on our review of the entire record, it is clear that Cristal and Melanie control the operations of the company. As President and Chief Financial Officer, Cristal is responsible for the overall daily operations and management of the company. As Vice President, Melanie is directly responsible for the quality of work performed by the company in the field. Since Melanie and Cristal own 70% of RWI's stock and compose 2/3 of the company's Board of Directors, women clearly have the power to make management and policy decisions for RWI.

The Clearinghouse argues that RWI is not an independent business and should not be certified as a WBE because:

- RWI shares office space and an office phone number with Residential Wall,
- RWI is dependent on Residential Wall for its employees,
- The women owners of RWI are financially dependent on Residential Wall,
- The women owners of RWI were previously employed by Residential Wall, which is a male-owned business,
- Since RWI relies on Joseph's license as a contractor to perform its core function and to maintain the Energy Partner's Contract with PG&E, Joseph effectively controls the operations of RWI.

However, based on our review of the entire record, we believe that this conclusion is not supported by substantial evidence or inferences reasonably drawn from the evidence.

The fact that Cristal and her husband have permitted Joseph to locate Residential Wall's offices on property that they own does not show that RWI is not owned and controlled by women. Moreover, RWI is a relatively new business, and the fact that RWI chose to share office space with Residential Wall, rather than to incur additional expenses for renting other office space during the start-up phase, does not show or support an inference that RWI is not an independent business owned and controlled by women.

Further, the fact that seven of RWI's employees worked for both RWI and Residential Wall during the quarters ending on December 31, 2006 and March 31, 2007, and another five RWI employees, including Cristal and Melanie, have also worked for Residential Wall in the past does not demonstrate that RWI is not an

(e) "Operate" means being actively involved in the day-to-day management and not merely officers or directors.

independent business that is owned and controlled by women. The record shows that although RWI was formed in 2006, the company did not start its operations until 2007 and was not awarded the PG&E Energy Partners contract, which is the company's sole client, until May 2007. Cristal's declaration establishes that she made the business decision to permit the employees being transferred to RWI to work part-time for both RWI and Residential Wall during this transition so that these employees could retain their health coverage. Further, since the Energy Partner's program was transferred from Residential Wall to RWI, it makes sense that RWI would hire some of Residential Wall's former employees who had experience with the program. There is no evidence in the record which suggests that RWI did not have access to its employees who were also working part-time for Residential Wall when they were needed for RWI's operations or that RWI did not have the ability to independently hire other employees as necessary.

Similarly, the fact that Cristal and Melanie previously worked for Residential Wall and received compensation from Wall for the quarters ending on December 31, 2006 and March 31, 2007, but no compensation from RWI during these periods, does not indicate that RWI is not a company owned and controlled by women. Since RWI did not start operations until 2007 and did not acquire the PG&E Energy Partners Program contract, which is the company's sole business, until May 2007, it is not surprising that Cristal and Melanie were not receiving compensation for their work from RWI during this start-up period and would continue to work for Residential Wall on at least a part-time basis. It is not uncommon for the owners of new small businesses to defer payment of compensation to themselves until their companies are earning sufficient revenue to allow for the payment of their salaries. Further, as indicated in the declarations provided by Clearinghouse, Cristal was needed to manage Residential Wall for Joseph during his military duty in Iraq.

In addition, although Joseph holds a state contractor's license as necessary to serve as RWI's RMO, the evidence clearly shows that he holds only a 30% ownership interest and is employed by RWI only half-time, handling billing, accounts receivable, and customer complaints under the direction of Cristal. As company president and vice president and the owners of 70% of the company's stock, Cristal and Melanie have the authority to hire a contractor to work for RWI, and if Joseph were not available to serve as RMO, they could hire another contractor to do so without losing control of the company. The record establishes that Melanie, as vice president, not Joseph, is responsible for ensuring the quality of RWI's work in the field, and that both Cristal and Melanie have

sufficient “hands-on” training and experience in the energy efficiency area to manage the work of employees in the field. Under these circumstances, Joseph does not effectively control RWI simply because he holds a contractor’s license and serves part-time as the company’s RMO.

The Guideline cited by the Clearinghouse in support of its argument that RWI must be an independent business in order to qualify as a WBE, clearly aims to prevent certification of a business as a WBE when the woman owners are not in control of the company’s daily operations or the destiny of the company. Here, there is no evidence in the record which shows or supports an inference that Cristal, assisted by Melanie, is not fully in charge of the management and operations of RWI, or that, as majority owners, Cristal and Melanie do not set the policy direction for the company.

Moreover, to interpret the Guidelines so strictly as to bar verification of a new company founded and operated by women under these circumstances would conflict with the intent of the Legislature in adopting Section 8282 to aid businesses owned by women and minorities.

We therefore find the argument of the Clearinghouse without merit.

B. Whether the Role of Joseph in RWI Is Disproportionate To His Ownership Interest In the Company.

The Clearinghouse also argues that RWI is not a WBE because Joseph owns 30% of RWI and 100% of Wall, is the former employer of both Cristal and Melanie, and the two women owners of RWI are dependent on Joseph because he holds the contractors license necessary for their company’s operations. In addition to the previously cited Guideline, the Clearinghouse cites the following Guidelines in support of its argument:

8. Non-minority male individuals may be involved in the management of an applicant concern, and may be stockholders, partners, officers, and/or directors of such concern. Such individual(s), their spouses or immediate family members who reside in the same household may not, however:

a. exercise actual control or have the power to control the applicant,

d. be former and/or current employers of the minority/women owner(s) of the applicant concern, unless it is determined that the contemplated relationship between the former employer and the minority/woman individual or applicant concern does not give the

former employer actual control or the potential to control the applicant concern and such relationship is in the best interest of the applicant concern. (Emphasis added).

However, here, the evidence is clear that Joseph does not reside in the same household as Cristal or Melanie. Therefore, the above Guideline does not apply to this case, and the Clearinghouse has made legal error in applying this Guideline to deny verification as a WBE to RWI.

We therefore find that this argument of the Clearinghouse is also without merit.

C. Whether the Clearinghouse Was Entitled to Presume that Joseph Effectively Controls RWI Because of His Role as RMO and His Contractor's License.

The Clearinghouse also contends that under the following Guideline, the Clearinghouse properly presumed that Joseph controls RWI because he holds the contractors license needed for the company's operations and serves as RMO:

9. Non-minority male individuals or entities owned by such individuals shall be deemed to control or have the power to control the applicant concern in any of the following circumstances:

c. The non-minority male individual or entity owned by such individuals provides critical financial or bonding support or licenses to the applicant, the terms of which would create effective control in all significant aspects over the applicant concern. (Emphasis added.)

f. Non-minority male individual or entity owned by such individual are disproportionately responsible for the operation of the firm.

The Clearinghouse states that Joseph's Class B general contractor's license, Class C-2 insulation and acoustical classification and Class C-20 warm-air heating, ventilating, and air conditioning classification are all critical to RWI's business of weatherizing homes, and that without Joseph's Class B contractor's license, RWI would be ineligible for the PG&E Energy Partners contract. The Clearinghouse further argues that since Joseph is RWI's RMO, he is responsible for any construction work performed by the company under state law. Therefore, Clearinghouse contends that it properly presumed that Joseph is disproportionately responsible for RWI's operations.

However, the above Guideline 9(c) is not consistent with previous Commission decisions, which determined that a woman owner need not necessarily hold a technical license or have technical expertise herself in order for her business to qualify as a WBE. Therefore, the Clearinghouse committed legal error in relying on this Guideline and presuming that Joseph controls RWI's operations because he holds a state contractors license needed for the company's operations.

As stated in Resolution ALJ-214 (Appeal of Beci Electric Company under GO 156 (Beci)), whether a woman or minority business owner has technical training, education, and experience relevant to the company's operations is only one factor in determining whether the company qualifies as a WMBE under GO 156. The Clearinghouse and the Commission must also consider other criteria stated in the applicable statutes, GO 156, and the Guidelines, and must evaluate all of the circumstances of each case. In cases in which a woman or minority business owner has a majority ownership interest, controls the management of the company, and sets corporate policy, the absence of technical training, education, experience, or credentials alone should not disqualify a company as a WMBE.

For example, in Scott Engineering, Inc. v. Cordoba Corporation (Scott), Decision (D.) 91-12-058, the Commission found that the company qualified as a woman-owned business under GO 156 even though the woman business owner did not have technical expertise in the field of engineering, which was the main area of the company's operations, and was previously a housewife. When the woman owner's husband started the business, she worked for the company as an employee and was primarily responsible for office management and finances. Several years later, when the company incorporated, the woman owner was named secretary and chief financial officer of the corporation. She later acquired control of 97.5% of the company's stock as a result of her husband's disability and death, continued to serve on the board of directors and as the company's chief financial officer, worked full-time managing the business, and had the "final say" on all management and internal affairs of the corporation. The Clearinghouse denied the company's application for certification as a WBE on the grounds that the woman owner did not have technical expertise and experience. The Clearinghouse noted that the woman owner's son was the company's chairman, president and chief executive officer, had over 18 years of technical experience in the field of engineering, and had the expertise and skills to manage the company's operations on a day-to-day basis.

The Commission determined in Scott that the company was a woman-owned business under GO 156 because as the owner of 97.5% of the company's stock,

the woman owner had ultimate and absolute control over the company. She had the legal power to change the direction of the company or to overrule the decision of any other person regarding the company's operations; to fire every director, officer, and employee; and even to dissolve the corporation if she chose to do so. Therefore, the woman owner both owned and controlled the operations of Scott Engineering. The Commission noted that the applicable statute defines "control" of a business to mean "exercising the power to make policy decisions."

Similarly, in Resolution ALJ 214 (Beci), the Commission granted the appeal of Beci Electric Company and, applying the reasoning in Scott, found that the company is a WBE, despite arguments raised by the Clearinghouse that the woman owner did not have training and experience as an electrician and was "grandfathered" on the company's state contractors license. The Commission noted that the woman owner has a majority ownership interest in the company, actively manages the company's operations on a day-to-day basis, and has the power to make major policy decisions. We also reasoned that the woman owner has the overall management responsibility for the company's projects and ensures that the company has the necessary technical expertise by hiring and managing qualified electricians and other personnel to assist her. We rejected the Clearinghouse's finding that Beci is not a woman-owned business because the woman owner's father plays a disproportionate role in the management of Beci, when the evidence showed that he is 71 years old, had been working only part-time for Beci in the past several years, and his part-time work for the company is generally limited to estimating.

Similarly, here, the fact that Cristal and Melanie do not personally hold contractors licenses is not substantial evidence that they do not control the daily operations and management of RWI. As president and chief financial officer of RWI, Cristal has the authority to hire a licensed contractor to work with her company and to serve as the RMO, but she retains the overall responsibility for all operations of RWI as the company president. Further, the evidence shows that Cristal and Melanie actively manage the operations of RWI, including work of employees in the field. As owners of 70% of RWI's stock, Cristal and Melanie also have the power to set policy for the company. We conclude that there is not substantial evidence in the record to show that Joseph has a disproportionately significant role in RWI because he holds a contractor's license, and works for RWI half-time, primarily handling accounts receivable, billing, and customer complaints under Cristal's direction. As a result, RWI should not be denied verification as a WBE on this basis.

Conclusion

Based on the foregoing, we find that RWI qualifies for verification as a woman-owned business under GO 156.

Public Review and Comment

The proposed Resolution was mailed to the parties for review and comment pursuant to Section 311(g)(1). Timely comments were filed by ____.

IT IS THEREFORE ORDERED that:

1. The appeal of Residential Weatherization Inc. (RWI) of the denial of its application for verification as a woman-owned business entity (WBE) by the Supplier Clearinghouse (Asian Inc.) is granted.
2. RWI qualifies for verification as a WBE under General Order (GO) 156.
3. Asian Inc. is directed to verify RWI as a WBE under GO 156, effective immediately.
4. Appeal Number GO 156 2008 2 is closed.
5. This order 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 _____ 2008, the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director