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5/13/2011

Mr. Steven C. Reed
Secretary
State of Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

RE: Response to File No. OA-2011-0332

Voluntary Docket to Study the Benefits of and to Encourage Utilities' Efforts to Procure Goods and Services from Diverse Suppliers, published at a session of the Public Service Commission on 12 April 2011

Dear Mr. Reed:

Thank you for writing to the National Association of Minority & Women Owned Law Firms (NAMWOLF) with your request for information concerning the potential benefits and concerns Missouri's regulated utilities may experience when seeking services from diverse suppliers. On behalf of NAMWOLF, I would like to thank the Commission for recognizing the need to increase diverse supplier participation in procurement of contracts from utilities.

Our response to the State of Missouri Public Service Commission is two-fold. The first section answers in order the questions put forward by the Commission, where our organization's expertise and knowledge are applicable. In the second section, we provide an explanation of how NAMWOLF can be of service to the agency and its regulated companies in meeting their supplier diversity goals. We strongly encourage your regulated utilities to join our Corporate and Public Entities Partnering Program as a way to ensure minority and women owned law firms can fairly compete for any outside legal work.

Finally, I have enclosed a copy of Public Utilities Commission of the State of California General Order 156 as an example of a highly developed and successful program designed to increase participation of diverse suppliers. We hope that it will provide you with insight and direction as you develop your own program.

Again, we wish to commend the Commission for recognizing the need for increased utilization of diverse suppliers. We look forward to the opportunity to work with the Commission and your regulated utilities in the future.

Sincerely,

Yolanda Coly
Senior Director of Development & Advocacy
ycoly@namwolf.org

SECTION ONE**I. How should “diverse suppliers” be defined;**

NAMWOLF recommends that “diverse suppliers” should include the following groups and be defined as follows:

- “Women-Owned Business”: means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more of those individuals.
- “Minority-Owned Business”: means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.
- “WMBE”: means a women-owned or minority-owned business enterprise; under these rules, the women and/or minorities owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

II. What goods and services do utilities procure from suppliers;

The following is a list of products and services that are typical procurement categories for utilities:

Advertising	Electricians
Architectural/Engineering Services	Engineering Services – Other
Automobiles, Parts & Services	Environmental Services
Casual Labor – Office	Fasteners
Casual Labor – Other	Financial Services
Chemicals	Gas Main Work
Clothing - Anti Contamination, Uniforms, etc.	Gas Meters
Computers, Parts & Services	Gasoline
Construction Equipment, Parts & Services	Gasses
Consulting Services	Guard Services
Contractor, General	Industrial Supplies
Contractor, HVAC	Insulators
Cross Arms	Insulation Services
Electric Meters	Insurance
Electric Motors & Repairs	Interior Design Work
Electric Protective Devices	Janitorial Supplies
	Lawn Maintenance/Landscaping
	Legal Services

Luminaries	Steel Poles
Material Handling	Steel Towers
Medical Services	Switchgear
Messenger Services	Telecommunications, Parts & Services
Natural Gas	Transformers
Office equipment	Trash Removal Services
Office Furniture	Travel Agencies
Office Supplies	Tree Trimming & Removal
Overhead Electric Line Work	Trucks, Parts & Services
Overhead Splices, Terminators & Connectors	Underground Electric Line Work
Painting Services	Underground Splices, Terminators & Connectors
Paving Services	Valve Maintenance
Plastic Products	Warehouse Steel
Pole Line Hardware	Welding Supplies & Services
Printing Pumps	Wire & Cable
Propane	
Pumps	
Rail Transportation	
Safety Equipment & Supplies	
Steel Pipe	

III. **Who are the diverse suppliers in the state of Missouri that could serve Missouri's utilities;**

The State of Missouri maintains a database of certified M/WBE businesses at:

www.directory.oeo.oa.mo.gov

Women's Business Development Center: This organization is a regional affiliate of the Women's Business Enterprise National Council (WBENC)—the largest third party certifier of businesses owned, controlled and operated by women in the United States. They are regarded as the nation's leading advocate for women-owned businesses as suppliers to U. S. companies.

www.wbdc.org

Mid-America Supplier Development Council (Kansas City) and St. Louis Supplier Development Council: These organizations are regional affiliates of the National Supplier Development Council—the leading organization for certification and advocacy for minority owned businesses in the U.S.

www.mambdc.org

www.slmbc.org

NAMWOLF: NAMWOLF is a nonprofit trade association comprised of M/WBE law firms who complete an extensive application and screening process before they can be admitted. NAMWOLF maintains a directory of our Law Firm Members which gives corporations and public entities access to pre-screened and certified M/WBE law firms by area of practice, geographic location and law firm name. Please see Section Two for an in-depth explanation of our services.

www.namwolf.org

Below is a list of NAMWOLF's current law firm members in Missouri:

Boggs, Avellino, Lach & Boggs, LLC

7912 Bonhomme Ave., Suite 400

Clayton, MO 63105

T: 314-726-2310

F: 314-726-2360

www.balblawyers.com

Fields & Brown, LLC

1100 Main Street, Suite 1600

Kansas City, MO 64105

T: 816.474.1700

F: 816.421.6239

www.fieldsandbrown.com

IV. **Which utilities already have supplier diversity programs in place;**

NAMWOLF recognizes that many companies have their own individual diversity policies. However, a Commission based framework, such as California Public Utilities Commission’s General Order 156, would allow participating companies to report their performance based on a consistent set of guidelines as well as setting consistent goals, with the end result being an effective way to gauge industry performance statewide.

In our survey of utility programs at companies under your authority, we discovered two companies that have actively participated in supplier diversity development: (1) Ameran was recognized for doubling its spend on diverse suppliers in the last three years in the June/July 2010 issue of *Diversity/Careers in Engineering and Information Technology* and (2) Kansas City Power & Light (KCP&L) Company participated in a roundtable discussion called *Utility Supply Chain Professionals – Best Practices Session* at the Edison Electric Institute’s 27th Annual Supplier Diversity Conference. This is by no means an exhaustive survey of supplier diversity programs at Missouri utility companies, but Ameran and KCP&L are positioned to provide leadership to other utilities seeking to develop and/or standardize a diverse procurement and benchmarking program.

Table 1 Missouri Electric Utility Company Supplier Diversity Programs & Administrators

Regulated Electric Utilities	Supplier Diversity Program	Supplier Diversity Professional
Ameren Missouri	Yes	Adriene Bruce; Manager, Supplier Diversity
Empire District Electric Company	Yes	Gary Stover; Director of Purchasing & Services
Kansas City Power & Light	Yes	Valerie Coyazo; Director, Supplier Diversity

Table 2 Missouri Gas Utility Company Supplier Diversity Programs & Administrators

Regulated Natural Gas Utilities	Supplier Diversity Program	Supplier Diversity Professional
Ameren UE	Yes	Adriene Bruce; Manager, Supplier Diversity
Atmos	Yes	Unknown
Empire District	Yes	Gary Stover; Director of Purchasing & Services
Laclede Gas Company	Unknown	Unknown
Missouri Gas Energy	Unknown	Unknown
Missouri Gas Utility	Unknown	Unknown
Southern Missouri Natural Gas	Unknown	Unknown

V. DIVERSITY METRICS

M/WBE utilization goals are measured either by percentage of total spend on M/WBE suppliers or by establishing a target dollar amount after consideration of the following data:

- Total utility purchasing or contracting projections
- Availability of M/WBEs
- Market dynamics base on historical data/trends
- Other factors which would increase M/WBE share of utility business

VI. INCENTIVES FOR UTILIZATION

It is the opinion of NAMWOLF that while no penalty should be imposed on utilities failing to meet or exceed their goals for M/WBE utilization, the practice of tying compensation to performance, especially at an executive level, has proven to be an effective incentive for improvement in supplier diversity performance. In addition, implementing tax incentives for companies who reach certain diversity “spend” goals have been utilized across the country.

VII. BARRIERS TO UTILIZATION (UTILITIES) and SOLUTION

Cost: NAMWOLF suggests the Commission focus on utilities (and subsidiaries/affiliates) with gross annual revenues exceeding \$25,000,000. Some utilities may perceive that there is undue hardship or unreasonable cost associated with the implementation of a supplier diversity program. NAMWOLF suggests the commission provide outreach and education opportunities to supplier diversity staff at utilities to ensure they have the proper knowledge and training to execute their supplier diversity programs in a cost-efficient way. Additionally, we suggest each utility maintain an appropriate number of staff for its program and ensure that its employees with procurement responsibilities receive training in the implementation of the program.

Identification: Utilities may have difficulty identifying M/WBE suppliers. NAMWOLF suggests the Commission establish and operate a certified M/WBE database through which utilities can identify suppliers.

VIII. BARRIERS TO ENTRY (SUPPLIERS)

M/WBEs typically lack information about and access to contract opportunities from utilities. Suggestions for correcting this are:

- Utilities should implement an outreach program to inform and recruit M/WBEs to apply for procurement contracts.
- Encourage utilities to break apart purchases and contracts to make it easier for M/WBE suppliers to participate.
- To the extent possible, make available to M/WBE contractors lists of utility purchase/contract categories which offer them the best opportunity for

success.

- Provide materials/information regarding utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures for M/WBE suppliers.
- Each utility should establish and maintain a subcontracting program for the purpose of encouraging its prime contractors to utilize M/WBE subcontractors.

IX. EXISTING PROCUREMENT METHODS

NAMWOLF does not have information relative to regulated Missouri utilities' procurement methods.

X. BEST PRACTICES

NAMWOLF strongly suggests that the Commission make annual review of regulated utilities' M/WBE utilization by seeking the following information:

- A description of M/WBE program activities engaged in during the previous calendar year.
- A summary of M/WBE purchases and/or contracts, with breakdowns by gender, race, product and service categories compared with total utility contract dollars awarded to outside vendors in those categories.
- A summary of prime contractor utilization of M/WBE subcontractors.
- A list of M/WBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status.
- A description of any efforts made to recruit M/WBE suppliers of products or services in procurement categories where utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- Each utility should report purchases by:
 1. Market origin and fuel type;
 2. Volume and dollar magnitude;
 3. Term of sale, e.g., spot, intermediate, long term;
 4. Ethnicity and gender of the supplier;

Section Two

NAMWOLF strongly encourages your regulated utilities to join our organization through the Corporate and Public Entities Partnering Program (CPEPP). The program is a way for Corporations, Government Agencies and Public Entities to set and meet goals regarding the retention of minority and women-owned law firms as outside counsel. There is no cost. NAMWOLF is highly regarded in the profession for its vetting process of outside firms who undergo an extensive application and screening process to ensure they are of the highest quality. With access to NAMWOLF's directory of law firms, utilities can select superior M/WBE law firms by area of practice and geographic location. Below is a list of our current utility related company partners.

Alliant Energy
Memphis Light, Gas, & Water
New York State Power Authority
Potomac Edison
We Energies
Citizens Gas & Coke Utility

Again, we encourage your agency and its regulated companies to participate in the Corporate and Public Entity Partnering Program (CPEPP). For more information on NAMWOLF and the CPEPP program please visit our Web site at www.namwolf.org or contact Yolanda Coly, Senior Director of Advocacy & Development.

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California's General Order 156



Supplier Diversity: Creating a Framework for Success

California's General Order 156



By Michael R. Peevey,
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January 2011



Supplier Diversity

California's General Order 156

Supplier Diversity has moved from a social justice program to a business imperative for participating California companies. This paper highlights some of the key steps in the transformation, explains why such a policy exists, and discusses the California Public Utilities Commission's (CPUC) role in encouraging supplier diversity from its regulated companies. This paper also describes best practices in a private and public partnership working collaboratively on Supplier Diversity Program implementation and management. Lastly, it is intended to serve as an example for those agencies and corporations who are looking to implement a proven model.

GO156 – Transformation from Social Justice to Business Imperative

General Order 156 (GO156) is a set of rules governing the development of programs to increase participation of women, minority, and disabled veteran business enterprises in procurement of contracts from participating companies. There are many diversity programs and most companies have their own diversity policies, but what distinguishes the companies participating in the GO156 program is that they all have a common platform. GO156 allows these participating companies to report their performance based on a consistent set of guidelines as well as setting a consistent set of goals. Other programs exist on an individual basis without a platform to gauge performance. GO156 is the stage that brings all the participants together. It's the main reason why the participating companies in California have transformed their own supply chain and diversity programs from goodwill to good business.

More than twenty years ago, the California legislature enacted a series of statutes to encourage supplier diversity. Then the CPUC created GO156 to encourage a fair proportion of total utility contracts and subcontracts for products and services to be awarded to women, minority, and disabled veteran business enterprises. The purposes are to:

- a) Encourage greater economic opportunity for women, minority, and disabled veteran business enterprises (WMDVBE);
- b) Promote competition among regulated public utility suppliers to enhance economic efficiency in the procurement of electrical, gas, and telephone corporations' contracts; and
- c) Clarify and expand the program for the utilities' procurement of products and services from diverse enterprises.

In GO156, the CPUC established voluntary procurement goals for each utility of 5 percent from woman-owned, 15 percent from minority owned, and 1.5 percent for disabled veteran-owned business enterprises, equaling 21.5 percent of total procurement. There are about 30 California utilities and telecommunication companies participating in this program. GO156 also established a Clearinghouse to conduct a certification process to ensure the integrity of the program. The Clearinghouse certifies minority owned and women owned businesses that establish a minimum of 51 percent ownership and control of their business. The certification must be renewed every three years to ensure that the majority ownership and control is maintained with the business. The Clearinghouse maintains a database of the certified suppliers. The disabled veteran certification is established through the California Department of General Services (DGS) and periodically the Clearinghouse downloads the data from DGS and compiles all diverse suppliers into the Clearinghouse database. This database is then used by the 30 participating companies to find suppliers that meet their specific needs. The reporting requirements to meet the 21.5 percent procurement goal rely on a supplier database that maintains the intent of GO156 by containing only those suppliers that meet the definition of a minority or woman owned business by having at least a majority (51%) ownership and control of the business. Currently, there are over 6,000 diverse suppliers in the database available to conduct

business with the participating companies. As a comparison, a national certification agency covering all 50 States has about 15,000 certified suppliers.

The utilities report annually on their procurement purchases from diverse suppliers, and their companies' progress in meeting the procurement goals. On September 1st of each year, the CPUC files an annual report with the Legislature detailing the progress by each utility towards implementing the policies. The report also contains information about aspects of the individual utilities' programs which contributed to their successes and recommendations for improvement. There is also an annual CPUC hearing where the leadership of the major participating companies speak about their respective company's performance and future plans to take advantage of the diverse supply base; the hearing is led by the CPUC's five Commissioners and invited California legislature members.

In the most recent CPUC [report to the legislature](#), utility spending on WMDVBE procurement increased from \$3.47 billion in 2008 to \$4.27 billion in 2009, an increase of 23.05 percent. There was also an increase as a percentage of total utility procurement; amounts from WMDVBE firms increased from 13.19 percent in 2008 to 16.72 percent in 2009. The table below shows a breakdown of the total WMDVBE procurement spending by minority owned (MBE), women owned (WBE), and disabled veteran owned (DVBE) businesses:

Category	Procurement Amount	Percentage Achieved	Goal
MBE	\$2.80 billion	10.97%	15.0%
WBE	\$1.34 billion	5.24%	5.0%
DVBE	\$132 million	0.52%	1.5%

The second table illustrates the performance of our major energy utilities and telecommunication companies.

Utility	Total Procurement	WMDVBE Procurement	Percent
AT&T California	\$2,156,383,641	\$750,089,752	34.78%
PG&E	\$3,630,251,430	\$928,412,652	25.57%
Edison	\$3,089,488,944	\$729,506,594	23.60%
SoCalGas	\$585,032,944	\$202,017,398	34.53%
SDG&E	\$818,384,652	\$237,955,293	29.08%
Verizon California	\$464,408,410	\$169,399,633	36.48%

The sheer dollar figures are impressive, but what's more telling are the examples of innovation and process improvements that have come about as a result of the inclusion of diverse suppliers in the utility supply chain. For example, a diverse telecom supplier created an innovative costing model for providing call center services; it created an incentive based pricing structure that charged the company only when it made a sale to a consumer. In 2009, an energy utility held its annual supplier conference and more than 70 suppliers attended. Three of the top six awards went to diverse suppliers. In fact, the top award was received by a woman-owned business that was recognized for consistently high levels of customer service, focus on workplace safety, and environmental leadership. In addition, this vendor also increased its year-over-year subcontracting with other WMDVBEs. Two other minority owned firms were recognized for strategic

thinking, high quality products/services, cost reduction and ongoing process improvements. Additionally, these suppliers exhibited leadership by mentoring and developing diverse suppliers in their supply chain. The annual reports to the CPUC also cover the qualitative aspects of the utility programs; describing improved quality, cycle time, and innovation diverse businesses bring to corporate supply chains. Job creation is also a natural by-product of a supplier diversity program; when diverse businesses grow, employment often follows.

Supplier Diversity as a Policy Initiative

The policy of supplier diversity originated not as a front for affirmative action, but rather a program about fairness and inclusion. It is important to note that this policy is not about set asides or preferences, but rather about opportunities and how a diverse workforce and diverse procurement investment can help companies venture into new markets and increase shareholder value. The CPUC's role in this area is in conjunction with one of its main regulatory goals: ensuring that consumers receive utility rates that are reasonable. The CPUC regulates utility services, works to stimulate innovation, and promotes competitive markets, where possible. Ultimately, the policy is and has been focused on managing California utility costs through increased competition and inclusion in the utility supply chains.

The CPUC, in conjunction with the California legislature, took the first step by creating a platform for companies to examine their diversity and inclusion practices in the form of GO156. And indeed, the government has a critical role to step in when the market cannot or does not provide the investment in the future. Two decades later research has shown that including women, minority and service disabled veteran suppliers in the utility supply chain makes good business sense. In fact, according to the *Journal of Supply Chain Management*, nearly half of companies that rated themselves as having a good supplier diversity program say their company's rationale for doing business with minority and women-owned establishments is that these firms offer competitive prices and quality products and services. It is, therefore, smart business to take advantage of the fastest growing segment of the U.S. economy. According to the Small Business Administration minority and women-owned business enterprises are among the fastest-growing segments of the U.S. economy. There are more than 12 million such firms accounting for over \$4 trillion in annual gross sales. If diverse businesses are not a part of a company's supply chain, not only is the company deprived of the fastest growing segment of our economy, but it's deprived from tapping into the rich perspective and talent of our communities. The Census Bureau estimates that minorities, both arriving from abroad and born in the U.S., will account for nearly 90 percent of the total growth in the U.S. population from 1995 to 2050.

Corporate leaders need to get out of their traditional comfort zones and take advantage of the untapped or under-utilized resources that are available so that consumers receive the best product and service at the lowest possible cost. Supplier diversity provides businesses with a significant competitive position in terms of enriching communities that these businesses are looking to serve.

Best Practices

In order to insure an effective supplier diversity program, any government agency or private corporation establishing or making changes to existing programs, should observe the following as guiding principles:

- A consistent set of guidelines with performance appraisals must be established to highlight success and areas of improvement.
- A written supplier diversity corporate policy should clearly define executive management commitment and measure success.
- Diverse business utilization/metrics should be included in annual performance goals for the utility and for each business unit/division of the utility.

- Management must establish its Supplier Diversity Program as a policy of the company.
- The Supplier diversity policy must articulate the rationale supporting the initiative. This policy must be communicated to staff and implemented.
- An executive advisory council/committee must be created composed of key stakeholders to drive the program's progress.
- All levels of management are accountable for diverse supplier development.
- Management should be directed to incorporate supplier diversity in the supply chain.
- As corporate purchasing organizations are involved in driving supply chain decisions, the corporate Supplier Diversity Program should reside in, or be closely linked to the Procurement department for most companies and business models.
- A Supplier diversity strategy should be about increasing competition and lowering cost and not a "social" policy statement.

Given the guiding principles, executive and senior level management's involvement and a high standard of accountability at all levels of management are key ingredients in sustaining the most effective supplier diversity program. We have reviewed other corporations' supplier diversity programs for their guiding principals; generally there are two basic policy reasons that are the building blocks for their respective programs:

- To increase the sponsoring company's market share within the nations expanding multicultural/diverse communities.
- To include companies in the supply chain owned by historically under- represented groups, thereby creating wealth for these groups and growing the customer base.

A few of the corporations we examined were: Apple Computer, Bank of America, Citigroup, Comerica, Ernst & Young, FHL Bank of San Francisco, Johnson and Johnson, JP Morgan Chase & Co., MetLife, Oracle, Union Bank, US Bancorp/US Bank, Wal-Mart, and Wells Fargo. Our review found that many of the programs were established in the 90s. Most program structures require 51 percent ownership and accept a variety of certifications (NMSDC, WBE, WBENC, Hub-Zone, W/M/DVBE, and LGBT).

We cite Union Bank as an example:

It established its supplier diversity program in 1996, and set a 10-year goal of discretionary purchases for MBEs. The program was re-negotiated in July 2005. While the intent of its program structure is for W/M/DVBE, Union Bank encourages Small Businesses and LGBT to participate in its supplier diversity database, but they are not identified nor counted in its program goal. W/M/DVBEs must be 51 percent ownership and controlled. Union Banks accepts all certifications and self-certification for suppliers with less than \$100,000 in annual spend. Union Bank has an established supplier diversity goal of 12 percent (and, an aspirational goal of 20 percent by 2015) and; its annual procurement spend for 2009 was \$678 million. In 2009, Union Bank's percent W/M/DVBE spend was 16.4 percent or a total W/M/DVBE spend of \$113 million.

Our review of the major corporations also showed that in comparison to GO156, which has strict reporting guidelines, there are inconsistencies on how data is collected and reported by these corporations, or in some cases no data are reported. These programs seem to operate on a standalone basis, without a set of consistent goals and reporting to substantiate the results.

Through GO156 our regulated utilities and carriers have produced remarkable results. Where most Fortune 500 companies struggle to get past 10 percent, the large California utilities have consistently achieved well over 20 percent procurement from diverse suppliers. GO156 and the CPUC's commitment to this program

have created the platform for our regulated utilities to showcase their achievements. GO156 has been successful because regulated companies were encouraged to make the investment and provide an equal opportunity for diverse suppliers to compete for utility business. Not surprisingly, these companies realized that diverse suppliers actually create significant value in their supply chain and there are business benefits associated with investing in all types of businesses. Government created the arena, but it is businesses that have transformed their supply chain. The CPUC will continue to provide this platform in the form of our annual hearings and reporting mechanisms, because supplier diversity is a journey.

Conclusion

There are other agencies as well as companies who are looking to establish their own programs. For instance the California legislature is currently reviewing a proposed bill that would require the Department of Insurance to adopt similar GO156-type goals for insurance companies. Additionally, at the Federal government level, the Financial Reform bill signed into law in 2010 mandated greater transparency, accountability and oversight of the industry and created Offices of Women and Minorities. It established at least 20 Offices of Minority and Women Inclusion to ensure the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in activities of the various federal agencies. Each Office will have a director to develop policies promoting “fair inclusion” in the agency’s workforce and the workforces of its contractors and sub-contractors.

We hope that GO156 can serve as a proven model of a successful private/public partnership. It is important to understand that GO156 established the guidelines and allowed for consistency, but it was the utility companies who transformed their supply chain to expand their procurement base, thereby increasing competition and lowering costs.

General Order 156 (Current as of August 24, 2006)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS
TO INCREASE PARTICIPATION OF WOMEN, MINORITY AND
DISABLED VETERAN BUSINESS ENTERPRISES IN PROCUREMENT OF CONTRACTS
FROM UTILITIES AS REQUIRED BY PUBLIC UTILITIES CODE SECTIONS 8281-8286
Adopted April 27, 1988. Effective May 30, 1988.

Decision 88-04-057 in R.87-02-026.

Modified by Decisions 88-09-024, 89-08-041, 9011-053, 90-12-027, 92-06-030,
95-12-045, 96-12-081, 98-11-030, 03-11-024, 05-12-023, and D.06-08-031.

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 - 8.1.2. Availability of WMDVBEs and competitiveness in the geographical area served by utility
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1. GENERAL

1. 1. Intent

- 1.1.1. Purpose-These rules implement PU Code Sections 8281-8286 which require the Commission to establish a procedure for gas, electric, and telephone utilities with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates to submit annual detailed and verifiable plans for increasing women, minority and disabled veteran business enterprises' (WMDVBE) procurement in all categories.
- 1.1.2. Revisions of Scope-These rules may be revised on the basis of experience gained in their application and/or changes in legislation. Utilities and other interested parties may individually or collectively file an application with the Commission for the purpose of amending these rules. Any such application shall clearly set forth the changes proposed and the supporting rationale.
- 1.1.3. In cases where the application of any of these rules results in undue hardship or unreasonable expense to a utility, the utility may request relief by filing an application in accordance with the Commission's Rules of Practice and Procedure. Where the relief requested is of minor importance or temporary in nature, the utility may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on all parties on the service list of this proceeding.

- 1.2. Applicability-These rules are applicable to all gas, electric, and telephone utilities under the Commission's jurisdiction with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates.

1.3. Definitions

- 1.3.1. "Commission" means The California Public Utilities Commission as provided for in Article MI of the California Constitution.
- 1.3.2. "Women-owned business" means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more of those individuals.
- 1.3.3. "Minority-owned business" means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.
- 1.3.4. "WMBE" means a women-owned or minority-owned business enterprise; under these rules, the women and/or minorities owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

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- 1.3.5. Black Americans-persons having origins in any black racial groups of Africa.
- 1.3.6. Hispanic Americans-all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.
- 1.3.7. Native Americans-persons having origin in any of the original peoples of North America or the Hawaiian Is-lands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.
- 1.3.8. Asian Pacific Americans-persons having origins in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.
- 1.3.9. Other groups-whose members are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of Small Business Act as amended (15 U.S.C. 637 (d)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.
- 1.3.10. Disabled Veteran-a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.
- 1.3.11. "Control" means exercising the power to make policy decisions.
- 1.3.12. "Operate" means being actively involved in the day-to-day management and not merely acting as officers or directors.
- 1.3.13. "Goal" means a target which, when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.
- 1.3.14. "Excluded category" means a category of products or services which may be removed from the dollar base used to establish goals, pursuant to Section 8.5 of this General Order, because of the established unavailability of WMDVBEs capable of supplying those products or services.
- 1.3.15. "Short-term goal" means a goal applicable to a period of one (1) year.
- 1.3.16. "Mid-term goal" means a goal applicable to a period of three (3) years.
- 1.3.17. "Long-term goal" means a goal applicable to a period of five (5) years.
- 1.3.18. "Utility" means all electric, gas, and telephone corporations with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their Commission-regulated subsidiaries and affiliates.
- 1.3.19. "Clearinghouse" means a Commission-supervised program that shall conduct WMBE verifications and maintain a database of WMDVBEs for the use of utilities and the Commission.

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- 1.3.20. "Subcontract" means any agreement or arrangement between a contractor and any party or person (in which the parties do not stand in the relationship of an employer and an employee):
 - 1.3.20.1. For the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or
 - 1.3.20.2. Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.
- 1.3.21. "Product and service categories" means product and service categories as defined by the Standard Industrial Classification (SIC) system maintained by the United States Department of Labor, Occupational Safety and Health Administration, as they currently read or as amended.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of women and minority business enterprises (WMBEs) for participation in utility WMDVBE procurement programs.

- 2.1. The clearinghouse described in Section 3 of this General Order shall supply a verification form to applicants. An applicant may complete the verification forms and return them to the Clearinghouse for processing and inclusion in the database.
- 2.2. In assessing the suitability of a WMDVBE to bid for procurement contracts, a utility may require additional information or the completion of additional forms to comply with specific requirements created by the unique character of its business, such as insurance requirements, product and service codes, bonding limits, and so on. A utility may not, however, require such additional information in order to verify that a business is in fact a WMDVBE.
- 2.3. WMBEs shall be required to submit verification forms at least once every three years.
- 2.4. Completion of the verification application only initiates a verification of the business's WMBE status. Filing of an application does not guarantee verification.
- 2.5. The fact that a verified WMDVBE is included in the clearing-house database shall neither be construed as an endorsement of its ability to perform nor shall such inclusion guarantee it business with the utilities.
- 2.6. WMBE verification forms shall be available for inspection by the Commission.
- 2.7. Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code Section 8285.

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3. CLEARINGHOUSE

The Commission shall provide a clearinghouse for the sharing of WMDVBE identification and verification information.

- 3.1. The Commission may establish and operate such a clearinghouse internally or authorize, by decision or resolution, a utility-formed entity or arrangement to fund the operation of such a clearinghouse. In authorizing a utility-formed entity or arrangement, the Commission will specify sufficient terms and conditions to specify how verifications and audits shall be performed and to ascertain and ensure that the clearinghouse is operated in accordance with this general order, Public Utilities Code sections 8281-8286, and other applicable legal requirements.
- 3.2. The primary purpose of the clearinghouse shall be to audit and verify the status of WMBEs, and to establish and maintain a database of WMDVBEs that is accessible to the Commission and to participating utilities.
- 3.3. The clearinghouse auditing and verification program shall preclude the need for an individual utility to audit and verify the status of the WMBEs it does business with.
- 3.4. The clearinghouse shall distribute renewal verification forms to WMBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the clearinghouse shall notify the WMBE and utilities that the WMBE will not be listed as a verified WMBE in the shared database until the renewal is completed.

4. DISABLED VETERANS

The following rules and guidelines shall apply to service disabled veteran business enterprises (DVBE). "Disabled veteran" is defined in Section 1.3.10 of this General Order.

- 4.1. "Disabled veteran business enterprise" means a business concern certified by the administering agency as meeting all of the following requirements.
 - 4.1.1. It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
 - 4.1.2. The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
 - 4.1.3. It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.
- 4.2. "Administering Agency" means the California State Department of General Services, Office of Small and Minority Business.
- 4.3. In order to qualify as a DVBE, businesses must meet the criteria in Section 4.1 and must present a current certificate from the California State Department of General Services, Office of Small and Minority Business verifying that such criteria have been met.

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5. SECTION 5 DELETED PER D.98-11-030.

6. UTILITY IMPLEMENTATION

Each utility's WMDVBE program shall be designed to ensure that WMDVBEs are encouraged to become potential suppliers of products and services to the utilities subject to GO 156. Nothing in GO 156 authorizes or permits a utility to utilize set-asides, preferences, or quotas in administration of its WMDVBE program. The utility retains its authority to use its legitimate business judgment to select the supplier for a particular contract.

6.1. Internal Utility Program Development

Each utility shall maintain an appropriately sized staff to provide overall WMDVBE program direction and guidance and to implement WMDVBE program requirements.

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

6.2. External Outreach

Each utility shall implement an outreach program to inform and recruit WMDVBEs to apply for procurement contracts.

- 6.2.1. Outreach activities may vary for each utility depending on its size, service territory, and specific lines of business. However, each utility shall at a minimum:
 - (1) Actively seek out opportunities to identify WMDVBE contractors and to expand WMDVBE source pools;
 - (2) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVBE contractors;
 - (3) Work with WMDVBE contractors to facilitate contracting relationships by explaining utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures;
 - (4) At the request of any unsuccessful WMDVBE bidder, provide information concerning the relative range/ranking of the WMDVBE contractor's bid as contrasted with the successful bid. Information on additional selection criteria, such as warranty periods, maintenance costs, and delivery capability, shall be provided when requested if disclosure would not violate the proprietary nature of the specific contract element;
 - (5) To the extent possible, make available to WMDVBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;
 - (6) Encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMDVBEs;
 - (7) Summarize this General Order in its outreach program handouts. Such summaries shall state that WMDVBEs will be furnished a complete copy of this General Order upon request.
 - (8) Each utility is directed to offer the same assistance set forth in Section 6.2 to non-WMDVBEs, upon request.

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6.3. Subcontracting Program

Each utility shall establish and maintain a subcontracting program for the purpose of encouraging its prime contractors to utilize WMDVBE subcontractors.

- 6.3.1. The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMDVBE prime contractor outreach program.
- 6.3.2. The subcontracting program shall apply to the following:
 - (1) Purchases/contracts exceeding \$500,000 for products and services;
 - (2) Construction contracts exceeding \$1,000,000;
 - (3) Purchases/contracts which offer WMDVBE subcontracting opportunities, regardless of value, where appropriate.
- 6.3.3. The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like.
- 6.3.4. Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMDVBES as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMDVBES as subcontractors. These plans may be incorporated into the contract between the utility and the prime contractor. The prime contractor may submit periodic reports on its compliance with the plan to the utility.
- 6.3.5. Each utility is encouraged to incorporate in all purchase orders, requests for bid proposals, and other appropriate procurement documents related to procurement efforts subject to the subcontracting program, a statement similar to the following:

UTILIZATION OF WOMEN, MINORITY AND DISABLED VETERAN OWNED BUSINESS ENTERPRISES

- (1) It is the policy of the utility that women, minority and disabled veteran owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. However, this policy shall not be used to exclude qualified non-WMDVBES from participating in utility contracting.
- (2) The contractor agrees to use his or her best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract.
- (3) The contractor agrees to inform prospective WMDVBE subcontractors of their opportunity to request from the clearinghouse a verification application form and to return the completed form to the clearinghouse for processing and inclusion in the database.

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- 6.3.6. Each utility is encouraged to inform suppliers of products and services that suppliers' good faith efforts to subcontract with WMDVBEs is a factor that will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.
- 6.3.7. Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMDVBE subcontractors.
- 6.3.8. Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and grantees to engage WMDVBE subcontractors in all procurement categories which provide subcontracting opportunities.
- 6.3.9. Each utility may include awards to verified WMDVBE subcontractors in its WMBE results.

7. COMPLAINT PROCESS

- 7.1 Complaints relating to this general order shall be filed and appealed only pursuant to the procedure set forth in this section 7. The Commission will not, however, entertain complaints which do not allege violations of any law, Commission rule, order, or decision, or utility tariff resulting from such Commission action, but which instead involve only general contract-related disputes, such as failure to win a contract award.
- 7.2. Complaints Concerning WMBE Verification Decisions
All complaints concerning a verification decision of the clearinghouse will be governed by the following procedures.
 - 7.2.1. Business enterprises whose WMBE status has been denied by the clearinghouse, or who have been deverified by the clearinghouse, may appeal the clearinghouse's decision to the Commission after exhausting their remedies under the internal appeal process implemented by the clearinghouse, a copy of which will be provided by the clearinghouse upon request by the affected business enterprise.
 - 7.2.2. Third parties may file complaints challenging the WMBE status of businesses whose WMBE verification is pending, or who have already been verified by the clearinghouse. Such complaints must: 1) be in writing and be addressed to the clearinghouse; 2) set forth with specificity the grounds for the challenge in ordinary and concise language; 3) include the name and address of the complainant; and 4) be served on the affected WMBE. Such complaints may include supporting documentation.

The clearinghouse will review third party complaints to determine whether there appears to be a factual basis for questioning the challenged party's WMBE status. If the clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall inform the complainant and affected WMBE of this determination in writing within 20 business days of the receipt of the complaint. The clearinghouse shall inform the complainant of its right to appeal this determination to the Commission.

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- 7.2.3. If the clearinghouse determines that there appears to be a sufficient factual basis for questioning the challenged party's WMBE status, it shall require the challenged party to provide the clearinghouse information sufficient to permit the evaluation of its WMBE status. Following a thorough review and evaluation of the information presented by both parties, and an opportunity for each party to respond to the clearinghouse's proposed resolution of the verification challenge, the clearinghouse shall notify the parties of its final verification decision and of their right to appeal this decision to the Commission.
- 7.2.4. During the pendency of a third party challenge of a verified WMBE, the presumption that the challenged party is a WMBE will remain in effect.
- 7.2.5. If a third party complaint does not include the minimum criteria set forth above, or if the third party rescinds its complaint, the clearinghouse may review the complaint to determine whether it merits unilateral consideration by the clearinghouse.
- 7.3. Commission Review of WMBE Verification Complaints
 - 7.3.1. The complainant, within 20 days after the service of the clearinghouse's final decision on the complaint, may serve a Notice of Appeal on the clearinghouse, indicating the grounds for the appeal. The complainant shall also serve the Chief Administrative Law Judge and the appropriate Commission director. The appeal will not be docketed as a formal proceeding.
 - 7.3.2. The complainant and clearinghouse shall be the only parties to the appeal.
 - 7.3.3. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the appeal of the complaint.
 - 7.3.4. Appeals of complaints will be heard in the Commission's San Francisco or Los Angeles courtrooms as scheduled by the assigned Administrative Law Judge.
 - 7.3.5. The Administrative Law Judge shall schedule and notice the appeal for hearing between 10 and 20 days after being assigned to hear the complaint. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
 - 7.3.6. A party may order a transcript of the hearing, but the party shall pay the cost of the transcript in accordance with the Commission's usual procedures.
 - 7.3.7. A party shall be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned Administrative Law Judge no less than three business days prior to the hearing.
 - 7.3.8. A party may be represented at the hearing by an attorney or other representative, but such representation will be at the respondent's sole expense.

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- 7.3.9. At the hearing, the complainant shall open and close. The Administrative Law Judge may, in his or her discretion, alter the order of presentation. Formal rules of evidence do not apply, and all relevant and reliable evidence may be received in the discretion of the Administrative Law Judge.
- 7.3.10. Ordinarily, the appeal shall be submitted at the close of the hearing. In the Administrative Law Judge's discretion, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.
- 7.3.11. The Administrative Law Judge shall issue an order resolving the appeal no later than 30 days after the appeal is submitted, and the order will be placed on the Commission's first available agenda, consistent with the Commission's applicable rules.
- 7.3.12. From the date the Notice of Appeal is served to and including the date the Commission's final order is mailed, neither party (or an attorney or agent acting in behalf of a party) shall engage in an ex parte communication with a Commissioner, a Commissioner's advisor, or an Administrative Law Judge except for procedural or scheduling purposes.

8. GOALS

Each utility shall set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBEs. Goals shall be set annually for each major product and service category which provides opportunities for procurement. "Substantial Goals" mean goals which are realistic and clearly demonstrate a utility's commitment to encourage the participation of WMDVBEs in utility purchases and contracts.

- 8.1. The utilities shall consider the following factors in setting their goals:
 - 8.1.1. Total utility purchasing and/or contracting projections;
 - 8.1.2. Availability of WMDVBEs and competitiveness in the geographical area served by the utility;
 - 8.1.3. Market dynamics based on historical data and trends;
 - 8.1.4. Other appropriate factors which would increase the WMDVBEs' share of utility business.
- 8.2. Each utility shall establish initial minimum long-term goals for each major category of products and services the utility purchases from outside vendors of not less than 15% for minority owned business enterprises and not less than 5% for women owned business enterprises. For the purposes of this section, contracts with minority women-owned business enterprises can be counted toward either the minority-owned business enterprise goal or the women-owned business enterprise goal, but not toward both. Similarly, contracts with disabled veteran business enterprises can be counted either as disabled veteran business enterprise procurement or the appropriate women or minority business enterprise goal, but not toward both. The goal for Disabled Veteran Business Enterprise (DVBE) participation in procurement programs of the participating utilities is set at 1.5%, effective January 1, 1997.

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- 8.3. The specification of initial long-term goals in this section shall not prevent the utilities from seeking to reach parity with public agencies, which the Legislature found in Public Utilities Code Section 8281(b)(1)(13) are awarding 30% or more of their contracts to WMBEs.
- 8.4. Goals shall also be established for both minority women-owned business enterprises and non-minority women-owned business enterprises. These goals are to be a subset of the overall goal for WMBEs established by Section 8.2 (initially 20% for both women-owned business enterprises and minority-owned business enterprises). These goals are intended to ensure that utilities do not direct their WMBE procurement programs toward non-minority women- and minority men-owned business enterprises to the detriment or exclusion of minority women-owned business enterprises.
- 8.4.1. Goals shall beset for each major category of products or services. Goals need not be set for products or services which fall within an "excluded category" created by a utility pursuant to Section 8.5.
- 8.5. A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, for each major category of products and services where the minimum long-term goals required by Section 8.2 are not met, the utility shall include a comprehensive discussion and detailed description of any efforts made to find or recruit WMDVBE suppliers of products or services in areas where WMDVBE suppliers are currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its WMDVBE goals are affected because WMDVBE's capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. In this explanatory section, the utility may also include data with exclusions pursuant to former Section 8.5. If such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility's report must contain the data without exclusions in the first sentence.
- 8.6. A utility which is presently purchasing products or services from affiliates may, subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing goals for purchases from WMDVBEs of these categories of products or services, provided that the utility encourages the affiliate to establish an appropriate subcontracting program where such affiliate employs subcontractors. Any utility which takes advantage of this section must in its annual report to the Commission state whether the affiliates have established a subcontracting program and describe the results of any such program. The utility's annual plan must describe any future plans to encourage such a sub-contracting program. This section applies only to those utilities which are purchasing products or services from affiliates as of the effective date of this General Order (May 30, 1988).

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- 8.7. Goals for each specific product or service category shall be expressed as a percentage of total dollars awarded by a utility to outside vendors in that category; however, where appropriate, non-numeric goals may also be included.
- 8.8. Overall program goals shall be expressed as a percentage of total dollars awarded to outside vendors in all categories of products and services purchased by a utility other than products and services which are included in a fuel procurement base established pursuant to Section 8.10.
- 8.9. Payments to other utilities and franchise tax fees, other taxes and postage need not be included in the standard procurement base used to establish goals.
- 8.10. Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMDVBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:
 - 8.10.1. Fuel used to power vehicles, heat utility facilities, and supply emergency generators may not be included in the fuel procurement base. Such fuel must be included in the standard procurement base used to establish goals, unless the fuel is purchased from another utility and thus subject to the exclusion authorized herein;
 - 8.10.2. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas markets;
 - 8.10.3. Utilities which purchase from WMDVBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.5 does not permit utilities to exclude product and services categories for which there are available WMDVBEs;
 - 8.10.4. Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under Section 8.5 and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMDVBEs.
- 8.11. Each utility shall make special efforts to increase utilization and encourage entry into the marketplace of WMDVBEs in product or service categories where there has been low utilization of WMDVBEs, such as legal and financial services, fuel procurement, and areas that are considered technical in nature.
- 8.12. No penalty shall be imposed for failure of any utility to meet and/or exceed goals.
- 8.13. Utilities shall report their goals in their annual plans.

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9. ANNUAL REPORT

Utilities shall serve twelve (12) copies on the Executive Director, by March 1 of each year, beginning in 1989, an Annual Report on their WMDVBE Program.

- 9.1. The Annual Report shall contain at least the following elements:
 - 9.1.1. A description of WMDVBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities.
 - 9.1.2. A summary of WMDVBE purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total utility contract dollars awarded to outside vendors in those categories.
 - 9.1.3. An itemization of WMDVBE program expenses provided in the format required by Attachment A to D.95-12-045.
 - 9.1.4. A description of progress in meeting or exceeding set goals and an explanation of any circumstances that may have caused the utility to fall short of its goals.
 - 9.1.5. A summary of prime contractor utilization of WMDVBE subcontractors.
 - 9.1.6. A list of WMDVBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status.
 - 9.1.7. A summary of purchases and/or contracts for products and services in excluded categories.
 - 9.1.8. A description of any efforts made to recruit WMDVBE suppliers of products or services in procurement categories where WMDVBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
 - 9.1.9. Utilities shall retain all documents and data they rely on in preparing their WMDVBE annual report for the longer of either three years or in conformance with the utilities' individual document retention policies, and shall provide these documents and data to the Commission upon request.

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- 9.1.10. Each utility which elects to report fuel procurement separately must file with the Executive Director by March 1 of each year, beginning in 1991, a separate detailed and verifiable report on WMDVBE participation in fuel markets. These reports must include, at a minimum, the results of purchases in each fuel category.
 - a. Each utility shall report purchases by:
 1. Market origin and fuel type;
 2. Volume and dollar magnitude;
 3. Term of sale, e.g., spot, intermediate, long term;
 4. Ethnicity and gender of the supplier.
 - b. Each utility shall provide:
 1. An explanation of how existing and/or changing market conditions are affecting the utility's ability to meet or exceed its WMDVBE goals for fuel;
 2. A comprehensive description of the specific out-reach programs used to seek WMDVBE fuel suppliers in each market in which fuel is purchased;
 3. A justification for any exclusion of a specific fuel category from the utility's fuel procurement base.
- 9.2. This General Order is not intended to permit erosion of WMDVBE programs and reporting presently engaged in by a utility.
- 9.3. Nothing in this General Order shall prohibit any utility from breaking down specific categories further than presently required (for example, reporting contracts awarded to Filipino Americans separately from those awarded to Asian Pacific Americans, or reporting male and female results within minority-owned classifications).

General Order 156 (Current as of August 24, 2006)

10. ANNUAL PLAN

Utilities shall serve twelve (12) copies on the Executive Director, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for encouraging women, minority, and disabled veteran business enterprises procurement in all categories.

- 10.1. The Annual Plan shall contain at least the following elements:
 - 10.1.1. Short, mid, and long term goals set as required by Section 8, *supra*;
 - 10.1.2. A description of WMDVBE program activities planned for the next calendar year. This description shall include both internal and external activities;
 - 10.1.3. Plans for recruiting WMDVBE suppliers of products or services where WMDVBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
 - 10.1.4. Plans for seeking and or recruiting WMDVBE suppliers of products or services in any "excluded category" of products or services which has been removed from the procurement dollar base used to set goals because of the established unavailability of WMDVBE suppliers.
 10. 1.4 Plans for seeking and or recruiting WMDVBE suppliers of products or services where WMDVBE suppliers are currently unavailable.
 - 10.1.5. Plans for encouraging both prime contractors and grantees to engage WMDVBES in subcontracts in all categories which provide subcontracting opportunities.
 - 10.1.6. Plans for complying with the WMDVBE program guidelines established by the Commission as required by Public Utilities Section 8283(c). The Executive Director's Office will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

11. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities under-taken by each utility to implement Public Utilities Code Sections 8281 through 8286 and this General Order, as required by Section 8283 (e).

- 11.1. In this report, the Commission shall recommend a program for carrying out the policy declared in the above-mentioned sections of the Public Utilities Code, together with recommendations for legislation it deems necessary or desirable to further that policy.
- 11.2. This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this General Order.

Approved and dated November 5, 1998 to become effective November 5, 1998, at San Francisco, California.

PUBLIC UTILITIES COMMISSION STATE OF CALIFORNIA

By Steve Larson, *Executive Director*