

Motion

Decision 88-04-057 April 27, 1988

MAY 3 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into )  
the implementation of Public )  
Utilities Code Sections 8281-8285 )  
relating to women and minority )  
business enterprises. )

R-87-02-026  
(Filed February 1, 1987)

INTERIM OPINION ON ESTABLISHING A GENERAL ORDER  
TO IMPLEMENT PUBLIC UTILITIES CODE SECTIONS 8281-8285

Summary of Decision

This decision implements Assembly Bill (AB) 3678 which became law in September 1986 and added Sections 8281 through 8285 to the Public Utilities Code (PU Code). AB 3678 directs the Commission to require every gas, electric, and telephone utility with gross annual revenues exceeding \$25,000,000 (and its Commission regulated subsidiaries and affiliates) to implement a program developed by the Commission to encourage, recruit, and utilize women and minority owned business enterprises (WMBE), as defined, in the procurement of contracts from those utilities.

AB 3678 requires the Commission to (1) report to the Legislature annually beginning January 1988 on the progress of activities undertaken by the respondent utilities to implement WMBE Programs, (2) establish guidelines to be used by the utilities in establishing WMBE Programs, (3) develop and publish regulations setting forth criteria for verifying and determining the eligibility of WMBEs for procurement contracts, and (4) develop and require the utilities to implement an outreach program to inform and recruit WMBEs to apply for procurement contracts.

In addition, the legislation provides that the Commission shall require an annual submission from each respondent utility of a detailed and verifiable plan which would include, among other

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things, short-term and long-term goals and timetables, but not quotas, for increasing WMBE procurement in all categories.

This interim order establishes guidelines and regulations to be used by the utilities in developing their programs to increase participation of WMBEs in procurement of contracts (WMBE Programs) as required by AB 3678.

Further consideration must also be given to certain other issues before the Commission can feel confident that it is implementing the legislation in the most appropriate and comprehensive manner. These items will be addressed in the next phase of this proceeding.

Phase 2 of this proceeding will address at least the following:

1. What forum should be utilized by persons wishing to voice their concerns and suggestions regarding the utilities' implementation of WMBE programs (i.e., should general rate cases continue to provide the forum, or should a generic annual WMBE proceeding be developed?)
2. If a generic proceeding is utilized, how will any costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases?

#### History of Proceeding

On February 11, 1987, the Commission issued an Order Instituting Rulemaking (R.) 87-02-026 into the implementation of PU Code Sections 8281-8285, relative to women and minority owned business enterprises. Fifteen utilities were made respondents to R.87-02-026. Decision (D.) 87-03-079 issued on March 25, 1987 amended R.87-02-026 by adding two more utilities as respondents. A list of respondent utilities is attached as Appendix B.

In R.87-02-026 the Commission proposed certain rules and/or guidelines regarding the implementation of PU Code Sections 8281-8285 and asked parties to provide their comments.

Respondents and interested parties filed comments on the Commission's proposed rules and guidelines. The majority of responses were supportive of proposed rules and guidelines. However, parties provided differing suggestions regarding various provisions of the guidelines and the rules.

A prehearing conference was held before Administrative Law Judge (ALJ) Garde on April 30, 1987. At the PHC, respondent utilities were asked to file proposed rules, utilizing the benefit of the comments and suggestions provided by the parties, to implement PU Code Sections 8281-8285. The requested rules were to address the entire statutory scheme. Interested parties were also allowed to file proposed rules.

The order requiring respondent utilities to file proposed rules was confirmed by an ALJ ruling dated April 30, 1987.

In response to the ALJ's ruling, respondent utilities and other parties filed their proposed rules and guidelines to implement PU Code Sections 8282-8285.

On July 15, 1987, an informal conference, chaired by the staff counsel, was held to determine the areas of agreement and disagreement among parties with regard to the proposed rules and guidelines. Staff counsel filed a report on the informal conference.

Based on the parties' proposed rules and the comments received at the informal conference, the ALJ, on October 1, 1987, issued proposed rules and guidelines to implement PU Code Sections 8281-8285. The proposed rules and guidelines were issued in the form of a draft general order (draft GO). Parties were required to review the draft GO and provide comments on it.

On November 12, 1987, a workshop was held to receive comments and recommendations for improving the proposed rules and

guidelines. Most parties filed written comments on the draft GO. Additional comments were received at the workshop.

At the workshop, Minority/Female Coalition reiterated its position that the proposed rules should include minimum long-term goals of 5% and 15% for women-owned business enterprises and minority-owned business enterprises respectively. Minority/Female Coalition asserted that the issuance of one percent of procurement contracts to Blacks by 1995 would constitute compliance with the draft GO. In support of its position, Minority/Female Coalition offered to provide testimony of expert witnesses. Assemblywoman Gwen Moore's office supported Minority/Female Coalition's position regarding appropriate long-term goals.

The ALJ ruled that specific goals for various utilities would be addressed in the next phase of this proceeding. The ALJ agreed to receive expert testimony regarding the setting of goals in this next phase. The ALJ's ruling was supported by Pacific Gas and Electric Company, Pacific Bell, Southern California Edison Company, Sierra Pacific Power Company and Southwest Gas Corporation.

At the workshop, Minority/Female Coalition also recommended that utility executive compensation be linked to WMBE program achievement.

The Division of Ratepayers Advocates (DRA) did not provide its comments on the draft GO at the workshop. Therefore, it was directed to file its comments on the draft GO by December 1, 1987. Parties were allowed until December 10, 1987 to file their response to DRA's comments. DRA has since informed the ALJ and other parties that it takes no position on the specific proposals included in the draft GO. However, the Commission Advisory and Compliance Division (CACD) has since filed its comments on the draft GO. CACD believes that the draft GO satisfies the requirements of PU Code Sections 8281-8285.

Comments

Comments on the ALJ's Proposed Interim Opinion were received from Pacific Bell (PacBell), San Diego Gas & Electric Company (SDG&E), AT&T Communications of California (AT&T), and Minority/Female Coalition.

AT&T recommends that in order to clarify the verification procedures established for small utilities and interexchange telecommunication carriers and to ensure consistency within the general order, Section 2.3.1 should be amended to include reference to an "internally-developed" verification form approved by the director of CACD as specified in Section 2.1.2. Accordingly, it proposes the following amended language:

2.3.1 Each small utility and IEX shall require its suppliers and/or contractors to complete and provide to the utility a Commission-approved form as set forth in Attachment A or as specified in Section 2.1.2 to qualify for the utility's F/MBE program.

We agree that an amendment similar to that suggested by AT&T would clarify the verification procedure and ensure consistency in the general order. Therefore, we will modify the appropriate section of the general order accordingly.

AT&T also recommends that, rather than requiring the inclusion of a copy of the complete text of the general order in the utilities' outreach program handouts (as specified in draft GO Section 4.1.1.7), an appropriate summary of that general order would be more effective. According to AT&T, printing the entire 13-page general order in every brochure, with all of the specific details about the utility's outreach program, would add unnecessarily to the bulk of the brochure as well as the cost of printing and postage, and, by increasing the volume of the information, could discourage a thorough reading of the material. AT&T asserts that it supports the need to inform minority and women businesses about the Commission's rules and guidelines in this

area, but believes the vendor notification would be more effective if the message was condensed and summarized for inclusion in the utilities' outreach program handouts.

We agree that the inclusion in the outreach program handouts of an appropriate summary of the general order rather than its complete text will be more effective. However, we believe that a copy of the complete text of the general order should be available to the WMBEs upon request. Each utility in its summary of the general order should indicate that WMBEs will be furnished a complete text of the general order upon request. Therefore, we will require each utility to:

- 4.2.1.7 Summarize this general order in its outreach program handouts. Such summaries shall state that WMBEs will be furnished a complete copy of this general order upon request.

PacBell recommends that since the language in Section 2 refers to "verification" of WMBE status, the label of the section should be modified from the currently proposed "CERTIFICATION" to "VERIFICATION".

We agree that the heading of a section should coincide with the terminology used throughout and accordingly will change the label of Section 2 to "VERIFICATION".

PacBell recommends the modification of Section 4.2.3 which provides that:

- 4.2.3 The utilities shall assist and encourage prime contractors to develop a plan to increase the utilization of WMBEs as subcontractors. The utilities shall monitor and include in their annual report to the Commission the prime contractors' progress in increasing the participation of WMBE subcontractors.

According to PacBell, the last sentence of this section appears to state that utilities are required to include, in their annual reports to the Commission, prime contractor progress reports

on increasing WMBE subcontractor participation. PacBell contends that if this provision means that utilities will have to submit individual progress reports for each of their prime contractors, such a reporting requirement may place an onerous administrative burden on utilities with hundreds of prime contractors. PacBell suggests that we adopt a more generalized reporting requirement in the subcontracting area, with the following language:

"The utilities shall monitor the progress of their prime contractors in increasing the utilization of WMBE subcontractors, and shall include in their annual report to the Commission a progress report on WMBE subcontracting."

We agree that requiring utilities to submit individual progress report for each of their prime contractor's progress in the utilization of WMBE subcontractors would place an undue burden on them. Therefore, we will adopt a more generalized reporting requirement in the subcontracting area by adopting a modified version of PacBell's recommended language.

PacBell is a federal government contractor and has filed a commercial subcontracting plan with the federal government covering all of its contracts. Consequently, in compliance with the federal law, its subcontracting program requires that its prime contractors submit subcontracting plans in accordance with federal regulations. PacBell recommends that in order to avoid confusion the following additional section be added regarding subcontracting:

4.2.4 This provision does not relieve utilities from complying with all federal laws and associated regulations addressing subcontracting plan requirements, if utilities are bound by such federal laws and associated regulations.

Since utilities are bound to comply with federal laws and regulations when dealing with the federal government, an explicit



declaration of that requirement need not be included in this general order.

Minority/Female Coalition recommends that the ALJ's draft decision not be adopted until there is an en banc hearing. The issue of en banc hearing is adequately addressed in the draft decision and therefore, will not be discussed further.

Minority/Female Coalition's concern that the draft opinion adopts no goals is addressed by our adoption of the initial long-term goals recommended by Joint Commenters.

Minority/Female Coalition recommends that AT&T, Sprint, and MCI be required to set California specific WMBE goals, on the ground that it is unfair to Hispanics and Asians to allow the use of nationwide goals since these groups are grossly underrepresented in most of the nation. The desirability of state specific, rather than national, goals for interexchange telecommunications companies is an issue we may revisit in the future, but for now we feel that it is more realistic and appropriate to allow such companies to use nationwide or multiple-state WMBE goals or goals established for a federally mandated WMBE procurement program in lieu of California specific goals.

Minority/Female Coalition's concern that the proposed general order would allow utilities to report less data than many of them do presently is addressed by our discussion under the heading "Erosion of Existing WMBE Programs," and by Section 7.3 of our adopted general order, which reads: "This general order is not intended to permit erosion of WMBE programs and reporting presently engaged in by a utility."

Minority/Female Coalition's concern that the proposed decision makes no reference to oversight or enforcement of goals and independent examination during ratemaking proceedings will be addressed in the next phase of this proceeding.

Minority/Female Coalition's suggested improvements to the verification program are, we believe, unnecessary at this time.

Minority Coalition claims that the proposed general order does not provide for a separate report for Filipino-Americans. We believe that Minority/Female Coalition may be confusing the definition section of the general order with the reporting requirements. The definitions set forth in Section 1.3 of the general order merely form part of the criteria for determining whether or not a business is a "minority-owned business" for the purposes of utility WMBE procurement programs, and do not establish the ethnic categories that must be used by the utilities for reporting WMBE progress in their reports to the Commission. Section 7.1.2 of the general order requires utilities to provide a summary of WMBE 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. We believe that the reporting requirement for Filipino-Americans is covered by this section.

Because the intent of the legislation we are implementing is to "clarify and expand" the utilities' WMBE procurement program (PU Code Section 8281 (b)(2)(C)), we cannot implement the legislation properly by allowing a retreat from present program progress. Thus, for example, if a utility is using highly refined reporting categories, the utility must continue to utilize such categories. And if future phases of this proceeding lead to the establishment of reporting requirements more refined than those in our general order, then utilities not presently using more refined reporting requirements will be required to do so.

Minority Coalition recommends that we tie top management compensation to a utility's WMBE achievements. This is addressed in the discussion section of this decision under the heading: "Internal Utility Program Development."

In response to PacBell's comments we have altered the discussion in the interim opinion and the provisions of the adopted general order to clarify the requirements for reporting progress.

toward increased utilization of WMBE subcontractors and the need for utilities to encourage prime contractors to develop plans for increased utilization of WMBE subcontractors.

In response to SDG&E's comments, we have added to the general order a modified, non-mandatory, version of two suggested subcontracting program requirements, and have augmented our discussion of subcontracting issues.

We believe that SDG&E's concerns regarding the definition of "exclusions" are addressed by our adoption of a modified version of the exclusion procedure suggested by Joint Commenters.

We do not agree with SDG&E that the verification form attached to the GO is likely to confuse WMBE's, but note that this issue may be discussed by the Clearinghouse Advisory Board.

#### Joint Comments

On February 8, 1988, Assemblywoman Gwen Moore, Pacific Bell, GTE of California, SCE, SoCal Gas, PG&E, and SDG&E filed a set of joint comments on the proposed decision. These comments represent a consensus of the joint commenters and are intended to resolve the issues of implementation for only the utilities which signed the joint comment document. These commenters do not take into account the distinctive nature of smaller utilities and interexchange carriers. The introduction to the joint comments requests that the comments be treated as though filed by the individual companies involved. For simplicity's sake, we will hereafter refer to the signers of this joint comment document as "Joint Commenters." The document itself will be referred to as the "joint comments," or "joint proposed rules."

The ALJ provided parties with an opportunity to submit comments on the joint comments. Comments were received from AT&T, MCI, Sprint, and the Minority/Female Coalition. Contel of California, Inc., Citizens Utilities Company of California, Roseville Telephone Company, Southwest Gas Corporation, CP National Corporation, and Sierra Pacific Power Company submitted a set of

joint comments. We will refer to the signers of this set of joint comments as "Joint Small Utility Commenters."

Joint Commenters submitted a complete set of proposed rules for implementing AB 3678. While many of the proposed rules merely represent efforts to refine relatively minor aspects of the ALJ's proposed decision and general order, the rules also include a number of important substantive guidelines and policy recommendations that differ greatly from those proposed by the ALJ. Joint Commenters believe their joint comments represent an equitable compromise of the issues involved in this proceeding which will lead to more efficient utility operations, increased competition and diversified sources of supplies, which will result in reduced costs to ratepayers. They believe that approval of the rules embodied in the joint comments will reduce the need for subsequent hearings and workshops on issues relating to parties to these joint comments thereby allowing the Commission to concentrate its effort on those issues relating to interexchange carriers and smaller utilities which merit different consideration because of their unique status.

Because the joint comments contain a full set of proposed rules, it would be unwieldy for us to address each proposed rule at this point in the decision. We will instead recite here only what we believe are the most significant changes from the direction taken by the ALJ's proposed decision and by Commission on its own initiative. These major issues include: (1) The establishment of specific overall long term WMBE procurement goals; (2) The creation of a mechanism for utility specific "exclusions" from the base of procurement dollars used to establish the monetary value of the WMBE procurement goals; (3) The establishment of internal utility policies related to outreach which include provisions for evaluation of employees with procurement responsibility on the basis of their progress in meeting specific procurement goals, and for review of WMBE program progress at officer level meetings;

(4) The exemption of contracts with affiliates from the base of procurement dollars used to establish goals coupled with the inclusion of affiliate WMBE subcontracts in utility WMBE results;

(5) The creation of a right to appeal to the Commission WMBE complaints not satisfactorily resolved by utility management; and

(6) The administration of the WMBE verification clearinghouse by the Commission itself, instead of by an advisory board composed of representatives of the utilities, the WMBE community, and Commission staff. These issues will be discussed at appropriate points in the text of this decision, and adopted recommendations will be included in the Appendix.

Although, as Joint Commenters point out, the Commission could reduce its workload by approving the rules set forth in the joint comments, we will not do so on a wholesale basis. Many of Joint Commenters recommendations are good ones, and will be adopted. Many of these recommendations require minor modifications which do not change the essence of the recommendation but which clarify certain requirements in ways that ensure our ability to implement an effective WMBE program. The general order we adopt will incorporate what we believe is the essence of the great majority of these recommendations, will retain many of the well-drafted provisions of the ALJ's draft general order, and will include a number of additional provisions suggested by other commenters earlier in this proceeding which we believe will help us to create a more comprehensive and effective program.

#### Discussion

Based on the comments received from various parties, the proposed general order has been modified. These modifications are discussed below on an issue-by-issue basis.

The adopted general order also incorporates a number of editorial changes to the proposed order and includes a method of selecting a representative for the WMBE group on the Advisory Board

in the event of a disagreement among female and minority organizations regarding representation.

The adopted general order containing the rules and guidelines to implement PU Code Sections 8281-8285 is attached as Appendix A.

General

In her written comments on the draft GO, Assemblywoman Moore asserts that certain agreements were reached with some utilities at meetings held on August 19, 1987 and October 22, 1987. The agreements reached at these meetings are not reflected herein because all parties to the proceeding were not invited to attend, no formalized agreements have been filed and the meetings were not a part of this proceeding. In any event, we believe it is safe to assume that all significant agreements Moore reached with utilities are incorporated in the proposed rules set forth in the joint comments.

Erosion of Existing WMBE Programs

A number of commenters express concern that if the draft GO is not made more specific, clear, and comprehensive, there is the potential for backward progress in the field of WMBE procurement.

We wish to make clear that we will not permit such erosion. PU Code Section 8281 states that AB 3678 is intended to do all of the following:

- a. Encourage greater economic opportunity for women and minority business enterprises.
- b. Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electric, gas, and telephone corporation contracts and contracts of their commission-regulated subsidiaries and affiliates.
- c. Clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies,

services, materials, and construction work from women and minority business enterprises.

Any adoption by the Commission of a utility WMBE procurement program or reporting requirement less stringent than that currently imposed on the utilities or implemented by the utilities on their own initiative would clearly be contrary to the legislation this interim order is designed to begin to implement.

Form of Issuance

The ALJ had originally proposed to implement the rules and guidelines in the form of a chapter to be added to the California Administrative Code, Title 20, Chapter 1, in which the Commission's Rules of Practice and Procedures are compiled. However, the ALJ later issued the proposed rules and guidelines in the form of general order with the following explanation:

"[S]ince these rules and guidelines apply generally to the utilities covered by AB 3678, are likely to be modified on the basis of experience gained in their application, and do not affect practice before this Commission, they are being proposed in the form of a new general order."

Assemblywoman Gwen Moore takes exception to the rules and guidelines being adopted in the form of a general order. Moore states that:

"The only explanation given for the ALJ's about-face is that the rules and guidelines apply only to the utilities covered by AB 3678 and are likely to be modified on the basis of experience. The ALJ proposal fails to consider, though, the possibility of additional utility corporations which might come under the scope of AB 3678 in the future. A general order may apply only to those companies currently a part of this proceeding."

We disagree. We note that the proposed rules and guidelines do not affect practice before the Commission and, therefore, should not be included in the Commission's Rules of

Practice and Procedure. In addition, the application of any general order is not limited to utilities which are parties to the proceeding in which the general order is adopted. This general order will apply automatically to any additional utilities which might come under the scope of AB 3678 in the future.

Moore also opposes the adoption of the rules and guidelines in the form of a general order on the basis that:

"Of even greater importance the ALJ's proposal fails to recognize that these rules will affect a far greater population than the utility companies under the jurisdiction of AB 3678. The rules and guidelines issued by the Commission also affect every female or minority owned business who wishes to do business with those companies. To issue the rules in the form of a general order rather than codifying them in the Administrative Code denies those businesses and their counsel an important means of access to those rules. Small businesses and their counsel not be (sic) familiar with PUC proceedings will not find a general order as easily as rules and guidelines in the California Administrative Code. Since these rules and guidelines are being drafted for use by more than just the utility companies, the Commission has a responsibility to make them accessible to all affected parties."

We appreciate Moore's concern about the need for all affected parties to be informed regarding the Commission's rules and guidelines implementing AB 3678. We accomplish that by requiring in the general order that all affected utilities implement an outreach program to inform and recruit WMBEs to apply for procurement contracts. Outreach programs will make the adopted rules and guidelines regarding the implementation of AB 3678 known to almost all eligible WMBEs. We will require the utilities to summarize the adopted general order in their outreach program handouts, and to inform WMBEs that a copy of the general order will be supplied upon request.



Adding the adopted rules and guidelines to the Commission's Rules of Practice and Procedure would unnecessarily delay their implementation and make them much more difficult to change as experience is gained. Therefore, we will adopt the rules and guidelines in the form of a new general order.

#### Revisions

Joint Commenters propose adding to the general order a section on revisions which, in addition to noting that these rules may be changed in light of experience, states that utilities and other interested parties may individually or collectively file an application to the Commission for the purpose of amending these rules. Such an application would be required to clearly set forth the proposed changes and the supporting rationale. We believe that such a section would be a useful addition to the general order and will adopt Joint Commenters' recommendation.

#### Hardship Exception

Joint Commenters propose adding to the general order a section permitting utilities to request specific relief where application of any of these rules results in undue hardship or unreasonable expense. Such relief would be requested through a formal application to the Commission in accordance with the Commission's Rules of Practice and Procedure. In instances where the requested relief is of minor importance or temporary in nature, Joint Commenters propose that the Commission may accept an application by letter. Such a letter must be sent to all parties on the service list of this proceeding.

We agree that utilities should be able to request relief from WMBE rules that result in undue hardship or unreasonable expense, and will incorporate a modified version of Joint Commenters' suggested language into the adopted general order. We will permit minor or temporary relief to be requested through an advice letter process.

### Definitions

Most parties have suggested that the ALJ's proposed definitions of WMBEs and various racial and ethnic classifications need to be expanded to include aliens lawfully admitted for permanent residence in the United States and other minorities which are recognized by other governmental agencies. PacBell has provided good suggestions to improve this section. PacBell believes that the Commission should adopt the same descriptions of racial/ethnic groups falling under the "minority" classification as have been adopted by the federal government. According to PacBell, inconsistency among federal and state agencies in designating minority groupings only contributes to confusion among minority businesses and those agencies applying incongruous standards. Therefore, PacBell recommends adoption of the United States Department of Commerce - Minority Business Development Agency's classifications for minorities, which are as follows:

"Black Americans - persons having origins in any black racial groups of Africa.

"Hispanic Americans - all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean and other Spanish culture or origin.

"Native Americans - persons having origins in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleutes and Native Hawaiians.

"Asian Americans - persons having origins 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.

"Hasidic Jews - persons who are members of an extremely orthodox Jewish sect whose distinctive appearance and social customs set them apart as a discrete and insular minority.

"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."

We agree with PacBell that federal and state agencies should be consistent in defining minorities. Therefore, we will adopt the United States Department of Commerce - Minority Business Development Agency's definition of minorities for the four categories (Black, Hispanic, Native and Asian Americans) included in PU Code Section 8282 (b).

We will, however, modify the definition of Asian American slightly to make it somewhat broader in line with the language suggested in the joint proposed rules.

We will also retain the "other" category for groups which may not fit under the first four definitions. We also agree with the parties recommending that definitions of WMBEs should be modified to include legal aliens with permanent residence status. We will accordingly change the definitions of WMBEs and minorities in the adopted general order. The definitions in Attachment A also include certain corrections and editorial modifications.

Assemblywoman Gwen Moore maintains that the draft GO rejects without reason the Order Instituting Rulemaking (OIR) definition of "long-term goals" as five-year goals, and that the draft GO's definition of "long-term" as three years implies a much lesser commitment to WMBE progress than was apparent in the OIR. Many utilities respond that realistic WMBE goals are too difficult to determine on a five-year basis, because the WMBE marketplace is a volatile one and existing vendors may or may not be operating five years hence to provide the desired goods and services. Joint Commenters agreed to one- and five-year goals.

We believe that this is one situation where we can have our cake and eat it too. We will, therefore, amend the draft GO to

reflect our belief that one, three and five year goals will be useful in ensuring the success of the utilities' WMBE programs.

### Verification

The draft GO provided for a central clearinghouse verification program which large utilities would be required to participate in and small utilities and interexchange carriers allowed to participate in. The clearinghouse function was to rotate annually between the large utilities.

Commenters make the following observations: (1) the costs of rotating the clearinghouse function would outweigh the benefits; (2) the verification form should be standardized because WMBEs do not want to have to fill out different forms for each utility and because standard forms will allow uniform tracking of WMBE status; (3) the certification programs required of small utilities and interexchange carriers should be augmented, or at least more clearly defined; and (4) the Commission should participate in the management of the clearinghouse or at least maintain an oversight role.

### Verification Forms

PacBell and Moore recommend deletion of the provision permitting utilities the use of the optional verification form. They contend that WMBEs constantly complain about having to complete a multiplicity of forms generated by various utilities. According to PacBell, use of a standardized form would simplify the procedure for the WMBEs and would also be of help in setting up the central clearinghouse.

Moore believes that the only situation which merits special consideration regarding the verification forms is the case of the interexchange telecommunications corporations which are required to use WMBEs outside of California.

We agree that the use of a standardized verification form would simplify and add fairness to the certification process. Therefore, we will require all utilities, with the exception of

interexchange telecommunications corporations that have established nationwide or multiple-state WMBE programs or need to comply with nationwide federally mandated WMBE requirements, to use the standard verification form set forth in Attachment 1<sup>1</sup> to Appendix A. Sections 2.1.1 and 2.1.2 will be renumbered and modified as follows:

2.1 WMBE Status Verification Form

Each utility shall use the standard Commission-approved form set forth in Attachment A, or, in the case of interexchange telecommunications corporations, as specified in Section 2.2, to verify the WMBE status of participants in its WMBE program. The standard form may be modified by the Clearinghouse Advisory Board as necessary, so long as it requires the same essential information.

- 2.2 An interexchange telecommunications corporation may use its own internally-developed verification form if the use of such form is necessary to comply with an established nationwide or multi-state WMBE program or federally mandated WMBE requirements, provided it is approved by the Director of the Commission Advisory and Compliance Division (CACD) and contains the following information:

Certain parties believe that the verification form attached to the draft GO needs to be revised to include more detailed information regarding the type of product/service provided by the prospective WMBE vendor. The parties also believe that the penalty statement for wrongful use of the form is not placed in a prominent place.

The verification form in Attachment 1 needs to be revised to take into consideration the revised definitions of minorities. PacBell has provided a more comprehensive verification form with

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1 Attachment 1 is in draft form.

its comments. The PacBell recommended form contains the minority classifications adopted in this decision and displays the warning regarding wrongful use prominently. However, we believe that the PacBell recommended verification form is in its draft state. The advisory board for administering the central clearinghouse (defined later in this order) should prepare a final version of this form as part its rules and guidelines for operating the central clearinghouse.

PacBell recommends modification of the section of the draft GO dealing with completion of the verification form (Section 2.2.3) which provides that:

"Completion of the self-verification form is only a verification of the vendor's F/MBE status and shall neither be construed as an endorsement of its ability to perform nor guarantee it business with the utility."

PacBell contends that this section appears to state that completion of the self-verification form will verify the vendor's WMBE status. According to PacBell, this apparent conclusion is inconsistent with the concept of establishing a central clearinghouse, whose purpose it will be to verify the WMBE status of vendors through an independent process of investigation. PacBell recommends that the section be modified as follows:

"Completion of the self-verification form only initiates a verification of the vendor's F/MBE status and shall neither be construed as an endorsement of its ability to perform nor guarantee it business with the utility."

We agree that completion of the verification form merely initiates the process of verification of the vendor's WMBE status. We note that the designation "self-verification form" is perhaps inappropriate for use in a situation involving subsequent verification by a clearinghouse. The draft GO will be modified to clarify these points.

Sections 2.2.2, 2.2.4, 2.2.5, and 2.2.6 in the draft GO deal with subjects of handling, retention and inspection of the verification forms. We believe that rules governing these items should be a part of the rules and guidelines for operating the central clearinghouse and should be addressed by the Advisory Board. Therefore, we delete these sections and replace them with the following two sections:

- 2.6 WMBEs shall be required to submit verification forms at least once every three years.
- 2.8 WMBE verification forms shall be available for inspection by the Commission.

**Verification Programs for Small Utilities and Interexchange Telecommunications Corporations**

In the draft GO, separate verification requirements are established for small and large utilities in order to recognize that smaller utilities have fewer resources available to devote to WMBE programs. MCI Telecommunications Corporation (MCI) requests that the interexchange telecommunications corporations (IECs) be required to meet the same requirements as the small utilities. According to MCI, while IECs may have revenues equal to those of the large companies, they are not able to devote commensurate resources to WMBE programs because of the manner in which they are regulated. MCI contends that unlike rate of return regulated utilities that can include the cost of WMBE programs in their revenue requirement, IECs are limited in their ability to recover these costs from their customers. MCI believes that including IECs in the small utility category will minimize the unequal burden on them. US Sprint also makes the same request.

In their comments on Joint Commenters' proposed rules, MCI, US Sprint, and AT&T continue to press for optional IEC participation in the clearinghouse program, and for freedom from use of the standard verification form.

Joint Small Utility Commenters similarly restate their desire that small utility participation in the clearinghouse be optional and suggest that small utilities be allowed to require WMBE submittal of new verification forms on an "as needed" basis.

We do not agree that IECs will be placed at a significant competitive disadvantage simply because we require them to participate in the central clearinghouse verification program and to report on their progress toward increased utilization of WMBE suppliers. Many of these companies already have substantial federal and/or state WMBE programs, yet none has provided evidence it has suffered competitively as a result. We doubt any additional California specific requirements we impose in this order will be the straw that breaks the camel's back.

Furthermore, we have decided to require small utilities to participate in the central clearinghouse verification program. As T/O Solutions noted in its November 12, 1987 workshop comments concerning the reluctance of small utilities and IECs to participate in the clearinghouse, "the data base will be enhanced by the increase of vendors that are available, whether they be in urban or rural areas."

We believe that mandatory participation in the clearinghouse program will assist all utilities to implement their WBME programs. Mandatory participation will also permit us to monitor WBMEs in a more uniform manner than would otherwise be possible. We also recognize that, as Assemblywoman Gwen Moore's office pointed out during the November 12, 1987 workshop, the idea of a master verification plan came out of a Commission decision concerning the IEC AT&T and it would be inconsistent for us to now take the position that this master verification program should not apply to AT&T. We will, therefore, require both small utilities and IECs to participate in the central clearinghouse program.

As we determined earlier, IECs may use different verification forms if this is necessary for them to comply with



established nationwide or multi-state WMBE programs or federally mandated WMBE requirements. All other utilities must use the standard verification form set forth in Attachment 1 to Appendix A.

Our decision to require all utilities to participate in the central clearinghouse program does not mean we intend to impose the same financial burdens on all utilities. We continue to recognize that small utilities and IECs cannot recover WMBE program expenses from ratepayers with the same ease as larger utilities. Nonetheless, since these entities will benefit from the operation of the clearinghouse it is fair to require them to provide some level of financial support. Once again, a reference to T/O Solutions' workshop comments is appropriate. In addressing what appears to be the real basis for the small utilities and interexchange carriers' reluctance to participate - the cost of supporting the central clearinghouse operation - T/O Solutions went on to point out a potential method of overcoming this reluctance:

"So that I would hope that all parties will be contributing the vendors that they are aware of and that they are using to the data base, and that there could be methods of establishing the cost pro-ration for the small utilities and perhaps the IECs that could be based on other formulas than would be used for the large utilities, such as usage, or some other factors that would help take care of the cost situation." (November 12, 1987 Workshop Transcript Volume 1, Page 64).

We agree that the issue of the financial burden imposed on small utilities and IECs can be addressed through a central clearinghouse cost allocation formula that differentiates between large utilities and small utilities and IECs. Rather than specify precisely the lesser financial burden to be borne by small utilities and IECs, we will modify the draft GO to require that the clearinghouse advisory board apportion the costs of operating the clearinghouse to the various utilities in an equitable manner.

### Central Clearinghouse

Based on the comments received from various parties, the section dealing with the establishment of a central clearinghouse needs to be revised.

We believe that rules and guidelines for establishing and operating the clearinghouse need to be developed in more detail than is possible in the framework of this general order.

CACD has certain reservations regarding the proposed method of administering the central clearinghouse. CACD suggests that one possible alternative for administering the central clearinghouse may be found in the Deaf Trust Fund, which is jointly administered by a committee of utility representatives and a representative of the deaf and disabled, with the participation of the Commission staff. Other commenters also support the participation of Commission staff in the administration of the clearinghouse.

We agree with CACD's suggestion and will modify the administration of the central clearinghouse accordingly. Therefore, we believe that an advisory board consisting of representatives from the following six utilities, a non-voting representative of CACD and a representative from a recognized WMBE group<sup>2</sup> should be established:

- a. Pacific Gas and Electric Company
- b. Pacific Bell
- c. Southern California Edison Company
- d. Southern California Gas Company

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<sup>2</sup> The seat of the WMBE representative on the Advisory Board shall rotate on an annual basis among different women and minority organizations. These organizations shall confer among themselves and select a representative. In the event these organizations are unable to agree on a representative, they may request that the director of CACD select a representative.

- e. General Telephone Company of California
- f. San Diego Gas & Electric Company

We invite comments from interexchange carriers, small local exchange carriers and other interested parties concerning their possible representation on the Advisory Board.

The Advisory Board will elect its own chairperson. The chairperson will be responsible for taking care of the administrative details associated with the Advisory Board. The Advisory Board will develop rules and guidelines for operating the central clearinghouse and will address questions such as:

1. Who, how much, and when does each utility pay for the clearinghouse?
2. Who will contract with a clearinghouse firm? How often?
3. How long will term of the chairman of the Advisory Board last?
4. How will concerns or grievances from funding utilities and WMBEs be handled?
5. Who has liability for clearinghouse activities?
6. Who owns the data base?
7. How detailed would the clearinghouse's verification of the vendor's WMBE status be?

In reviewing the draft GO we note that although the Advisory Board is required to meet within 90 days of the effective date of this decision, there is no specified time within which the Advisory Board is required to submit its proposed rules and guidelines to the Commission. Because we believe the public interest would be better served by the near term implementation of the central clearinghouse program, we will amend the draft GO to provide that the Advisory Board must meet within 30 days of the

effective date of this interim order and must submit its proposed rules and guidelines to the Commission within 90 days of the effective date.

The Advisory Board's proposed rules and guidelines for establishing, operating and maintaining the central clearinghouse shall be subject to the approval of the Director of CACD.

Joint Commenters propose that the Commission establish and administer the clearinghouse for the compilation and dissemination of WMBE verification information. The Commission does not have the employee resources to establish the clearinghouse and be responsible for its operation. However, we believe that the Commission should be represented on the Advisory Board and have modified the proposed general order accordingly.

The clearinghouse rules proposed by Joint Commenters suggest to us a number of minor changes that will improve or clearinghouse program. Our adopted general order will reflect these changes.

AB 1464, which became law on January 1, 1987, added Section 14030.5 to the Government Code. AB 1464, among other things, requires the State Department of Transportation (DOT) to certify socially and economically disadvantaged business concerns, as defined. Under the bill, all state agencies are required to accept DOT certification of any socially and economically disadvantaged business concern as a valid indication of the status of that business when awarding contracts. The bill prohibits state agencies from requiring the business to comply with any other certification process.

The definition of a "socially and economically disadvantaged business concern" (SEDBC) developed by DOT is very similar to the definition of a WMBE proposed in the draft GO. We believe that it may be in the ratepayers' best interest, in order to avoid cost duplication, to use the DOT developed certification program to verify the WMBE status of any business seeking utility

contracts. Indeed, the provisions of AB 1464 may preclude our imposition of any other verification program. Nonetheless, we must be satisfied that the DOT certification program is suitable for our purposes in implementing AB 3678. Therefore, the Advisory Board should work with DOT to modify, if necessary, the SEDBC certification program to make it applicable for verification of the WMBE status of businesses seeking utility contracts.

If the DOT certification program ultimately is used, Section 3 of the general order adopted herein will require substantial revision (for example, cost allocation may no longer be an issue). If that is the case, the Advisory Board shall submit its recommended Section 3 revisions to the director of CACD, who shall bring the matter before the Commission.

Section 3 will be revised to read as follows:

3. CENTRAL CLEARINGHOUSE

The utilities shall jointly establish a central clearinghouse for the sharing of WMBE identification and verification information. The central clearinghouse shall be a separate entity. It shall not serve as a representative for or on behalf of any individual or group or utility. It shall be operated by a contractor selected by an Advisory Board.

3.1 The primary purpose of the clearinghouse shall be to audit and verify the status of WMBE vendors/suppliers, and to establish and maintain a database of WMBE vendors/suppliers that is accessible to the Commission and to participating utilities. The database shall consist of WMBE vendors/suppliers whose WMBE status has been verified through a process of independent investigation by the clearinghouse.

- 3.2 Utility participation in 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. This participation shall not preclude auditing and verification by an individual utility if the utility deems such action necessary. Clearinghouse auditing does not relieve the Commission of the duty to audit or verify WMBE status pursuant to a complaint or an ongoing investigation.
- 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of representatives from the following six utilities, a non-voting representative of CACD and a representative from a recognized WMBE group:
- a. Pacific Gas and Electric Company
  - b. Pacific Bell
  - c. Southern California Edison Company
  - d. Southern California Gas Company
  - e. General Telephone Company of California
  - f. San Diego Gas & Electric Company
- 3.4 The seat of the representative for the WMBE group on the Advisory Board shall rotate on an annual basis among different women and minority organizations. These organizations shall confer among themselves and select a representative. In the event of disagreement among women and minority organizations regarding representation on the Advisory Board, the organizations may petition the Director of CACD to select the representative.

- 3.5 The Advisory Board shall develop a formula for equitably allocating the costs of establishing and maintaining the clearinghouse among the various utilities. These costs shall be primarily distributed among the large utilities. Any costs allocated to small utilities or IECs shall be substantially less than the costs allocated to the large utilities.
- 3.6 Within thirty (30) days after the effective date of this general order, the Advisory Board shall meet to develop operational guidelines for the clearinghouse, and to select a contractor to operate it. The Advisory Board shall consult with Caltrans to determine whether the utilization of that agency's present clearinghouse operation would meet the needs of the utilities and WMBEs while avoiding duplication of state agency effort. These proposed guidelines shall be submitted to the Commission within ninety (90) days after the effective date of this order. These guidelines will be subject to the approval of the Director of the Commission Advisory and Compliance Division. Thereafter, the Advisory Board shall meet at least annually to review the operational guidelines for the clearinghouse and to implement any necessary modifications.
- 3.7 The Advisory Board shall file an annual report with the Director of CACD no later than March 1 of each year. The report shall include a detailed description of the activities of the clearinghouse during the previous year.
- 3.8 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 affected utilities that the WMBE will be dropped from the shared database until the renewal is completed.

#### Internal Utility Outreach Program

Assemblywoman Gwen Moore contends that the draft GO does not adequately address the issue of internal company outreach. Her primary concern is the failure to incorporate a procedure for ensuring that all utility employees with any purchasing responsibilities be evaluated on the basis of their progress in meeting utility established goals. The basis for Moore's concern is the same as that underlying Minority/Female Coalition's recommendation that executive salaries be linked to utility WMBE achievement. Both parties feel that utilities will not be properly motivated to develop a successful WMBE program until it is clear that the failure to develop such a program will adversely affect the pocketbooks of utility employees, most especially those with significant management responsibilities.

Assemblywoman Moore urges that some form of linkage be adopted for all utility employees with procurement responsibilities. She notes that not only is such linkage a key portion of the PacBell Minority Task Force's recommendations, but that many utilities have already imposed such linkage in some fashion. She urges the Commission not to step backwards by permitting utilities to abandon such linkage in the future.

We agree that we should not permit utilities currently linking executive salaries to WMBE performance to abandon such linkage now, since to do so would be in conflict with our mandate to "clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women and minority business enterprises." (PU Code Section 8281 (b) (2) (C).) And we agree that the imposition of such linkage would no doubt provide a strong incentive to improve WMBE program performance. We believe,



however, that we can address a utility's lack of good faith or failure to achieve significant WMBE progress without getting directly involved in the determination of executive compensation.

Moore's proposed rules and guidelines include a number of suggestions for internal outreach program elements that may encourage utility employees to increase WMBE procurement. Joint Commenters incorporate Moore's thoughts and provide a number of additional suggestions.

Joint Small Utility Commenters suggest modifying the joint proposed rules' WMBE program staff requirement to state that small utilities are not required to increase their staff or to identify existing staff members to provide full-time WMBE program direction, but may instead assign responsibility for program direction and goal accomplishment to existing staff members. Joint Small Utility Commenters suggest an additional modification which would relieve small utilities from certain employee awareness requirements and from the duty to evaluate their procurement employees on the basis of progress in meeting the goals of their specific areas of procurement.

We believe the the sections of the joint proposed rules dealing with internal utility program development (particularly the section dealing with the evaluation of employees on the basis of their progress in meeting the goals of their specific area of procurement) provide a good incentive for the utilities and more importantly for their employees responsible for procurement activities to work in good faith to achieve significant WMBE progress. We will permit small utilities to use existing employees if such employees can effectively implement the utility's WMBE program. We will not, however, relieve small utilities from the proposed employee awareness requirements or from the duty to evaluate procurement employees on the basis of WMBE progress, since we see no logical reason to do so and prefer a uniform WMBE program.

approach wherever possible. We will adopt a slightly modified version of these sections, as shown in Section 4.1 of the adopted general order:

4.1 Internal Utility Program Development

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

4.1.2 Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMBE program. These employees shall be evaluated on the basis of their progress in meeting the goals of their specific area of procurement. Some of the major components of a training program shall include:

4.1.2.1 Review of WMBE program progress and results, and the development of future strategies, at officer level meetings. These meetings shall also include an exchange of ideas and a pledge of ongoing support for the program;

4.1.2.2 Meetings or seminars to familiarize employees with WMBE program objectives, goals, and operations, and with the special problems confronting WMBEs;

4.1.2.3 Programs to train and encourage employees involved in procurement activities to break

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3 It may not be necessary for small utilities to increase their staff or assign existing staff members full-time WMBE program responsibilities if they can implement their WMBE program effectively by assigning responsibilities for program direction and goal accomplishment to existing staff.

apart purchases and contracts as appropriate to accommodate the capabilities of WMBEs.

#### External Outreach Program

We believe that the sections of the joint proposed rules dealing with external outreach, coupled with several suggestions made earlier by SDG&E and PacBell, provide a sound basis for utility external outreach programs. We will adopt slightly modified versions of these recommendations. We will incorporate the suggestion of Joint Small Utility Commenters that we require that information on additional selection criteria be made available to unsuccessful WMBE bidders only when requested. The external outreach section of the adopted general order will read as follows:

#### 4.2 External Outreach

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

4.2.1 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:

4.2.1.1 Actively seek out opportunities to identify WMBE contractors and to expand WMBE source pools;

4.2.1.2 Actively support the efforts of organizations experienced in the field who promote the interests of WMBE contractors;

4.2.1.3 Work with WMBE 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;

4.2.1.4 At the request of any unsuccessful WMBE bidder, provide information concerning the relative range/ranking of the WMBE 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;

4.2.1.5 To the extent possible, make available to WMBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;

4.2.1.6 Encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMBEs;

4.2.1.7 Summarize this general order in its outreach program handouts. Such summaries shall state that WMBEs will be furnished a complete copy of this general order upon request.

### Subcontractors

The draft GO requires only the "non WMBE" prime contractors to develop a plan to increase the utilization of WMBE subcontractors. Certain parties have recommended that this program should not be limited to non-WMBE prime contractors and should apply to all prime contractors doing business with utilities. We agree with this recommendation and will modify the adopted general order accordingly. The Associated General Contractors of

California feel that the term "Subcontracting Opportunity" used in Section 4.2.2. should be defined. They offer the following definition:

"'Subcontracting Opportunity' means work encompassed within a prime contract normally performed by a subcontractor and is not intended to include any work regularly performed by the Prime Contractor with its own workforce."

While we appreciate the General Contractors' desire for certainty with regard to the definition of "subcontracting opportunity," we will refrain from adopting their definition at this time. This is an issue we feel could benefit from further consideration after we have taken a close look at the subcontracting programs the utilities develop in response to our general order.

SDG&E expressed a desire for clarity with regard to the definition of "subcontracting," by asking: What is considered to be subcontracting for a manufacturer or distributor of products or a supplier of services? Joint Commenters proposed to clarify this issue by excluding from subcontracting programs the procurement of products manufactured for general consumption. We agree that this issue requires clarification and will adopt Joint Commenters' recommendation.

Certain parties contend that it is inconsistent for the draft GO to require that the subcontracting programs established by the utilities apply to "Purchases/contracts which offer WMBE subcontracting opportunities, regardless of value, where appropriate," as well as to "Purchases/contracts exceeding \$500,000 for products and services," and "Construction contracts exceeding \$1,000,000. We assume that they feel that where we establish specific categories for procurements in excess of certain high dollar amounts it is unfair for us to also establish a catch-all category with no dollar threshold.

We do not agree that these categories are inconsistent. The two specific categories ensure that at least those larger procurement contracts will be subject to the subcontracting program but relieve utilities of the burdens associated with applying the program requirements to contracts of lesser importance. The catch-all category, on the other hand, will ensure WMBEs the opportunity to be considered as subcontractors in all appropriate contracts regardless of dollar value. We believe that contracts for less than the specified threshold values may provide a great number of subcontracting opportunities. We believe our approach appropriately balances the interests of both utilities and WMBEs.

Joint Commenters recommend that the utilities' subcontracting program not apply to any procurement area designated as an "exclusion" under the joint proposed rules. While we believe that the implementation of a vigorous subcontracting program in areas otherwise excluded from WMBE procurement goals because of the absence of available WMBE suppliers might prove a fertile method for seeking such suppliers and increasing their availability, we can also see how the utilities might find it burdensome to mount a subcontracting program for excluded categories of products or services. We will adopt Joint Commenters' recommendation.

Joint Commenters' recommend that we include the following provision in the general order section dealing with subcontracting:

The utility's prime contractors shall be encouraged to submit to the utility a plan that includes goals for the utilization of WMBEs as subcontractors, the plan 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.

We believe that such a provision would be a positive addition to the subcontracting program set forth in the draft GO. We will adopt a modified version of this provision.

Joint Small Utility Commenters suggest adding to this provision the phrase "if the parties to the contract mutually agree." We believe such language is unnecessary, since contracts are by their very nature the result of mutual agreement. Furthermore, such language would give contractors an undesirable degree of control over utility WMBE programs. We will reject this suggestion.

In response to a number of thoughtful suggestions set forth in PacBell and SDG&E comments on the ALJ's proposed interim order, we are modifying the subcontracting portions of the general order in several respects in order to encourage utilities to incorporate in all appropriate procurement documents statements concerning their WMBE policies which are designed to encourage contractors to use their best efforts to utilize WMBE subcontractors. These provisions of the general order will be permissive, rather than mandatory, in order to allow utilities sufficient flexibility to implement programs most appropriate to their particular situations.

Certain parties contend that the draft GO leaves unanswered questions regarding the details of measuring subcontracts as part of a utility's total WMBE activity. They ask, for example:

1. What is the nature of the subcontracting reports required by the CPUC?
2. Is the verification of prime contractor commitment versus results required?
3. Should utilities include subcontractor dollar amounts in the Annual Report on payments to WMBEs?
4. Do subcontracting dollars contribute to WMBE goal results?
5. Is verification of subcontractors required?

The general order as modified in response to the joint comments answers these questions as follows.

Section 4.3.7 provides that: "Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMBE subcontractors." Section 4.3.8 provides that: "Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and guarantees to engage WMBE subcontractors in all procurement categories which provide subcontracting opportunities." Sections 7.1.5 and 8.1.5 list the above reports as elements to be included in each utility's annual report and annual plan, respectively.

Verification of prime contractor commitment will not be required at this time. Section 4.3.4 of the adopted GO does provide, however, that: "Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMBEs 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."

Section 7.1.5 of the adopted GO provides that each utility's annual report to the Commission must include a summary of prime contractor utilization of WMBE subcontractors.

Section 4.3.9 of the adopted GO provides that each utility may include awards to verified WMBE subcontractors in its WMBE results. While verification of subcontractors is not required, awards to subcontractors may only be included in a utility's WMBE results if the WMBE status of the subcontractor has been verified.



The subcontracting program section of the adopted general order will read as follows:

4.3 Subcontracting Program

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

4.3.1 The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMBE prime contractor outreach program.

4.3.2 The subcontracting program shall apply to the following:

4.3.2.1 Purchases/contracts exceeding \$500,000 for products and services;

4.3.2.2 Construction contracts exceeding \$1,000,000;

4.3.2.3 Purchases/contracts which offer WMBE subcontracting opportunities, regardless of value, where appropriate.

4.3.3 The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like, or to the procurement of products and services in excluded categories.

4.3.4 Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMBEs 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.

- 4.3.5 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 AND MINORITY OWNED BUSINESS ENTERPRISES

- a. It is the policy of the utility that women and minority owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts.
  - b. 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.
  - c. The contractor agrees to provide prospective WMBE subcontractors with a copy of a WMBE status verification form approved by the California Public Utilities Commission, which is to be completed by the WMBE and forwarded to the central clearinghouse for verification.
- 4.3.6 Each utility is encouraged to inform suppliers of products and services that subcontracting with WMBEs 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.

- 4.3.7 Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMBE subcontractors.
- 4.3.8 Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and guarantees to engage WMBE subcontractors in all procurement categories which provide subcontracting opportunities.
- 4.3.9 Each utility may include awards to verified WMBE subcontractors in its WMBE results.

#### Complaint Procedure

In developing earlier versions of the draft GO, the ALJ proposed that the WMBEs use the Commission's established complaint procedure to settle any complaints against utilities.

Moore maintains that this suggested procedure of settling WMBE complaints violates D.82-12-101 in C.10308.

D.82-12-101 stated, among other things, that:

"We will require the establishment or expansion of complaint procedures with the purpose of identifying and improving problems encountered by minority vendors in doing business with the various utilities. During the course of these hearings, . . . F/MBEs attempted to communicate in their testimony the difficulty of finding a way to address procurement problems." (10 CPUC 2d 414, at 432-433 (1982).)

That decision ordered utilities to file, with their next general rate case applications, "A description of the complaint procedure available to F/MBE vendors including methods of making F/MBEs aware of the procedure." (Id., at 436.)

Although AB 3678 does not refer specifically require any complaint or appeals process, we agree with Assemblywoman Gwen Moore and other commenters that it is necessary to address complaint or appeals procedures in this rulemaking proceeding. As Moore points out, D.82-12-101 did require utilities to file a description of complaint procedures available to WMBE vendors. Since one purpose of AB 3678 is to "clarify and expand" the program for utility procurement of goods and services from WMBEs, it would be inappropriate for the Commission to be complacent about the existing status of the complaint and appeals procedures available to WMBEs.

The procedure to present complaints to the utility's management proposed by Joint Commenters will provide a fair and practical means to redress WMBE complaints. However, we believe that Joint Commenters' proposed procedure for appealing to the Commission the utility WMBE program administrator's decision is already available pursuant to PU Code § 1702 and Article 3 of the Commission's Rules of Practice and Procedure. We believe that the Commission's complaint procedure has worked successfully for all complainants including those unfamiliar with the Commission's procedures. The Commission's Consumer Affairs Branch and Public Advisor's Office have done a very successful job of assisting those unfamiliar with the Commission's complaint procedures. They can provide similar assistance to any grieved WMBE. Therefore, we do not believe that the Commission's complaint procedure or its rules need to be modified in the manner suggested by Joint Commenters.

We emphasize that the Commission only entertains complaints concerning alleged violations of law, Commission rules, orders and decisions, and utility tariffs, and not complaints which simply involve general contract disputes between a utility and an existing or prospective contractor (See D.88-03-024).

Goals

The ALJ's proposed decision and general order deferred consideration of WMBE goals until Phase 2 of this proceeding. Since Joint Commenters propose goals satisfactory to all major utilities subject to the general order, this deferral is no longer necessary or appropriate.

Joint Commenters propose that each utility set substantial and verifiable short-term (one year) and long-term (five year) goals for the utilization of WMBE contractors. The long-term goals are to establish minimum goals for each major product and service category in which the utility makes such outside purchases of not less than 15% for minority owned business enterprises and not less than 5% for women owned business enterprises.<sup>4</sup> These categories may be adapted to meet the utility's specific needs. Each utility is to use an appendix attached to the joint comments as an example of categories in which to establish goals. Small utilities may use the broad categories set forth in PU Code Section 8281 (b) (1) (B). Overall program goals, disaggregated by minorities (MBEs) and non-minority women (WBEs), are also to be established.

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4 A cross-out, and two sets of initials in the margin of the joint comments appear to indicate that two utilities preferred overall minimum goals to minimum goals for each procurement category. We reject this approach for three reasons. First, we believe that it is best to adopt a uniform set of requirements for all utilities so that we can better track each utility's progress in utilizing WMBEs. Second, the joint proposed rules approach allows the creation of excluded categories of products or services where WMBE suppliers are unavailable, and should enable each utility the flexibility needed to appropriately tailor goal setting without such a drastic reduction in program requirements. Third, the use of overall minimum goals instead of category by category goals would enable utilities to make apparent, but illusory, progress in WMBE procurement simply by loading up on WMBE contractors in certain categories while virtually ignoring the rest. We do not feel that such an approach is what the Legislature had in mind when it enacted AB 3678.

The joint comments note that the long term goals noted above do not preclude utilities from seeking parity with public agencies which are awarding 30% or more of their contracts to WMBEs.

Factors to be used in setting goals include, but are not limited to: (1) Total utility purchasing/contracting projections, (2) Market dynamics based on historical data and trends, and (3) WMBE availability and competitiveness in the geographical area served by the utility.

Joint Commenters propose that goals be set for each major product or service category which provides opportunities for procurement. Where it is clearly evident that women or minority vendors do not provide a specific product or service, or that sole source procurement is the only available procurement method, however, Joint Commenters would permit the creation of an "exclusion." Goals would be expressed as a percentage of dollars awarded to outside vendors in each category by the utility (excepting exclusions).

Joint Commenters would also permit utilities which are presently purchasing products or services from affiliates to consider those purchases to be an exclusion, provided that as a part of the utility's outreach program the utility encourages the affiliate to establish an appropriate subcontracting program where the affiliate employs subcontractors.

Under Joint Commenters' approach, where penetration of WMBEs is relatively low utilities are to take steps to encourage WMBE entry into the marketplace, in addition to any other outreach activities. Each utility is also required to make special efforts to increase utilization where there has been low utilization of WMBEs such as legal and financial services and areas that are considered technical in nature.

Joint Commenters suggest the addition of a section noting that no penalties shall be imposed by the Commission for any

utility's failure to meet and/or exceed goals, but that a Commission finding of a willful violation of these rules or any related Commission decision or order shall result in the imposition of the appropriate penalties.

We commend Joint Commenters for developing proposed rules dealing with the establishment of WMBE procurement goals in a manner acceptable to the major utilities subject to these rules. We are pleased that the interexchange telecommunications companies and small utilities which commented on the joint proposed rules appear willing to accept a program similar to that proposed by Joint Commenters. We understand, and will accommodate, the interexchange companies' desire to be allowed to use multi-state or national goals and verification forms. We will, however, reject the recommendation of AT&T and the Joint Small Utility Commenters that we allow such companies to set overall procurement goals not based on product or service categories. We understand their reluctance to embrace such an approach, but are not convinced that we should adopt separate requirements for such entities. We are likewise not convinced that we should allow small utilities freedom from the initial long-term goals set forth in the joint proposed rules. We prefer a uniform program wherever possible.

We will adopt a modified version of Joint Commenters' proposed rules on goals. Our version is designed to capture the essence of Joint Commenters' proposal while making it easier for us to implement. We will allow utilities to create "excluded categories" of products or services where they can demonstrate the unavailability of WMBE suppliers. Utilities can note such categories in their annual reports to the Commission. In order to ensure that such excluded categories meet real needs and do not continue to exist after WMBE suppliers in such categories become available, we will require utilities to report any efforts made to recruit WMBE suppliers in these categories and to note in their annual plans any plans they have to recruit such suppliers in the

future. We believe that a requirement that utilities be prepared to justify the continued existence of excluded categories does not violate the essence of the joint proposed rules on goals, but is simply a necessary component of any program designed to properly implement AB 3678.

Utilities presently purchasing products or services from affiliates will be able to subtract such purchases from the dollar base used to establish goals in those categories of products or services, so long as they encourage their affiliates to establish appropriate subcontracting programs.

The section of the adopted general order dealing with goals will read as follows:

6. GOALS

Each utility shall annually set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBE contractors. Goals shall be set annually for each major product and service category which provides opportunities for procurement. Each utility shall use Attachment 2 as an example of categories in which to establish goals. Small utilities may choose to establish goals for only the broad categories set forth in Public Utilities Code Section 8281 (b) (1) (E) (i.e., technology, equipment, supplies, services, materials and construction).

6.1 The utilities shall consider the following factors in setting their goals:

6.1.1 Total utility purchasing and/or contracting projections;

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5 "Substantial goals" mean goals which are realistic and clearly demonstrate a utility's commitment to increase WMBEs' share of the utility's purchases and contracts.



- 6.1.2 Availability of WMBE contractors and competitiveness in the geographical area served by the utility;
  - 6.1.3 Market dynamics based on historical data and trends;
  - 6.1.4 Other appropriate factors which would increase the WMBEs' share of utility business.
- 6.2 Each utility shall establish initial minimum long-term goals for each 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. The specification of minimum 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) (B) are awarding 30% or more of their contracts to WMBEs.
- 6.3 Overall program goals shall also be established for both minority owned business enterprises (MBEs) and non-minority women owned business enterprises (WBEs).
- 6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. Goals need not be set for products or services which fall within an "excluded category" created by a utility pursuant to Section 6.5 of this general order because of the unavailability of WMBEs capable of supplying those products or services.
- 6.5 A utility may create an "excluded category" of products or services where it is clearly evident that WMBEs do not provide a specific product or

service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMBEs capable of supplying such products or services. Because there may in the future be WMBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of any excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMBE program progress and future plans.

- 6.6 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 WMBE providers 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 subcontracting 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.
- 6.7 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.

- 6.8 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 fall within an excluded category established by the utility pursuant to Section 6.5.
- 6.9 Payments to other utilities and franchise tax fees need not be included in the procurement dollar base used to establish goals.
- 6.10 Each utility shall make special efforts to increase utilization of WMBEs in product or service categories where there has been low utilization of WMBEs, such as legal and financial services and areas that are considered technical in nature.
- 6.11 In procurement areas where penetration of WMBEs is low or non-existent, each utility shall take steps to encourage WMBE entry into the marketplace, in addition to any outreach activity.
- 6.12 Interexchange telecommunications corporations may file with the Commission nationwide or multiple-state WMBE goals or goals established for a federally mandated WMBE procurement program in lieu of California-specific goals.
- 6.13 Except for any penalty imposed as a result of a Commission-initiated investigation, no penalty shall be imposed for failure of any utility to meet and/or exceed goals.
- 6.14 Utilities shall report their goals in their annual plans.

### Annual Reports and Annual Plans

The adopted general order addresses the reporting requirements proposed by Joint Commenters, and includes several additional requirements necessary to allow us to keep track of utility efforts to recruit WMBE suppliers of products or service in procurement categories where WMBE utilization has been low or non-existent.

In addition, we will on our own initiative modify certain portions of the draft GO to ensure full compliance with PU Code Section 8283, which requires us to require utilities to submit annually detailed and verifiable plans for increasing women and minority business enterprise procurement in all categories. Section 8283 (b) states that these annual plans "shall include short-and long-term goals and timetables, ...and shall include methods for encouraging both prime contractors and guarantees to engage women and minority business enterprises in subcontracts in all categories which provide subcontracting opportunities."

While the draft GO required utilities to submit plans for increasing WMBE procurement in purchases and or contracts as one element of their annual reports, we believe it is more appropriate to distinguish between annual plans and annual reports, since both are required by the legislation. Both the annual report and the annual plan may be incorporated within one physical document, so long as all required elements are included. We also believe that if we are fully comply with Section 8283 we must specify in greater detail the minimum contents of the annual plans.

We will also add to the general order a section dealing with the Commission's own obligation to report to the Legislature on the progress made by utilities to implement these rules, to include in this report our recommendations to the utilities for achieving maximum results, and to recommend legislation if needed.

The sections of the adopted general order dealing with reporting requirements will read as follows:

7. ANNUAL REPORT

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, an Annual Report on their WMBE Program.

7.1 The Annual Report shall contain at least the following elements:

- 7.1.1 A description of WMBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities;
- 7.1.2 A summary of WMBE 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;
- 7.1.3 An itemization of WMBE program expenses;
- 7.1.4 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;
- 7.1.5 A summary of prime contractor utilization of WMBE subcontractors;
- 7.1.6 A list of WMBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status;

- 7.1.7 A summary of purchases and/or contracts for products and services in excluded categories.
- 7.1.8 A description of any efforts made to recruit WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;
- 7.1.9 A justification for the continued existence of 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 WMBE suppliers. Such justification must include a description of any efforts made to find and or recruit WMBE suppliers of products or services in the excluded category.
- 7.2 The annual WMBE report shall include either data pertaining to the utility's California operations or, in the case of interexchange telecommunications corporations, data regarding their plans for nationwide or multiple-state WMBE goals and outreach programs, or the results and plans for any federally mandated WMBE goals and outreach programs.
- 7.3. This general order is not intended to permit erosion of WMBE programs and reporting presently engaged in by a utility.
- 7.4 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).

8. ANNUAL PLAN

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for increasing women and minority business enterprise procurement in all categories.

8.1 The Annual Plan shall contain at least the following elements:

8.1.1 Short, mid, and long term goals set as required by Section 5, SUPRA;

8.1.2 A description of WMBE program activities planned for the next calendar year. This description shall include both internal and external activities;

8.1.3 Plans for recruiting WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;

8.1.4 Plans for seeking and or recruiting WMBE 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 WMBE suppliers.

- 8.1.5 Plans for encouraging both prime contractors and grantees to engage women and minority business enterprises in subcontracts in all categories which provide subcontracting opportunities.
- 8.1.6 Plans for complying with the WMBE program guidelines established by the Commission as required by Public Utilities Section 8283 (c). The Commission's CACD will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

9. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities undertaken by each utility to implement Public Utilities Code Sections 8281 through 8285 and this general order, as required by Section 8283 (e).

- 9.1 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.
- 9.2 This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this general order.



En Banc Hearing

Parties were advised by the ALJ that, if requested by any party, the Commission would hold an en banc hearing to allow parties to present oral arguments on the proposed order. On further reflection, we believe that an en banc hearing, focused on the ALJ's proposed draft, is not necessary. We have received extensive comments from parties (as well as their input in a subsequent workshop presided over by the ALJ) on the draft GO, and all significant issues raised by the parties have been addressed in the final general order. We also recognize the mandate of the legislature to implement these rules without undue delay. Therefore, we will adopt the general order as revised herein without holding additional hearings for oral argument.

Findings of Facts

1. The California Legislature enacted AB 3678, which became law in September 1986 with the stated purpose of implementing a program to encourage, recruit, and utilize WMBEs in the procurement of contracts from every gas, electric, and telephone utility with gross annual revenues exceeding \$25,000,000 (and its Commission regulated subsidiaries and affiliates).
2. It is the intent of AB 3678 to aid the interest of WMBEs.
3. AB 3678 added Sections 8281 through 8285 to the Public Utilities Code.
4. The Commission issued R.87-02-026 as means of implementing AB 3678.
5. Seventeen utilities were made respondents to R.87-02-026.
6. The respondents were ordered to file proposed rules and guidelines to implement PU Code Sections 8281-8285. The requested rules were to address the entire statutory scheme.
7. Interested parties were also allowed to file proposed rules.

8. On July 15, 1987, an informal conference, chaired by the counsel for the Public Staff Division (now the Division of Ratepayer Advocates), was held to determine the areas of agreement and disagreement among parties with regard to the proposed rules and guidelines.

9. Based on the parties' proposed rules and the comments received at the informal conference, the ALJ issued proposed rules and guidelines to implement PU Code Sections 8281-8285.

10. The proposed rules and guidelines were issued in the form of a draft general order.

11. Parties were required to review the draft GO and provide comments on it.

12. On November 12, 1987, a workshop was held to receive comments and recommendations for improving the draft GO.

13. Parties provided extensive comments on the draft GO.

14. This interim opinion addresses all significant issues raised by parties.

15. The proposed rules and guidelines apply to all utilities covered by AB 3678, are likely to be modified on the basis of experience gained in their application, and do not affect practice before this Commission.

16. The Commission's Rules of Practice and Procedures include rules that govern practice before the Commission.

17. The adopted general order will implement the requirements of AB 3678.

18. The rules and guidelines adopted by this general order need to be supplemented in the next phase of this proceeding by a decision addressing at least the following issues:

- a. What forum should be utilized by persons wishing to voice their concerns and suggestions regarding the utilities' implementation of WMBE programs (i.e., should general rate cases continue to provide the forum, or should a generic annual WMBE proceeding be developed?

- b. If a generic proceeding is utilized, how will any costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases?

Conclusions of Law

1. The proposed rules and guidelines should be issued in the form of a general order.
2. The general order included in Appendix A should be adopted without further hearings.

INTERIM ORDER

IT IS ORDERED that:

1. Appendix A is adopted as a general order of the Commission.
2. This rulemaking remains open for further proceedings to supplement this general order.
3. Phase 2 of this proceeding will address at least the following:
  - a. What forum should be utilized by persons wishing to voice their concerns and suggestions regarding the utilities' implementation of WMBE programs (i.e., should general rate cases continue to provide the forum, or should a generic annual WMBE proceeding be developed?
  - b. If a generic proceeding is utilized, how will any costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases?
4. Within 60 days of the date of mailing of this order, respondents shall file written comments, including specific proposals, addressing the matters set forth in Ordering

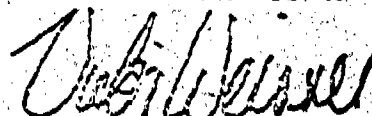
Paragraph 3. Other parties may file written comments under the same time schedule. The original and 12 copies of all such comments shall be filed with the Commission's Docket Office. In addition to conforming to the requirements of Article 2 of the Commission's Rules of Practice and Procedure, such comments shall contain a certificate indicating service on all other respondents and parties to the proceeding.

This order becomes effective 30 days from today.

Dated April 27, 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.



Victor Weisser, Executive Director

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GENERAL ORDER 156

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS TO INCREASE  
PARTICIPATION OF FEMALE AND MINORITY BUSINESS ENTERPRISES IN  
PROCUREMENT OF CONTRACTS FROM UTILITIES AS REQUIRED BY PUBLIC  
UTILITIES CODE SECTIONS 8281-8285

Adopted April 27, 1988. Effective May 30, 1988.  
Decision 88-04-057, R.87-02-026.

1. GENERAL

1.1 Intent

1.1.1

Purpose - These rules implement PU Code Sections 8281-8285 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 female and minority business enterprises' (W/MBE) 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

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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.

1.3.2

"Women-owned business" 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 women.

1.3.3

"Minority-owned business" means a business enterprise that is at least 51% owned by a minority individual or group; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and 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 Americans, and other groups.

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1 As provided for in Article XII of the California Constitution.

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- 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 should be either U.S. citizens or legal aliens with permanent residence status in the United States.
- 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 Islands, in particular, American Indians, Eskimos, Aleutes, 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 "Control" means exercising the power to make policy decisions.

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- 1.3.11 "Operate" means being actively involved in the day-to-day management and not merely acting as officers or directors.
- 1.3.12 "Goal" means a target which when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.
- 1.1.13 "Excluded category" means a category of products or services which may be removed from the dollar base used to establish goals, pursuant to Section 6.5 of this general order, because of the established unavailability of WMBEs capable of supplying those products or services.
- 1.3.13 "Short-term goal" means a goal applicable to a period of (1) one year.
- 1.3.14 "Mid-term goal" means a goal applicable to a period of (3) three years.
- 1.3.15 "Long-term goal" means a goal applicable to a period of (5) five years.
- 1.3.16 "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.
- 1.3.17 "Small utility" means all electric, gas, and telephone utilities subject to these rules which had less than \$250 million in annual operating revenues attributable to its California-regulated utility operations according to the most recent annual report filed with the Commission.
- 1.3.18 "Interexchange telecommunications corporation" means any corporation authorized by the Commission to provide



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intrastate, interLATA services within California.

1.3.19 "Central clearinghouse" means an entity that shall serve as a shared database unit and WMBE verification organization that serves the needs of the utilities and the Commission. It shall not serve as a representative for or on behalf of any individual or group.

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.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of WMBEs for participation in utility WMBE procurement programs.

2.1 WMBE Status Verification Form Each utility shall use the standard Commission-approved form set forth in Attachment 1, or, in the case of interexchange telecommunications corporations, as specified in Section 2.2, to verify the WMBE status of participants in its WMBE program. The standard form may be modified by the Clearinghouse Advisory Board as

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necessary, so long as it requires the same essential information.

2.2

An interexchange telecommunications corporation may use its own internally-developed verification form if the use of such form is necessary to comply with an established nationwide or multi-state WMBE program or federally mandated WMBE requirements, provided it is approved by the Director of the Commission Advisory and Compliance Division (CACD) and contains the following information:

2.2.1 WMBE's name, address, and telephone number;

2.2.2 Type of ownership, i.e., sole ownership, partnership, corporation;

2.2.3 Type of business, i.e., product or service offered;

2.2.4 Ethnic and gender classifications included in PU Code Section 8282 (b);

2.2.5 Signature of principal owner/officer and date of signature;

2.2.6 Declaration of penalty statement contained in PU Code Section 8285;

2.2.7 Requirement for immediate notification of ownership change and completion of new verification form;

2.2.8 Itemization and proof of certification by other agencies.

2.2.9 Declaration under penalty of perjury that the information contained on the form is true and correct.

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- 2.3 The verification form may be appended to any utility supplier information/qualification form and shall be forwarded when complete by the utility to the central clearinghouse described in Section 3 of this general order.
- 2.4 The verification form may be supplied to WMBE contractors by the clearinghouse. Contractors may in turn supply the verification form to potential subcontractors. Contractors or subcontractors may complete verification forms and return them to the clearinghouse for processing and inclusion, if appropriate, in the database.
- 2.5 In assessing the suitability of a WMBE 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 WMBE.
- 2.6 WMBEs shall be required to submit verification forms at least once every three years.
- 2.7 Completion of the verification form only initiates a verification of the business's WMBE status and shall neither be construed as an endorsement of its ability to perform nor guarantee its business with the utility.
- 2.8 WMBE verification forms shall be available for inspection by the Commission.

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- 2.9 Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code Section 8285.

3. CENTRAL CLEARINGHOUSE

The utilities shall jointly establish a central clearinghouse for the sharing of WMBE identification and verification information. The central clearinghouse shall be a separate entity. It shall not serve as a representative for or on behalf of any individual or group or utility. It shall be operated by a contractor selected by an Advisory Board.

- 3.1 The primary purpose of the clearinghouse shall be to audit and verify the status of WMBE vendors/suppliers, and to establish and maintain a database of WMBE vendors/suppliers that is accessible to the Commission and to participating utilities. The database shall consist of WMBE vendors/suppliers whose WMBE status has been verified through a process of independent investigation by the clearinghouse.

- 3.2 Utility participation in 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. This participation shall not preclude auditing and verification by an individual utility if the utility deems such action necessary. Clearinghouse auditing does not relieve the Commission of the duty to audit or verify WMBE status pursuant to a complaint or an ongoing investigation.

- 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of representatives from the following six utilities, a non-voting representative of CACD and a

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representative from a recognized WMBE group:

- a. Pacific Gas and Electric Company
- b. Pacific Bell
- c. Southern California Edison Company
- d. Southern California Gas Company
- e. General Telephone Company of California
- f. San Diego Gas & Electric Company

3.4

The seat of the representative for the WMBE group on the Advisory Board shall rotate on an annual basis among different women and minority organizations. These organizations shall confer among themselves and select a representative. In the event of disagreement among women and minority organizations regarding representation on the Advisory Board, the organizations may petition the Director of CACD to select the representative.

3.5

The Advisory Board shall develop a formula for equitably allocating the costs of establishing and maintaining the clearinghouse among the various utilities. These costs shall be primarily distributed among the large utilities. Any costs allocated to small utilities or IECs shall be substantially less than the costs allocated to the large utilities.

3.6

Within thirty (30) days after the effective date of this general order, the Advisory Board shall meet to develop operational guidelines for the clearinghouse, and to select a contractor to operate it. The Advisory Board shall consult with Caltrans to determine whether the utilization of that agency's present clearinghouse operation would meet the needs of the utilities and WMBEs while avoiding duplication of state agency effort.

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These proposed guidelines shall be submitted to the Commission within ninety (90) days after the effective date of this order. These guidelines will be subject to the approval of the Director of the Commission Advisory and Compliance Division. Thereafter, the Advisory Board shall meet at least annually to review the operational guidelines for the clearinghouse and to implement any necessary modifications.

3.7 The Advisory Board shall file an annual report with the Director of CACD no later than March 1 of each year. The report shall include a detailed description of the activities of the clearinghouse during the previous year.

3.8 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 affected utilities that the WMBE will be dropped from the shared database until the renewal is completed.

4. UTILITY IMPLEMENTATION

Each utility's WMBE program shall be designed to ensure that a fair proportion of product and services contracts are awarded to WMBEs. The following minimum program elements shall be incorporated into each utility's WMBE program.

4.1 Internal Utility Program Development

Each Utility shall maintain an appropriately sized staff to provide overall WMBE program direction and guidance and

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to implement WMBE program requirements. 2

4.1.2

Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMBE program. These employees shall be evaluated on the basis of their progress in meeting the goals of their specific area of procurement. Some of the major components of a training program shall include:

4.1.2.1 Review of WMBE program progress and results, and the development of future strategies, at officer level meetings. These meetings shall also include an exchange of ideas and a pledge of ongoing support for the program;

4.1.2.2. Meetings or seminars to familiarize employees with WMBE program objectives, goals, and operations, and with the special problems confronting WMBEs;

4.1.2.3. Programs to train and encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMBEs.

4.2 External Outreach

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

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2 It may not be necessary for small utilities to increase their staff or assign existing staff members full-time WMBE program responsibilities if they can implement their WMBE program effectively by assigning responsibilities for program direction and goal accomplishment to existing staff.

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4.2.1

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:

4.2.1.1 Actively seek out opportunities to identify WMBE contractors and to expand WMBE source pools;

4.2.1.2 Actively support the efforts of organizations experienced in the field who promote the interests of WMBE contractors;

4.2.1.3 Work with WMBE 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;

4.2.1.4 At the request of any unsuccessful WMBE bidder, provide information concerning the relative range/ranking of the WMBE 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;

4.2.1.5 To the extent possible, make available to WMBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;

4.2.1.6 Encourage employees involved in procurement activities to break apart purchases and contracts as



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appropriate to accommodate the capabilities of WMBEs;

4.2.1.7 Summarize this general order in its outreach program handouts. Such summaries shall state that WMBEs will be furnished a complete copy of this general order upon request.

4.3 Subcontracting Program

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

4.3.1 The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMBE prime contractor outreach program.

4.3.2 The subcontracting program shall apply to the following:

4.3.2.1 Purchases/contracts exceeding \$500,000 for products and services;

4.3.2.2 Construction contracts exceeding \$1,000,000;

4.3.2.3 Purchases/contracts which offer WMBE subcontracting opportunities, regardless of value, where appropriate.

4.3.3 The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like, or to the procurement of products and services in excluded categories.

4.3.4 Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMBEs as subcontractors. Prime contractors shall be encouraged to submit to the

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utility plans that include goals for the utilization of WMBEs 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.

4.3.5

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 AND MINORITY OWNED BUSINESS ENTERPRISES

- a. It is the policy of the utility that women and minority owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts.
- b. 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.
- c. The contractor agrees to provide prospective WMBE subcontractors with a copy of a WMBE status verification form approved by the California Public Utilities Commission, which is to be completed by the WMBE and forwarded to the central clearinghouse for verification.

4.3.6

Each utility is encouraged to inform suppliers of products and services that subcontracting with WMBEs is a factor that will be considered in the bid evaluation process. A statement to

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that effect could be included in all appropriate procurement documents.

4.3.7 Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMBE subcontractors.

4.3.8 Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and grantees to engage WMBE subcontractors in all procurement categories which provide subcontracting opportunities.

4.3.9 Each utility may include awards to verified WMBE subcontractors in its WMBE results.

4.4 Internal Utility Appeals Process

Each utility shall provide a mechanism through which WMBE contractors or prospective WMBE contractors can present complaints to the utility's management.

4.4.1 Complaints shall first be submitted to a WMBE program administrator within a reasonable time after the event complained of. WMBEs should be encouraged to make their complaints in writing.

4.4.2 Complaints shall be reviewed and investigated by the administrator and the administrator's decision communicated to the complainant within twenty (20) working days of receipt of the complaint.

5. WMBE COMPLAINTS TO THE COMMISSION

In the event that a WMBE believes that a utility WMBE program administrator's decision, or any other act or omission of the utility, violates any provision of law or of any order or rule of the Commission, the WMBE may file a complaint with the Commission pursuant to Public Utilities Code Section 1702 and

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Article 3 of the Commission's Rules of Practice and Procedure (Title<sup>3</sup> 20, Chapter 1, of the California Administrative Code).

5.1 WMBE complaints filed with the Commission shall be handled in a timely manner in accordance with the Commission's Rules of Practice and Procedure. Pursuant to Rule 13, defendant utilities must answer such complaints within thirty (30) days. Complaints which do not allege that the matter has first been brought to the staff for informal resolution may, under Rule 10, be referred to the staff to attempt to resolve the matter informally. In appropriate circumstances, the expedited complaint procedure set forth in Rule 13.2 of the Commission's Rules may be utilized.

5.2 The Commission's Office of the Public Advisor may assist WMBEs in preparing to file complaints against utilities.

6. GOALS

Each utility shall annually set substantial<sup>4</sup> and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBE contractors. Goals shall be set annually for each major product and service category which provides opportunities for procurement. Each utility shall use Attachment 2 as an example of categories in which to establish goals. Small utilities may choose to establish goals for only the broad categories set forth in Public Utilities Code Section 8281 (b)(1)(E) (i.e., technology, equipment, supplies, services, materials and construction).

6.1 The utilities shall consider the following factors in setting their goals:

---

<sup>3</sup> 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 type disputes between a utility and an existing or prospective WMBE contractor.

<sup>4</sup> "Substantial goals" mean goals which are realistic and clearly demonstrate a utility's commitment to increase WMBEs' share of the utility's purchases and contracts.

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6.1.1 Total utility purchasing and/or contracting projections;

6.1.2 Availability of WMBE contractors and competitiveness in the geographical area served by the utility;

6.1.3 Market dynamics based on historical data and trends;

6.1.4 Other appropriate factors which would increase the WMBEs' share of utility business.

6.2 Each utility shall establish initial minimum long-term goals for each 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. The specification of minimum 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) (B) are awarding 30% or more of their contracts to WMBEs.

6.3 Overall program goals shall also be established for both minority owned business enterprises (MBEs) and non-minority women owned business enterprises (WBEs).

6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. Goals need not be set for products or services which fall within an "excluded category" created by a utility pursuant to Section 6.5 of this general order because of the unavailability of WMBEs capable of supplying those products or services.

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6.5

A utility may create an "excluded category" of products or services where it is clearly evident that WMBEs do not provide a specific product or service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMBEs capable of supplying such products or services. Because there may in the future be WMBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of any excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMBE program progress and future plans.

6.6

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 WMBE providers 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 subcontracting 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.

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- 6.7 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.
- 6.8 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 fall within an excluded category established by the utility pursuant to Section 6.5.
- 6.9 Payments to other utilities and franchise tax fees need not be included in the procurement dollar base used to establish goals.
- 6.10 Each utility shall make special efforts to increase utilization of WMBEs in product or service categories where there has been low utilization of WMBEs, such as legal and financial services and areas that are considered technical in nature.
- 6.11 In procurement areas where penetration of WMBEs is low or non-existent, each utility shall take steps to encourage WMBE entry into the marketplace, in addition to any outreach activity.
- 6.12 Interexchange telecommunications corporations may file with the Commission nationwide or multiple-state WMBE goals or goals established for a federally mandated WMBE procurement program in lieu of California-specific goals.
- 6.13 Except for any penalty imposed as a result of a Commission-initiated investigation, no penalty shall be imposed for failure of any utility to meet and/or exceed goals.

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6.14 Utilities shall report their goals in their annual plans.

7. ANNUAL REPORT

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, an Annual Report on their WMBE Program.

7.1 The Annual Report shall contain at least the following elements:

7.1.1 A description of WMBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities;

7.1.2 A summary of WMBE 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;

7.1.3 An itemization of WMBE program expenses;

7.1.4 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;

7.1.5 A summary of prime contractor utilization of WMBE subcontractors;

7.1.6 A list of WMBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status;

7.1.7 A summary of purchases and/or contracts for products and services in excluded categories.



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7.1.8 A description of any efforts made to recruit WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;

7.1.9 A justification for the continued existence of 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 WMBE suppliers. Such justification must include a description of any efforts made to find and or recruit WMBE suppliers of products or services in the excluded category.

7.2 The annual WMBE report shall include either data pertaining to the utility's California operations or, in the case of interexchange telecommunications corporations, data regarding their plans for nationwide or multiple-state WMBE goals and outreach programs, or the results and plans for any federally mandated WMBE goals and outreach programs.

7.3 This general order is not intended to permit erosion of WMBE programs and reporting presently engaged in by a utility.

7.4 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).

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8. ANNUAL PLAN

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for increasing women and minority business enterprise procurement in all categories.

8.1

The Annual Plan shall contain at least the following elements:

8.1.1 Short, mid, and long term goals set as required by Section 5, supra;

8.1.2 A description of WMBE program activities planned for the next calendar year. This description shall include both internal and external activities;

8.1.3 Plans for recruiting WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;

8.1.4 Plans for seeking and or recruiting WMBE 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 WMBE suppliers.

8.1.5 Plans for encouraging both prime contractors and grantees to engage women and minority business enterprises in subcontracts in all categories which provide subcontracting opportunities.

8.1.6 Plans for complying with the WMBE program guidelines established by the Commission as required by Public Utilities Section 8283 (c).

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The Commission's CACD will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

9. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities undertaken by each utility to implement Public Utilities Code Sections 8281 through 8285 and this general order, as required by Section 8283 (e).

9.1

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.

9.2

This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this general order.

(END OF APPENDIX A)

# CLEARING HOUSE

## F/MBE VERIFICATION FORM

### ATTENTION

Female/Minority Business Enterprises are defined as businesses which:

are at least fifty-one (51) percent owned by a minority/woman individual or group members who are <sup>United States</sup> citizens or permanent residents and who also control and operate the business.

for publicly owned companies, at least fifty-one (51) percent of the stock is owned by one or more <sup>United States</sup> citizens or permanent residents who are minority/women individuals or group members, and who also control and operate the business.

Minority group members include male or female:

\*

- Hispanic Americans (5)
- Black Americans (6)
- Asian Pacific Americans (7)
- Native Americans (8)
- Other minority group designated by SBA or IC.

Women group members are:

- Non-ethnic women (3)  
*minority*

\* all racial/ethnic classification to be described

1. Full Company Name				1a. Co. Abbreviation										
2. Business Address	Number/Street	City	State	Zip Code										
3. Mailing/Billing Name and Address (if different)	Name	Number/Street	City	State Zip Code										
4. Local Contact Person Title Address				Telephone Number(s) Business: (____) _____ Emergency: (____) _____										
5. Business Started														
6. Business Type	<input type="checkbox"/> Corporation <input type="checkbox"/> Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other:													
7. Small Business Administration	According to the Small Business Administration (SBA) guidelines, does your company qualify as a small business? If unsure, please contact your Local Small Business Administration Office for clarification. <input type="checkbox"/> Yes <input type="checkbox"/> No													
8. List Product/Service That Correspond To Your Business.	Product/Service: (TO BE DISCUSSED WITH OTHER UTILITIES) Is Your Company A: <input type="checkbox"/> Manufacturer <input type="checkbox"/> Distributor <input type="checkbox"/> Service Company													
9. Is Equipment List Available?	<input type="checkbox"/> Yes    Facility Space <input type="checkbox"/> No    (In Sq. Ft.)    Office _____ Shop _____ Warehouse _____ Dock _____													
10. Number of Employees	Professional/Technical _____ Crafts _____ Other _____ (Specify) _____													
11. Employees Unionized?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what union _____													
12. Outside Support	Consultants: <input type="checkbox"/> Management <input type="checkbox"/> Engineering <input type="checkbox"/> Other (BDO's, etc.) <input type="checkbox"/> CPA <input type="checkbox"/> Marketing <input type="checkbox"/> None Required													
13. Gross Sales	\$ _____ Last Year    \$ _____ This Year    \$ _____ Next Year (projected)													
14. Pricing Basis	<input type="checkbox"/> Quote <input type="checkbox"/> Hourly/Day Rate <input type="checkbox"/> As Required <input type="checkbox"/> Catalog <input type="checkbox"/> Regulated <input type="checkbox"/> Commission <input type="checkbox"/> Price List <input type="checkbox"/> Estimate <input type="checkbox"/> Other													
15. Market Area	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Regional <input type="checkbox"/> National <input type="checkbox"/> International													
16. Three Significant Clients (References)	_____ _____ _____													
17. Principal Officers of Company	<table border="0" style="width:100%"> <tr> <td style="width:50%">Name</td> <td style="width:25%">Title</td> <td style="width:25%">Years Experience</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </table>				Name	Title	Years Experience	_____	_____	_____				
Name	Title	Years Experience												
_____	_____	_____												
18. Non-Minority	<input checked="" type="checkbox"/> M3 Non-Minority Male													
18. Minority and/or Women Ownership (Please check appropriate box, if applicable.)	<table border="0" style="width:100%"> <tr> <td><input type="checkbox"/> F3 Non-minority Female</td> <td><input type="checkbox"/> F5 Hispanic</td> <td><input type="checkbox"/> F8</td> <td><input type="checkbox"/> M8</td> <td>None</td> </tr> <tr> <td><input type="checkbox"/> F4 Other Designated Minority</td> <td><input type="checkbox"/> F6 Black</td> <td><input type="checkbox"/> F7</td> <td><input type="checkbox"/> M7 Asian Pacific</td> <td></td> </tr> </table> <p style="font-size: small;">Company must be at least 51% owned and operated by one of the above groups.    F = Female    M = Male</p>				<input type="checkbox"/> F3 Non-minority Female	<input type="checkbox"/> F5 Hispanic	<input type="checkbox"/> F8	<input type="checkbox"/> M8	None	<input type="checkbox"/> F4 Other Designated Minority	<input type="checkbox"/> F6 Black	<input type="checkbox"/> F7	<input type="checkbox"/> M7 Asian Pacific	
<input type="checkbox"/> F3 Non-minority Female	<input type="checkbox"/> F5 Hispanic	<input type="checkbox"/> F8	<input type="checkbox"/> M8	None										
<input type="checkbox"/> F4 Other Designated Minority	<input type="checkbox"/> F6 Black	<input type="checkbox"/> F7	<input type="checkbox"/> M7 Asian Pacific											
19. Bond (if applicable)	Amount: \$ _____ Bonding Agent: _____													
20. Contractor's and/or Business License	Number _____ Type _____ Issued By _____													
21. Federal & State Driver I.D. Nos	(F) _____ (S) _____													
22. Information Supplied By	Name _____ Title _____													

23. Has your company's name changed?	<input type="checkbox"/> Yes If yes, list former name: _____ <input type="checkbox"/> No _____
24. Is company result of merger?	<input type="checkbox"/> Yes If yes, which companies merged? _____ <input type="checkbox"/> No _____
25. Is company headquarters out of U.S.?	<input type="checkbox"/> Yes If yes, which country? _____ <input type="checkbox"/> No _____
26. If headquartered outside U.S.	Parent Company name: _____ Do you have manufacturing facilities in the United States? <input type="checkbox"/> Yes If yes, where? _____ <input type="checkbox"/> No _____
27. OTHER Verification	Has your company been previously verified by another agency? If yes, please identify agency and attach proof of verification. <input type="checkbox"/> Yes Agency _____ Contact Name _____ <input type="checkbox"/> No Address _____ Verification Date _____
28. Describe Product/Service Offered By Your Company	_____ _____ _____ _____ _____ _____ _____ _____ _____

**WARNING:**

Any person or corporation, through its Directors, Officers or Agents, which falsely represents the business as a woman or minority business enterprise shall be punished by a fine of not more than five thousand dollars (\$5,000), or by imprisonment in the county jail not to exceed one (1) year, or in the state prison not to exceed five (5) years, or both the fine and imprisonment. California Public Utilities Code Section 8285.

I declare that the foregoing information is true and correct, and that I have read and understand the above written WARNING. I consent to the release of the foregoing information to a central clearinghouse for the purpose of verifying claimed female/minority business enterprise status.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

R.87-02-026

Attachment 2 to Appendix A  
PACIFIC BELL  
M/WBE PRODUCT/SERVICE CATEGORY REPORT  
FOR 1987 CALENDAR YEAR  
(5000)

CATEGORY	POLYN.	HIJIP.	HISP.	BLACK	ASIAN	AMEX. IND.	MULTI. ETHNIC	CAUC. FEMALE	TOTAL M/WBE	NON- M/WBE	TOTAL COMPANY	PCT MBE	PCT WBE	PCT M/WBE
<b>TELECOMMUNICATIONS</b>														
Common Sys. & Equip.	46	0	252	5,864	133	0	0	430	6,728	46,215	52,943	11.8	0.8	12.7
Computer Prod. & Serv.	2	1,613	1,772	2,792	3,855	1,560	1	7,086	16,683	182,034	200,718	5.7	3.5	9.3
Misc. Mater. & Supplies	0	0	139	0	287	3	5	241	678	22,004	22,683	1.9	1.0	2.9
Fiber Optic Sys. & Supp.	0	0	4	39	3	0	0	22	69	5,742	5,812	0.8	0.3	1.1
Outside Plant	0	0	277	0	0	0	0	4,666	4,944	21,396	26,341	1.0	17.7	18.7
Switching Sys.	0	0	0	0	16,225	0	0	8	16,233	2,057	18,291	88.7	0.0	88.7
Terminating Equip.	0	0	0	0	191	0	0	1,097	1,289	126,160	127,449	0.1	0.8	1.0
Test Equip.	0	0	296	0	0	68	0	71	436	6,654	7,090	5.1	1.0	6.1
Transmission Sys.	0	0	0	0	16	0	0	38	54	133,520	133,575	0.0	0.0	0.0
Wire and Cable	658	0	277	160	0	0	0	5,282	6,381	28,211	34,592	3.1	15.2	18.4
AT&T	0	0	0	0	0	0	0	0	0	333,698	333,698	0.0	0.0	0.0
<b>Total Telecommunications</b>	<b>708</b>	<b>1,613</b>	<b>3,020</b>	<b>8,857</b>	<b>20,714</b>	<b>1,633</b>	<b>6</b>	<b>18,946</b>	<b>55,501</b>	<b>907,696</b>	<b>963,197</b>	<b>3.8</b>	<b>2.0</b>	<b>5.8</b>
Percentage in Category	0.07%	0.17%	0.31%	0.92%	2.15%	0.17%	0.00%	1.97%	5.76%	94.23%	---	---	---	---
<b>NON-TELECOMMUNICATIONS</b>														
Apparatus, Electrical	0	0	133	3	227	1	0	708	1,074	31,963	33,038	1.1	2.1	3.2
Apparatus, Mechanical	0	0	51	0	0	4	0	931	987	5,913	6,900	0.8	13.4	14.3
Audiovisual	0	0	308	0	16	0	0	498	823	1,710	2,534	12.8	19.6	32.3
Furniture/Services	0	0	134	17	28	170	29	953	1,334	9,495	10,832	3.3	8.8	12.3
Hardware/Services	0	0	92	2	0	0	0	90	187	1,706	1,893	5.1	4.7	9.9
Materials	0	0	8	3	11	172	0	1,932	2,131	16,966	19,017	1.0	10.1	11.1
Power Units & Accessories	0	0	13	0	0	0	8	123	145	10,178	10,323	0.2	1.1	1.4
Prob. Struc./Bld. Mat'l.	0	0	0	0	0	3	0	94	100	7,010	7,110	0.0	1.3	1.4
Office Mach/Supp./Serv.	0	1	307	20	1,394	3	53	3,921	5,703	31,908	37,611	4.7	10.4	15.1
Safety & Security	0	0	563	0	111	0	4	243	922	8,919	9,841	6.9	2.4	9.3
Services, Bldg. Maint.	64	0	1,850	282	1,851	106	55	2,502	6,714	12,836	19,550	21.5	12.7	34.3
Services, Business Other	2	69	419	510	607	187	39	7,552	9,389	49,703	59,092	3.1	12.7	15.8
Services, Print. & Repro.	0	0	1,098	5	1,859	0	10	2,743	5,718	5,131	10,849	27.4	25.2	52.7
Services, Transportation	6	39	2,493	555	420	450	88	4,860	8,915	33,784	42,700	9.4	11.3	20.8
Structural/Contractors	0	31	15,748	821	1,643	32	5	12,339	30,623	66,968	97,611	18.7	12.6	31.4
Vehicles & Accessory	5	0	162	3	66	4	0	14,344	14,507	7,356	21,864	1.1	63.3	66.4
Miscellaneous	1	7	1,161	6,156	2,137	460	2	1,068	11,003	354,348	365,351	2.7	0.3	3.0
<b>Total Non-Telecommunications</b>	<b>80</b>	<b>149</b>	<b>24,551</b>	<b>8,386</b>	<b>10,337</b>	<b>1,601</b>	<b>297</b>	<b>54,928</b>	<b>100,363</b>	<b>655,921</b>	<b>756,284</b>	<b>6.0</b>	<b>7.3</b>	<b>13.3</b>
Percentage in Category	0.01%	0.02%	3.23%	1.11%	1.37%	0.21%	0.04%	7.26%	13.27%	86.73%	---	---	---	---
<b>PROFESSIONAL SERVICES</b>														
Health & Medical	0	3	16	26	99	8	18	325	497	10,808	11,305	1.3	2.8	4.4
Financial	0	0	650	61	654	0	33	645	2,045	66,269	68,315	2.0	0.9	2.9
Legal	0	0	17	199	0	0	0	23	240	20,834	21,075	1.0	0.1	1.1
Advertising	0	0	5,542	396	388	0	0	3,052	9,381	11,281	20,663	30.6	14.7	45.4
Marketing	0	1	347	231	170	1	0	1,916	2,699	22,316	25,016	3.0	7.6	10.7
Architect/Inter. Design	0	586	716	80	2,060	0	0	2,277	5,720	5,829	11,550	29.8	19.7	49.5
Engineering	0	471	363	78	10	0	0	517	1,441	8,637	10,078	9.1	5.1	14.3
Photographic Services	0	0	44	10	2	0	0	59	115	933	1,049	5.3	5.6	11.0
Real Estate Services	0	0	0	0	47	0	143	427	618	31,309	31,927	0.6	1.3	1.9
Schools/Training	0	0	0	0	3	0	0	142	147	5,385	5,533	0.0	2.5	2.6
Misc. Services	0	0	331	48	35	0	0	1,210	1,626	25,556	27,183	1.5	4.4	5.9
<b>Total Professional Svcs.</b>	<b>0</b>	<b>1,063</b>	<b>8,030</b>	<b>1,153</b>	<b>3,474</b>	<b>10</b>	<b>196</b>	<b>10,598</b>	<b>24,526</b>	<b>209,162</b>	<b>233,618</b>	<b>5.9</b>	<b>4.5</b>	<b>10.4</b>
Percentage in Category	0.00%	0.45%	3.44%	0.49%	1.49%	0.00%	0.08%	4.54%	10.50%	89.50%	---	---	---	---
<b>Grand Total</b>	<b>788</b>	<b>2,825</b>	<b>35,601</b>	<b>18,396</b>	<b>34,565</b>	<b>1,244</b>	<b>499</b>	<b>84,472</b>	<b>180,390</b>	<b>1,772,779</b>	<b>1,953,169</b>	<b>4.9</b>	<b>4.3</b>	<b>9.2</b>
Percentage in Category	0.04%	0.14%	1.82%	0.94%	1.77%	0.17%	0.03%	4.32%	9.24%	90.76%	---	---	---	---

APPENDIX B  
Page 1RespondentsElectric and/or Gas Utility

1. Pacific Gas and Electric Company  
P. O. Box 7442, San Francisco, CA 94120
2. Southern California Edison Company  
P. O. Box 800, Rosemead, CA 91770
3. San Diego Gas & Electric Company  
P. O. Box 1831, San Diego, CA 92112
4. Pacific Power and Light Company  
920 Southwest 6th Ave., Portland, OR 97204
5. Sierra Pacific Power Company  
J. D. Salo, Box 10100, Reno, NV 89520
6. Southern California Gas Company  
810 So. Flower Street, Los Angeles, CA 90017
7. Southwest Gas Corporation  
P. O. Box 15015, Las Vegas, NV 89101
8. CP National Corporation  
P. O. Box 8192, Walnut Creek, CA 94956

Communications Utilities

1. Pacific Bell  
140 New Montgomery Street, San Francisco, CA 94105
2. General Telephone Company of California  
1 GTE Place, RC3300, Thousand Oaks, CA 91362-3811
3. AT&T Communications of California  
795 Folsom Street, San Francisco, CA 94107
4. Roseville Telephone Company  
P. O. Box 969, Roseville, CA 95661
5. Citizens Utilities Company of California  
Box 2218, Redding, CA 96099
6. Continental Telephone Company of California  
Box 5246, Bakersfield, CA 93388



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7. CP National Corporation  
Box 8192, Walnut Creek, CA 94956
8. U.S. Sprint  
700 Airport Blvd., Burlingame, CA 94010
9. MCI Communications Corporation  
201 Spear Street, San Francisco, CA 94105

(END OF APPENDIX B)

Decision 88 04 057 APR 27 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into )  
the implementation of Public )  
Utilities Code Sections 8281-8285 )  
relating to women and minority )  
business enterprises. )

**ORIGINAL**

R.87-02-026  
(Filed February 1, 1987)

INTERIM OPINION ON ESTABLISHING A GENERAL ORDER  
TO IMPLEMENT PUBLIC UTILITIES CODE SECTIONS 8281-8285

Summary of Decision

This decision implements Assembly Bill (AB) 3678 which became law in September 1986 and added Sections 8281 through 8285 to the Public Utilities Code (PU Code). AB 3678 directs the Commission to require every gas, electric, and telephone utility with gross annual revenues exceeding \$25,000,000 (and its Commission regulated subsidiaries and affiliates) to implement a program developed by the Commission to encourage, recruit, and utilize women and minority owned business enterprises (WMBE), as defined, in the procurement of contracts from those utilities.

AB 3678 requires the Commission to (1) report to the Legislature annually beginning January 1988 on the progress of activities undertaken by the respondent utilities to implement WMBE Programs, (2) establish guidelines to be used by the utilities in establishing WMBE Programs, (3) develop and publish regulations setting forth criteria for verifying and determining the eligibility of WMBEs for procurement contracts, and (4) develop and require the utilities to implement an outreach program to inform and recruit WMBEs to apply for procurement contracts.

In addition, the legislation provides that the Commission shall require an annual submission from each respondent utility of a detailed and verifiable plan which would include, among other

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things, short-term and long-term goals and timetables, but not quotas, for increasing WMBE procurement in all categories.

This interim order establishes guidelines and regulations to be used by the utilities in developing their programs to increase participation of WMBEs in procurement of contracts (WMBE Programs) as required by AB 3678.

Further consideration must also be given to certain other issues before the Commission can feel confident that it is implementing the legislation in the most appropriate and comprehensive manner. These items will be addressed in the next phase of this proceeding.

Phase 2 of this proceeding will address at least the following:

1. What forum should be utilized by persons wishing to voice their concerns and suggestions regarding the utilities' implementation of WMBE programs (i.e., should general rate cases continue to provide the forum, or should a generic annual WMBE proceeding be developed?)
2. If a generic proceeding is utilized, how will any costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases?

#### History of Proceeding

On February 11, 1987, the Commission issued an Order Instituting Rulemaking (R.) 87-02-026 into the implementation of PU Code Sections 8281-8285, relative to women and minority owned business enterprises. Fifteen utilities were made respondents to R.87-02-026. Decision (D.) 87-03-79 issued on March 25, 1987 amended R.87-02-026 by adding two more utilities as respondents. A list of respondent utilities is attached as Appendix B.

In R.87-02-026 the Commission proposed certain rules and/or guidelines regarding the implementation of PU Code Sections 8281-8285 and asked parties to provide their comments.

Respondents and interested parties filed comments on the Commission's proposed rules and guidelines. The majority of responses were supportive of proposed rules and guidelines. However, parties provided differing suggestions regarding various provisions of the guidelines and the rules.

A prehearing conference was held before Administrative Law Judge (ALJ) Garde on April 30, 1987. At the PHC, respondent utilities were asked to file proposed rules, utilizing the benefit of the comments and suggestions provided by the parties, to implement PU Code Sections 8281-8285. The requested rules were to address the entire statutory scheme. Interested parties were also allowed to file proposed rules.

The order requiring respondent utilities to file proposed rules was confirmed by an ALJ ruling dated April 30, 1987.

In response to the ALJ's ruling, respondent utilities and other parties filed their proposed rules and guidelines to implement PU Code Sections 8282-8285.

On July 15, 1987, an informal conference, chaired by the staff counsel, was held to determine the areas of agreement and disagreement among parties with regard to the proposed rules and guidelines. Staff counsel filed a report on the informal conference.

Based on the parties' proposed rules and the comments received at the informal conference, the ALJ, on October 1, 1987, issued proposed rules and guidelines to implement PU Code Sections 8281-8285. The proposed rules and guidelines were issued in the form of a draft general order (draft GO). Parties were required to review the draft GO and provide comments on it.

On November 12, 1987, a workshop was held to receive comments and recommendations for improving the proposed rules and

guidelines. Most parties filed written comments on the draft GO. Additional comments were received at the workshop.

At the workshop, Minority/Female Coalition reiterated its position that the proposed rules should include minimum long-term goals of 5% and 15% for women-owned business enterprises and minority-owned business enterprises respectively. Minority/Female Coalition asserted that the issuance of one percent of procurement contracts to Blacks by 1995 would constitute compliance with the draft GO. In support of its position, Minority/Female Coalition offered to provide testimony of expert witnesses. Assemblywoman Gwen Moore's office supported Minority/Female Coalition's position regarding appropriate long-term goals.

The ALJ ruled that specific goals for various utilities would be addressed in the next phase of this proceeding. The ALJ agreed to receive expert testimony regarding the setting of goals in this next phase. The ALJ's ruling was supported by Pacific Gas and Electric Company, Pacific Bell, Southern California Edison Company, Sierra Pacific Power Company and Southwest Gas Corporation.

At the workshop, Minority/Female Coalition also recommended that utility executive compensation be linked to WMBE program achievement.

The Division of Ratepayers Advocates (DRA) did not provide its comments on the draft GO at the workshop. Therefore, it was directed to file its comments on the draft GO by December 1, 1987. Parties were allowed until December 10, 1987 to file their response to DRA's comments. DRA has since informed the ALJ and other parties that it takes no position on the specific proposals included in the draft GO. However, the Commission Advisory and Compliance Division (CACD) has since filed its comments on the draft GO. CACD believes that the draft GO satisfies the requirements of PU Code Sections 8281-8285.

Comments

Comments on the ALJ's Proposed Interim Opinion were received from Pacific Bell (PacBell), San Diego Gas & Electric Company (SDG&E), AT&T Communications of California (AT&T), and Minority/Female Coalition.

AT&T recommends that in order to clarify the verification procedures established for small utilities and interexchange telecommunication carriers and to ensure consistency within the general order, Section 2.3.1 should be amended to include reference to an "internally-developed" verification form approved by the director of CACD as specified in Section 2.1.2. Accordingly, it proposes the following amended language:

- 2.3.1 Each small utility and IEX shall require its suppliers and/or contractors to complete and provide to the utility a Commission-approved form as set forth in Attachment A or as specified in Section 2.1.2 to qualify for the utility's F/MBE program.

We agree that an amendment similar to that suggested by AT&T would clarify the verification procedure and ensure consistency in the general order. Therefore, we will modify the appropriate section of the general order accordingly.

AT&T also recommends that, rather than requiring the inclusion of a copy of the complete text of the general order in the utilities' outreach program handouts (as specified in draft GO Section 4.1.1.7), an appropriate summary of that general order would be more effective. According to AT&T, printing the entire 13-page general order in every brochure, with all of the specific details about the utility's outreach program, would add unnecessarily to the bulk of the brochure as well as the cost of printing and postage, and, by increasing the volume of the information, could discourage a thorough reading of the material. AT&T asserts that it supports the need to inform minority and women businesses about the Commission's rules and guidelines in this

area, but believes the vendor notification would be more effective if the message was condensed and summarized for inclusion in the utilities' outreach program handouts.

We agree that the inclusion in the outreach program handouts of an appropriate summary of the general order rather than its complete text will be more effective. However, we believe that a copy of the complete text of the general order should be available to the WMBEs upon request. Each utility in its summary of the general order should indicate that WMBEs will be furnished a complete text of the general order upon request. Therefore, we will require each utility to:

- 4.2.1.7 Summarize this general order in its outreach program handouts. Such summaries shall state that WMBEs will be furnished a complete copy of this general order upon request.

PacBell recommends that since the language in Section 2 refers to "verification" of WMBE status, the label of the section should be modified from the currently proposed "CERTIFICATION" to "VERIFICATION".

We agree that the heading of a section should coincide with the terminology used throughout and accordingly will change the label of Section 2 to "VERIFICATION".

PacBell recommends the modification of Section 4.2.3 which provides that:

- 4.2.3 The utilities shall assist and encourage prime contractors to develop a plan to increase the utilization of WMBEs as subcontractors. The utilities shall monitor and include in their annual report to the Commission the prime contractors' progress in increasing the participation of WMBE subcontractors.

According to PacBell, the last sentence of this section appears to state that utilities are required to include, in their annual reports to the Commission, prime contractor progress reports



on increasing WMBE subcontractor participation. PacBell contends that if this provision means that utilities will have to submit individual progress reports for each of their prime contractors, such a reporting requirement may place an onerous administrative burden on utilities with hundreds of prime contractors. PacBell suggests that we adopt a more generalized reporting requirement in the subcontracting area, with the following language:

**"The utilities shall monitor the progress of their prime contractors in increasing the utilization of WMBE subcontractors, and shall include in their annual report to the Commission a progress report on WMBE subcontracting."**

We agree that requiring utilities to submit individual progress report for each of their prime contractor's progress in the utilization of WMBE subcontractors would place an undue burden on them. Therefore, we will adopt a more generalized reporting requirement in the subcontracting area by adopting a modified version of PacBell's recommended language.

PacBell is a federal government contractor and has filed a commercial subcontracting plan with the federal government covering all of its contracts. Consequently, in compliance with the federal law, its subcontracting program requires that its prime contractors submit subcontracting plans in accordance with federal regulations. PacBell recommends that in order to avoid confusion the following additional section be added regarding subcontracting:

4.2.4 This provision does not relieve utilities from complying with all federal laws and associated regulations addressing subcontracting plan requirements, if utilities are bound by such federal laws and associated regulations.

Since utilities are bound to comply with federal laws and regulations when dealing with the federal government, an explicit

declaration of that requirement need not be included in this general order.

Minority/Female Coalition recommends that the ALJ's draft decision not be adopted until there is an en banc hearing. The issue of en banc hearing is adequately addressed in the draft decision and therefore, will not be discussed further.

Minority/Female Coalition's concern that the draft opinion adopts no goals is addressed by our adoption of the initial long-term goals recommended by Joint Commentors.

Minority/Female Coalition recommends that AT&T, Sprint, and MCI be required to set California specific WMBE goals, on the ground that it is unfair to Hispanics and Asians to allow the use of nationwide goals since these groups are grossly underrepresented in most of the nation. The desirability of state specific, rather than national, goals for interexchange telecommunications companies is an issue we may revisit in the future, but for now we feel that it is more realistic and appropriate to allow such companies to use nationwide or multiple-state WMBE goals or goals established for a federally mandated WMBE procurement program in lieu of California specific goals.

Minority/Female Coalition's concern that the proposed general order would allow utilities to report less data than many of them do presently is addressed by our discussion under the heading "Erosion of Existing WMBE Programs," and by Section 7.3 of our adopted general order, which reads: "This general order is not intended to permit erosion of WMBE programs and reporting presently engaged in by a utility."

Minority/Female Coalition's concern that the proposed decision makes no reference to oversight or enforcement of goals and independent examination during ratemaking proceedings will be addressed in the next phase of this proceeding.

Minority/Female Coalition's suggested improvements to the verification program are, we believe, unnecessary at this time.

Minority Coalition claims that the proposed general order does not provide for a separate report for Filipino-Americans. We believe that Minority/Female Coalition may be confusing the definition section of the general order with the reporting requirements. The definitions set forth in Section 1.3 of the general order merely form part of the criteria for determining whether or not a business is a "minority-owned business" for the purposes of utility WMBE procurement programs, and do not establish the ethnic categories that must be used by the utilities for reporting WMBE progress in their reports to the Commission. Section 7.1.2 of the general order requires utilities to provide a summary of WMBE 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. We believe that the reporting requirement for Filipino-Americans is covered by this section.

Because the intent of the legislation we are implementing is to "clarify and expand" the utilities' WMBE procurement program (PU Code Section 8281 (b) (2) (C)), we cannot implement the legislation properly by allowing a retreat from present program progress. Thus, for example, if a utility is using highly refined reporting categories, the utility must continue to utilize such categories. And if future phases of this proceeding lead to the establishment of reporting requirements more refined than those in our general order, then utilities not presently using more refined reporting requirements will be required to do so.

Minority Coalition recommends that we tie top management compensation to a utility's WMBE achievements. This is addressed in the discussion section of this decision under the heading: "Internal Utility Program Development."

In response to PacBell's comments we have altered the discussion in the interim opinion and the provisions of the adopted general order to clarify the requirements for reporting progress

toward increased utilization of WMBE subcontractors and the need for utilities to encourage prime contractors to develop plans for increased utilization of WMBE subcontractors.

In response to SDG&E's comments, we have added to the general order a modified, non-mandatory, version of two suggested subcontracting program requirements, and have augmented our discussion of subcontracting issues.

We believe that SDG&E's concerns regarding the definition of "exclusions" are addressed by our adoption of a modified version of the exclusion procedure suggested by Joint Commenters.

We do not agree with SDG&E that the verification form attached to the GO is likely to confuse WMBE's, but note that this issue may be discussed by the Clearinghouse Advisory Board.

#### Joint Comments

On February 8, 1988, Assemblywoman Gwen Moore, Pacific Bell, GTE of California, SCE, SoCal Gas, PG&E, and SDG&E filed a set of joint comments on the proposed decision. These comments represent a consensus of the joint commenters and are intended to resolve the issues of implementation for only the utilities which signed the joint comment document. These commenters do not take into account the distinctive nature of smaller utilities and interexchange carriers. The introduction to the joint comments requests that the comments be treated as though filed by the individual companies involved. For simplicity's sake, we will hereafter refer to the signers of this joint comment document as "Joint Commenters." The document itself will be referred to as the "joint comments," or "joint proposed rules."

Joint Commenters submitted a complete set of proposed rules for implementing AB 3678. While many of the proposed rules merely represent efforts to refine relatively minor aspects of the ALJ's proposed decision and general order, the rules also include a number of important substantive guidelines and policy recommendations that differ greatly from those proposed by the ALJ.

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The ALJ provided parties with an opportunity to submit comments on the joint comments. Comments were received from AT&T, MCI, Sprint, and the Minority Female Coalition. Contel of California, Inc., Citizens Utilities Company of California, Roseville Telephone Company, Southwest Gas Corporation, CP National Corporation, and Sierra Pacific Power Company submitted a set of

joint comments. We will refer to the signers of this set of joint comments as "Joint Small Utility Commenters."

Joint Commenters submitted a complete set of proposed rules for implementing AB 3678. While many of the proposed rules merely represent efforts to refine relatively minor aspects of the ALJ's proposed decision and general order, the rules also include a number of important substantive guidelines and policy recommendations that differ greatly from those proposed by the ALJ.

Joint Commenters believe their joint comments represent an equitable compromise of the issues involved in this proceeding which will lead to more efficient utility operations, increased competition and diversified sources of supplies, which will result in reduced costs to ratepayers. They believe that approval of the rules embodied in the joint comments will reduce the need for subsequent hearings and workshops on issues relating to parties to these joint comments thereby allowing the Commission to concentrate its effort on those issues relating to interexchange carriers and smaller utilities which merit different consideration because of their unique status.

Because the joint comments contain a full set of proposed rules, it would be unwieldy for us to address each proposed rule at this point in the decision. We will instead recite here only what we believe are the most significant changes from the direction taken by the ALJ's proposed decision and by Commission on its own initiative. These major issues include: (1) The establishment of specific overall long term WMBE procurement goals; (2) The creation of a mechanism for utility specific "exclusions" from the base of procurement dollars used to establish the monetary value of the WMBE procurement goals; (3) The establishment of internal utility policies related to outreach which include provisions for evaluation of employees with procurement responsibility on the basis of their progress in meeting specific procurement goals, and for review of WMBE program progress at officer level meetings; (4) The exemption of contracts with affiliates from the base of procurement dollars used to establish goals coupled with the inclusion of affiliate WMBE subcontracts in utility WMBE results; (5) The creation of a right to appeal to the Commission WMBE complaints not satisfactorily resolved by utility management; and (6) The administration of the WMBE verification clearinghouse by the Commission itself, instead of by an advisory board composed of representatives of the utilities, the WMBE community, and

Commission staff. These issues will be discussed at appropriate points in the text of this decision, and adopted recommendations will be included in the Appendix.

Although, as Joint Commenters point out, the Commission could reduce its workload by approving the rules set forth in the joint comments, we will not do so on a wholesale basis. Many of Joint Commenters recommendations are good ones, and will be adopted. Many of these recommendations require minor modifications - which do not change the essence of the recommendation but which clarify certain requirements in ways that ensure our ability to implement an effective WMBE program. The general order we adopt will incorporate what we believe is the essence of the great majority of these recommendations, will retain many of the well-drafted provisions of the ALJ's draft general order, and will include a number of additional provisions suggested by other commenters earlier in this proceeding which we believe will help us to create a more comprehensive and effective program.

#### Discussion

Based on the comments received from various parties, the proposed general order has been modified. These modifications are discussed below on an issue-by-issue basis.

The adopted general order also incorporates a number of editorial changes to the proposed order and includes a method of selecting a representative for the WMBE group on the Advisory Board in the event of a disagreement among female and minority organizations regarding representation.

The adopted general order containing the rules and guidelines to implement PU Code Sections 8281-8285 is attached as Appendix A.

#### General

In her written comments on the draft GO, Assemblywoman Moore asserts that certain agreements were reached with some utilities at meetings held on August 19, 1987 and October 22, 1987.



The agreements reached at these meetings are not reflected herein because all parties to the proceeding were not invited to attend, no formalized agreements have been filed and the meetings were not a part of this proceeding. In any event, we believe it is safe to assume that all significant agreements Moore reached with utilities are incorporated in the proposed rules set forth in the joint comments.

#### Erosion of Existing WMBE Programs

A number of commenters express concern that if the draft GO is not made more specific, clear, and comprehensive, there is the potential for backward progress in the field of WMBE procurement.

We wish to make clear that we will not permit such erosion. PU Code Section 8281 states that AB 3678 is intended to do all of the following:

- a. Encourage greater economic opportunity for women and minority business enterprises.
- b. Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electric, gas, and telephone corporation contracts and contracts of their commission-regulated subsidiaries and affiliates.
- c. Clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women and minority business enterprises.

Any adoption by the Commission of a utility WMBE procurement program or reporting requirement less stringent than that currently imposed on the utilities or implemented by the utilities on their own initiative would clearly be contrary to the legislation this interim order is designed to begin to implement.

Form of Issuance

The ALJ had originally proposed to implement the rules and guidelines in the form of a chapter to be added to the California Administrative Code, Title 20, Chapter 1, in which the Commission's Rules of Practice and Procedures are compiled. However, the ALJ later issued the proposed rules and guidelines in the form of general order with the following explanation:

"[S]ince these rules and guidelines apply generally to the utilities covered by AB 3678, are likely to be modified on the basis of experience gained in their application, and do not affect practice before this Commission, they are being proposed in the form of a new general order."

Assemblywoman Gwen Moore takes exception to the rules and guidelines being adopted in the form of a general order. Moore states that:

"The only explanation given for the ALJ's about-face is that the rules and guidelines apply only to the utilities covered by AB 3678 and are likely to be modified on the basis of experience. The ALJ proposal fails to consider, though, the possibility of additional utility corporations which might come under the scope of AB 3678 in the future. A general order may apply only to those companies currently a part of this proceeding."

We disagree. We note that the proposed rules and guidelines do not affect practice before the Commission and, therefore, should not be included in the Commission's Rules of Practice and Procedure. In addition, the application of any general order is not limited to utilities which are parties to the proceeding in which the general order is adopted. This general order will apply automatically to any additional utilities which might come under the scope of AB 3678 in the future.

Moore also opposes the adoption of the rules and guidelines in the form of a general order on the basis that:

"Of even greater importance the ALJ's proposal fails to recognize that these rules will affect a far greater population than the utility companies under the jurisdiction of AB 3678. The rules and guidelines issued by the Commission also affect every female or minority owned business who wishes to do business with those companies. To issue the rules in the form of a general order rather than codifying them in the Administrative Code denies those businesses and their counsel an important means of access to those rules. Small businesses and their counsel not be (sic) familiar with PUC proceedings will not find a general order as easily as rules and guidelines in the California Administrative Code. Since these rules and guidelines are being drafted for use by more than just the utility companies, the Commission has a responsibility to make them accessible to all affected parties."

We appreciate Moore's concern about the need for all affected parties to be informed regarding the Commission's rules and guidelines implementing AB 3678. We accomplish that by requiring in the general order that all affected utilities implement an outreach program to inform and recruit WMBEs to apply for procurement contracts. Outreach programs will make the adopted rules and guidelines regarding the implementation of AB 3678 known to almost all eligible WMBEs. We will require the utilities to summarize the adopted general order in their outreach program handouts, and to inform WMBEs that a copy of the general order will be supplied upon request.

Adding the adopted rules and guidelines to the Commission's Rules of Practice and Procedure would unnecessarily delay their implementation and make them much more difficult to change as experience is gained. Therefore, we will adopt the rules and guidelines in the form of a new general order.

#### Revisions

Joint Commenters propose adding to the general order a section on revisions which, in addition to noting that these rules

may be changed in light of experience, that utilities and other interested parties may individually or collectively file an application to the Commission for the purpose of amending these rules. Such an application would be required to clearly set forth the proposed changes and the supporting rationale. We believe that such a section would be a useful addition to the general order and will adopt Joint Commenters' recommendation.

#### Hardship Exception

Joint Commenters propose adding to the general order a section permitting utilities to request specific relief where application of any of these rules results in undue hardship or unreasonable expense. Such relief would be requested through a formal application to the Commission in accordance with the Commission's Rules of Practice and Procedure. In instances where the requested relief is of minor importance or temporary in nature, Joint Commenters propose that the Commission may accept an application by letter. Such a letter must be sent to all parties on the service list of this proceeding.

We agree that utilities should be able to request relief from WMBE rules that result in undue hardship or unreasonable expense, and will incorporate a modified version of Joint Commenters' suggested language into the adopted general order. We will permit minor or temporary relief to be requested through an advice letter process.

#### Definitions

Most parties have suggested that the ALJ's proposed definitions of WMBEs and various racial and ethnic classifications need to be expanded to include aliens lawfully admitted for permanent residence in the United States and other minorities which are recognized by other governmental agencies. PacBell has provided good suggestions to improve this section. PacBell believes that the Commission should adopt the same descriptions of racial/ethnic groups falling under the "minority" classification as

have been adopted by the federal government. According to PacBell, inconsistency among federal and state agencies in designating minority groupings only contributes to confusion among minority businesses and those agencies applying incongruous standards. Therefore, PacBell recommends adoption of the United States Department of Commerce - Minority Business Development Agency's classifications for minorities, which are as follows:

"Black Americans - persons having origins in any black racial groups of Africa.

"Hispanic Americans - all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean and other Spanish culture or origin.

"Native Americans - persons having origins in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleutes and Native Hawaiians.

"Asian Americans - persons having origins 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.

"Hasidic Jews - persons who are members of an extremely orthodox Jewish sect whose distinctive appearance and social customs set them apart as a discrete and insular minority.

"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."

We agree with PacBell that federal and state agencies should be consistent in defining minorities. Therefore, we will adopt the United States Department of Commerce - Minority Business

Development Agency's definition of minorities for the four categories (Black, Hispanic, Native and Asian Americans) included in PU Code Section 8282 (b).

We will, however, modify the definition of Asian American slightly to make it somewhat broader in line with the language suggested in the joint proposed rules.

We will also retain the "other" category for groups which may not fit under the first four definitions. We also agree with the parties recommending that definitions of WMBEs should be modified to include legal aliens with permanent residence status. We will accordingly change the definitions of WMBEs and minorities in the adopted general order. The definitions in Attachment A also include certain corrections and editorial modifications.

Assemblywoman Gwen Moore maintains that the draft GO rejects without reason the Order Instituting Rulemaking (OIR) definition of "long-term goals" as five-year goals, and that the draft GO's definition of "long-term" as three years implies a much lesser commitment to WMBE progress than was apparent in the OIR. Many utilities respond that realistic WMBE goals are too difficult to determine on a five-year basis, because the WMBE marketplace is a volatile one and existing vendors may or may not be operating five years hence to provide the desired goods and services. Joint Commenters agreed to one- and five-year goals.

We believe that this is one situation where we can have our cake and eat it too. We will, therefore, amend the draft GO to reflect our belief that one, three and five year goals will be useful in ensuring the success of the utilities' WMBE programs.

#### Verification

The draft GO provided for a central clearinghouse verification program which large utilities would be required to participate in and small utilities and interexchange carriers allowed to participate in. The clearinghouse function was to rotate annually between the large utilities.

Commenters make the following observations: (1) the costs of rotating the clearinghouse function would outweigh the benefits; (2) the verification form should be standardized because WMBEs do not want to have to fill out different forms for each utility and because standard forms will allow uniform tracking of WMBE status; (3) the certification programs required of small utilities and interexchange carriers should be augmented, or at least more clearly defined; and (4) the Commission should participate in the management of the clearinghouse or at least maintain an oversight role.

#### Verification Forms

PacBell and Moore recommend deletion of the provision permitting utilities the use of the optional verification form. They contend that WMBEs constantly complain about having to complete a multiplicity of forms generated by various utilities. According to PacBell, use of a standardized form would simplify the procedure for the WMBEs and would also be of help in setting up the central clearinghouse.

Moore believes that the only situation which merits special consideration regarding the verification forms is the case of the interexchange telecommunications corporations which are required to use WMBEs outside of California.

We agree that the use of a standardized verification form would simplify and add fairness to the certification process. Therefore, we will require all utilities, with the exception of interexchange telecommunications corporations that have established nationwide or multiple-state WMBE programs or need to comply with nationwide federally mandated WMBE requirements, to use the standard verification form set forth in Attachment 1<sup>1</sup> to

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1 Attachment 1 is in draft form.

Appendix A. Sections 2.1.1 and 2.1.2 will be renumbered and modified as follows:

- 2.1 WMBE Status Verification Form  
Each utility shall use the standard Commission-approved form set forth in Attachment A, or, in the case of interexchange telecommunications corporations, as specified in Section 2.2, to verify the WMBE status of participants in its WMBE program. The standard form may be modified by the Clearinghouse Advisory Board as necessary, so long as it requires the same essential information.
- 2.2 An interexchange telecommunications corporation may use its own internally-developed verification form if the use of such form is necessary to comply with an established nationwide or multi-state WMBE program or federally mandated WMBE requirements, provided it is approved by the Director of the Commission Advisory and Compliance Division (CACD) and contains the following information:

Certain parties believe that the verification form attached to the draft GO needs to be revised to include more detailed information regarding the type of product/service provided by the prospective WMBE vendor. The parties also believe that the penalty statement for wrongful use of the form is not placed in a prominent place.

The verification form in Attachment 1 needs to be revised to take into consideration the revised definitions of minorities. PacBell has provided a more comprehensive verification form with its comments. The PacBell recommended form contains the minority classifications adopted in this decision and displays the warning regarding wrongful use prominently. However, we believe that the PacBell recommended verification form is in its draft state. The advisory board for administering the central clearinghouse (defined later in this order) should prepare a final version of this form as



part its rules and guidelines for operating the central clearinghouse.

PacBell recommends modification of the section of the draft GO dealing with completion of the verification form (Section 2.2.3) which provides that:

"Completion of the self-verification form is only a verification of the vendor's F/MBE status and shall neither be construed as an endorsement of its ability to perform nor guarantee its business with the utility."

PacBell contends that this section appears to state that completion of the self-verification form will verify the vendor's WMBE status. According to PacBell, this apparent conclusion is inconsistent with the concept of establishing a central clearinghouse, whose purpose it will be to verify the WMBE status of vendors through an independent process of investigation.

PacBell recommends that the section be modified as follows:

"Completion of the self-verification form only initiates a verification of the vendor's F/MBE status and shall neither be construed as an endorsement of its ability to perform nor guarantee its business with the utility."

We agree that completion of the verification form merely initiates the process of verification of the vendor's WMBE status. We note that the designation "self-verification form" is perhaps inappropriate for use in a situation involving subsequent verification by a clearinghouse. The draft GO will be modified to clarify these points.

Sections 2.2.2, 2.2.4, 2.2.5, and 2.2.6 in the draft GO deal with subjects of handling, retention and inspection of the verification forms. We believe that rules governing these items should be a part of the rules and guidelines for operating the central clearinghouse and should be addressed by the Advisory Board. Therefore, we delete these sections and replace them with the following two sections:

- 2.6 WMBEs shall be required to submit verification forms at least once every three years.
- 2.8 WMBE verification forms shall be available for inspection by the Commission.

**Verification Programs for Small  
Utilities and Interexchange  
Telecommunications Corporations**

In the draft GO, separate verification requirements are established for small and large utilities in order to recognize that smaller utilities have fewer resources available to devote to WMBE programs. MCI Telecommunications Corporation (MCI) requests that the interexchange telecommunications corporations (IECs) be required to meet the same requirements as the small utilities. According to MCI, while IECs may have revenues equal to those of the large companies, they are not able to devote commensurate resources to WMBE programs because of the manner in which they are regulated. MCI contends that unlike rate of return regulated utilities that can include the cost of WMBE programs in their revenue requirement, IECs are limited in their ability to recover these costs from their customers. MCI believes that including IECs in the small utility category will minimize the unequal burden on them. US Sprint also makes the same request.

We do not, however, agree that IECs will be placed at a significant competitive disadvantage simply because we require them to participate in the central clearinghouse verification program and to report on their progress toward increased utilization of WMBE suppliers. Many of these companies already have substantial federal and/or state WMBE programs, yet none has provided evidence it has suffered competitively as a result. We doubt any additional California specific requirements we impose in this order will be the straw that breaks the camel's back.

We have also decided not to relieve small utilities and IECs of the duty to participate in the central clearinghouse

- 2.6 WMBEs shall be required to submit verification forms at least once every three years.
- 2.8 WMBE verification forms shall be available for inspection by the Commission.

Verification Programs for Small  
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Telecommunications Corporations

In the draft GO, separate verification requirements are established for small and large utilities in order to recognize that smaller utilities have fewer resources available to devote to WMBE programs. MCI Telecommunications Corporation (MCI) requests that the interexchange telecommunications corporations (IECs) be required to meet the same requirements as the small utilities. According to MCI, while IECs may have revenues equal to those of the large companies, they are not able to devote commensurate resources to WMBE programs because of the manner in which they are regulated. MCI contends that unlike rate of return regulated utilities that can include the cost of WMBE programs in their revenue requirement, IECs are limited in their ability to recover these costs from their customers. MCI believes that including IECs in the small utility category will minimize the unequal burden on them. US Sprint also makes the same request.

In their comments on Joint Commenters' proposed rules, MCI, US Sprint, and AT&T continue to press for optional IEC participation in the clearinghouse program, and for freedom from use of the standard verification form.

Joint Small Utility Commenters similarly restate their desire that small utility participation in the clearinghouse be optional and suggest that small utilities be allowed to require WMBE submittal of new verification forms on an "as needed" basis.

We do not agree that IECs will be placed at a significant competitive disadvantage simply because we require them to participate in the central clearinghouse verification program and

verification program. As T/O Solutions noted in its November 12, 1987 workshop comments concerning the reluctance of small utilities to participate in the clearinghouse, "the data base will be enhanced by the increase of vendors that are available, whether they be in urban or rural areas."

We agree with T/O Solutions' analysis of the benefits of small utility and IEC participation in the clearinghouse program, and note further that such participation will permit us to monitor WMBEs in a more uniform manner than would otherwise be possible. We also recognize that, as Assemblywoman Gwen Moore's office pointed out during the November 12, 1987 workshop, the idea of a master verification plan came out of a Commission decision concerning the IEC AT&T and it would be inconsistent for us to now take the position that this master verification program should not apply to AT&T. We will, therefore, require small utilities and IECs to participate in the central clearinghouse program.

As we determined earlier, IECs may use different verification forms if this is necessary for them to comply with established nationwide or multi-state WMBE programs or federally mandated WMBE requirements.

Our decision to require all utilities to participate in the central clearinghouse program does not mean we intend to impose the same financial burdens on all utilities. We continue to recognize that small utilities and IECs cannot recover WMBE program expenses from ratepayers with the same ease as larger utilities. Nonetheless, since these entities will benefit from the operation of the clearinghouse it is fair to require them to provide some level of financial support. Once again, a reference to T/O Solutions' workshop comments is appropriate. In addressing what appears to be the real basis for the small utilities and interexchange carriers' reluctance to participate - the cost of supporting the central clearinghouse operation - T/O Solutions went on to point out a potential method of overcoming this reluctance:

to report on their progress toward increased utilization of WMBE suppliers. Many of these companies already have substantial federal and/or state WMBE programs, yet none has provided evidence it has suffered competitively as a result. We doubt any additional California specific requirements we impose in this order will be the straw that breaks the camel's back.

Furthermore, we have decided to require small utilities to participate in the central clearinghouse verification program. As T/O Solutions noted in its November 12, 1987 workshop comments concerning the reluctance of small utilities and IECs to participate in the clearinghouse, "the data base will be enhanced by the increase of vendors that are available, whether they be in urban or rural areas."

We believe that mandatory participation in the clearinghouse program will assist all utilities to implement their WMBE programs. Mandatory participation will also permit us to monitor WMBEs in a more uniform manner than would otherwise be possible. We also recognize that, as Assemblywoman Gwen Moore's office pointed out during the November 12, 1987 workshop, the idea of a master verification plan came out of a Commission decision concerning the IEC AT&T and it would be inconsistent for us to now take the position that this master verification program should not apply to AT&T. We will, therefore, require both small utilities and IECs to participate in the central clearinghouse program.

As we determined earlier, IECs may use different verification forms if this is necessary for them to comply with established nationwide or multi-state WMBE programs or federally mandated WMBE requirements. All other utilities must use the standard verification form set forth in Attachment 1 to Appendix A.

Our decision to require all utilities to participate in the central clearinghouse program does not mean we intend to impose the same financial burdens on all utilities. We continue to recognize that small utilities and IECs cannot recover WMBE program

expenses from ratepayers with the same ease as larger utilities. Nonetheless, since these entities will benefit from the operation of the clearinghouse it is fair to require them to provide some level of financial support. Once again, a reference to T/O Solutions' workshop comments is appropriate. In addressing what appears to be the real basis for the small utilities and interexchange carriers' reluctance to participate - the cost of supporting the central clearinghouse operation - T/O Solutions went on to point out a potential method of overcoming this reluctance:

"So that I would hope that all parties will be contributing the vendors that they are aware of and that they are using to the data base, and that there could be methods of establishing the cost pro-ration for the small utilities and perhaps the IECs that could be based on other formulas than would be used for the large utilities, such as usage, or some other factors that would help take care of the cost situation." (November 12, 1987 Workshop Transcript Volume 1, Page 64).

We agree that the issue of the financial burden imposed on small utilities and IECs can be addressed through a central clearinghouse cost allocation formula that differentiates between large utilities and small utilities and IECs. Rather than specify precisely the lesser financial burden to be borne by small utilities and IECs, we will modify the draft GO to require that the clearinghouse advisory board apportion the costs of operating the clearinghouse to the various utilities in an equitable manner.

#### Central Clearinghouse

Based on the comments received from various parties, the section dealing with the establishment of a central clearinghouse needs to be revised.

We believe that rules and guidelines for establishing and operating the clearinghouse need to be developed in more detail than is possible in the framework of this general order.

CACD has certain reservations regarding the proposed method of administering the central clearinghouse. CACD suggests that one possible alternative for administering the central clearinghouse may be found in the Deaf Trust Fund, which is jointly administered by a committee of utility representatives and a representative of the deaf and disabled, with the participation of the Commission staff. Other commenters also support the participation of Commission staff in the administration of the clearinghouse.

We agree with CACD's suggestion and will modify the administration of the central clearinghouse accordingly. Therefore, we believe that an advisory board consisting of representatives from the following six utilities, a representative of CACD and a representative from a recognized WMBE group<sup>2</sup> be should established:

- a. Pacific Gas and Electric Company
- b. Pacific Bell
- c. Southern California Edison Company
- d. Southern California Gas Company
- e. General Telephone Company of California
- f. San Diego Gas & Electric Company

The Advisory Board will elect its own chairperson. The chairperson will be responsible for taking care of the administrative details associated with the Advisory Board. The Advisory Board will develop rules and guidelines for operating the central clearinghouse and will address questions such as:

1. Who, how much, and when does each utility pay for the clearinghouse?
2. Who will contract with a clearinghouse firm? How often?
3. How long will term of the chairman of the Advisory Board last?
4. How will concerns or grievances from funding utilities and WMBEs be handled?

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<sup>2</sup> The seat of the WMBE representative on the Advisory Board shall rotate on an annual basis among different women and minority organizations. These organizations shall confer among themselves and select a representative. In the event these organizations are unable to agree on a representative, they may request that the director of CACD select a representative.



We agree with CACD's suggestion and will modify the administration of the central clearinghouse accordingly. Therefore, we believe that an advisory board consisting of representatives from the following six utilities, a non-voting representative of CACD and a representative from a recognized WMBE group<sup>2</sup> should be established:

- a. Pacific Gas and Electric Company
- b. Pacific Bell
- c. Southern California Edison Company
- d. Southern California Gas Company
- e. General Telephone Company of California
- f. San Diego Gas & Electric Company

We invite comments from inter-exchange carriers, small local exchange carriers and other interested parties concerning their possible representation on the Advisory Board.

The Advisory Board will elect its own chairperson. The chairperson will be responsible for taking care of the administrative details associated with the Advisory Board. The Advisory Board will develop rules and guidelines for operating the central clearinghouse and will address questions such as:

1. Who, how much, and when does each utility pay for the clearinghouse?
2. Who will contract with a clearinghouse firm? How often?
3. How long will term of the chairman of the Advisory Board last?

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<sup>2</sup> The seat of the WMBE representative on the Advisory Board shall rotate on an annual basis among different women and minority organizations. These organizations shall confer among themselves and select a representative. In the event these organizations are unable to agree on a representative, they may request that the director of CACD select a representative.

5. Who has liability for clearinghouse activities?
6. Who owns the database?
7. How detailed would the clearinghouse's verification of the vendor's WMBE status be?

In reviewing the draft GO we note that although the Advisory Board is required to meet within 90 days of the effective date of this decision, there is no specified time within which the Advisory Board is required to submit its proposed rules and guidelines to the Commission. Because we believe the public interest would be better served by the near term implementation of the central clearinghouse program, we will amend the draft GO to provide that the Advisory Board must meet within 30 days of the effective date of this interim order and must submit its proposed rules and guidelines to the Commission within 90 days of the effective date.

The Advisory Board's proposed rules and guidelines for establishing, operating and maintaining the central clearinghouse shall be subject to the approval of the Director of CACD.

Joint Commenters propose that the Commission establish and administer the clearinghouse for the compilation and dissemination of WMBE verification information. The Commission does not have the employee resources to establish the clearinghouse and be responsible for its operation. However, we believe that the Commission should be represented on the Advisory Board and have modified the proposed general order accordingly.

The clearinghouse rules proposed by Joint Commenters suggest to us a number of minor changes that will improve or clearinghouse program. Our adopted general order will reflect these changes.

AB 1464, which became law on January 1, 1987, added Section 14030.5 to the Government Code. AB 1464, among other

things, requires the State Department of Transportation (DOT) to certify socially and economically disadvantaged business concerns, as defined. Under the bill, all state agencies are required to accept DOT certification of any socially and economically disadvantaged business concern as a valid indication of the status of that business when awarding contracts. The bill prohibits state agencies from requiring the business to comply with any other certification process.

The definition of a "socially and economically disadvantaged business concern" (SEDBC) developed by DOT is very similar to the definition of a WMBE proposed in the draft GO. We believe that it may be in the ratepayers' best interest, in order to avoid cost duplication, to use the DOT developed certification program to verify the WMBE status of any business seeking utility contracts. Indeed, the provisions of AB 1464 may preclude our imposition of any other verification program. Nonetheless, we must be satisfied that the DOT certification program is suitable for our purposes in implementing AB 3678. Therefore, the Advisory Board should work with DOT to modify, if necessary, the SEDBC certification program to make it applicable for verification of the WMBE status of businesses seeking utility contracts.

If the DOT certification program ultimately is used, Section 3 of the general order adopted herein will require substantial revision (for example, cost allocation may no longer be an issue). If that is the case, the Advisory Board shall submit its recommended Section 3 revisions to the director of CACD, who shall bring the matter before the Commission.

Section 3 will be revised to read as follows:

3. CENTRAL CLEARINGHOUSE

The utilities shall jointly establish a central clearinghouse for the sharing of WMBE identification and verification information. The central clearinghouse shall be a separate entity. It shall not

serve as a representative for or on behalf of any individual or group or utility. It shall be operated by a contractor selected by an Advisory Board.

- 3.1 The primary purpose of the clearinghouse shall be to audit and verify the status of WMBE vendors/suppliers, and to establish and maintain a database of WMBE vendors/suppliers that is accessible to the Commission and to participating utilities. The database shall consist of WMBE vendors/suppliers whose WMBE status has been verified through a process of independent investigation by the clearinghouse.
- 3.2 Utility participation in 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. This participation shall not preclude auditing and verification by an individual utility if the utility deems such action is necessary. Clearinghouse auditing does not relieve the Commission of the duty to audit or verify WMBE status pursuant to a complaint or an ongoing investigation.
- 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of representatives from the following six utilities, a representative of CACD and a representative from a recognized WMBE group:
  - a. Pacific Gas and Electric Company
  - b. Pacific Bell
  - c. Southern California Edison Company
  - d. Southern California Gas Company
  - e. General Telephone Company of California
  - f. San Diego Gas & Electric Company

serve as a representative for or on behalf of any individual or group or utility. It shall be operated by a contractor selected by an Advisory Board.

- 3.1 The primary purpose of the clearinghouse shall be to audit and verify the status of WMBE vendors/suppliers, and to establish and maintain a database of WMBE vendors/suppliers that is accessible to the Commission and to participating utilities. The database shall consist of WMBE vendors/suppliers whose WMBE status has been verified through a process of independent investigation by the clearinghouse.
- 3.2 Utility participation in 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. This participation shall not preclude auditing and verification by an individual utility if the utility deems such action is necessary. Clearinghouse auditing does not relieve the Commission of the duty to audit or verify WMBE status pursuant to a complaint or an ongoing investigation.
- 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of representatives from the following six utilities, a non-voting representative of CACD and a representative from a recognized WMBE group:
  - a. Pacific Gas and Electric Company
  - b. Pacific Bell
  - c. Southern California Edison Company
  - d. Southern California Gas Company
  - e. General Telephone Company of California
  - f. San Diego Gas & Electric Company

- 3.4 The seat of the representative for the WMBE group on the Advisory Board shall rotate on an annual basis among different female and minority organizations. These organizations shall confer among themselves and select a representative. In the event of disagreement among women and minority organizations regarding representation on the Advisory Board, the organizations may petition the Director of CACD to select the representative.
- 3.5 The Advisory Board shall develop a formula for equitably allocating the costs of establishing and maintaining the clearinghouse among the various utilities. These costs shall be primarily distributed among the large utilities. Any costs allocated to small utilities or IECs shall be substantially less than the costs allocated to the large utilities.
- 3.6 Within thirty (30) days after the effective date of this general order, the Advisory Board shall meet to develop operational guidelines for the clearinghouse, and to select a contractor to operate it. The Advisory Board shall consult with Caltrans to determine whether the utilization of that agency's present clearinghouse operation would meet the needs of the utilities and WMBEs while avoiding duplication of state agency effort. These proposed guidelines shall be submitted to the Commission within ninety (90) days after the effective date of this order. These guidelines will be subject to the approval of the Director of the Commission Advisory and Compliance Division. Thereafter, the Advisory Board shall meet at least annually to review the operational guidelines for the clearinghouse and to implement any necessary modifications.

- 3.7 The Advisory Board shall file an annual report with the Director of CACD no later than March 1 of each year. The report shall include a detailed description of the activities of the clearinghouse during the previous year.
- 3.8 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 affected utilities that the WMBE will be dropped from the shared database until the renewal is completed.

#### Internal Utility Outreach Program

Assemblywoman Gwen Moore contends that the draft GO does not adequately address the issue of internal company outreach. Her primary concern is the failure to incorporate a procedure for ensuring that all utility employees with any purchasing responsibilities be evaluated on the basis of their progress in meeting utility established goals. The basis for Moore's concern is the same as that underlying Minority/Female Coalition's recommendation that executive salaries be linked to utility WMBE achievement. Both parties feel that utilities will not be properly motivated to develop a successful WMBE program until it is clear that the failure to develop such a program will adversely affect the pocketbooks of utility employees, most especially those with significant management responsibilities.

Assemblywoman Moore urges that some form of linkage be adopted for all utility employees with procurement responsibilities. She notes that not only is such linkage a key portion of the PacBell Minority Task Force's recommendations, but that many utilities have already imposed such linkage in some

fashion. She urges the Commission not to step backwards by permitting utilities to abandon such linkage in the future.

We agree that we should not permit utilities currently linking executive salaries to WMBE performance to abandon such linkage now, since to do so would be in conflict with our mandate to "clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women and minority business enterprises." (PU Code Section 8281 (b)(2)(C).) And we agree that the imposition of such linkage would no doubt provide a strong incentive to improve WMBE program performance. We believe, however, that we can address a utility's lack of good faith or failure to achieve significant WMBE progress without getting directly involved in the determination of executive compensation.

Moore's proposed rules and guidelines include a number of suggestions for internal outreach program elements that may encourage utility employees to increase WMBE procurement. Joint Commenters incorporate Moore's thoughts and provide a number of additional suggestions.

We believe the the sections of the joint proposed rules dealing with internal utility program development (particularly the section dealing with the evaluation of employees on the basis of their progress in meeting the goals of their specific area of procurement) provide a good incentive for the utilities and more importantly for their employees responsible for procurement activities to work in good faith to achieve significant WMBE progress. We will adopt a slightly modified version of these sections, as shown in Section 4.1 of the adopted general order:

**4.1 Internal Utility Program Development**

Each Utility shall maintain an appropriately sized staff to provide overall WMBE program direction and



fashion. She urges the Commission not to step backwards by permitting utilities to abandon such linkage in the future.

We agree that we should not permit utilities currently linking executive salaries to WMBE performance to abandon such linkage now, since to do so would be in conflict with our mandate to "clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women and minority business enterprises." (PU Code Section 8281 (b) (2) (C).) And we agree that the imposition of such linkage would no doubt provide a strong incentive to improve WMBE program performance. We believe, however, that we can address a utility's lack of good faith or failure to achieve significant WMBE progress without getting directly involved in the determination of executive compensation.

Moore's proposed rules and guidelines include a number of suggestions for internal outreach program elements that may encourage utility employees to increase WMBE procurement. Joint Commenters incorporate Moore's thoughts and provide a number of additional suggestions.

Joint Small Utility Commenters suggest modifying the joint proposed rules' WMBE program staff requirement to state that small utilities are not required to increase their staff or to identify existing staff members to provide full-time WMBE program direction, but may instead assign responsibility for program direction and goal accomplishment to existing staff members. Joint Small Utility Commenters suggest an additional modification which would relieve small utilities from certain employee awareness requirements and from the duty to evaluate their procurement employees on the basis of progress in meeting the goals of their specific areas of procurement.

We believe the the sections of the joint proposed rules dealing with internal utility program development (particularly the section dealing with the evaluation of employees on the basis of

their progress in meeting the goals of their specific area of procurement) provide a good incentive for the utilities and more importantly for their employees responsible for procurement activities to work in good faith to achieve significant WMBE progress. We will permit small utilities to use existing employees if such employees can effectively implement the utility's WMBE program. We will not, however, relieve small utilities from the proposed employee awareness requirements or from the duty to evaluate procurement employees on the basis of WMBE progress, since we see no logical reason to do so and prefer a uniform WMBE program approach wherever possible. We will adopt a slightly modified version of these sections, as shown in Section 4.1 of the adopted general order:

4.1 Internal Utility Program Development

Each Utility shall maintain an appropriately sized staff to provide overall WMBE program direction and

guidance and to implement WMBE program requirements.

4.1.2 Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMBE program. These employees shall be evaluated on the basis of their progress in meeting the goals of their specific area of procurement. Some of the major components of a training program shall include:

4.1.2.1 Review of WMBE program progress and results, and the development of future strategies, at officer level meetings. These meetings shall also include an exchange of ideas and a pledge of ongoing support for the program;

4.1.2.2 Meetings or seminars to familiarize employees with WMBE program objectives, goals, and operations, and with the special problems confronting WMBEs;

4.1.2.3 Programs to train and encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMBEs.

#### External Outreach Program

We believe that the sections of the joint proposed rules dealing with external outreach, coupled with several suggestions made earlier by SDG&E and PacBell, provide a sound basis for

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3 It may not be necessary for small utilities to increase their staff or assign existing staff members full-time WMBE program responsibilities if they can implement their WMBE program effectively by assigning responsibilities for program direction and goal accomplishment to existing staff.

utility external outreach programs. We will adopt slightly modified versions of these recommendations. The external outreach section of the adopted general order will read as follows:

#### 4.2 External Outreach

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

4.2.1 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:

4.2.1.1 Actively seek out opportunities to identify WMBE contractors and to expand WMBE source pools;

4.2.1.2 Actively support the efforts of organizations experienced in the field who promote the interests of WMBE contractors;

4.2.1.3 Work with WMBE 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;

4.2.1.4 At the request of any unsuccessful WMBE bidder, provide information concerning the relative range/ranking of the WMBE 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;

utility external outreach programs. We will adopt slightly modified versions of these recommendations. We will incorporate the suggestion of Joint Small Utility Commenters that we require that information on additional selection criteria be made available to unsuccessful WMBE bidders only when requested. The external outreach section of the adopted general order will read as follows:

#### 4.2 External Outreach

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

4.2.1 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:

4.2.1.1 Actively seek out opportunities to identify WMBE contractors and to expand WMBE source pools;

4.2.1.2 Actively support the efforts of organizations experienced in the field who promote the interests of WMBE contractors;

4.2.1.3 Work with WMBE 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;

4.2.1.4 At the request of any unsuccessful WMBE bidder, provide information concerning the relative range/ranking of the WMBE 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;

4.2.1.5 To the extent possible, make available to WMBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;

4.2.1.6 Encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMBEs;

4.2.1.7 Summarize this general order in its outreach program handouts. Such summaries shall state that WMBEs will be furnished a complete copy of this general order upon request.

#### Subcontractors

The draft GO requires only the "non WMBE" prime contractors to develop a plan to increase the utilization of WMBE subcontractors. Certain parties have recommended that this program should not be limited to non-WMBE prime contractors and should apply to all prime contractors doing business with utilities. We agree with this recommendation and will modify the adopted general order accordingly. The Associated General Contractors of California feel that the term "Subcontracting Opportunity" used in Section 4.2.2. should be defined. They offer the following definition:

"'Subcontracting Opportunity' means work encompassed within a prime contract normally performed by a subcontractor and is not intended to include any work regularly performed by the Prime Contractor with its own workforce."

While we appreciate the General Contractors' desire for certainty with regard to the definition of "subcontracting opportunity," we will refrain from adopting their definition at this time. This is an issue we feel could benefit from further

consideration after we have taken a close look at the subcontracting programs the utilities develop in response to our general order.

SDG&E expressed a desire for clarity with regard to the definition of "subcontracting," by asking: What is considered to be subcontracting for a manufacturer or distributor of products or a supplier of services? Joint Commenters proposed to clarify this issue by excluding from subcontracting programs the procurement of products manufactured for general consumption. We agree that this issue requires clarification and will adopt Joint Commenters' recommendation.

Certain parties contend that it is inconsistent for the draft GO to require that the subcontracting programs established by the utilities apply to "Purchases/contracts which offer WMBE subcontracting opportunities, regardless of value, where appropriate," as well as to "Purchases/contracts exceeding \$500,000 for products and services," and "Construction contracts exceeding \$1,000,000. We assume that they feel that where we establish specific categories for procurements in excess of certain high dollar amounts it is unfair for us to also establish a catch-all category with no dollar threshold.

We do not agree that these categories are inconsistent. The two specific categories ensure that at least those larger procurement contracts will be subject to the subcontracting program but relieve utilities of the burdens associated with applying the program requirements to contracts of lesser importance. The catch-all category, on the other hand, will ensure WMBEs the opportunity to be considered as subcontractors in all appropriate contracts regardless of dollar value. We believe that contracts for less than the specified threshold values may provide a great number of subcontracting opportunities. We believe our approach appropriately balances the interests of both utilities and WMBEs.



Joint Commenters recommend that the utilities' subcontracting program not apply to any procurement area designated as an "exclusion" under the joint proposed rules. While we believe that the implementation of a vigorous subcontracting program in areas otherwise excluded from WMBE procurement goals because of the absence of available WMBE suppliers might prove a fertile method for seeking such suppliers and increasing their availability, we can also see how the utilities might find it burdensome to mount a subcontracting program for excluded categories of products or services. We will adopt Joint Commenters' recommendation.

Joint Commenters' recommend that we include the following provision in the general order section dealing with subcontracting:

The utility's prime contractors shall be encouraged to submit to the utility a plan that includes goals for the utilization of WMBEs as subcontractors, the plan 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.

We believe that such a provision would be a positive addition to the subcontracting program set forth in the draft GO. We will adopt a modified version of this provision.

Joint Small Utility Commenters suggest adding to this provision the phrase "if the parties to the contract mutually agree." We believe such language is unnecessary, since contracts are by their very nature the result of mutual agreement. Furthermore, such language would give contractors an undesirable degree of control over utility WMBE programs. We will reject this suggestion.

In response to a number of thoughtful suggestions set forth in PacBell and SDG&E comments on the ALJ's proposed interim order, we are modifying the subcontracting portions of the general order in several respects in order to encourage utilities to incorporate in all appropriate procurement documents statements

Joint Commenters recommend that the utilities' subcontracting program not apply to any procurement area designated as an "exclusion" under the joint proposed rules. While we believe that the implementation of a vigorous subcontracting program in areas otherwise excluded from WMBE procurement goals because of the absence of available WMBE suppliers might prove a fertile method for seeking such suppliers and increasing their availability, we can also see how the utilities might find it burdensome to mount a subcontracting program for excluded categories of products or services. We will adopt Joint Commenters' recommendation.

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We believe that such a provision would be a positive addition to the subcontracting program set forth in the draft GO. We will adopt a modified version of this provision.

In response to a number of thoughtful suggestions set forth in PacBell and SDG&E comments on the ALJ's proposed interim order, we are modifying the subcontracting portions of the general order in several respects in order to encourage utilities to incorporate in all appropriate procurement documents statements concerning their WMBE policies which are designed to encourage contractors to use their best efforts to utilize WMBE subcontractors. These provisions of the general order will be permissive, rather than mandatory, in order to allow utilities sufficient flexibility to implement programs most appropriate to their particular situations.

concerning their WMBE policies which are designed to encourage contractors to use their best efforts to utilize WMBE subcontractors. These provisions of the general order will be permissive, rather than mandatory, in order to allow utilities sufficient flexibility to implement programs most appropriate to their particular situations.

Certain parties contend that the draft GO leaves unanswered questions regarding the details of measuring subcontracts as part of a utility's total WMBE activity. They ask, for example:

1. What is the nature of the subcontracting reports required by the CPUC?
2. Is the verification of prime contractor commitment versus results required?
3. Should utilities include subcontractor dollar amounts in the Annual Report on payments to WMBEs?
4. Do subcontracting dollars contribute to WMBE goal results?
5. Is verification of subcontractors required?

The general order as modified in response to the joint comments answers these questions as follows.

Section 4.3.7 provides that: "Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMBE subcontractors." Section 4.3.8 provides that: "Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and guarantees to engage WMBE subcontractors in all procurement categories which provide subcontracting opportunities." Sections 7.1.5 and 8.1.5 list the above reports as elements to be included in each utility's annual report and annual plan, respectively.

Verification of prime contractor commitment will not be required at this time. Section 4.3.4 of the adopted GO does provide, however, that: "Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMBEs 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."

Section 7.1.5 of the adopted GO provides that each utility's annual report to the Commission must include a summary of prime contractor utilization of WMBE subcontractors.

Section 4.3.9 of the adopted GO provides that each utility may include awards to verified WMBE subcontractors in its WMBE results. While verification of subcontractors is not required, awards to subcontractors may only be included in a utility's WMBE results if the WMBE status of the subcontractor has been verified.

The subcontracting program section of the adopted general order will read as follows:

#### 4.3 Subcontracting Program

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

- 4.3.1 The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMBE prime contractor outreach program.
- 4.3.2 The subcontracting program shall apply to the following:
  - 4.3.2.1 Purchases/contracts exceeding \$500,000 for products and services;
  - 4.3.2.2 Construction contracts exceeding \$1,000,000;
  - 4.3.2.3 Purchases/contracts which offer WMBE subcontracting opportunities, regardless of value, where appropriate.

- 4.3.3 The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens and the like, or to the procurement of products and services in excluded categories.
- 4.3.4 Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMBEs 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.
- 4.3.5 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 AND MINORITY OWNED  
BUSINESS ENTERPRISES**

- a. It is the policy of the utility that women and minority owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts.
- b. 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.

- c. The contractor agrees to provide prospective WMBE subcontractors with a copy of a WMBE status verification form approved by the California Public Utilities Commission, which is to be completed by the WMBE and forwarded to the central clearinghouse for verification.
- 4.3.6 Each utility is encouraged to inform suppliers of products and services that subcontracting with WMBEs 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.
- 4.3.7 Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMBE subcontractors.
- 4.3.8 Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and guarantees to engage WMBE subcontractors in all procurement categories which provide subcontracting opportunities.
- 4.3.9 Each utility may include awards to verified WMBE subcontractors in its WMBE results.

#### Complaint Procedure

In developing earlier versions of the draft GO, the ALJ proposed that the WMBEs use the Commission's established complaint procedure to settle any complaints against utilities.

Moore maintains that this suggested procedure of settling WMBE complaints violates D.82-12-101 in C.10308.

D.82-12-101 stated, among other things, that:

"We will require the establishment or expansion of complaint procedures with the purpose of identifying and improving problems encountered by minority vendors in doing business with the various utilities. During the course of these hearings, . . . F/MBEs attempted to communicate in their testimony the difficulty of finding a way to address procurement problems." (10 CPUC 2d 414, at 432-433 (1982).)

That decision ordered utilities to file, with their next general rate case applications, "A description of the complaint procedure available to F/MBE vendors including methods of making F/MBEs aware of the procedure." (*Id.*, at 436.)

Although AB 3678 does not refer specifically require any complaint or appeals process, we agree with Assemblywoman Gwen Moore and other commenters that it is necessary to address complaint or appeals procedures in this rulemaking proceeding. As Moore points out, D.82-12-101 did require utilities to file a description of complaint procedures available to WMBE vendors. Since one purpose of AB 3678 is to "clarify and expand" the program for utility procurement of goods and services from WMBEs, it would be inappropriate for the Commission to be complacent about the existing status of the complaint and appeals procedures available to WMBEs.

The procedure to present complaints to the utility's management proposed by Joint Commenters will provide a fair and practical means to redress WMBE complaints. However, we believe that Joint Commenters' proposed procedure for appealing to the Commission the utility WMBE program administrator's decision is already available pursuant to PU Code § 1702 and Article 3 of the Commission's Rules of Practice and Procedure. We believe that the Commission's complaint procedure has worked successfully for all complainants including those unfamiliar with the Commission's procedures. The Commission's Consumer Affairs Branch and Public



Advisor's Office have done a very successful job of assisting those unfamiliar with the Commission's complaint procedures. They can provide similar assistance to any grieved WMBE. Therefore, we do not believe that the Commission's complaint procedure or its rules need to be modified in the manner suggested by Joint Commenters.

We emphasize that the Commission only entertains complaints concerning alleged violations of law, Commission rules, orders and decisions, and utility tariffs, and not complaints which simply involve general contract disputes between a utility and an existing or prospective contractor (See D.88-03-024).

#### Goals

The ALJ's proposed decision and general order deferred consideration of WMBE goals until Phase 2 of this proceeding. Since Joint Commenters propose goals satisfactory to all major utilities subject to the general order, this deferral is no longer necessary or appropriate.

Joint Commenters propose that each utility set substantial and verifiable short-term (one year) and long-term (five year) goals for the utilization of WMBE contractors. The long-term goals are to establish minimum goals for each major product and service category in which the utility makes such outside purchases of not less than 15% for minority owned business enterprises and not less than 5% for women owned business

enterprises.<sup>4</sup> These categories may be adapted to meet the utility's specific needs. Each utility is to use an appendix attached to the joint comments as an example of categories in which to establish goals. Overall program goals, disaggregated by minorities (MBEs) and non-minority women (WBEs), are also to be established.

The joint comments note that the long term goals noted above do not preclude utilities from seeking parity with public agencies which are awarding 30% or more of their contracts to WMBEs.

Factors to be used in setting goals include, but are not limited to: (1) Total utility purchasing/contracting projections, (2) Market dynamics based on historical data and trends, and (3) WMBE availability and competitiveness in the geographical area served by the utility.

Joint Commenters propose that goals be set for each major product or service category which provides opportunities for procurement. Where it is clearly evident that women or minority vendors do not provide a specific product or service, or that sole source procurement is the only available procurement method,

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4 A cross-out, and two sets of initials in the margin of the joint comments appear to indicate that two utilities preferred overall minimum goals to minimum goals for each procurement category. We reject this approach for three reasons. First, we believe that it is best to adopt a uniform set of requirements for all utilities so that we can better track each utility's progress in utilizing WMBEs. Second, the joint proposed rules approach allows the creation of excluded categories of products or services where WMBE suppliers are unavailable, and should enable each utility the flexibility needed to appropriately tailor goal setting without such a drastic reduction in program requirements. Third, the use of overall minimum goals instead of category by category goals would enable utilities to make apparent, but illusory, progress in WMBE procurement simply by loading up on WMBE contractors in certain categories while virtually ignoring the rest. We do not feel that such an approach is what the Legislature had in mind when it enacted AB 3678.

enterprises.<sup>4</sup> These categories may be adapted to meet the utility's specific needs. Each utility is to use an appendix attached to the joint comments as an example of categories in which to establish goals. Small utilities may use the broad categories set forth in PU Code Section 8281 (b) (1) (B). Overall program goals, disaggregated by minorities (MBEs) and non-minority women (WBEs), are also to be established.

The joint comments note that the long term goals noted above do not preclude utilities from seeking parity with public agencies which are awarding 30% or more of their contracts to WBEs.

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however, Joint Commenters would permit the creation of an "exclusion." Goals would be expressed as a percentage of dollars awarded to outside vendors in each category by the utility (excepting exclusions).

Joint Commenters would also permit utilities which are presently purchasing products or services from affiliates to consider those purchases to be an exclusion, provided that as a part of the utility's outreach program the utility encourages the affiliate to establish an appropriate subcontracting program where the affiliate employs subcontractors.

Under Joint Commenters' approach, where penetration of WMBEs is relatively low utilities are to take steps to encourage WMBE entry into the marketplace, in addition to any other outreach activities. Each utility is also required to make special efforts to increase utilization where there has been low utilization of WMBEs such as legal and financial services and areas that are considered technical in nature.

Joint Commenters suggest the addition of a section noting that no penalties shall be imposed by the Commission for any utility's failure to meet and/or exceed goals, but that a Commission finding of a willful violation of these rules or any related Commission decision or order shall result in the imposition of the appropriate penalties.

We commend Joint Commenters for developing proposed rules dealing with the establishment of WMBE procurement goals in a manner acceptable to the major utilities subject to these rules. We are pleased that the interexchange telecommunications companies that commented on the joint proposed rules appear willing to accept a program like that proposed by Joint Commenters. We understand the reluctance of the smaller utilities to embrace such an approach, but are not convinced that we should adopt separate requirements for those entities.

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Joint Commenters suggest the addition of a section noting that no penalties shall be imposed by the Commission for any utility's failure to meet and/or exceed goals, but that a Commission finding of a willful violation of these rules or any related Commission decision or order shall result in the imposition of the appropriate penalties.

We commend Joint Commenters for developing proposed rules dealing with the establishment of WMBE procurement goals in a manner acceptable to the major utilities subject to these rules. We are pleased that the interexchange telecommunications companies and small utilities which commented on the joint proposed rules appear willing to accept a program similar to that proposed by Joint Commenters. We understand, and will accommodate, the interexchange companies' desire to be allowed to use multi-state or national goals and verification forms. We will, however, reject

the recommendation of AT&T and the Joint Small Utility Commenters that we allow such companies to set overall procurement goals not based on product or service categories. We understand their reluctance to embrace such an approach, but are not convinced that we should adopt separate requirements for such entities. We are likewise not convinced that we should allow small utilities freedom from the initial long-term goals set forth in the joint proposed rules. We prefer a uniform program wherever possible.

We will adopt a modified version of Joint Commenters' proposed rules on goals. Our version is designed to capture the essence of Joint Commenters' proposal while making it easier for us to implement. We will allow utilities to create "excluded categories" of products or services where they can demonstrate the unavailability of WMBE suppliers. Utilities can note such categories in their annual reports to the Commission. In order to ensure that such excluded categories meet real needs and do not continue to exist after WMBE suppliers in such categories become available, we will require utilities to report any efforts made to recruit WMBE suppliers in these categories and to note in their annual plans any plans they have to recruit such suppliers in the future. We believe that a requirement that utilities be prepared to justify the continued existence of excluded categories does not violate the essence of the joint proposed rules on goals, but is simply a necessary component of any program designed to properly implement AB 3678.

Utilities presently purchasing products or services from affiliates will be able to subtract such purchases from dollar base used to establish goals in those categories of products or services, so long as they encourage their affiliates to establish appropriate subcontracting programs.

The section of the adopted general order dealing with goals will read as follows:

6. GOALS

Each utility shall annually set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBE contractors. Goals

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5 "Substantial goals" mean goals which are realistic and clearly demonstrate a utility's commitment to increase WMBEs' share of the utility's purchases and contracts.

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shall be set annually for each major product and service category which provides opportunities for procurement. Each utility shall use Attachment 2 as an example of categories in which to establish goals. Small utilities may choose to establish goals for only the broad categories set forth in Public Utilities Code Section 8281 (b) (1) (E) (i.e., technology, equipment, supplies, services, materials and construction).

- 6.1 The utilities shall consider the following factors in setting their goals:
  - 6.1.1 Total utility purchasing and/or contracting projections;
  - 6.1.2 Availability of WMBE contractors and competitiveness in the geographical area served by the utility;
  - 6.1.3 Market dynamics based on historical data and trends;
  - 6.1.4 Other appropriate factors which would increase the WMBEs' share of utility business.
- 6.2 Each utility shall establish initial minimum long-term goals for each 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. The specification of minimum 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) (B) are awarding 30% or more of their contracts to WMBEs.
- 6.3 Overall program goals shall also be established for both minority owned

business enterprises (MBEs) and non-minority women owned business enterprises (WBEs).

- 6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. Goals need not be set for products or services which fall within an "excluded category" created by a utility pursuant to Section 6.5 of this general order because of the unavailability of WMBEs capable of supplying those products or services.
- 6.5 A utility may create an "excluded category" of products or services where it is clearly evident that WMBEs do not provide a specific product or service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMBEs capable of supplying such products or services. Because there may in the future be WMBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of an excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMBE program progress and future plans.
- 6.6 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 WMBE providers 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 subcontracting 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.

- 6.7 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.
- 6.8 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 fall within an excluded category established by the utility pursuant to Section 6.5.
- 6.9 Payments to other utilities and franchise tax fees need not be included in the procurement dollar base used to establish goals.
- 6.10 Each utility shall make special efforts to increase utilization of WMBEs in product or service categories where there has been low utilization of WMBEs, such as legal and financial services and areas that are considered technical in nature.
- 6.11 In procurement areas where penetration of WMBEs is low or non-existent, each utility shall take steps to encourage WMBE entry into the marketplace, in addition to any outreach activity.
- 6.12 Interexchange telecommunications corporations may file with the

Commission nationwide or multiple-state WMBE goals or goals established for a federally mandated WMBE procurement program in lieu of California-specific goals.

- 6.13 Except for any penalty imposed as a result of a Commission-initiated investigation, no penalty shall be imposed for failure of any utility to meet and/or exceed goals.
- 6.14 Utilities shall report their goals in their annual plans.

#### Annual Reports and Annual Plans

The adopted general order addresses the reporting requirements proposed by Joint Commenters, and includes several additional requirements necessary to allow us to keep track of utility efforts to recruit WMBE suppliers of products or service in procurement categories where WMBE utilization has been low or non-existent.

In addition, we will on our own initiative modify certain portions of the draft GO to ensure full compliance with PU Code Section 8283, which requires us to require utilities to submit annually detailed and verifiable plans for increasing women and minority business enterprise procurement in all categories. Section 8283 (b) states that these annual plans "shall include short-and long-term goals and timetables, ...and shall include methods for encouraging both prime contractors and guarantees to engage women and minority business enterprises in subcontracts in all categories which provide subcontracting opportunities."

While the draft GO required utilities to submit plans for increasing WMBE procurement in purchases and or contracts as one element of their annual reports, we believe it is more appropriate to distinguish between annual plans and annual reports, since both are required by the legislation. Both the annual report and the annual plan may be incorporated within one physical document, so

long as all required elements are included. We also believe that if we are fully comply with Section 8283 we must specify in greater detail the minimum contents of the annual plans.

We will also add to the general order a section dealing with the Commission's own obligation to report to the Legislature on the progress made by utilities to implement these rules, to include in this report our recommendations to the utilities for achieving maximum results, and to recommend legislation if needed.

The sections of the adopted general order dealing with reporting requirements will read as follows:

7. ANNUAL REPORT

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, an Annual Report on their WMBE Program.

7.1 The Annual Report shall contain at least the following elements:

7.1.1 A description of WMBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities;

7.1.2 A summary of WMBE 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;

7.1.3 An itemization of WMBE program expenses;

7.1.4 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;

- 7.1.5 A summary of prime contractor utilization of WMBE subcontractors;
  - 7.1.6 A list of WMBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status;
  - 7.1.7 A summary of purchases and/or contracts for products and services in excluded categories.
  - 7.1.8 A description of any efforts made to recruit WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;
  - 7.1.9 A justification for the continued existence of 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 WMBE suppliers. Such justification must include a description of any efforts made to find and or recruit WMBE suppliers of products or services in the excluded category.
- 7.2 The annual WMBE report shall include either data pertaining to the utility's California operations or, in the case of interexchange telecommunications corporations, data regarding their plans for nationwide or multiple-state WMBE goals and outreach programs, or the results and plans for any federally

mandated WMBE goals and outreach programs.

- 7.3 This general order is not intended to permit erosion of WMBE programs and reporting presently engaged in by a utility.
- 7.4 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).

#### 8. ANNUAL PLAN

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for increasing women and minority business enterprise procurement in all categories.

- 8.1 The Annual Plan shall contain at least the following elements:
- 8.1.1 Short, mid, and long term goals set as required by Section 5, AWDRA;
- 8.1.2 A description of WMBE program activities planned for the next calendar year. This description shall include both internal and external activities;
- 8.1.3 Plans for recruiting WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;

- 8.1.4 Plans for seeking and or recruiting WMBE 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 WMBE suppliers.
- 8.1.5 Plans for encouraging both prime contractors and guarantees to engage women and minority business enterprises in subcontracts in all categories which provide subcontracting opportunities.
- 8.1.6 Plans for complying with the WMBE program guidelines established by the Commission as required by Public Utilities Section 8283 (c). The Commission's CACD will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

## 9. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities undertaken by each utility to implement Public Utilities Code Sections 8281 through 8285 and this general order, as required by Section 8283 (e).

- 9.1 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.



- 9.2 This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this general order.

#### En Banc Hearing

Parties were advised by the ALJ that, if requested by any party, the Commission would hold an en banc hearing to allow parties to present oral arguments on the proposed order. On further reflection, we believe that an en banc hearing, focused on the ALJ's proposed draft, is not necessary. We have received extensive comments from parties (as well as their input in a subsequent workshop presided over by the ALJ) on the draft GO, and all significant issues raised by the parties have been addressed in the final general order. We also recognize the mandate of the legislature to implement these rules without undue delay. Therefore, we will adopt the general order as revised herein without holding additional hearings for oral argument.

#### Findings of Facts

1. The California Legislature enacted AB 3678, which became law in September 1986 with the stated purpose of implementing a program to encourage, recruit, and utilize WMBEs in the procurement of contracts from every gas, electric, and telephone utility with gross annual revenues exceeding \$25,000,000 (and its Commission regulated subsidiaries and affiliates).
2. It is the intent of AB 3678 to aid the interest of F/MBEs.
3. AB 3678 added Sections 8281 through 8285 to the Public Utilities Code.
4. The Commission issued R.87-02-026 as means of implementing AB 3678.
5. Seventeen utilities were made respondents to R.87-02-026.

6. The respondents were ordered to file proposed rules and guidelines to implement PU Code Sections 8281-8285. The requested rules were to address the entire statutory scheme.

7. Interested parties were also allowed to file proposed rules.

8. On July 15, 1987, an informal conference, chaired by the counsel for the Public Staff Division (now the Division of Ratepayer Advocates), was held to determine the areas of agreement and disagreement among parties with regard to the proposed rules and guidelines.

9. Based on the parties' proposed rules and the comments received at the informal conference, the ALJ issued proposed rules and guidelines to implement PU Code Sections 8281-8285.

10. The proposed rules and guidelines were issued in the form of a draft general order.

11. Parties were required to review the draft GO and provide comments on it.

12. On November 12, 1987, a workshop was held to receive comments and recommendations for improving the draft GO.

13. Parties provided extensive comments on the draft GO.

14. This interim opinion addresses all significant issues raised by parties.

15. The proposed rules and guidelines apply to all utilities covered by AB 3678, are likely to be modified on the basis of experience gained in their application, and do not affect practice before this Commission.

16. The Commission's Rules of Practice and Procedures include rules that govern practice before the Commission.

17. The adopted general order will implement the requirements of AB 3678.

18. The rules and guidelines adopted by this general order need to be supplemented in the next phase of this proceeding by a decision addressing at least the following issues:

- a. What forum should be utilized by persons wishing to voice their concerns and suggestions regarding the utilities' implementation of WMBE programs (i.e., should general rate cases continue to provide the forum, or should a generic annual WMBE proceeding be developed?
- b. If a generic proceeding is utilized, how will any costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases?

### Conclusions of Law

1. The proposed rules and guidelines should be issued in the form of a general order.
2. The general order included in Appendix A should be adopted without further hearings.

### INTERIM ORDER

#### IT IS ORDERED that:

1. Appendix A is adopted as a general order of the Commission.
2. This rulemaking remains open for further proceedings to supplement this general order.
3. Phase 2 of this proceeding will address at least the following:
  - a. What forum should be utilized by persons wishing to voice their concerns and suggestions regarding the utilities' implementation of WMBE programs (i.e., should general rate cases continue to provide the forum, or should a generic annual WMBE proceeding be developed?

- b. If a generic proceeding is utilized, how will any costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases?

This order becomes effective 30 days from today.

Dated \_\_\_\_\_, at San Francisco, California.

- b. If a generic proceeding is utilized, how will any costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases?

4. Within 60 days of the date of mailing of this order, respondents shall file written comments, including specific proposals, addressing the matters set forth in Ordering Paragraph 3. Other parties may file written comments under the same time schedule. The original and 12 copies of all such comments shall be filed with the Commission's Docket Office. In addition to conforming to the requirements of Article 2 of the Commission's Rules of Practice and Procedure, such comments shall contain a certificate indicating service on all other respondents and parties to the proceeding.

This order becomes effective 30 days from today.

Dated APR 27 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

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## GENERAL ORDER 156

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIARULES GOVERNING THE DEVELOPMENT OF PROGRAMS TO INCREASE  
PARTICIPATION OF FEMALE AND MINORITY BUSINESS ENTERPRISES IN  
PROCUREMENT OF CONTRACTS FROM UTILITIES AS REQUIRED BY PUBLIC  
UTILITIES CODE SECTIONS 8281-8285Adopted Decision \_\_\_\_\_, Effective \_\_\_\_\_  
Decision 88 04 057, R.87-02-026.1. GENERAL1.1 Intent

## 1.1.1

Purpose - These rules implement PU Code Sections 8281-8285 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 female and minority business enterprises' (W/MBE) 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

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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.

## 1.3.2

"Women-owned business" 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 women.

## 1.3.3

"Minority-owned business" means a business enterprise that is at least 51% owned by a minority individual or group; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and 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 Americans, and other groups.

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1 As provided for in Article XII of the California Constitution.

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- 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 should be either U.S. citizens or legal aliens with permanent residence status in the United States.
- 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 Islands, in particular, American Indians, Eskimos, Aleutes, 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 "Control" means exercising the power to make policy decisions.



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- 1.3.11 "Operate" means being actively involved in the day-to-day management and not merely acting as officers or directors.
- 1.3.12 "Goal" means a target which when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.
- 1.1.13 "Excluded category" means a category of products or services which may be removed from the dollar base used to establish goals, pursuant to Section 6.5 of this general order, because of the established unavailability of WMBEs capable of supplying those products or services.
- 1.3.13 "Short-term goal" means a goal applicable to a period of (1) one year.
- 1.3.14 "Mid-term goal" means a goal applicable to a period of (3) three years.
- 1.3.15 "Long-term goal" means a goal applicable to a period of (5) five years.
- 1.3.16 "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.
- 1.3.17 "Small utility" means all electric, gas, and telephone utilities subject to these rules which had less than \$250 million in annual operating revenues attributable to its California-regulated utility operations according to the most recent annual report filed with the Commission.
- 1.3.18 "Interexchange telecommunications corporation" means any corporation authorized by the Commission to provide

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intrastate, interLATA services within California.

1.3.19 "Central clearinghouse" means an entity that shall serve as a shared database unit and WMBE verification organization that serves the needs of the utilities and the Commission. It shall not serve as a representative for or on behalf of any individual or group.

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.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of WMBEs for participation in utility WMBE procurement programs.

2.1 WMBE Status Verification Form Each utility shall use the standard Commission-approved form set forth in Attachment A, or, in the case of interexchange telecommunications corporations, as specified in Section 2.2, to verify the WMBE status of participants in its WMBE program. The standard form may be modified by the Clearinghouse Advisory Board as

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necessary, so long as it requires the same essential information.

2.2

An interexchange telecommunications corporation may use its own internally-developed verification form if the use of such form is necessary to comply with an established nationwide or multi-state WMBE program or federally mandated WMBE requirements, provided it is approved by the Director of the Commission Advisory and Compliance Division (CACD) and contains the following information:

2.2.1 WMBE's name, address, and telephone number;

2.2.2 Type of ownership, i.e., sole ownership, partnership, corporation;

2.2.3 Type of business, i.e., product or service offered;

2.2.4 Ethnic and gender classifications included in PU Code Section 8282 (b);

2.2.5 Signature of principal owner/officer and date of signature;

2.2.6 Declaration of penalty statement contained in PU Code Section 8285;

2.2.7 Requirement for immediate notification of ownership change and completion of new verification form;

2.2.8 Itemization and proof of certification by other agencies.

2.2.9 Declaration under penalty of perjury that the information contained on the form is true and correct.

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- 2.3 The verification form may be appended to any utility supplier information/qualification form and shall be forwarded when complete by the utility to the central clearinghouse described in Section 3 of this general order.
- 2.4 The verification form may be supplied to WMBE contractors by the clearinghouse. Contractors may in turn supply the verification form to potential subcontractors. Contractors or subcontractors may complete verification forms and return them to the clearinghouse for processing and inclusion, if appropriate, in the database.
- 2.5 In assessing the suitability of a WMBE 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 WMBE.
- 2.6 WMBEs shall be required to submit verification forms at least once every three years.
- 2.7 Completion of the verification form only initiates a verification of the business's WMBE status and shall neither be construed as an endorsement of its ability to perform nor guarantee its business with the utility.
- 2.8 WMBE verification forms shall be available for inspection by the Commission.

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- 2.9 Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code Section 8285.

3. CENTRAL CLEARINGHOUSE

The utilities shall jointly establish a central clearinghouse for the sharing of WMBE identification and verification information. The central clearinghouse shall be a separate entity. It shall not serve as a representative for or on behalf of any individual or group or utility. It shall be operated by a contractor selected by an Advisory Board.

- 3.1 The primary purpose of the clearinghouse shall be to audit and verify the status of WMBE vendors/suppliers, and to establish and maintain a database of WMBE vendors/suppliers that is accessible to the Commission and to participating utilities. The database shall consist of WMBE vendors/suppliers whose WMBE status has been verified through a process of independent investigation by the clearinghouse.
- 3.2 Utility participation in 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. This participation shall not preclude auditing and verification by an individual utility if the utility deems such action is necessary. Clearinghouse auditing does not relieve the Commission of the duty to audit or verify WMBE status pursuant to a complaint or an ongoing investigation.
- 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of representatives from the following six utilities, a representative of CACD and a

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- 2.9 Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code Section 8285.

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- 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of representatives from the following six utilities, a non-voting representative of CACD and a

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representative from a recognized WMBE group:

- a. Pacific Gas and Electric Company
- b. Pacific Bell
- c. Southern California Edison Company
- d. Southern California Gas Company
- e. General Telephone Company of California
- f. San Diego Gas & Electric Company

3.4

The seat of the representative for the WMBE group on the Advisory Board shall rotate on an annual basis among different female and minority organizations. These organizations shall confer among themselves and select a representative. In the event of disagreement among women and minority organizations regarding representation on the Advisory Board, the organizations may petition the Director of CACD to select the representative.

3.5

The Advisory Board shall develop a formula for equitably allocating the costs of establishing and maintaining the clearinghouse among the various utilities. These costs shall be primarily distributed among the large utilities. Any costs allocated to small utilities or IECs shall be substantially less than the costs allocated to the large utilities.

3.6

Within thirty (30) days after the effective date of this general order, the Advisory Board shall meet to develop operational guidelines for the clearinghouse, and to select a contractor to operate it. The Advisory Board shall consult with Caltrans to determine whether the utilization of that agency's present clearinghouse operation would meet the needs of the utilities and WMBEs while avoiding duplication of state agency effort.

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These proposed guidelines shall be submitted to the Commission within ninety (90) days after the effective date of this order. These guidelines will be subject to the approval of the Director of the Commission Advisory and Compliance Division. Thereafter, the Advisory Board shall meet at least annually to review the operational guidelines for the clearinghouse and to implement any necessary modifications.

3.7 The Advisory Board shall file an annual report with the Director of CACD no later than March 1 of each year. The report shall include a detailed description of the activities of the clearinghouse during the previous year.

3.8 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 affected utilities that the WMBE will be dropped from the shared database until the renewal is completed.

#### 4. UTILITY IMPLEMENTATION

Each utility's WMBE program shall be designed to ensure that a fair proportion of product and services contracts are awarded to WMBEs. The following minimum program elements shall be incorporated into each utility's WMBE program.

##### 4.1 Internal Utility Program Development

Each Utility shall maintain an appropriately sized staff to provide overall WMBE program direction and guidance and



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to implement WMBE program requirements. <sup>2</sup>

## 4.1.2

Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMBE program. These employees shall be evaluated on the basis of their progress in meeting the goals of their specific area of procurement. Some of the major components of a training program shall include:

4.1.2.1 Review of WMBE program progress and results, and the development of future strategies, at officer level meetings. These meetings shall also include an exchange of ideas and a pledge of ongoing support for the program;

4.1.2.2. Meetings or seminars to familiarize employees with WMBE program objectives, goals, and operations, and with the special problems confronting WMBEs;

4.1.2.3. Programs to train and encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMBEs.

4.2 External Outreach

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

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<sup>2</sup> It may not be necessary for small utilities to increase their staff or assign existing staff members full-time WMBE program responsibilities if they can implement their WMBE program effectively by assigning responsibilities for program direction and goal accomplishment to existing staff.

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## 4.2.1.

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:

4.2.1.1 Actively seek out opportunities to identify WMBE contractors and to expand WMBE source pools;

4.2.1.2 Actively support the efforts of organizations experienced in the field who promote the interests of WMBE contractors;

4.2.1.3 Work with WMBE 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;

4.2.1.4 At the request of any unsuccessful WMBE bidder, provide information concerning the relative range/ranking of the WMBE 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;

4.2.1.5 To the extent possible, make available to WMBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;

4.2.1.6 Encourage employees involved in procurement activities to break apart purchases and contracts as

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appropriate to accommodate the capabilities of WMBEs;

4.2.1.7 Summarize this general order in its outreach program handouts. Such summaries shall state that WMBEs will be furnished a complete copy of this general order upon request.

#### 4.3 Subcontracting Program

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

4.3.1 The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMBE prime contractor outreach program.

4.3.2 The subcontracting program shall apply to the following:

4.3.2.1 Purchases/contracts exceeding \$500,000 for products and services;

4.3.2.2 Construction contracts exceeding \$1,000,000;

4.3.2.3 Purchases/contracts which offer WMBE subcontracting opportunities, regardless of value, where appropriate.

4.3.3 The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like, or to the procurement of products and services in excluded categories.

4.3.4 Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMBEs as subcontractors. Prime contractors shall be encouraged to submit to the

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utility plans that include goals for the utilization of WMBEs 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.

4.3.5

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 AND MINORITY OWNED BUSINESS ENTERPRISES**

- a. It is the policy of the utility that women and minority owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts.
- b. 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.
- c. The contractor agrees to provide prospective WMBE subcontractors with a copy of a WMBE status verification form approved by the California Public Utilities Commission, which is to be completed by the WMBE and forwarded to the central clearinghouse for verification.

4.3.6

Each utility is encouraged to inform suppliers of products and services that subcontracting with WMBEs is a factor that will be considered in the bid evaluation process. A statement to

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that effect could be included in all appropriate procurement documents.

4.3.7 Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMBE subcontractors.

4.3.8 Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and grantees to engage WMBE subcontractors in all procurement categories which provide subcontracting opportunities.

4.3.9 Each utility may include awards to verified WMBE subcontractors in its WMBE results.

4.4 Internal Utility Appeals Process

Each utility shall provide a mechanism through which WMBE contractors or prospective WMBE contractors can present complaints to the utility's management.

4.4.1 Complaints shall first be submitted to a WMBE program administrator within a reasonable time after the event complained of. WMBEs should be encouraged to make their complaints in writing;

4.4.2 Complaints shall be reviewed and investigated by the administrator and the administrator's decision communicated to the complainant within twenty (20) working days of receipt of the complaint;

5. WMBE COMPLAINTS TO THE COMMISSION

In the event that a WMBE believes that a utility WMBE program administrator's decision, or any other act or omission of the utility, violates any provision of law or of any order or rule of the Commission, the WMBE may file a complaint with the Commission pursuant to Public Utilities Code Section 1702 and

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Article 3 of the Commission's Rules of Practice and Procedure (Title 20, Chapter 1, of the California Administrative Code).

5.1 WMBE complaints filed with the Commission shall be handled in a timely manner in accordance with the Commission's Rules of Practice and Procedure. Pursuant to Rule 13, defendant utilities must answer such complaints within thirty (30) days. Complaints which do not allege that the matter has first been brought to the staff for informal resolution may, under Rule 10, be referred to the staff to attempt to resolve the matter informally. In appropriate circumstances, the expedited complaint procedure set forth in Rule 13.2 of the Commission's Rules may be utilized.

5.2 The Commission's Office of the Public Advisor may assist WMBEs in preparing to file complaints against utilities.

## 6. GOALS

Each utility shall annually set substantial<sup>4</sup> and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBE contractors. Goals shall be set annually for each major product and service category which provides opportunities for procurement. Each utility shall use Attachment 2 as an example of categories in which to establish goals. Small utilities may choose to establish goals for only the broad categories set forth in Public Utilities Code Section 8281 (b)(1)(E) (i.e., technology, equipment, supplies, services, materials and construction).

### 6.1

The utilities shall consider the following factors in setting their goals:

3 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 type disputes between a utility and an existing or prospective WMBE contractor.

4 "Substantial goals" mean goals which are realistic and clearly demonstrate a utility's commitment to increase WMBEs' share of the utility's purchases and contracts.

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6.1.1 Total utility purchasing and/or contracting projections;

6.1.2 Availability of WMBE contractors and competitiveness in the geographical area served by the utility;

6.1.3 Market dynamics based on historical data and trends;

6.1.4 Other appropriate factors which would increase the WMBEs' share of utility business.

6.2 Each utility shall establish initial minimum long-term goals for each 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. The specification of minimum 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) (B) are awarding 30% or more of their contracts to WMBEs.

6.3 Overall program goals shall also be established for both minority owned business enterprises (MBEs) and non-minority women owned business enterprises (WBEs).

6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. Goals need not be set for products or services which fall within an "excluded category" created by a utility pursuant to Section 6.5 of this general order because of the unavailability of WMBEs capable of supplying those products or services.

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6.5

A utility may create an "excluded category" of products or services where it is clearly evident that WMBEs do not provide a specific product or service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMBEs capable of supplying such products or services. Because there may in the future be WMBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of an excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMBE program progress and future plans.

6.6

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 WMBE providers 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 subcontracting 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.



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- 6.7 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.
- 6.8 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 fall within an excluded category established by the utility pursuant to Section 6.5.
- 6.9 Payments to other utilities and franchise tax fees need not be included in the procurement dollar base used to establish goals.
- 6.10 Each utility shall make special efforts to increase utilization of WMBEs in product or service categories where there has been low utilization of WMBEs, such as legal and financial services and areas that are considered technical in nature.
- 6.11 In procurement areas where penetration of WMBEs is low or non-existent, each utility shall take steps to encourage WMBE entry into the marketplace, in addition to any outreach activity.
- 6.12 Interexchange telecommunications corporations may file with the Commission nationwide or multiple-state WMBE goals or goals established for a federally mandated WMBE procurement program in lieu of California-specific goals.
- 6.13 Except for any penalty imposed as a result of a Commission-initiated investigation, no penalty shall be imposed for failure of any utility to meet and/or exceed goals.

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6.14

Utilities shall report their goals in their annual plans.

7. ANNUAL REPORT

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, an Annual Report on their WMBE Program.

7.1

The Annual Report shall contain at least the following elements:

7.1.1 A description of WMBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities;

7.1.2 A summary of WMBE 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;

7.1.3 An itemization of WMBE program expenses;

7.1.4 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;

7.1.5 A summary of prime contractor utilization of WMBE subcontractors;

7.1.6 A list of WMBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status;

7.1.7 A summary of purchases and/or contracts for products and services in excluded categories.

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7.1.8 A description of any efforts made to recruit WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;

7.1.9 A justification for the continued existence of 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 WMBE suppliers. Such justification must include a description of any efforts made to find and or recruit WMBE suppliers of products or services in the excluded category.

7.2

The annual WMBE report shall include either data pertaining to the utility's California operations or, in the case of interexchange telecommunications corporations, data regarding their plans for nationwide or multiple-state WMBE goals and outreach programs, or the results and plans for any federally mandated WMBE goals and outreach programs.

7.3

This general order is not intended to permit erosion of WMBE programs and reporting presently engaged in by a utility.

7.4

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).

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Page 228. ANNUAL PLAN

Utilities shall file with the Director of CACD, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for increasing women and minority business enterprise procurement in all categories.

## 8.1

The Annual Plan shall contain at least the following elements:

8.1.1 Short, mid, and long term goals set as required by Section 5, supra;

8.1.2 A description of WMBE program activities planned for the next calendar year. This description shall include both internal and external activities;

8.1.3 Plans for recruiting WMBE suppliers of products or services in procurement categories where WMBE utilization has been low, such as legal and financial services and areas that are considered highly technical in nature;

8.1.4 Plans for seeking and or recruiting WMBE 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 WMBE suppliers.

8.1.5 Plans for encouraging both prime contractors and grantees to engage women and minority business enterprises in subcontracts in all categories which provide subcontracting opportunities.

8.1.6 Plans for complying with the WMBE program guidelines established by the Commission as required by Public Utilities Section 8283 (c).

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The Commission's CACD will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

9. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities undertaken by each utility to implement Public Utilities Code Sections 8281 through 8285 and this general order, as required by Section 8283 (e).

9.1

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.

9.2

This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this general order.

(END OF APPENDIX A)