

SEP 16 1988

Decision 88 09 024 SEP 14 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)

OPINION MODIFYING DECISION 88-04-057Summary

This order modifies Decision (D.) 88-04-057 which adopted rules and guidelines for increasing participation of women and minority owned business enterprises in procurement of contracts from utilities.

Background

On April 27, 1988, the Commission issued (D.) 88-04-057 which adopted General Order (GO) 156 to implement Assembly Bill 3678 (AB 3678) and Public Utilities (PU) Code §§ 8281-8285 regarding increasing participation of women and minority owned business enterprises (WMBE) in the procurement of utility contracts. Petitions seeking the following modifications to D.88-04-057 have been filed:

1. Certain small utilities (as defined by § 1.3.17 of GO 156) and interexchange telecommunication corporations (IECs) request representation on the Advisory Board responsible for operating the central clearinghouse (Advisory Board).

Assemblywoman Moore supports the request by small utilities and IECs. She also requests that the Advisory Board include representatives from each of the groups identified in AB 3678 and GO 156, (i.e., Black Americans, Hispanic Americans, Asian Americans, Native Americans, and Women), as well as representatives from the Legislature.

2. Pacific Bell (PacBell) requests that goals for WMBE participation be set for each major product/service category rather than for each detailed product/service category.
3. Southern California Gas Company (SoCal) requests that fuel costs be excluded from total procurement expenditures for the purposes of calculating goals and achievements for WMBE participation.

Request for Representation on the Advisory Board

On May 27, 1988, Respondents Continental Telephone Company of California, Citizens Utilities Company of California, Roseville Telephone Company, CP National, Sierra Pacific Power Company and Southwest Gas Corporation (collectively Petitioners) filed a joint petition to modify GO 156 to permit small utilities to have a voting representative on Advisory Board of the central clearinghouse for the sharing of WMBE identification and verification information.

MCI Telecommunications Corporation (MCI), AT&T Communications of California Inc. (AT&T), and US Sprint Communications Company (US Sprint) filed petitions for modification of D.88-04-057 on June 2, June 7, and June 10, 1988, respectively. MCI, AT&T, and US Sprint request that they be added to the Advisory Board.

On June 15, 1988, Assemblywoman Moore filed a petition for modification of D.88-04-057. Assemblywoman Moore requests that in addition to representation from IECs and small utilities, the Advisory Board include representation from each of the groups identified in AB 3678 and GO 156 (i.e., Black Americans, Hispanic Americans, Asian Pacific Americans, Native Americans, and Women), as well as representatives from the Legislature.

Assemblywoman Moore also requests that the representatives from the women and minority business community not be limited to a rotating one year term.

On June 28, 1988, San Diego Gas & Electric Company (SDG&E) filed a response in opposition to the petitions filed by Petitioners, MCI, AT&T, and US Sprint.

Petitioners and IECs contend that the ALJ's proposed opinion did not require small utilities and IECs to participate in the funding of the central clearinghouse therefore they did not comment on the structure of the Advisory Board. However, D.88-04-057 makes participation in the central clearinghouse mandatory for all utilities subject to GO 156. Therefore, Petitioners and IECs request that they have appropriate representation on Advisory Board. Petitioners and IECs are particularly concerned about the equitable apportionment of the costs of operating the clearinghouse.

According to Assemblywoman Moore, the participation by representatives from each of the women and minority groups is extremely important in light the diverse interests of each group.

Assemblywoman Moore believes that legislative representation on the Advisory Board is essential since the task of the board is to implement provisions of legislation.

Assemblywoman Moore states that the Commission has overlooked the importance of continuity by directing that the single representative from the women and minority group would hold the seat for one year while it rotated on an annual basis. She states that it would be literally impossible for a single person, assigned to represent five diverse groups, to do an adequate job in one year, and equally impossible for that person's successor to effectively pick up where the prior representative left off. Therefore, Assemblywoman Moore requests that the the terms of representatives from women and minority groups not be limited to one year.

SDG&E contends that the requests by Petitioners, MCI, AT&T, and US Sprint to be included on the Advisory Board are premature, and that the Advisory Board should first be permitted to

collectively engage in discussions concerning its membership with IECs, various small utilities, and minority groups who are expected to desire some representation on the Board. According to SDG&E, this will enable the concerned parties to discuss these issues in the context of overall operation of the Advisory Board and to make a recommendation to the Commission if a consensus can be reached. SDG&E argues that this process is more logical than piecemeal action by the Commission. SDG&E, therefore, requests that Commission action on this issue be deferred for 90 days to allow the Advisory Board itself to first consider the issue.

Discussion

We agree with Petitioners and IECs that since their participation in the central clearinghouse is mandatory, they should have representation on the Advisory Board.

We believe that participation on the Advisory Board by representatives from each of the women and minority groups will serve an important function of protecting the diverse interests of each group. We do not believe that including representatives of the Legislature on the Advisory Board will facilitate the task of implementing AB 3678. The Clearinghouse Advisory Board is not a program policy advisory board and its functions will not extend to the overall implementation of AB 3678 or the determination of legislative intent. The growing size of the advisory board could make its operation unwieldy and since we can discern no overriding need to have two additional members representing the Legislature, will not provide for it.

We will not delay representation of Petitioners, IECs, and minority groups on the Advisory Board as SDG&E suggests. Their input in the initial phases of determining procedures for establishing and operating the central clearinghouse is important to ensure that the central clearinghouse functions properly.

We agree with Assemblywoman Moore that the effectiveness of women and minority groups would be increased if their terms of

service of the Advisory Board are not limited to one year. However, we are concerned that opportunity exist for periodic replacement of representatives on the Advisory Board should a particular group wish to do so. Accordingly, we will establish a three year term with the understanding that representatives may serve multiple terms if reselected by the group they represent.

In order to institute the above changes we will modify §§ 3.3 and 3.4 of GO 156 as follows:

- 3.3 "The Advisory Board responsible for operating the central clearinghouse shall consist of a non-voting representative of CACD, and a voting representative from each of the following utilities and groups:
- 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
 - g. AT&T Communications of California
 - h. MCI Telecommunications Corporation
 - i. US Sprint Communications Company
 - j. Small utilities as defined by § 1.3.17
 - k. Black Americans as defined by § 1.3.5
 - l. Hispanic Americans as defined by § 1.3.6
 - m. Native Americans as defined by § 1.3.7
 - n. Asian Pacific Americans as defined by § 1.3.8

o. Women

3.4 "Each group identified in § 3.3 shall select its own representative. If a group is unable to select its representative, it may petition the Director of CACD to select a representative. Representatives shall serve three year terms. Representatives may serve multiple terms if reselected by the group they represent."

Lest there be any confusion, we remind the parties of the limited role of the Clearinghouse Advisory Board. The primary purpose of the clearinghouse is to audit and verify the status of WMBE suppliers and to establish and maintain a database of WMBE suppliers that is accessible to the Commission and to participating utilities. (GO 156 § 3.1.) The clearinghouse will not serve as a representative for or on behalf of any individual or group or utility. (GO 156 § 3.) The clearinghouse will be operated by a contractor selected by the Advisory Board. (GO 156 § 3.)

The Advisory Board is responsible for developing operational guidelines for the clearinghouse, for modifying such guidelines as appropriate, for selecting a contractor to operate the clearinghouse, for developing a formula for equitably allocating the costs of establishing and maintaining the clearinghouse among the various utilities, and for filing with the Commission an annual report containing a detailed description of the activities of the clearinghouse during the previous year. (GO 156 §§ 3.5, 3.6, 3.7.) The Advisory Board will not serve as a WMBE program policy advisory board. Those wishing to make WMBE program recommendations may do so through whatever forum is selected in Phase 2 of this proceeding.

Request for Modification of Product/Service Category Definition

On June 2, 1988, Pacific Bell (PacBell) filed a petition to modify § 6.2 of GO 156 to clarify the definition of the word "categories". On June 13, 1988, GTE California Incorporated (GTE)

filed a response supporting PacBell's petition and on June 15, 1988, Assemblywoman Moore filed a response in opposition to PacBell's petition. On July 15, SDG&E filed a response supporting PacBell's petition. Since GTE's and SDG&E's responses merely reiterate arguments made by PacBell, they will not be addressed separately.

PacBell contends that GO 156 sets out three separate, and inconsistent, requirements with respect to the establishment of goals. According to PacBell, § 6 of GO 156 requires PacBell "annually to set substantial and verifiable short-term...mid-term...and long-term goals for the utilization of WMBE contractors. Goals shall be set annually for each major product and service category which provides opportunities for procurement." PacBell claims that § 6.4 of GO 156 requires PacBell to set separate goals "for each major category of products or services which could be supplied by available WMBEs." PacBell points out that § 6.2 which requires it to establish initial minimum goals for each category of products and services rather than each major product/service category is inconsistent with § 6.4. PacBell also points out that § 6.3 of GO 156 requires Pacific to establish "overall program goals...for both minority owned business enterprises...and non-minority women owned business enterprises...."

According to PacBell, it developed the list of product/services categories included in Attachment 2 to Appendix A to GO 156 (Attachment 2) as an analytic tool to identify more clearly where opportunities exist to increase WMBE participation, and it is useful to have such a result tracking system available for diagnostic purposes. PacBell intends to continue tracking sub-categories and to report results based on them. PacBell argues that establishing goals and objectives for each of those sub-categories would be counterproductive.

PacBell maintains that while it tracks performance in a number of sub-categories, it does not believe that GO 156

contemplates establishing long-term goals and objectives for detailed product/service categories. PacBell believes that the categories upon which goals are to be based are its major product/service categories. In the context of Attachment 2, PacBell's major categories are "telecommunications," "nontelecommunications," and "professional services."

Assemblywoman Moore disagrees with PacBell's claim that the decision has an inconsistency which could be remedied by the insertion of the word "major" in the definition of product/service categories. Assemblywoman Moore contends that in requiring utilities to set goals by each major product/service category the Commission was referring to the 39 categories in Attachment 2 to demonstrate its meaning of major product/service category. She points out that Attachment 2 is a PacBell developed list of product and service categories and therefore, requiring PacBell to set goals according to that list could hardly be counterproductive.

Assemblywoman Moore also contends that the Commission's definition of "major product/service" category is more expansive than suggested by PacBell. To demonstrate, she points to the Commission's provision that small utilities need set goals only in the broad categories named in PU Code § 8281(b)(1)(E): i.e., technology, equipment, supplies, services, materials, and construction.

Discussion

Our definition of "major product/service" category is more expansive than interpreted by PacBell. We intended to require utilities to set their goals for WMBE participation by as many product/service categories as possible rather than limiting them to the most major product/service categories. As Assemblywoman Moore points out, it would not make sense for us to impose goal setting and requirements on large utilities that are less rigorous than those we impose on small utilities. Yet that is the practical implication of PacBell's petition for modification.

Perhaps our use of the word "major," without additional clarifying language, is responsible for PacBell's confusion. The word "major" is, of course, a relative term. If the categories in Attachment 2 are viewed in isolation, then the three categories of "telecommunications," "nontelecommunications," and "professional services" appear to be "major" categories. Each of these three categories contain a number of smaller categories, 39 in all. If, on the other hand, Attachment 2 is viewed in the broader context of PacBell's overall procurement program, it becomes clear that each of the 39 categories is in itself a "major" category. These 39 categories were the result of D.84-06-111, which ordered PacBell to report WMBE procurement progress in each category of products and services in which PacBell spent over \$5 million dollars. The Commission's establishment of a \$5 million dollar threshold was intended to allow goal setting and progress tracking in an adequate number of procurement categories instead of in each of PacBell's several hundred procurement categories. GO 156 was drafted with the broader context in view; we consider each of the 39 categories in Attachment 2 to be a "major" category.

Because we intended to allow utilities a certain flexibility in establishing procurement categories for the purpose of WMBE goal setting in order to allow for accounting differences and for variations in the procurement needs of the utilities, we did not specify precisely which product and service categories must be used for WMBE goal setting and reporting. We weighed the usefulness of uniform categories against the desirability of flexibility. While we are tempted to establish specific, uniform, categories in order to avoid the type of confusion represented by PacBell's petition, we still believe that a more flexible approach is better - at least for the moment. If confusion persists, we may need to rethink this decision.

At this time we will not require utilities to use uniform goal setting and reporting categories. We wish to make it

perfectly clear, however, that this does not mean utilities are free to set goals in as few or as many categories as they please. Utilities must use more than three major categories as proposed by PacBell. Small utilities are permitted by § 6 of GO 156 to set goals only in the broad categories set forth in Public Utilities Code Section 8281 (b) (1) (E), but they are free to use more categories if they so desire. Large utilities must set goals in significantly more categories than the small utilities; we will refrain from setting a precise number.

As we tried to make clear in § 6 of GO 156, large utilities must use as a model for the type of major procurement categories to be used for goal setting purposes the 39 major categories set forth in Attachment 2. Exact tracking of these 39 categories is not required, and a utility is not bound to use 39 categories for goal setting if the use of a few more or a few less categories is more appropriate given the utility's procurement accounting system. We will require goal setting for major procurement categories only. We will not require goal setting in each of the several hundred individual accounting categories used by some of the large utilities.

Although PacBell points out that GO 156 requires the establishment of overall program goals for both minority owned business enterprises and non-minority women owned business enterprises, and includes this requirement in its list of allegedly inconsistent goals in GO 156, it fails to explain why it believes that these overall program goals for minority owned businesses and non-minority women owned business are inconsistent with the other goals required by GO 156. These overall program goals were included in Section V(b) of the Joint Comments filed by Assemblywoman Moore and signed by California's six largest utilities. Since PacBell supported those comments, we are uncertain why PacBell now feels that these overall goals are somehow inconsistent.

In any event, we believe that the GO 156 § 6.3 distinction between minority owned business enterprises and non-minority women owned business enterprises may focus attention on the potential for procurement contract disparity between minority women and non-minority women owned business enterprises and may encourage utilities to focus procurement efforts toward both minority and non-minority women owned businesses. We believe this distinction between minority and non-minority women owned business enterprises may assist minority women owned businesses to obtain more utility contracts.

In the absence of any compelling reason for doing so, we will not modify GO 156 § 6.3.

We hope that the above discussion will assist PacBell and the other utilities affected by GO 156 in understanding the level of goal setting and reporting we require. We encourage utilities to consult with the Commission Advisory and Compliance Division if they have further questions in this area.

In order to clarify our intent we will modify §§ 6, 6.2, and 6.4 as follows:

6. 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 the 39 categories in Attachment 2 as an example of the major 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).
- 6.2 Each utility shall establish initial minimum long-term goals for each major category of products and services the utility purchases from outside vendors of not less than 15% for minority owned business enterprises and not

less than 5% for women owned business enterprises. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. The specification of initial long-term goals in this section shall not prevent the utilities from seeking to reach parity with public agencies, which the Legislature found in Public Utilities Code Section 8281 (b) (1) (B) are awarding 30% or more of their contracts to WMBEs.

- 6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. 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.

Request for Exclusion of Fuel Costs from WMBE Procurement Base

On June 7, 1988, SoCal filed a petition to modify § 6.9 of GO 156 to exclude fuel costs from total procurement expenditures for purposes of the WMBE program. On June 15, 1988, Assemblywoman Moore filed a response in opposition to SoCal's petition. On July 8, 1988, SoCal filed a response to Assemblywoman Moore's response in opposition to SoCal's petition. On July 13, 1988, SDG&E filed a response in support of SoCal's petition. Since SDG&E's response merely reiterates arguments made by SoCal, it will not be addressed separately.

SoCal notes that GO 156 does not exclude fuel costs from total procurement expenditures for the purposes of calculating WMBE goals and achievements. SoCal believes that this is due to an oversight and requests that the oversight be corrected.

In support of its request SoCal cites the first Commission WMBE decision (D.82-10-101 in Case 10308) which explicitly excluded fuel costs for the purposes of computing WMBE

goals and achievements. SoCal maintains that the practice of excluding fuel costs has been followed in subsequent Commission decisions dealing with WMBE programs.

SoCal claims that its fuel costs are unique compared to other types of expenditures. According to SoCal, its fuel supplies are purchased from gas producers located within California, from interstate pipeline companies such as El Paso and Transwestern, and from suppliers to SoCal's spot market program. SoCal contends that its fuel supply program allows it to obtain gas at the lowest cost consistent with supply security. SoCal maintains that in the context of its gas procurement practices, it is apparent that fuel costs should be excluded from WMBE procurement base.

Assemblywoman Moore contends that the fuel market has totally changed since the Commission's first WMBE decision was issued in 1982. According to Assemblywoman Moore, SoCal's attempt to deny opportunities to women and minority businesses that are in the business of supplying fuel is not only ill-founded but it is totally against the spirit of AB 3678 and GO 156.

Assemblywoman Moore also points out that SoCal has not: (1) shown that the companies from which it currently purchases fuel are the only source for the fuel, or (2) that there are no women and minority fuel suppliers.

SoCal responds to Assemblywoman Moore with the statement that it was SoCal's understanding when it signed the Joint Comments filed by Assemblywoman Moore and signed by California's six largest utilities that fuel costs would be excluded from the WMBE procurement base and that SoCal would not have signed the Joint Comments unless they specifically excluded fuel costs. SoCal argues that a fair reading of the Joint Comments shows an intent to exclude fuel cost, since they specifically provide for exclusions and state that such exclusions could include items such as "franchise fees, taxes, and fuel costs."

SoCal further responds that the inclusion of fuel costs in the WMBE procurement base would make it impossible for SoCal to achieve the five year goals of 5 percent for women and 15% for minorities. In 1987 SoCal's WMBE purchases were 9.2% of total purchases, exclusive of fuel costs. If fuel costs had been included in the WMBE procurement base, WMBE purchases in 1987 would have been only 1.3%.

SoCal urges us to modify GO 156 to make fuel costs an excluded category. SoCal does not wish to be placed in the position of representing to the community that it will achieve substantial WMBE goals when in fact the inclusion of fuel costs in the procurement base may prevent SoCal from achieving those goals.

Discussion

It is our intent to increase WMBE participation in utility contracts in every area where such products or services are available. This includes fuel procurement. We conclude that utilities should be required to encourage participation of WMBE fuel suppliers, just as they are required to encourage participation of other WMBE suppliers.

We are not, however, in re-examining the question of blanket fuel cost exclusions, convinced that eliminating the exclusion is the best means of encouraging the utilities aggressively to foster WMBE participation in this market. The sudden and drastic decrease in SoCal's calculated WMBE purchase percentage that would result from eliminating the exclusion could conceivably have a chilling effect on SoCal's relationship with the WMBE community. We note that SoCal has previously been among the industry leaders in implementing the WMBE program.

Further, it is not clear that there yet exists significant WMBE participation in fuel markets. Without WMBE participation, eliminating the exclusion will only undermine the legitimate efforts of utilities in this area. Despite claims by both sides in this proceeding, the record does not offer the

Commission sufficient evidence on this important question. Our past exclusion of fuel costs was, at least in part, based on the assumption that there was not enough WMBE participation to warrant the elimination of an exclusion for fuel costs, and we decline to abandon this belief in the absence of convincing evidence to the contrary.

We will grant SoCal's petition. This in no way represents a retreat from our strongly-held belief that WMBE participation in all areas of utility procurement must be encouraged, including fuel markets. Our decision simply reflects the current absence of adequate information regarding the availability of WMBE fuel suppliers.

Accordingly, we will require the utilities to expand their efforts to identify and utilize WMBE fuel suppliers, and to file a special report concerning WMBE participation in fuel procurement. We will require the utilities to file this report in one year, at which time we will re-examine the fuel cost exclusion. Continuation of the exclusion beyond one year is contingent on affirmative showings by the utilities that there is insignificant participation of WMBE's in fuel markets.

Petition for Extension of Time

On August 17, 1988, SoCal, Southern California Edison Company, Pacific Gas and Electric Company, SDG&E, GTE, and PacBell filed a petition for extension until November 30, 1988, pursuant to Rule 43 of the Commission's Rules of Practice and Procedure, to comply with Paragraph 3.6 of GO 156. Since the petitioners cite extenuating circumstances in support of their request, we will grant the requested extension.

Findings of Fact

1. Petitioners, MCI, AT&T, and US Sprint request modification of § 3.3 of GO 156 to allow them representation on the Advisory Board responsible for operating the central clearinghouse.

2. Participation of small utilities and IECs in the central clearinghouse is mandatory.

3. Under the current provisions of GO 156 small utilities and IECs have no representation on the Advisory Board.

4. Assemblywoman Moore requests modification of § 3.3 of GO 156 to include on the Advisory Board representatives of each of the groups identified in §§ 1.3.5 through 1.3.8 as well as representatives from the Legislature.

5. Assemblywoman Moore requests modification of § 3.4 of GO 156 to extend the terms of service of representatives of women and minority groups.

6. Participation by a representative from each of the women and minority groups is important in light of the diverse interests of each group.

7. The inclusion of representatives from the Legislature on the Advisory Board will facilitate the implementation of AB 3678.

8. The effectiveness of representatives of women and minority groups will be increased if their terms of service on the Advisory Board are not limited to one year.

9. Women and minority groups should have the opportunity to periodically replace representatives on the Advisory Board. This opportunity could be created by establishing a three year term with the understanding that representatives may serve multiple terms if reselected by the group they represent.

10. SDG&E has filed a response in opposition to the request filed by Petitioners, MCI, AT&T, and US Sprint.

11. SDG&E requests that any Commission action on the inclusion of representatives of small utilities and IECs on the Advisory Board be delayed by 90 days.

12. The input of small utilities and IECs in developing operational guidelines for the clearinghouse and selecting a contractor to operate it is important to ensure that the central clearinghouse functions properly.

13. PacBell requests modification of § 6.2 of GO 156 to allow utilities to set goals for WMBE participation for each major product/service category rather than for each detailed product/service category.

14. GTE and SDG&E have filed responses in support of PacBell's request.

15. Assemblywoman Moore has filed a response in opposition to PacBell's request.

16. It is the Commission's intent to require utilities to set their goals for WMBE participation by each major product/service category rather than just the most major product/service categories.

17. The meaning of the word "major" may vary with the context in which it is used. If the categories in Attachment 2 are viewed in isolation, then the three categories of "telecommunications," "nontelecommunications," and "professional services" appear to be "major" categories. Each of these three categories contain a number of smaller categories, 39 in all. If, on the other hand, Attachment 2 is viewed in the broader context of PacBell's overall procurement program, with its several hundred procurement categories, it becomes clear that each of the 39 categories is in itself a "major" category.

18. It is the Commission's intent to require utilities to use the 39 categories in Attachment 2 to GO 156 as an example of the major categories for which utilities must establish goals.

19. It is the Commission's intent that small utilities establish goals for at least the broad categories set forth in Public Utilities Code Section 8281 (b)(1)(E) (i.e., technology, equipment, supplies, services, materials and construction).

20. It is the intent of the Commission that large utilities set goals in far more categories than those required for small utilities.

21. It is the intent of the Commission to allow utilities some flexibility in establishing procurement categories for WMBE goal setting purposes in order to allow for accounting differences and for variations in the procurement needs of the utilities; this is why we did not specify precisely which product and service categories must be used for WMBE goal setting and reporting.

22. If significant confusion regarding WMBE goal setting and reporting categories continues to hamper implementation of effective utility WMBE programs, it may be necessary for the Commission to establish uniform WMBE goal setting and reporting categories.

23. Sections 6, 6.2, and 6.4 of GO 156 need to be clarified to reflect the Commission's intent stated in Findings of Fact 16 through 21.

24. PacBell does not explain how § 6.3, which requires utilities to establish overall goals for both minority owned business enterprises and non-minority women owned business enterprises is inconsistent with the goals required by Sections 6, 6.2, and 6.4 of GO 156.

25. Section 6.3 is not inconsistent with §§ 6, 6.2, and 6.4 of GO 156.

26. SoCal requests that § 6.9 of GO 156 be modified to exclude fuel costs from total procurement expenditures for the purpose of calculating goals and achievements for WMBE participation.

27. SDG&E has filed a response in support of SoCal's request.

28. Assemblywoman Moore has filed a response in opposition to SoCal's request.

29. SoCal has filed a response to Assemblywoman Moore's response to SoCal's request that § 6.9 be modified.

30. It the Commission's intent to increase WMBE procurement for every product category procured by the utilities, including fuel supplies.

Conclusions of Law

1. Petitions filed by Petitioners, MCI, AT&T, and US Sprint should be granted by modifying § 3.3 of GO 156.
2. Assemblywoman Moore's petition should be granted in part by modifying §§ 3.3 and 3.4 of GO 156 and denied in part with respect to the addition of representatives of the Legislature on the Clearinghouse Advisory Board.
3. SDG&E's request to delay Commission action on the representation of small utilities and IECs on the Advisory Board should be denied.
4. PacBell's petition to modify § 6.2 of GO 156 should be granted, with clarification of the Commission's intent.
5. Sections 6, 6.2, and 6.4 of GO 156 should be modified to make them consistent with the Commission's intent.
6. SoCal's petition to modify § 6.9 of GO 156 should be granted to the extent provided by this order.

ORDER

IT IS ORDERED that:

1. Sections 3.3 and 3.4 of General Order 156 (GO 156) are modified as follows:
 - 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of a non-voting representative of CACD, and a voting representative from each of the following utilities and groups:
 - a. Pacific Gas and Electric Company (PG&E)
 - b. Pacific Bell (PacBell)
 - c. Southern California Edison Company (Edison)
 - d. Southern California Gas Company (SoCal)

- e. General Telephone Company of California (GTE)
- f. San Diego Gas & Electric Company (SDG&E)
- g. AT&T Communications of California
- h. MCI Telecommunications Corporation
- i. US Sprint Communications Company
- j. Small utilities as defined by § 1.3.17
- k. Black Americans as defined by § 1.3.5
- l. Hispanic Americans as defined by § 1.3.6
- m. Native Americans as defined by § 1.3.7
- n. Asian Pacific Americans as defined by § 1.3.8
- o. Women

3.4 Each group identified in § 3.3 shall select its own representative. If a group is unable to select its representative, it may petition the Director of CACD to select a representative. Representatives shall serve three year terms. Representatives may serve multiple terms if reselected by the group they represent.

2. Sections 6, 6.2, and 6.4 of GO 156 are modified as follows:

- 6. 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 the 39 categories in Attachment 2 as an example of the major 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).

6.2 Each utility shall establish initial minimum long-term goals for each major category of products and services the utility purchases from outside vendors of not less than 15% for minority owned business enterprises and not less than 5% for women owned business enterprises. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. The specification of initial long-term goals in this section shall not prevent the utilities from seeking to reach parity with public agencies, which the Legislature found in Public Utilities Code Section 8281 (b)(1)(B) are awarding 30% or more of their contracts to WMBEs.

6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. 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.

3. Pacific Bell's petition to modify § 6.2 of GO 156 is granted, with clarification of the Commission's intent.

4. Section 6.9 of GO 156 is modified for a period of one year following the effective date of this order as follows:

6.9 Payments to other utilities, fuel costs, and franchise tax fees need not be included in the procurement dollar base used to establish goals.

5. Section 6.10 of GO 156 is modified as follows:

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, fuel procurement, and areas that are considered technical in nature.

6. Each utility will file within one year of the effective date of this order a report on WMBE participation in fuel procurement markets during the past year, and the utility's efforts to expand this participation, if any.

These reports must include, at minimum, the following information:

- A. A list of the type of fuels purchased;
- B. A list of the volume of each type of fuel purchased;
- C. A list of the dollar magnitude of utility purchases of fuel in each category of fuel purchased by the utility;
- D. A list of the volume of utility purchases of fuel from WMBE suppliers in each category of fuel purchased by the utility;
- E. A list of the dollar magnitude of utility purchases of fuel from WMBE suppliers in each category of fuel purchased by the utility;
- F. A description of the market within which each type of fuel was purchased (e.g., spot gas market, longer term negotiated contract market, standard competitive bid market, etc.);
- G. A list of WMBEs offering to sell fuels, with a statement of the type of fuels offered, the volume of fuels offered, and the type of contract requested by each WMBE;
- H. A list of all fuel procurement contracts with WMBEs, with a contract by contract description of fuel type, volume of fuel purchased, and market category in which the fuel was purchased;

- I. A list of all contacts with WMBEs offering to supply fuel to the utility which did not lead to the issuance of procurement contracts, and a detailed statement as to the reason for each failure to establish a contractual arrangement;
- J. A list of problems encountered with WMBE fuel suppliers which did contract with the utility (e.g., WMBE failed to deliver gas contracted for, WMBE failed to meet delivery date or location obligations, etc.) - This list should specify the quantities and types of fuel involved;
- K. A comprehensive description of the specific outreach programs used to seek WMBE fuel suppliers in each market in which fuel is purchased;
- L. A detailed statement of the reasons, if any, why the utility feels that WMBEs are unable to supply fuel in any of the markets in which the utility purchases fuel; and
- M. A detailed statement of any other reasons, if any, why the utility feels that all, or a portion, of fuel costs should be excluded from the procurement dollar base used to set WMBE goals;

7. The Commission will address the need for a continuation of the fuel cost exclusion after the reports required in Ordering Paragraph 6 are received. Continuation of the exclusion beyond one year is contingent on affirmative showings by the utilities that there is insignificant participation of WMBE's in fuel markets.

8. Assemblywoman Moore's petition to modify § 3.3 of GO 156 to include representatives of the Legislature on the Clearinghouse Advisory Board is denied.

9. The modified general order contained in Appendix A is adopted.

This order is effective today.

Dated September 14, 1988, at San Francisco, California.

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

I will file a written concurrence.

/s/ FREDERICK R. DUDA
Commissioner

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

[Signature]
Vice President, Executive Director

AS

- k. Black Americans as defined by § 1.3.5
- l. Hispanic Americans as defined by § 1.3.6
- m. Native Americans as defined by § 1.3.7
- n. Asian Pacific Americans as defined by § 1.3.8
- o. Women

3.4 Each group identified in § 3.3 shall select its own representative. If a group is unable to select its representative, it may petition the Director of CACD to select a representative. Representatives shall serve three year terms. Representatives may serve multiple terms if reselected by the group they represent.

2. Sections 6, 6.2, and 6.4 of GO 156 are modified as follows:

- 6. 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 the 39 categories in Attachment 2 as an example of the major 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).
- 6.2 Each utility shall establish initial minimum long-term goals for each major category of products and services the utility purchases from outside vendors of not less than 15% for minority owned business enterprises and not less than 5% for women owned business enterprises. For the purposes of this section, the term "major category" shall mean a category established in accord with

APPENDIX A
Page 1

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 in R.87-02-026,

Modified by Decision 88 09 024.

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

APPENDIX A
Page 2

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.

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

APPENDIX A
Page 3

- 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.

APPENDIX A
Page 4

- 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

APPENDIX A
Page 5

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

APPENDIX A
Page 6

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.

APPENDIX A
Page 7

- 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.

APPENDIX A
Page 8

- 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 a non-voting representative of CACD, and a voting representative from each of the following utilities and groups:

APPENDIX A
Page 9

- 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
- g. AT&T Communications of California
- h. MCI Telecommunications Corporation
- i. US Sprint Communications Company
- j. Small utilities as defined by § 1.3.17
- k. Black Americans as defined by § 1.3.5
- l. Hispanic Americans as defined by § 1.3.6
- m. Native Americans as defined by § 1.3.7
- n. Asian Pacific Americans as defined by § 1.3.8
- o. Women

3.4 Each group identified in § 3.3 shall select its own representative. If a group is unable to select its representative, it may petition the Director of CACD to select a representative. Representatives shall serve for three year terms. Representatives may serve multiple terms if reselected by the group they represent.

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

APPENDIX A
Page 10

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.

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.

APPENDIX A
Page 11

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.

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.

APPENDIX A
Page 12

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

APPENDIX A
Page 13

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.

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.

APPENDIX A
Page 14

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.

APPENDIX A
Page 15

- 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 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;

APPENDIX A
Page 16

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 Article 3 of the Commission's Rules of Practice and Procedure (Title₃ 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 substantial⁴ 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 the 39 categories in Attachment 2 as an example of the major categories in which to establish goals. Small utilities may choose to establish goals for only the

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.

APPENDIX A
Page 17

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. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. 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).

APPENDIX A
Page 18

- 6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. 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

APPENDIX A
Page 19

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, fuel costs, 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, fuel procurement, 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.

APPENDIX A
Page 20

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.

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;

APPENDIX A
Page 21

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

APPENDIX A
Page 22

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

APPENDIX A
Page 23

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.

APPENDIX A
Page 24

9.2

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

Adopted and dated SEP 14 1988, at San Francisco, California.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA



By VICTOR WEISSER
Executive Director

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 ^{United States} 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 ^{United States} 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 SC.

Women group members are:

- Non-ethnic women (3)
minority

* all racial / ethnic classification to be described

(Vendor I.D. No. _____)

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? <input type="checkbox"/> Yes <input type="checkbox"/> No (If unsure, please contact your Local Small Business Administration Office for clarification.)			
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	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.)	<div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> F3 Non-minority Female <input checked="" type="checkbox"/> F4 M4 Other Designated Minority </div> <div> <input type="checkbox"/> F5 M5 Hispanic <input type="checkbox"/> F6 M6 Black <input type="checkbox"/> F7 M7 Asian Pacific </div> <div> <input type="checkbox"/> F8 M8 Native </div> </div> <p style="text-align: right;">F = Female M = Male</p> <p>Company must be at least 51% owned and operated by one of the above groups.</p>			
19. Bond (if applicable)	Amount	\$ _____	Bonding Agent _____	
20. Contractor's and/or Business License	Number	_____	Type	_____ Issued By _____
21. Federal & State Taxpayer 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 2285.

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 _____

Attachment 2 to Appendix A
PACIFIC BELL
MWBE PRODUCT/SERVICE CATEGORY REPORT
FOR 1987 CALENDAR YEAR
(\$000)

ATTACHMENT 2

CATEGORY	POLYN.	PILIP.	HISP.	BLACK	ASIAN	AMER. IND.	MULTI. ETHNIC	CAUC. FEMALE	TOTAL MWBE	NON-MWBE	TOTAL COMPANY	PCT MBE	PCT WBE	PCT MWBE
TELECOMMUNICATIONS														
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	18,683	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	5,812	5,881	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	0.6	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	14	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	333,696	333,696	0.0	0.0	0.0
Total Telecommunications	708	1,613	3,020	8,857	20,714	1,633	6	18,946	55,301	907,696	963,197	3.8	2.0	5.8
Percentage in Category	0.07%	0.17%	0.31%	0.92%	2.15%	0.17%	0.00%	1.97%	5.76%	94.23%	---	---	---	---

NON-TELECOMMUNICATIONS

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	136	17	28	170	29	953	1,336	9,495	10,832	3.5	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	19,097	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
Probab. Struct./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	104	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	7,352	9,389	49,703	59,092	3.1	12.7	15.8
Services, Print. & Repro.	0	0	1,098	3	1,859	0	10	2,743	3,718	5,131	10,849	27.4	25.2	52.7
Services, Transportation	6	39	2,493	535	420	450	88	4,860	8,915	33,784	42,700	9.4	11.3	20.8
Construction/Contractors	0	31	15,748	821	1,643	32	5	12,339	30,623	66,988	97,611	18.7	12.6	31.4
Vehicles & Accessory	5	0	162	3	66	4	0	14,344	14,387	7,356	21,944	1.1	63.3	66.4
Miscellaneous	1	7	1,161	6,156	2,137	440	2	1,088	11,003	354,348	365,351	2.7	0.3	3.0
Total Non-Telecommunications	80	149	24,551	8,386	10,337	1,601	297	54,928	100,363	655,921	756,284	6.0	7.3	13.3
Percentage in Category	0.01%	0.02%	3.25%	1.11%	1.37%	0.21%	0.04%	7.26%	13.27%	86.73%	---	---	---	---

PROFESSIONAL SERVICES

Health & Medical	0	3	16	26	99	8	18	325	497	10,808	11,305	1.5	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	251	170	1	0	1,916	2,849	22,316	25,006	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	49.3
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	5	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
Total Professional Svcs.	0	1,063	8,020	1,153	3,474	10	196	10,598	24,526	209,162	233,688	5.9	4.3	10.4
Percentage in Category	0.00%	0.45%	3.44%	0.49%	1.49%	0.00%	0.08%	4.54%	10.50%	89.50%	---	---	---	---
Grand Total	788	2,623	35,601	18,394	34,545	3,244	499	84,472	180,390	1,772,779	1,953,169	4.9	4.3	9.2
Percentage in Category	0.04%	0.14%	1.82%	0.94%	1.77%	0.17%	0.03%	4.32%	9.24%	90.76%	---	---	---	---

R.87-02-026
D.88-09-024

FREDERICK R. DUDA, Commissioner, Concurring.

I am pleased with the compromise reached today concerning the fuel cost exclusion. I am also pleased that the presumption in favor of a fuel cost exclusion ends in one year and that thereafter utilities will have the burden of proving the need for a continued fuel cost exclusion.

I believe, however, that it would have been better for the Commission to have denied utilities the fuel cost exclusion until after they justified it.

In my belief SoCal's petition for modification does not justify a fuel cost exclusion. SoCal's petition provides no factual basis for its implied assertion that there are no WMBE natural gas suppliers or contracting opportunities outside SoCal's spot market program. Nor does the petition convince me that there is no way to adjust the size of its spot market program or to alter its operational characteristics in some fashion which might encourage WMBE natural gas suppliers.

I can understand why SoCal prefers a Commission mandated generic fuel cost exclusion to an optional utility specific exclusion which requires the utility to demonstrate the non-existence of WMBE fuel suppliers. This preference is especially understandable if SoCal believes it will have difficulty proving the unavailability of WMBEs offering to supply fuel.

While I understand SoCal's concern that GO 156 does not include fuel costs as an across the board excluded category as did certain past Commission decisions, I believe that such a broad exclusion is neither necessary nor desirable.

In the past, the Commission excluded franchise fees and purchases from other utilities from the base of procurement dollars used to track WMBE progress because these items could not be procured from WMBE suppliers. Fuel costs were also excluded, evidently because the Commission was then persuaded that SoCal's natural gas purchases could similarly not be obtained from WMBE suppliers, and because such purchases would, if included in SoCal's WMBE program, inevitably skew the overall results since natural gas constitutes by far the largest dollar item purchased. (D.82-12-101, 10 CPUC 2d 414, 421, 431 (1982)). In 1982, the Commission was taking the first steps toward developing a WMBE program for utilities and preferred a simple approach to a sophisticated one. The use of an across the board fuel costs exclusion furthered such simplification. I understand that subsequent Commission decisions did not alter the D.82-12-101 exclusion of fuel costs, and that SoCal may have expected this situation to continue in our general order.

GO 156 reflects to a large extent language from the Joint Comments signed by Assemblywoman Gwen Moore and the six major utilities in this state. Section I 4. (d) of the Joint Comments states that a utility can create an exclusion where it is clearly evident that WMBEs do not provide a product or service or that sole source procurement is the only available procurement method. Franchise fees, taxes, fuel costs, switching equipment, cable facilities, and payments to other utilities and affiliates are listed as examples of items for which a utility can create an exclusion if it can demonstrate that procurement from WMBEs is not possible. The Joint Comments do not contain any reference to an across the board exclusion of fuel costs from the procurement bases of all utilities subject to the general order.

The original GO 156 is fully consistent with the Joint Comments provisions dealing with exclusions and fuel costs. Section 6.5 of GO 156 provides that utilities can create "excluded categories" of products or services where procurement from WMBEs is not possible. Nothing in the original GO 156 prevented SoCal from creating an excluded category for fuel costs if it could demonstrate the need to do so. With regard to fuel costs, SoCal was in the same position it would have been had we adopted the actual language of the Joint Comments. Therefore, SoCal's petition is unnecessary and contrary to the position SoCal took when it signed the Joint Comments, which provided only for an optional utility specific exclusion.

I note that even if SoCal could justify an exclusion of a portion or even all of its natural gas purchases, there would be no reason for us to assume that other utilities could do the same. One of the benefits of the "excluded category" system established in GO 156 is that it eliminates the need for us to establish statewide exclusions for all utilities. While franchise fees and purchases from other utilities affect all utilities in the state on a fairly uniform basis, I cannot draw the same conclusion with regard to the availability of WMBE suppliers of products such as natural gas or other fuel. Fuel purchased by gas companies for sale to customers plays a different role in utility operations than fuel purchased by, for example, a telephone company. The type of fuel, and quantity purchased, might differ considerably. The factors that might justify an exclusion of natural gas purchases might not justify an exclusion of the cost of other fuels. A generic fuel cost exclusion treating all fuel costs alike does not make sense to me.

I am sensitive to SoCal's desire to avoid the public relations problems that might have resulted if the inclusion of fuel costs in SoCal's WMBE procurement base and the attendant reduction in overall WMBE purchase percentages created the illusion of a lessened commitment to WMBE program progress.

I believe, however, that SoCal need not have worried about public relations so long as it adequately explained that the apparent reduction in overall procurement percentages resulted from the inclusion of a very large new category in the procurement base and not from a reduction in procurement in any existing categories. Furthermore, SoCal was free to report its WMBE results both with and without the fuel cost category, so that its continuing progress in non-fuel procurement could be readily seen. Such dual reporting would have eased any confusion that might have resulted from the inclusion of fuel costs in SoCal's procurement base.

Most likely the WMBE community would have preferred the additional procurement opportunities that would result from the inclusion of fuel costs in SoCal's procurement base. The progress shown by the increasing procurement percentages in the relatively small proportion of SoCal's procurement base represented by non-fuel cost purchases is helpful but not broad enough. In the long run both SoCal and the WMBE community would have benefited from the inclusion of fuel costs in the procurement base. The same is true with regard to the other utilities granted fuel cost exclusions by today's decision.

To sum up, in creating GO 156, I do not believe that fuel costs should be excluded from goal setting under the WMBE program on a generic basis. I believe each utility should have to justify the exclusion of fuel costs from its procurement base before such an exclusion is granted. Therefore, I would prefer to deny SoCal's petition to modify § 6.9 of GO 156.

R.87-02-026
D.88-09-024

I believe the position taken by my fellow commissioners is perhaps the next best alternative, and for that reason I concur in today's decision.


Frederick R. Duda, Commissioner

September 14, 1988
San Francisco, California

SoCal further responds that the inclusion of fuel costs in the WMBE procurement base would make it impossible for SoCal to achieve the five year goals of 5 percent for women and 15% for minorities. In 1987 SoCal's WMBE purchases were 9.2% of total purchases, exclusive of fuel costs. If fuel costs had been included in the WMBE procurement base, WMBE purchases in 1987 would have been only 1.3%.

SoCal urges us to modify GO 156 to make fuel costs an excluded category. SoCal does not wish to be placed in the position of representing to the community that it will achieve substantial WMBE goals when in fact the inclusion of fuel costs in the procurement base may prevent SoCal from achieving those goals.

Discussion

It is our intent to increase WMBE participation in utility contracts in every area where such products or services are available. This includes fuel procurement. We conclude that utilities should be required to encourage participation of WMBE fuel suppliers, just as they are required to encourage participation of other WMBE suppliers. ✓

We are not, however, in re-examining the question of blanket fuel cost exclusions, convinced that eliminating the exclusion is the best means of encouraging the utilities aggressively to foster WMBE participation in this market. The sudden and drastic decrease in SoCal's calculated WMBE purchase percentage that would result from eliminating the exclusion could conceivably have a chilling effect on SoCal's relationship with the WMBE community. We note that SoCal has previously been among the industry leaders in implementing the WMBE program. ✓

Further, it is not clear that there yet exists significant WMBE participation in fuel markets. Without WMBE participation, eliminating the exclusion will only undermine the legitimate efforts of utilities in this area. Despite claims by both sides in this proceeding, the record does not offer the

SoCal further responds that the inclusion of fuel costs in the WMBE procurement base would make it impossible for SoCal to achieve the five year goals of 5 percent for women and 15% for minorities. In 1987 SoCal's WMBE purchases were 9.2% of total purchases, exclusive of fuel costs. If fuel costs had been included in the WMBE procurement base, WMBE purchases in 1987 would have been only 1.3%.

SoCal urges us to modify GO 156 to make fuel costs an excluded category. SoCal does not wish to be placed in the position of representing to the community that it will achieve substantial WMBE goals when in fact the inclusion of fuel costs in the procurement base may prevent SoCal from achieving those goals.

Discussion

It was our intent to increase WMBE participation in utility contracts in every area where such products or services are available. This includes the area of fuel procurement. We conclude that utilities should be required to encourage participation of WMBE fuel suppliers, just as they are required to encourage participation of other WMBE suppliers.

While we understand SoCal's concern that GO 156 does not include fuel costs as an across the board excluded category as did certain past Commission decisions, we believe that such a broad exclusion is neither necessary nor desirable.

In the past, the Commission excluded franchise fees and purchases from other utilities from the base of procurement dollars used to track WMBE progress because these items could not be procured from WMBE suppliers. Fuel costs were also excluded, evidently because the Commission was persuaded that SoCal's natural gas purchases could similarly not be obtained from WMBE suppliers, and because such purchases would, if included in SoCal's WMBE program, inevitably skew the results since natural gas constitutes by far the largest dollar item purchased.

(D.82-12-101, 10 CPUC 2d 414, 421, 431 (1982).) In 1982, the

Commission was taking the first steps toward developing a WMBE program for utilities and preferred a simple approach to a sophisticated one. The use of an across the board fuel costs exclusion furthered such simplification. We understand that subsequent Commission decisions did not alter the D.82-12-101 exclusion of fuel costs, and that SoCal may have expected this situation to continue in our general order.

As Assemblywoman Moore notes in her response to SoCal's petition, times have changed since 1982. In 1982, SoCal obtained its natural gas primarily from Transwestern and El Paso under long term contracts. California producers provided additional natural gas, just as they do today. Now, as SoCal's petition makes clear, there is a competitively bid spot gas market in addition to the longer term contract market. Former assumptions about the availability of WMBE natural gas suppliers may no longer be true.

SoCal's petition provides no factual basis for its implied assertion that there are no WMBE natural gas suppliers or contracting opportunities outside SoCal's spot market program. Nor does the petition convince us that there is no way to adjust the size of its spot market program or to alter its operational characteristics in some fashion which might encourage WMBE natural gas suppliers. This is not to say that SoCal could never convince us that an exclusion of a portion or even all of its natural gas purchases is appropriate, but simply to note that SoCal's petition for modification does not do so.

If SoCal can demonstrate the unavailability of WMBEs capable of supplying natural gas or other fuel, or provide clear evidence that sole source procurement is the only available procurement method, then SoCal may be entitled to create an "excluded category" under § 6.5 of GO 156. Goals need not be set for products or services which fall within an "excluded category." (GO 156 § 6.4.) Because there may in the future be WMBEs capable of supplying products or services in an excluded category, the

Commission sufficient evidence on this important question. Our past exclusion of fuel costs was, at least in part, based on the assumption that there was not enough WMBE participation to warrant the elimination of an exclusion for fuel costs, and we decline to abandon this belief in the absence of convincing evidence to the contrary.

We will grant SoCal's petition. This in no way represents a retreat from our strongly-held belief that WMBE participation in all areas of utility procurement must be encouraged, including fuel markets. Accordingly, we will require the utilities to expand their efforts to identify and utilize WMBE fuel suppliers, and report on the results obtained in a special report concerning WMBE participation in fuel procurement. We will require the utilities to file this report in one year, at which time we will re-examine the fuel cost exclusion.

Findings of Facts

1. Petitioners, MCI, AT&T, and US Sprint request modification of § 3.3 of GO 156 to allow them representation on the Advisory Board responsible for operating the central clearinghouse.
2. Participation of small utilities and IECs in the central clearinghouse is mandatory.
3. Under the current provisions of GO 156 small utilities and IECs have no representation on the Advisory Board.
4. Assemblywoman Moore requests modification of § 3.3 of GO 156 to include on the Advisory Board representatives of each of the groups identified in §§ 1.3.5 through 1.3.8 as well as representatives from the Legislature.
5. Assemblywoman Moore requests modification of § 3.4 of GO 156 to extend the terms of service of representatives of women and minority groups.

utility must justify in its annual report the continued existence of any excluded category. (GO 156 § 6.5.)

Recognizing that SoCal's creation of an excluded category for natural gas purchases may be controversial, we note that the creation of such a category, or its continued existence, can be challenged in the forum selected in Phase 2 of this proceeding.

We do not here determine whether or not it is possible for SoCal to justify an excluded category for natural gas purchases. However, we do want SoCal to know that it will need more than past Commission decisions and simple assertions to justify such an excluded category.

In any event, what might be true for SoCal might not be true for other utilities subject to GO 156. One of the benefits of the "excluded category" system established in GO 156 is that it eliminates the need for us to establish statewide exclusions for all utilities. While franchise fees and purchases from other utilities affect all utilities in the state on a fairly uniform basis, we cannot draw the same conclusion with regard to the availability of WMBE suppliers of products such as natural gas or other fuel. Even if SoCal could fully justify an excluded category for fuel costs, there would be no reason for us to assume that other utilities could do the same.

We will now address SoCal's assertion that GO 156 does not do what SoCal thought it would do based on SoCal's interpretation of the Joint Comments filed in this proceeding, and on its expectations based on past Commission practice.

First, we believe that GO 156 is fully consistent with the Joint Comments provisions dealing with exclusions and fuel costs. We adopted the spirit, and most of the letter, of the Joint Comments because we believed that the apparent consensus opinion of seven of the major parties to this proceeding deserved serious consideration. GO 156 differs from the Joint Comments only where

such differences were necessary to create a clear and effective WMBE program for utilities.

Since we cannot see into the hearts and minds of each utility which signed the Joint Comments, we must take the language submitted at face value. Section I.4(d) of the Joint Comments states in pertinent part:

"Exclusions" means the amounts or items removed from total procurement expenditure which could include franchise fees, taxes, fuel costs, switching equipment, cable facilities, and payments to other utilities (and their commission-regulated affiliates). 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, the utility may create an exclusion. [Irrelevant footnote omitted] The utility shall bear the burden of using its best efforts to demonstrate the reasonableness of this condition. Any other exclusions will be noted in the corporation's annual report to the Commission, and the utility shall bear the burden of utilizing its best efforts to establish its reasonableness."

This language indicates that a utility can create an exclusion where it is clearly evident that WMBEs do not provide a product or service or that sole source procurement is the only available procurement method. Franchise fees, taxes, fuel costs, switching equipment, cable facilities, and payments to other utilities and affiliates are listed as examples of items for which a utility can create an exclusion if it can demonstrate that procurement from WMBEs is not possible.

We are unable to find in the Joint Comments any reference to an across the board exclusion of fuel costs from the procurement bases of all utilities subject to the general order. We must, therefore, assume that the Joint Comments intended only to authorize individual utilities to create exclusion in appropriate

23. Sections 6, 6.2, and 6.4 of GO 156 need to be clarified to reflect the Commission's intent stated in Findings of Fact 16 through 21.

24. PacBell does not explain how § 6.3, which requires utilities to establish overall goals for both minority owned business enterprises and non-minority women owned business enterprises is inconsistent with the goals required by Sections 6, 6.2, and 6.4 of GO 156.

25. Section 6.3 is not inconsistent with §§ 6, 6.2, and 6.4 of GO 156.

26. SoCal requests that § 6.9 of GO 156 be modified to exclude fuel costs from total procurement expenditures for the purpose of calculating goals and achievements for WMBE participation.

27. SDG&E has filed a response in support of SoCal's request.

28. Assemblywoman Moore has filed a response in opposition to SoCal's request.

29. SoCal has filed a response to Assemblywoman Moore's response to SoCal's request that § 6.9 be modified.

30. It is the Commission's intent to increase WMBE procurement for every product category procured by the utilities, including fuel supplies.

[Strike Fof's 31, 32, and 33]

Conclusions of Law

1. Petitions filed by Petitioners, MCI, AT&T, and US Sprint should be granted by modifying § 3.3 of GO 156.

2. Assemblywoman Moore's petition should be granted in part by modifying §§ 3.3 and 3.4 of GO 156 and denied in part with respect to the addition of representatives of the Legislature on the Clearinghouse Advisory Board.

3. SDG&E's request to delay Commission action on the representation of small utilities and IECs on the Advisory Board should be denied.

circumstances, not to create an across the board exclusion of all items listed as examples of possible exclusions.

GO 156 reflects our interpretation of the Joint Comments position on exclusions, with minor modifications. Section 6.5 of GO 156 provides that utilities can create "excluded categories" of products or services where procurement from WMBEs is not possible. Section 6.9 of GO 156 goes beyond the Joint Comments position to create an across the board exclusion for payments to other utilities and franchise tax fees. No utility need include these items in the procurement dollar base used to set goals. The exclusion of these two specific items is consistent with past Commission practice. For reasons discussed earlier, we no longer include fuel costs in the list of across the board exclusions. Nothing in GO 156 prevents SoCal from creating an excluded category for fuel costs if it can demonstrate the need to do so. With regard to fuel costs, SoCal is in the same position it would have been had we adopted the actual language of the Joint Comments.

Second, even if GO 156 does differ from SoCal's interpretation of the Joint Comments or its prior expectations, this is no reason for us to modify the general order. We have described our reasons for treating fuel costs different than franchise tax fees and payments to other utilities, and believe that these provide a rational basis for changing our past regulatory practice. The fact that our general order disappoints business expectations is not fatal. (Usery v. Turner Elkhorn Mining Company, 428 U.S. 1, 16 (1976); O'Connor v. Superior Court, 90 Cal. App. 3d 107, at 114 (1979).)

We are sensitive to SoCal's desire to avoid setting goals in an area where the utility feels it is unlikely to obtain significant supplies from WMBE vendors, especially in light of the great magnitude of SoCal's natural gas purchases in comparison to its other expenditures. (D.82-12-101, 10 CPUC 2d at 421.) Nonetheless, we would rather have SoCal make a real effort to

4. PacBell's petition to modify § 6.2 of GO 156 should be granted, with clarification of the Commission's intent.

5. Sections 6, 6.2, and 6.4 of GO 156 should be modified to make them consistent with the Commission's intent.

6. SoCal's petition to modify § 6.9 should be granted.

encourage WMBE participation in this area than allow SoCal to sidestep the subject altogether. GO 156 does not require perfection, but it does require good faith effort. If a utility fails to achieve its goal in a particular area, it must explain the situation in its annual report to the Commission, but it will not be punished for its failure so long as it tried in good faith to comply.

We are also sensitive to SoCal's desire to avoid the public relations problems that may result if the inclusion of fuel costs in SoCal's WMBE procurement base and the attendant reduction in overall WMBE purchase percentages creates the illusion of a lessened commitment to WMBE program progress. We believe, however, that SoCal need not worry about public relations so long as it adequately explains that the apparent reduction in overall procurement percentages results from the inclusion of a very large new category in the procurement base and not from a reduction in procurement in any existing categories. Furthermore, SoCal is free to report its WMBE results both with and without the fuel cost category, so that its continuing progress in non-fuel cost procurement can be readily seen. Such dual reporting would ease any confusion that might result from the fuel cost inclusion.

We are confident that the WMBE community is sophisticated enough to prefer the additional procurement opportunities that will result from the inclusion of fuel costs in SoCal's procurement base to simply the progress shown by the increasing procurement percentages in the relatively small proportion of SoCal's procurement base represented by non-fuel cost purchases. While we understand SoCal's concerns about transitional public relations, we believe that in the long run both SoCal and the WMBE community will benefit from the fuel cost inclusion.

To sum up, we did not intend that fuel costs be excluded from goal setting under the WMBE program. Therefore, we will deny SoCal's petition to modify § 6.9 of GO 156.

Findings of Facts

1. Petitioners, MCI, AT&T, and US Sprint request modification of § 3.3 of GO 156 to allow them representation on the Advisory Board responsible for operating the central clearinghouse.

2. Participation of small utilities and IECs in the central clearinghouse is mandatory.

3. Under the current provisions of GO 156 small utilities and IECs have no representation on the Advisory Board.

4. Assemblywoman Moore requests modification of § 3.3 of GO 156 to include on the Advisory Board representatives of each of the groups identified in §§ 1.3.5 through 1.3.8 as well as representatives from the Legislature.

5. Assemblywoman Moore requests modification of § 3.4 of GO 156 to extend the terms of service of representatives of women and minority groups.

6. Participation by a representative from each of the women and minority groups is important in light of the diverse interests of each group.

7. The inclusion of representatives from the Legislature on the Advisory Board will facilitate the implementation of AB 3678.

8. The effectiveness of representatives of women and minority groups will be increased if their terms of service on the Advisory Board are not limited to one year.

9. Women and minority groups should have the opportunity to periodically replace representatives on the Advisory Board. This opportunity could be created by establishing a three year term with the understanding that representatives may serve multiple terms if reselected by the group they represent.

10. SDG&E has filed a response in opposition to the request filed by Petitioners, MCI, AT&T, and US Sprint.

11. SDG&E requests that any Commission action on the inclusion of representatives of small utilities and IECs on the Advisory Board be delayed by 90 days.

Petition for Extension of Time

On August 17, 1988, SoCal, Southern California Edison Company, Pacific Gas and Electric Company, SDG&E, GTE, and PacBell filed a petition for extension until November 30, 1988, pursuant to Rule 43 of the Commission's Rules of Practice and Procedure, to comply with Paragraph 3.6 of GO 156. Since the petitioners cite exenuating circumstances in support of their request, we will grant the requested extension.

Findings of Facts

1. Petitioners, MCI, AT&T, and US Sprint request modification of § 3.3 of GO 156 to allow them representation on the Advisory Board responsible for operating the central clearinghouse.
2. Participation of small utilities and IECs in the central clearinghouse is mandatory.
3. Under the current provisions of GO 156 small utilities and IECs have no representation on the Advisory Board.
4. Assemblywoman Moore requests modification of § 3.3 of GO 156 to include on the Advisory Board representatives of each of the groups identified in §§ 1.3.5 through 1.3.8 as well as representatives from the Legislature.
5. Assemblywoman Moore requests modification of § 3.4 of GO 156 to extend the terms of service of representatives of women and minority groups.
6. Participation by a representative from each of the women and minority groups is important in light of the diverse interests of each group.
7. The inclusion of representatives from the Legislature on the Advisory Board will facilitate the implementation of AB 3678.
8. The effectiveness of representatives of women and minority groups will be increased if their terms of service on the Advisory Board are not limited to one year.
9. Women and minority groups should have the opportunity to periodically replace representatives on the Advisory Board. This

12. The input of small utilities and IECs in developing operational guidelines for the clearinghouse and selecting a contractor to operate it is important to ensure that the central clearinghouse functions properly.

13. PacBell requests modification of § 6.2 of GO 156 to allow utilities to set goals for WMBE participation for each major product/service category rather than for each detailed product/service category.

14. GTE and SDG&E have filed responses in support of PacBell's request.

15. Assemblywoman Moore has filed a response in opposition to PacBell's request.

16. It is the Commission's intent to require utilities to set their goals for WMBE participation by each major product/service category rather than just the most major product/service categories.

17. The meaning of the word "major" may vary with the context in which it is used. If the categories in Attachment 2 are viewed in isolation, then the three categories of "telecommunications," "nontelecommunications," and "professional services" appear to be "major" categories. Each of these three categories contain a number of smaller categories, 39 in all. If, on the other hand, Attachment 2 is viewed in the broader context of PacBell's overall procurement program, with its several hundred procurement categories, it becomes clear that each of the 39 categories is in itself a "major" category.

18. It is the Commission's intent to require utilities to use the 39 categories in Attachment 2 to GO 156 as an example of the major categories for which utilities must establish goals.

19. It is the Commission's intent that small utilities establish goals for at least the broad categories set forth in Public Utilities Code Section 8281 (b) (1) (E) (i.e., technology, equipment, supplies, services, materials and construction).

opportunity could be created by establishing a three year term with the understanding that representatives may serve multiple terms if reselected by the group they represent.

10. SDG&E has filed a response in opposition to the request filed by Petitioners, MCI, AT&T, and US Sprint.

11. SDG&E requests that any Commission action on the inclusion of representatives of small utilities and IECs on the Advisory Board be delayed by 90 days.

12. The input of small utilities and IECs in developing operational guidelines for the clearinghouse and selecting a contractor to operate it is important to ensure that the central clearinghouse functions properly.

13. PacBell requests modification of § 6.2 of GO 156 to allow utilities to set goals for WMBE participation for each major product/service category rather than for each detailed product/service category.

14. GTE and SDG&E have filed responses in support of PacBell's request.

15. Assemblywoman Moore has filed a response in opposition to PacBell's request.

16. It is the Commission's intent to require utilities to set their goals for WMBE participation by each major product/service category rather than just the most major product/service categories.

17. The meaning of the word "major" may vary with the context in which it is used. If the categories in Attachment 2 are viewed in isolation, then the three categories of "telecommunications," "nontelecommunications," and "professional services" appear to be "major" categories. Each of these three categories contain a number of smaller categories, 39 in all. If, on the other hand, Attachment 2 is viewed in the broader context of PacBell's overall procurement program, with its several hundred procurement

20. It is the intent of the Commission that large utilities set goals in far more categories than those required for small utilities.

21. It is the intent of the Commission to allow utilities some flexibility in establishing procurement categories for WMBE goal setting purposes in order to allow for accounting differences and for variations in the procurement needs of the utilities; this is why we did not specify precisely which product and service categories must be used for WMBE goal setting and reporting.

22. If significant confusion regarding WMBE goal setting and reporting categories continues to hamper implementation of effective utility WMBE programs, it may be necessary for the Commission to establish uniform WMBE goal setting and reporting categories.

23. Sections 6, 6.2, and 6.4 of GO 156 need to be clarified to reflect the Commission's intent stated in Findings of Fact 16 through 21.

24. PacBell does not explain how § 6.3, which requires utilities to establish overall goals for both minority owned business enterprises and non-minority women owned business enterprises is inconsistent with the goals required by Sections 6, 6.2, and 6.4 of GO 156.

25. Section 6.3 is not inconsistent with §§ 6, 6.2, and 6.4 of GO 156.

26. SoCal requests that § 6.9 of GO 156 be modified to exclude fuel costs from total procurement expenditures for the purpose of calculating goals and achievements for WMBE participation.

27. SDG&E has filed a response in support of SoCal's request.

28. Assemblywoman Moore has filed a response in opposition to SoCal's request.

29. SoCal has filed a response to Assemblywoman Moore's response to SoCal's request that § 6.9 be modified.

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.

3. Pacific Bell's petition to modify § 6.2 of GO 156 is granted, with clarification of the Commission's intent.
4. Section 6.9 of GO 156 is modified as follows:
 - 6.9 Payments to other utilities, fuel costs, and franchise tax fees need not be included in the procurement dollar base used to establish goals.
5. Section 6.10 of GO 156 is modified as follows:
 - 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, fuel procurement, and areas that are considered technical in nature.
6. Each utility will submit within one year of the effective date of this order a report on WMBE participation in fuel procurement markets, and the utility's efforts to expand this participation, if any.
7. Assemblywoman Moore's petition to modify § 3.3 of GO 156 to include representatives of the Legislature on the Clearinghouse Advisory Board is denied.
8. The modified general order contained in Appendix A is adopted.

This order is effective today.

Dated _____, at San Francisco, California.

categories, it becomes clear that each of the 39 categories is in itself a "major" category.

18. It is the Commission's intent to require utilities to use the 39 categories in Attachment 2 to GO 156 as an example of the major categories for which utilities must establish goals.

19. It is the Commission's intent that small utilities establish goals for at least the broad categories set forth in Public Utilities Code Section 8281 (b) (1) (E) (i.e., technology, equipment, supplies, services, materials and construction).

20. It is the intent of the Commission that large utilities set goals in far more categories than those required for small utilities.

21. It is the intent of the Commission to allow utilities some flexibility in establishing procurement categories for WMBE goal setting purposes in order to allow for accounting differences and for variations in the procurement needs of the utilities; this is why we did not specify precisely which product and service categories must be used for WMBE goal setting and reporting.

22. If significant confusion regarding WMBE goal setting and reporting categories continues to hamper implementation of effective utility WMBE programs, it may be necessary for the Commission to establish uniform WMBE goal setting and reporting categories.

23. Sections 6, 6.2, and 6.4 of GO 156 need to be clarified to reflect the Commission's intent stated in Findings of Fact 16 through 21.

24. PacBell does not explain how § 6.3, which requires utilities to establish overall goals for both minority owned business enterprises and non-minority women owned business enterprises is inconsistent with the goals required by Sections 6, 6.2, and 6.4 of GO 156.

25. Section 6.3 is not inconsistent with §§ 6, 6.2, and 6.4 of GO 156.

30. It the Commission's intent to increase WMBE procurement for every product category procured by the utilities, including fuel supplies.

31. SoCal has not established that WMBE fuel suppliers are unavailable.

32. If SoCal can demonstrate that WMBE fuel suppliers are unavailable or that sole source procurement is the only method for procurement, it may create an "excluded category" pursuant to § 6.5 of GO 156.

33. Even if SoCal could demonstrate that it is entitled to create an "excluded category" for natural gas purchases and other fuel costs, it would provide no basis for the creation of an across the board fuel costs exclusion for all utilities subject to GO 156; what may be true for one utility may not be true for another.

Conclusions of Law

1. Petitions filed by Petitioners, MCI, AT&T, and US Sprint should be granted by modifying § 3.3 of GO 156.

2. Assemblywoman Moore's petition should be granted in part by modifying §§ 3.3 and 3.4 of GO 156 and denied in part with respect to the addition of representatives of the Legislature on the Clearinghouse Advisory Board.

3. SDG&E's request to delay Commission action on the representation of small utilities and IECs on the Advisory Board should be denied.

4. PacBell's petition to modify § 6.2 of GO 156 should be granted, with clarification of the Commission's intent.

5. Sections 6, 6.2, and 6.4 of GO 156 should be modified to make them consistent with the Commission's intent.

6. SoCal's petition to modify § 6.9 of GO 156 should be denied.

26. SoCal requests that § 6.9 of GO 156 be modified to exclude fuel costs from total procurement expenditures for the purpose of calculating goals and achievements for WMBE participation.

27. SDG&E has filed a response in support of SoCal's request.

28. Assemblywoman Moore has filed a response in opposition to SoCal's request.

29. SoCal has filed a response to Assemblywoman Moore's response to SoCal's request that § 6.9 be modified.

30. It is the Commission's intent to increase WMBE procurement for every product category procured by the utilities, including fuel supplies.

31. SoCal has not established that WMBE fuel suppliers are unavailable.

32. If SoCal can demonstrate that WMBE fuel suppliers are unavailable or that sole source procurement is the only method for procurement, it may create an "excluded category" pursuant to § 6.5 of GO 156.

33. Even if SoCal could demonstrate that it is entitled to create an "excluded category" for natural gas purchases and other fuel costs, it would provide no basis for the creation of an across the board fuel costs exclusion for all utilities subject to GO 156; what may be true for one utility may not be true for another.

Conclusions of Law

1. Petitions filed by Petitioners, MCI, AT&T, and US Sprint should be granted by modifying § 3.3 of GO 156.

2. Assemblywoman Moore's petition should be granted in part by modifying §§ 3.3 and 3.4 of GO 156 and denied in part with respect to the addition of representatives of the Legislature on the Clearinghouse Advisory Board.

3. SDG&E's request to delay Commission action on the representation of small utilities and IECs on the Advisory Board should be denied.

ORDER

IT IS ORDERED that:

1. Sections 3.3 and 3.4 of General Order 156 (GO 156) are modified as follows:

- 3.3 The Advisory Board responsible for operating the central clearinghouse shall consist of a non-voting representative of CACD, and a voting representative from each of the following utilities and groups:
- 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
 - g. AT&T Communications of California
 - h. MCI Telecommunications Corporation
 - i. US Sprint Communications Company
 - j. Small utilities as defined by § 1.3.17
 - k. Black Americans as defined by § 1.3.5
 - l. Hispanic Americans as defined by § 1.3.6
 - m. Native Americans as defined by § 1.3.7
 - n. Asian Pacific Americans as defined by § 1.3.8
 - o. Women
- 3.4 Each group identified in § 3.3 shall select its own representative. If a group

4. PacBell's petition to modify § 6.2 of GO 156 should be granted, with clarification of the Commission's intent.

5. Sections 6, 6.2, and 6.4 of GO 156 should be modified to make them consistent with the Commission's intent.

6. SoCal's petition to modify § 6.9 of GO 156 should be denied.

ORDER

IT IS ORDERED that:

1. Sections 3.3 and 3.4 of General Order 156 (GO 156) are modified as follows:

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

- a. Pacific Gas and Electric Company (PG&E)
- b. Pacific Bell (PacBell)
- c. Southern California Edison Company (Edison) ✓
- d. Southern California Gas Company (SoCal) ✓
- e. General Telephone Company of California (GTE) ✓
- f. San Diego Gas & Electric Company (SDG&E) ✓
- g. AT&T Communications of California
- h. MCI Telecommunications Corporation
- i. US Sprint Communications Company
- j. Small utilities as defined by § 1.3.17

is unable to select its representative, it may petition the Director of CACD to select a representative. Representatives shall serve three year terms. Representatives may serve multiple terms if reselected by the group they represent.

2. Sections 6, 6.2, and 6.4 of GO 156 are modified as follows:

6. 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 the 39 categories in Attachment 2 as an example of the major 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).
- 6.2 Each utility shall establish initial minimum long-term goals for each major category of products and services the utility purchases from outside vendors of not less than 15% for minority owned business enterprises and not less than 5% for women owned business enterprises. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. The specification of initial long-term goals in this section shall not prevent the utilities from seeking to reach parity with public agencies, which the Legislature found in Public Utilities Code Section 8281 (b) (1) (B) are awarding 30% or more of their contracts to WMBEs.
- 6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. For the purposes of this section, the term "major category" shall mean a category established in accord with Section 6. 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.

3. Pacific Bell's petition to modify § 6.2 of GO 156 is granted, with clarification of the Commission's intent.

4. Southern California Gas Company's petition to modify § 6.9 of GO 156 is denied.

5. Assemblywoman Moore's petition to modify § 3.3 of GO 156 to include representatives of the Legislature on the Clearinghouse Advisory Board is denied.

6. The modified general order contained in Appendix A is adopted.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
Page 19

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.

7. The joint petition of SoCal, Edison, PG&E, SDG&E, GTE, and PacBell for extension until November 30, 1988, to comply with Paragraph 3.6 of GO 156 is granted.

This order is effective today.

Dated SEP 14 1988, at San Francisco, California.

I will file a concurring opinion.

FREDERICK R. DUDA
Commissioner

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