

Decision 89-08-026 August 3, 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

R.87-02-026
(Filed February 11, 1987) ✓

OPINION

I. Summary of Decision

This decision resolves the question of which forum, the rate case or generic proceeding, is better suited for addressing women and minority business enterprise (WMBE) issues. We conclude that the generic proceeding is the more appropriate forum to review and investigate WMBE policies, practices, procedures, and costs pursuant to General Order (GO) 156 and to achieve the objectives of WMBE legislation in Public Utilities (PU) Code §§ 8281-8285.

We view 1989 as a transitional year, since the first generic investigation will not be opened until early 1990. During 1989, the Executive Director's designee¹ will provide to respondents and interested parties a written evaluation of 1989 WMBE annual reports. The Executive Director's designee may conduct

1 In a decision issued contemporaneously, we have modified GO 156 as necessary to reflect a reorganization and reassignment of WMBE oversight duties from the Director of the Commission Advisory and Compliance Division (CACD) to the Executive Director's office.

workshops in which interested parties² may participate in the review of implementation of GO 156. The objective of the evaluation and workshop process is to frame the issues to be addressed in the first generic proceeding held during 1990.

Prior to March 1, 1990, the WMBE annual report filing date, the Commission will institute an investigation into WMBE policies, practices, procedures, and costs incurred in complying with GO 156. Among other relevant issues, the first WMBE investigation will address 1989 and 1990 annual reports and related issues; it will also review costs through 1990 for all respondents, except PG&E and SoCalGas, and projected 1991 program costs for all respondents. On March 1, 1990, WMBE annual reports and a WMBE cost exhibit shall be filed by each respondent as specified in Ordering Paragraph 1. Thereafter, parties shall complete discovery and engage in workshops to frame the issues. The Executive Director's designee shall chair the workshops. On June 1, 1990, the Executive Director's designee shall report to the assigned Administrative Law Judge (ALJ) the results of the annual report review, indicating undisputed and disputed issues among parties and which parties desire a hearing. Parties may comment on this report within 30 days of its submission. Respondents not involved in disputed issues may file motions to be excused from any further proceedings.

2 Both Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCalGas) are currently pursuing test year 1990 general rate cases where testimony has been presented on WMBE program compliance and 1990 test year costs. Decisions will be issued in each of these proceedings on WMBE issues. Therefore PG&E and SoCalGas are not required to participate in the 1989 workshops; however, the two utilities must still file their March 1, 1990 WMBE reports, as required by GO 156, and participate in the generic 1990 proceeding to the extent necessary to enable the Commission to decide the questions of: (1) WMBE compliance based on the March 1990 annual reports and (2) projected 1991 program costs.

Where matters are in dispute, a prehearing conference will be held. Hearings will be held if necessary.

In January 1991 or earlier, if feasible, the Commission will issue a final decision to resolve all issues of 1989/90 WMBE compliance and to open the generic investigation for the following year (1991). The same procedure and schedule shall be followed in future years.

Particular rate changes required due to WMBE costs or due to WMBE program noncompliance will be recognized in the next subsequent proceeding which adjusts rates for the affected respondent.

This decision also clarifies that the Commission's Rules of Practice and Procedure, Article 18.7 governing intervenor's fees and expenses, apply to the annual WMBE review and investigation.

Finally, throughout this proceeding an ex parte rule has been in effect. Since this decision resolves the issues to be considered during Phase II and closes this proceeding, there is no reason to continue the ex parte rule.

II. Background

On April 27, 1988, the Commission issued Decision (D.) 88-04-057 which established GO 156, the rules and guidelines for increasing participation of WMBE in the procurement of contracts from public utilities.

On September 14, 1988, D.88-09-024 modified D.88-04-057 and GO 156. The Commission extended Advisory Board representative's terms to three years, added representatives for small utilities and interexchange telecommunication corporations, and required a special report on WMBE fuel suppliers. As noted previously in a companion decision today, we modify GO 156 to reflect a reorganization and reassignment of WMBE oversight duties from the CACD director to the Executive Director's office, and to

address an unrelated definitional issue. However, the order regarding Phase II of this proceeding remains unchanged. D.88-04-057 ordered that Phase II would address at least the following issues:

- a. What forum should be used by persons wishing to voice their concerns and suggestions regarding the utilities' implementation of WMBE programs (i.e., should general rate cases continue to provide the forum, or should a generic annual WMBE proceeding be developed?
- b. If a generic proceeding is used, how will costs associated with WMBE programs be translated into revenue requirement changes for each utility, a process that presently occurs in general rate cases? (Ordering Paragraph 3.)

Respondents and interested parties were ordered to comment on these issues in writing by July 5, 1988. Accordingly, several parties filed written comments which varied in their recommendations.

Six parties favor retaining WMBE issues in general rate case proceedings. Two parties favor addressing WMBE issues in a separate generic proceeding involving all utilities. One party offers a variation of the generic proceeding patterned after the existing offset cases. One party recommends addressing WMBE issues in advice letter proceedings, treating costs in a balancing account. MCI Telecommunications Corp. (MCI) implores the Commission not to burden nondominant interexchange carriers with the costs of participating in WMBE proceedings. One party offers a hybrid rate case/generic proceeding approach whereby an initial inquiry would be made in the generic proceeding and further inquiry made in the rate case upon approval by the Commission. Another party offers a hybrid rate case/generic proceeding where common issues would be addressed in the generic proceeding and revenue

requirement and utility specific issues would be addressed in individual rate cases.

Parties were divided in their treatment of WMBE costs. Some favored accumulating these costs in a memorandum account after they are developed in a rate case, to be held until the next rate case change in rates. Others recommended the Commission decide issues of cost in the generic proceeding, allowing utilities to accumulate recognized costs in a memorandum account or a balancing account until the next rate case.

No party requested hearings and on November 21, 1988 the assigned Administrative Law Judge ruled that hearings were not necessary to decide the policy matters at issue. The matter was submitted upon the written comments of the parties.

III. The Rate Case Option

Six parties preferred retaining WMBE issues in the general rate case proceeding.³ Reasons given for making this recommendation were as follows:

1. The utility can best be audited, defend, and be allowed to recover the cost of WMBE programs in a rate proceeding;
2. Addressing WMBE issues in rate proceedings has been successful. Intervenors and interested parties have participated actively and extensively.
3. In the rate case, a utility's accomplishments can be viewed in the context of its overall expenses, construction and procurement programs, the operating demographics, market, ethnic population, and business environment.

3 PG&E, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Edison Company, SoCalGas, and Southwest Gas Corporation.

4. The operation of the clearinghouse will expedite and improve the effectiveness of addressing WMBE in rate cases.
5. Utilities already have a regulatory team prepared to participate in rate cases. Additional personnel, e.g. attorney, regulatory staff, would be needed for generic proceedings.
6. The revenue requirement for WMBE is easily implemented in rate cases. § 1.1.3 of GO 156 allows the filing of an application or advice letter for increased costs.
7. Adjustments for bad faith efforts can easily be made in the rate case.

We do not believe that successful participation in rate cases precludes successful participation in other forums. Prior to the enactment of §§ 8281-8285, the legislation requiring WMBE programs, the Commission ordered utilities to address WMBE issues in their respective rate cases (D.82-12-101), and it is true that utilities and interested parties have allocated staff and other resources to address these issues on a case-by-case basis. However, reviewing WMBE issues within the time constraints of the existing rate case schedule allowed limited time to pursue WMBE concerns. As rate case participants are aware, the mandated schedule must accommodate myriad complex issues and is barely sufficient to do this. Adding WMBE issues to the rate case meant that detailed analysis of WMBE was not always possible.

It is also true that interested parties participating in rate cases to address WMBE issues were successful in substantially contributing to equitable resolution of these issues. However, at that time the rate case was the only forum available for interested parties to pursue these issues. Therefore, implying that these issues can only be adequately addressed in rate cases begs the question which proceeding, generic or rate case, is the more efficient and effective forum. No party denies that there is

much progress to be made in WMBE programs and goal achievements. The success of WMBE litigants in rate cases only shows that this premise is true. The key to making progress is finding a procedural format which will allow more time to analyze and address WMBE issues.

Proponents of retaining WMBE in the rate case argued that the clearinghouse will expedite and simplify WMBE issues. The newly established clearinghouse to be used by all utilities in contract procurement and verification should expedite and simplify the resolution of disputed aspects of WMBE programs and GO 156 compliance. However, the facts derived from the clearinghouse can be used in any forum and would undoubtedly have the same effect regardless of the type of proceeding. We do not find that this argument provides a basis for retaining WMBE issues solely in rate cases.

There are two arguments advanced for retaining WMBE issues in rate cases which do concern us: (1) the uniqueness of each utility's operating environment and the differences of the various utility industries; and (2) the ease of implementing initial WMBE costs in the revenue requirement and the assurance of a mechanism to make future WMBE cost adjustments.

There is no doubt that there are differences among the utilities in overall expenses, construction budgets, procurement programs, and operating demographics, such as, markets, ethnic population, and business environment. However, the factors used in setting WMBE goals required by GO 156 provide substantial uniformity in WMBE programs while allowing for differences in utility operation and operating environments.

GO 156 makes all WMBE issues common to all utilities which are subject to §§ 8281-8285. The rules are uniform for verification, the use of a central clearinghouse, internal and external program elements, and complaint procedures. Even the issue of goal-setting has uniform and common methodology, although

the input factors and results may vary among utilities. This being the case, we cannot agree that the uniqueness of each utility or differences in utility industries warrant individual pursuit of WMBE issues in separate utility rate cases. From the standpoint of common issues, we find that it will be more expedient, efficient, and effective to evaluate WMBE issues in one proceeding rather than on a case-by-case basis.

In addition, our experience with addressing WMBE issues in rate proceedings has produced a valid criticism of this forum: there is significant duplication of effort of WMBE intervenors among the numerous rate cases. We have reduced the amount of compensation awarded to intervenors for specific WMBE issues by as much as 25-50% based upon duplication of effort among proceedings and for overlap of discovery requests, investigation, and prepared testimony. (Application of PG&E, D.88-04-058; Application of Pacific Bell, D.87-12-067.) Such findings in requests for compensation for participation in rate cases are prima facie evidence that pursuit of WMBE issues in separate rate cases is wasteful.

We also cannot ignore the fact that, at least in the telecommunications industry, competition has resulted in applications for rate flexibility and the reduction of regulatory oversight, resulting in the postponement of Pacific Bell's (Pacific's) 1989 rate case until the completion of the rate flexibility proceeding (I 87-11-033). Thus, as a result of the rate flexibility investigation, rate case schedules have already been altered and the need for scheduled telecommunications rate cases is being challenged. Should these rate cases become the exception, rather than the rule, WMBE litigants will have no readily available forum for reviewing WMBE issues of a telecommunications utility and a new procedure will be required. Rather than start down that road, it is better to explore alternate forums now.

Proponents of retaining WMBE issues in the rate case criticize the WMBE generic proceeding as a step backward from the lessening of regulation which competition warrants. However, we have found that with competition comes the need for additional or new analysis of old issues as well as inquiry into some new matters. It would be reasonable to add GO 156 compliance to this list of areas for continued regulatory oversight as a program not to be jeopardized in a competitive environment.

Adherence to the rate case forum may also make it more difficult for the Commission to undertake uniform improvements to utility WMBE programs, especially if these improvements require modification of GO 156.

Several parties assert that rate changes caused by WMBE program costs are best implemented in rate cases, yet other parties identify the offset and advice letter proceedings as other procedural mechanisms for changing rates. We find the rate case proceeding is only one mechanism to implement rate changes. Since there are other proceedings to implement any necessary WMBE cost adjustments, it is not necessary to retain the rate case solely for the purpose of implementing rate changes.

After review of all arguments advanced for retaining WMBE issues in the rate case and after reflection on our own experience with WMBE issues, we find that the rate case option is inadequate to meet the legal objectives required to revise GO 156, and it is not the most expedient proceeding to achieve our administrative objectives or improve WMBE programs.

IV. The Generic Proceeding

GTE California Incorporated (GTE) and Citizens Utilities Company (Citizens) (representing the views of both Citizens and Roseville) favor the generic proceeding as the most expeditious,

efficient, and responsive for individual, group, and utility expression of WMBE concerns and program changes.

GTE recommends that the Commission undertake a generic proceeding to implement GO 156, and thereafter, that it undertake a generic investigation upon application by any party, including CACD, or upon its own motion. WMBE compliance would be monitored by CACD.

We disagree with GTE that a formal proceeding is needed to implement GO 156, given the parameters of this order. This order, which details a program of implementation, must be followed by all respondents. However, we agree with GTE that WMBE compliance should be monitored by the Executive Director's Office (replacing CACD) as well as interested parties and that any party should have the opportunity to review and investigate WMBE issues. A transitional period should be allowed for parties to adjust from addressing WMBE issues in rate cases to participating in a generic proceeding. As noted previously, we are aware that PG&E and SoCalGas are pursuing rate cases (A.88-12-005 and A.88-12-047) where WMBE program compliance (based on March 1989 annual reports) and test year 1990 WMBE program costs are at issue. This schedule need not be changed. Decisions will issue in these rate cases. However, all other respondents shall participate together in a review of 1989 annual report and projected (1990) costs until the first generic investigation is ordered. The Executive Director's designee shall submit to each respondent a written evaluation of its 1989 WMBE annual report and implementation of GO 156. For the remainder of this year, the Executive Director's designee, respondents, and interested parties may resolve any matters of concern, including projected costs, to implement GO 156 and frame issues for the first generic proceeding.

In 1990, prior to the March 1 WMBE annual report filing date, the Commission will issue an order instituting investigation into WMBE policies, practices, procedures, and costs pursuant to

GO 156. The costs reviewed shall be all costs not previously approved by this Commission and projected 1991 costs. On March 1, 1990 each respondent shall file its annual report and a cost exhibit, including costs in authorized memorandum accounts, as specified in Ordering Paragraph 1. Thereafter, parties shall pursue discovery and workshops to review reports and narrow the issues. The workshops shall be chaired by a designee of the Executive Director. The Executive Director's designee shall submit a report to the assigned ALJ on June 1, 1990 indicating which issues are in dispute between which parties and which parties desire that hearings be held. A copy of this report shall be mailed to all parties. Within 30 days after the submission of the report, parties desiring to do so may submit comments on the report. The assigned ALJ will then schedule a prehearing conference and any necessary hearings, with a target Commission decision date of January 1991 or earlier. At the time it issues this decision, the Commission will also initiate a generic WMBE investigation for the following year (1991). The Commission will follow this same schedule in future years, as detailed below:

Jan. - Mar.	Commission initiates OII re WMBE compliance and costs
Mar. 1	OII respondents file annual reports and cost exhibit
Mar. - May	Executive Director's designee holds workshops
June 1	Executive Director submits workshop report to assigned ALJ
July 1	Comments on Workshop Report by parties
June - Jan.	Evidentiary hearings, briefs, culminating in Commission decision issued no later than January.

Some commenters have raised the concern that smaller utilities are unduly burdened if required to participate in a generic WMBE proceeding involving all respondents. Citizens, while favoring the generic proceeding, requests that small utilities not be required to participate in every generic proceeding. Citizens alleges that the cost of mandatory participation in every proceeding would be burdensome. Instead, Citizens recommends that small utilities become parties only in the generic investigation if a complaint is filed against them or other evidence of noncompliance is presented.

WMBE legislation makes no exceptions to annual report filings. These reports form the basis for our review of compliance and progress in achieving WMBE objectives. We have concluded that this review is best achieved in a generic proceeding where all utilities subject to §§ 8281-8285 are respondents. Although it is not feasible to exclude any utility from this proceeding, there may be no need for utilities with reasonable costs which are in compliance and making satisfactory progress to be subjected to hearings. Therefore, in the generic proceeding where a utility's compliance, progress and costs are undisputed, the utility may file a motion to be excused from participating in hearings, based on the June 1 report from the workshop chairperson.

V. Other Related Matters

The commenters favoring the generic proceeding did not specify which party has the burden of proof in this proceeding. It is the utility's responsibility to show that its policy and program are in compliance with GO 156 and the utility therefore has the burden of proof on this issue.

GTE proposes that initial WMBE costs and any subsequent changes be established in the rate case. Rate adjustments would appear in the rate case and companion attrition filings as a surcharge or surcredit to revenue requirement. Unanticipated costs

would be a basis for emergency interim rate relief. Pacific recommends that any revenue requirement adjustments be incorporated into rate cases.

We do not agree that it is efficient to separate WMBE policy issues and program content from the ensuing costs. The content of a WMBE program generates the costs. We believe it is more efficient to address both in the same record to avoid repetition or conflict in the facts generating the costs. Each utility shall file a WMBE cost exhibit on March 1 with its annual report. Once costs and any necessary rate adjustments are approved in the generic proceeding, they can be incorporated in the next proceeding where rates are changed. This may be a rate case, an attrition filing, an advice letter filing, or a yet to be designated proceeding to implement rate adjustments in the absence of a rate case.

One party favoring the rate case option believed that an annual generic proceeding could result in significant expansion and cost increases between rate cases. It is not clear whether this cost increase would be due to program expansion or additional staffing for a generic proceeding. We do not agree that either is likely. WMBE programs are not new, just reviewed by this Commission under new legislation. Thus, initial staffing and costs for implementing programs have been established.

We do not believe it is necessary or desirable to calendar regular rate adjustment proceedings for WMBE costs like our offset proceedings for fuel costs and revenues since WMBE program cost adjustments are significantly smaller and will not occur frequently. WMBE cost changes which affect rates should not interfere with our general policy to minimize rate fluctuations.

We have already approved memorandum account treatment of unanticipated WMBE costs for SoCalGas and Southern California Edison Company. (Resolution G-2844, January 27, 1989 and Resolution E-3133, March 22, 1989.) A utility with an approved

memorandum account shall include these costs separately in its cost exhibit filed on March 1 to be reviewed in the next generic proceeding. We expect in the first generic proceeding, to review pre-1990 and 1990 costs for all respondents except SoCalGas and PG&E and to review projected 1991 costs for all respondents, including SoCalGas and PG&E. In subsequent years, we will review projected costs for each respondent (e.g. 1991 proceeding will review projected 1992 costs).

Although Public Advocates favors the generic case approach, it wishes as a last resort to retain the right to intervene in a rate case if it is dissatisfied with the utilities' showing in the generic proceeding. Public Advocates is concerned about the Commission's ability to review WMBE compliance in a nonrevenue requirement setting. However, we conclude that the rate case is not the only proceeding in which such penalty or disallowance recommendations can be made. The sanctions for noncompliance, if any, should be addressed in the same proceeding in which the issue is raised, and, as stated previously, necessary rate adjustments can be incorporated in the next proceeding where a particular utility's rates are changed.

Public Advocates also raises the issue of intervenor compensation for participation. It recommends that the cost of intervenor participation in a generic WMBE proceeding be shared on a pro rata basis among the six largest utilities with smaller utilities contributing if their programs are in dispute. Should the Commission choose the generic proceeding for WMBE issues, MCI requests that nondominant carriers not be assessed for costs of intervenor participation.

The award of intervenor fees is appropriate in proceedings or hearings for the purpose of modifying a rate or establishing a fact or rule that may influence a rate. (PU Code

§ 1801 et seq.)⁴ The annual generic investigation is such a proceeding. In response to the concern about an equitable sharing of costs among the respondents, we note that those seeking compensation may apportion their dollar requests in proportion to the time spent on each respondent's programs and costs. This division of intervenor costs might include a smaller utility in cases where an intervenor spends considerable time addressing a dispute over the smaller utility's program. In order to achieve this division of intervenor costs, an intervenor requesting compensation must indicate the percentage of time allocated to each respondent. In any event we will make such allocations on a case by case basis as requests for compensation are filed.

Pacific recommends that progress in the implementation of WMBE programs be evaluated by the number and frequency of WMBE complaints. Should a proceeding be needed, Pacific favors a generic proceeding to focus on issues and resolve them in a timely manner. Pacific offers revisions in §§ 4.4 and 5 of GO 156 to require that WMBE program changes first be submitted to utilities for review. However, we do not believe complaints are the sole criteria for assessing the progress or success of WMBE programs. The ultimate goal and express intent of §§ 8281 et seq. is to increase WMBE participation in utility procurement, and our assessment is that the generic proceeding will best meet this goal.

In response to Pacific's assertion that WMBE program changes be submitted to the utility first, we do not want to impose such a requirement. Pacific's suggestion raises questions, such as, what happens if the utility objects to the changes? Would the

4 In D.82-12-101 in C.10308 this Commission specifically determined that there is a nexus between its regulatory responsibility to ensure just and reasonable rates and the quality of WMBE programs undertaken by utilities in the conduct of their business.

proponent of the changes be precluded from filing a formal request for changes if the utility objects? Would any party formally requesting changes be precluded from so doing if the utility had not been notified of the changes first?

We do not believe this policy direction is desirable given our goal of allowing all parties the unfettered right to request WMBE review and program, practice, or policy changes.

On April 26, 1989 Public Advocates filed a Notice of Motion and Motion for hearings regarding possible inaccuracies of data, incorrect categorization and exclusions and modification of goals re F/MBE (sic) reports of March 1989. The motion was filed without specific hearings being requested and without specific allegations being made. While Public Advocates makes general statements about inaccurate reporting, misuse of the purposes of the WMBE general order, unnecessarily broad exclusions from the goals and the original goals being inadequate, no facts are alleged with regard to any individual utility and the thrust of the motion is somewhat vague. Public Advocates states that it hopes to seek a resolution with the cooperation of the utilities without hearing.

We will deny the motion at this time, since its purpose is unclear but we do so without prejudice to Public Advocates' renewing the motion if it wishes to allege specific facts or point out specific noncompliance with our decisions. To the extent that such allegations may be directed at PG&E or SoCalGas, they should be raised in those utilities' general rate cases which are in hearings at the present time. We encourage parties to resolve their questions outside of the hearing process and minimize, if not avoid, the need for hearings. To the extent Public Advocates' motion asserts that original goals are inadequate (Motion, p. 3), the motion is procedurally defective. Such assertions are more appropriately raised via petition for modification.

Findings of Fact

1. Participation or success in developing WMBE issues in rate cases does not preclude participation or success in other forums.

2. WMBE issues were placed into the rate case within the time limitations of the existing rate case schedule, allowing no additional time to pursue WMBE concerns.

3. Previously, interested parties participated in rate cases addressing WMBE issues and were successful in substantially contributing to their equitable resolution. However, prior to this proceeding, the rate case was the only forum available to pursue these issues.

4. There is much progress to be made in WMBE programs and goal achievements.

5. In order to make progress, a proceeding which allows more time to analyze and address WMBE issues is desirable.

6. GO 156 requires substantial uniformity in WMBE programs, while allowing for differences in utility operation and operating environments in the factors used in setting WMBE goals.

7. Under GO 156, most WMBE issues will be common among all utilities. Even the issue of goal-setting has uniform and common methodology under GO 156, although the input factors and results may vary among utilities.

8. Our experience with addressing WMBE issues in rate proceedings has produced the valid criticism that there is significant duplication of effort of WMBE intervenors among the numerous rate cases.

9. As a result of I.87-11-033, Pacific's 1989 rate case has been postponed and the necessity for regularly scheduled telecommunications rate cases is being examined.

10. The rate case option is inadequate to provide notice to all parties to revise GO 156 or uniformly investigate WMBE policies, practices, procedures, and costs.

11. It is not efficient to separate WMBE issues from the ensuing costs. Facts pertaining to both are better developed in the same record to avoid repetition or conflict in facts justifying the costs.

12. Parties should be allowed a transitional period to adjust to addressing WMBE issues in a generic proceeding.

13. It is not feasible to exclude small utilities from the generic investigation; however, where no matters in their programs or costs are in dispute, they may be excused from participating in hearings under the provisions outlined in this decision.

14. It is not necessary or desirable to calendar regular quarterly rate adjustment proceedings for WMBE costs like our offset proceedings for fuel costs and revenues since changes in WMBE costs are not likely to be as great as those in fuel offset cases.

15. Initial utility staffing of personnel to address WMBE issues in rate cases has occurred. It is not reasonable to anticipate significant staff or cost increases to participate in a generic proceeding.

16. It is not necessary to address WMBE issues in the rate case to recommend sanctions for noncompliance with GO 156. Sanctions should be addressed in the same proceeding in which noncompliance is raised.

17. Costs associated with intervenor compensation in a generic WMBE proceeding should be shared by respondent utilities as determined by the Commission on a case by case basis.

18. The motion of Public Advocates for further hearing is vague and non specific and does not request hearings at a particular time and for a particular purpose.

Conclusions of Law

1. An annual generic proceeding is the appropriate forum to investigate respondents' WMBE policies, practices, procedures, and costs pursuant to GO 156.

2. PU Code §§ 1801 et seq. and the rules governing intervenor compensation (Article 18.7) apply to the generic WMBE proceeding.

3. Good cause for further hearings on the motion of Public Advocates has not been shown and the motion should be denied.

O R D E R

IT IS ORDERED that:

1. An annual generic proceeding shall be the forum for parties to address WMBE policies, practices, procedures, and costs pursuant to GO 156. Prior to March 1, 1990 the Commission will institute an investigation into the policies, practices, procedures and costs of WMBE programs established under GO 156 for the year 1990. Utilities subject to GO 156 shall be respondents in this investigation. Thereafter and in future years, the following schedule and procedures shall be followed until further order of this Commission:

- a. On March 1, WMBE annual reports shall be submitted to the Executive Director as specified in § 7 of GO 156. In addition, filers shall notify all other parties in the WMBE investigation initiated by the Commission that a copy of their annual report will be sent on request.
- b. On March 1, respondents shall file in the WMBE investigation docket the original and 12 copies (with certificate of service attached) of an exhibit containing projected and other WMBE costs which have not been reviewed by the Commission, including costs contained in any authorized WMBE-related memorandum account. At a minimum, the first generic proceeding will review the March 1990 annual reports of all respondents, the March 1989 annual reports of all respondents except Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCalGas),

projected 1991 WMBE program costs for all respondents, and pre-1990 and 1990 WMBE program costs for all respondents except PG&E and SoCalGas.

- c. Interested parties may engage in discovery and workshops where WMBE issues may be framed. The Executive Director's designee shall chair any necessary workshops.
- d. On or before June 1, the Executive Director's designee shall submit a written report to the assigned ALJ summarizing the disputed and undisputed matters among parties, identifying which parties request hearings, and making a recommendation for further proceedings. A copy of the report shall be mailed to all parties. Within 30 days after the submission of the report, workshop participants may submit comments on the report, if desired. Based upon this report, the respondents may file a motion to be excused from participating in the current investigation on the basis that the respondent's WMBE programs, policies, practices, and costs are not in dispute.
- e. If there are matters in dispute, a prehearing conference will be held to schedule hearings and frame the issues.
- f. Any subsequent hearings shall be completed in time for the Commission to render a final decision the following January. In the final decision, the Commission will address all disputed issues and order an investigation for the next consecutive year.

2. The schedule set in Ordering Paragraph 1 shall apply to ensuing years. The assigned ALJ shall have the discretion to adjust filing dates unless such changes prevent a timely final Commission decision in January.

3. During transition year 1989, the Executive Director's designee shall submit to respondents a written evaluation of WMBE policies, practices, procedures, and costs or estimated costs.

Parties interested in participating in review of respondent WMBE matters this year shall notify the Executive Director's designee in writing. The Executive Director's designee shall conduct and coordinate WMBE review during this transitional period and shall chair any workshops concerning WMBE issues. The objective of the evaluation and workshop process for transitional year 1989 is to frame the issues to be addressed in the first generic proceeding during 1990. SoCalGas and PG&E are not required to participate in these transitional year activities, since these matters are being considered in their test year 1990 rate proceedings.

4. Requests for compensation for intervenor fees for participation in generic WMBE proceedings shall be made in accordance with the Commission Rules of Practice and Procedure, Article 18.7, and shall apportion the compensation sought from the various respondents on a case by case basis. Parties shall recommend such apportionment as part of their compensation filings.

5. The motion of Public Advocates for further hearings is denied without prejudice.

6. This proceeding is closed, and the ALJ Ruling precluding ex-parte contacts in this proceeding is terminated.

This order becomes effective 30 days from today.

Dated AUG 3 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did not
participate.

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

Victor Weisser

Victor Weisser, Executive Director

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Decision 89 08 026 AUG 3 1989**ORIGINAL**

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OPINIONI. Summary of Decision

This decision resolves the question of which forum, the rate case or generic proceeding, is better suited for addressing women and minority business enterprise (WMBE) issues. We conclude that the generic proceeding is the more appropriate forum to review and investigate WMBE policies, practices, procedures, and costs pursuant to General Order (GO) 156 and to achieve the objectives of WMBE legislation in Public Utilities (PU) Code §§ 8281-8285.

We view 1989 as a transitional year, since the first generic investigation will not be opened until early 1990. During 1989, the Executive Director's designee¹ will provide to respondents and interested parties a written evaluation of 1989 WMBE annual reports. The Executive Director's designee may conduct

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projected 1991 WMBE program costs for all respondents, and pre-1990 and 1990 WMBE program costs for all respondents except PG&E and SoCalGas.

- c. Interested parties may engage in discovery and workshops where WMBE issues may be framed. The Executive Director's designee shall chair any necessary workshops.
- d. On or before June 1, the Executive Director's designee shall submit a written report to the assigned ALJ summarizing the disputed and undisputed matters among parties, identifying which parties request hearings, and making a recommendation for further proceedings. A copy of the report shall be mailed to all parties. Within 30 days after the submission of the report, workshop participants may submit comments on the report, if desired. Based upon this report, the respondents may file a motion to be excused from participating in the current investigation on the basis that the respondent's WMBE programs, policies, practices, and costs are not in dispute.
- e. If there are matters in dispute, a prehearing conference will be held to schedule hearings and frame the issues.
- f. Any subsequent hearings shall be completed in time for the Commission to render a final decision the following January. In the final decision, the Commission will address all disputed issues and order an investigation for the next consecutive year.

2. The schedule set in Ordering Paragraph 1 shall apply to ensuing years. The assigned ALJ shall have the discretion to adjust filing dates unless such changes prevent a timely final Commission decision in January.

3. During transition year 1989, the Executive Director's designee shall submit to respondents a written evaluation of WMBE policies, practices, procedures, and costs or estimated costs.