

Decision 30 06 002 JUN 06 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Travel Era,

Complainant,

vs.

Pacific Gas and Electric  
Company,

Defendant.

**ORIGINAL**

Case 89-07-047  
(Filed July 27, 1989)

Ajit S. Patwardhan, for Travel Era,  
complainant.  
Jefferson C. Bagby, for Pacific Gas and  
Electric Company, defendant.

O P I N I O N

Summary of Complaint

On July 27, 1989, Travel Era (complainant) filed a complaint against Pacific Gas and Electric Company (defendant) claiming the denial of business opportunities by defendant. Complainant is a minority owned small business travel agency interested in participating in defendant's travel contract offerings. Complainant claims to have been required to file supplier profiles a number of times during 1988 because defendant lost or misplaced these supplier profiles thereby denying complainant a business opportunity with defendant. A supplier profile is a brief document giving basic information about the vendor: name, address, size of company, type of business, minority status, etc. It is used by the utility to identify potential vendors of a particular good or service so that they can send out notices of bid or requests for proposals. Complainant claims that defendant's omissions delayed action required by General Order

(GO) 156 and requests that defendant compensate complainant for the business loss.

Summary of Answer

On August 31, 1989, defendant filed its answer to the complaint. Defendant indicates that it properly processed each of the supplier profiles submitted by complainant. Defendant states that in response to complainant's submittal of a revised supplier profile indicating that complainant was a minority owned business, defendant updated complainant's entry in its database to indicate the change that complainant is minority owned. Defendant alleges that at all times in its dealings with complainant, defendant complied with all applicable rules and requests that the complaint be dismissed.

Prehearing Conference

A prehearing conference was held before Administrative Law Judge (ALJ) Texeira on September 20, 1989. Complainant agreed to file an amendment to the complaint to define more specifically the basis for the complaint and the relief being sought.

Amendment to the Complaint

On September 27, 1989, complainant filed an amendment to the complaint stating that defendant did not comply with the provisions of GO 156 while processing complainant's request for registration as a vendor under its Equal Opportunity Purchasing Program (EOPP). Complainant further claimed that defendant demonstrated bad business practices in not allowing complainant to solicit business as a minority owned small business enterprise on the plea that the profile submitted had been lost and complainant had not been registered with defendant. Complainant states that defendant has not acted in good faith and has deliberately denied a business opportunity to complainant. Complainant then requests that defendant be reprimanded for this willful act and complainant be granted relief as admissible.

Defendant filed its answer to the amendment to the complaint on November 3, 1989 denying complainant's allegations that it had not acted in good faith toward complainant and that it deliberately denied any business opportunity to complainant. Defendant claimed that complainant was treated consistently with the treatment given all other suppliers of travel services contained in its database of like status. Defendant finally requested that the complaint, as amended, be dismissed.

Hearing

Evidentiary hearings were held on January 16 and 17, 1990 in San Francisco before ALJ Texeira. Ajit S. Patwardhan testified for complainant. Charles E. Shepherd, Marjorie C. Sarofeen, and Tom Evans testified for defendant. The matter was submitted with the filing of concurrent briefs on February 16, 1990. These are the facts that were developed during the hearings.

By letter dated January 6, 1988 mailed sometime before February 22, 1988, complainant submitted a supplier profile to defendant. Defendant determined that complainant at that time was not a minority owned business. Defendant states that this determination was correct under applicable California law as GO 156 did not designate persons from the Indian subcontinent as minorities until May 30, 1988. This supplier profile was entered into defendant's computerized vendor database on March 3, 1988.

In June 1988, complainant discovered from an advertisement that it could participate in defendant's EOPP as a minority business enterprise. The advertisement was placed as part of defendant's outreach program.

During this period complainant stated that he made numerous telephone inquiries to determine the status of his profile and drew no response from defendant. Defendant did not agree with this statement. Complainant also indicated that he sent a copy of his supplier profile to defendant's Materials Department on

July 15, 1988 because he had been informed by defendant that his supplier profile had been misplaced.

On July 21, 1988, defendant sent out for bid a travel services contract. Complainant believes that he should have been included in the qualified bidders list for this travel services contract. Before the contract was sent out for bidding, a set of criteria was prepared by defendant to determine who would be qualified to bid. One of the criteria used was the size of the company. Complainant was too small a company to have made the qualified bidders list based on this criterion. Interestingly, the procedures used by defendant in preparing the qualified bidders list for this contract were designed to maximize the participation of minority owned enterprises in the process. As a result, the qualified bidders list was composed of over 50 percent Women and Minority Business Enterprises (WMBE) firms and the contract was eventually awarded to a WMBE firm.

On August 31, 1988, complainant sent a letter requesting defendant to consider his request for providing travel and related services. In this letter, complainant mentioned that he had submitted a copy of his supplier profile to replace the copy that had been sent on January 6, 1988 and appeared to have been lost. Defendant observes that nowhere in the letter is any mention of complainant being a minority owned business.

On September 7, 1988, defendant received a telephone call from complainant inquiring about the classification of complainant as a minority or majority owned business. Defendant claims that this was the first contact with complainant where the problem of minority status was raised. Complainant agreed during the telephone conversation to send to defendant a copy of the Federal orders classifying people from the Indian subcontinent as a minority.

In response to complainant's letter of September 10, 1988, defendant reclassified complainant as a minority owned business enterprise on October 27, 1988.

In his brief, complainant requests that defendant be identified as the erring party and directed to initiate action to redeem the opportunities denied. Defendant asserts that this case does not involve violations of GO 156 nor discrimination. Instead it is a case of communication difficulties between complainant and defendant and no remedy by the Commission is required.

Discussion

In complaint proceedings such as this case, complainant has the burden of proving that a law, order, or rule has been violated and because of that violation, complainant is entitled to relief. Defendant correctly characterizes this case as one of communications difficulties rather than rule violations or discrimination.

Complainant generally refers to defendant not returning phone calls, losing or misplacing documents, and not making stronger outreach attempts to keep potential vendors informed. Defendant strongly disagrees with these assertions and showed that its procedures were designed to treat all vendors fairly. It is clear that although proper procedures may be in place, that may not be sufficient to bridge potential cultural or language difficulties. Proper implementation of programs designed to encourage the participation of WMBE firms requires extraordinary efforts to insure understanding and lowering of whatever barriers that may exist. Defendant is cautioned to review its program to see if these goals are being met.

Defendant has not violated GO 156. On the contrary, the record clearly shows that in preparing the travel contract in dispute for bid defendant took extraordinary efforts to insure the participation of WMBE firms. The result was that one of the WMBE firms was awarded the contract. Complainant would not have been

able to qualify to participate as a bidder according to the reasonable criteria developed by defendant for participation in the bidding process leading to the award of this contract. The fact that complainant was not designated a minority owned business enterprise by defendant would have not made any difference on complainant's ability to meet the criteria and participate in the process.

Complainant has been given numerous opportunities to describe the specific relief sought in this proceeding. In his brief, complainant requests that the Commission direct the utility to initiate action to redeem the opportunities denied. During the hearing, complainant was asked if the relief sought meant termination of the travel services contract with the existing WMBE vendor and awarding that contract to complainant. Complainant's response was that it was up to defendant to decide. Although the precise relief that complainant is seeking is still unclear, it is not necessary to determine what that relief may be since complainant has not proved that any violation has taken place that requires a remedy. The complaint should be denied.

Comments on the ALJ's proposed decision were filed by complainant and defendant. After review, we are not persuaded to alter the proposed decision.

Findings of Fact

1. In early 1988, complainant submitted a supplier profile to defendant.
2. At that time, defendant correctly classified complainant as not being a minority owned business enterprise.
3. This classification was correct as GO 156 did not designate persons from the Indian subcontinent as minorities until May 30, 1988.
4. Defendant sent out for bid a travel services contract on July 21, 1988. One of the criteria used to qualify bidders to

participate was size of the firm. Complainant was too small and would not have made the qualified bidders list.

5. Complainant was later reclassified a minority owned business enterprise. This change in classification would have no effect on his ability to make the qualified bidders list for the travel services contract.

6. The problem in this proceeding has been a communication difficulty between complainant and defendant. Defendant should take steps to reduce communications or cultural barriers in future dealings with minority owned business enterprises.

Conclusions of Law

1. Defendant did not violate GO 156 or any other law, rule, or order.

2. Complainant's request for relief should be denied.

ORDER

IT IS ORDERED that the complaint of Travel Era against Pacific Gas and Electric Company is denied.

This order becomes effective 30 days from today.

Dated JUN 06 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHAMAN  
PATRICIA M. ECKERT  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director