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Decision 90-12-027 December 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

ORIGINAL
R:87-02-026:5
(Filed February 11, 1987)

O P I N I O N

Summary

This order modifies Decision (D.) 87-09-024 and General Order (GO) 156 to eliminate the one year fuel exclusion granted in D.88-09-024 and establish goals and guidelines for utility procurement of fuel from women and minority owned business enterprises (WMBEs).

Utilities are authorized to report the procurement of fuels separately from the procurement of other products and services so that the relatively low participation of WMBEs in fuel markets does not distort utility progress in other procurement categories. The minimum fuel procurement base will include only domestic onshore natural gas purchases because utilities report insignificant WMBE participation in other fuel categories.¹

Fuels used to power vehicles, heat utility facilities, and supply emergency generators, however, must be included in the original WMBE procurement base unless they represent purchases from other utilities and are thus exempted from the WMBE procurement base by GO 156 § 6.9. There is no evidence in the record of this

¹ The term "domestic onshore natural gas" refers to natural gas from the southwest, California, and other markets within the continental United States; it excludes natural gas from Canadian or federal offshore markets.

proceeding to support special treatment of such fuels, and several utilities expressed the opinion that such fuels should be included in the original procurement base.

This decision establishes long-term goals which require utilities to seek to purchase 15% of their fuel from minority owned business enterprises (MBEs) and 5% from women owned business enterprises (WBEs) within five years (1995). The long-term goals of 15/5% are consistent with those already in place for other categories of products and services.

Utilities are required to report annually on their efforts to increase fuel purchases from WMBEs.

Background

On December 22, 1982, the Commission issued its first comprehensive decision concerning utility procurement of products and services from WMBEs. In response to utility representations that there were few WMBE fuel suppliers, and that the inclusion of fuel within the category of products and services subject to the WMBE program would skew the results of the program in a manner that would reflect badly on utility efforts to increase procurement from WMBEs, the Commission excluded fuel from the category of products and services subject to the WMBE program.

On April 27, 1988, the Commission in D.88-04-057 adopted GO 156 which sets forth rules governing the development of utility programs to increase participation of women and minority owned business enterprises. This order requires every gas, electric, and telephone utility with gross annual revenues exceeding \$25 million to seek to obtain from WMBEs at least 20% (15% for MBEs and 5% for WBEs) of the products and services it purchases within five years. GO 156 did not exclude fuel from the WMBE program. Instead, GO 156 provided that:

- 6.4 Goals shall be set for each major category of products or services which could be supplied by available WMBEs. Goals need not be set for products or services which fall within an "excluded

category" created by a utility pursuant to Section 6.5 of this general order because of the unavailability of WMBEs capable of supplying those products or services.

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

The Commission did not mandate a "fuels" exclusion because it believed that permanent product category exclusions unnecessarily assume a static business environment. The Commission noted that: "In order to ensure that such excluded categories meet real needs and do not continue to exist after WMBE suppliers in such categories become available, we will require utilities to report any efforts made to recruit WMBE suppliers in these categories and to note in their annual plans any plans they have to recruit such suppliers in the future." (D.88-04-057, 28 CPUC 2d 36, at 60.)

On June 7, 1988, Southern California Gas Company (SoCal) petitioned to modify GO 156 to exclude fuel costs from the procurement base used to calculate progress in achieving WMBE program goals. In support of its petition, SoCal cited prior Commission decisions beginning with D.82-12-101 which specifically excluded fuel costs from the program. SoCal argued that if fuel

costs were included in the procurement base, it would be unlikely to be able to attain the overall 20% WMBE procurement goal since inclusion of the utility's \$1 billion-plus fuel costs would lower its reported WMBE achievement because WMBEs did not participate in appreciable numbers in fuel markets.

Assemblywoman Gwen Moore opposed SoCal's petition, noting that fuels markets have changed since the WMBE fuel exclusion was first adopted in D.82-12-101.

On September 14, 1988, the Commission issued D.88-09-024, which granted SoCal's petition, but ordered utilities to expand their efforts to identify and utilize WMBE fuel suppliers and to file in one year a special report on those efforts. The Commission stated:

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 WMBEs in fuel markets." (D.88-09-024, 29 CPUC 2d 229, at 236-237.)

D.88-09-024 listed certain information to be included in utility fuel purchase reports.

In September, 1989, utilities filed the special fuel reports required by D.88-09-024. These reports may be summarized as follows:

There are eight energy utilities subject to GO 156. These utilities purchased a variety of fuels including natural gas, geothermal steam, low and intermediate sulfur fuel oil, distillates, coal, and nuclear fuel. They also purchased a variety of fuels needed to power vehicles, heat facilities, and supply emergency standby generators.

Natural gas was by far the dominant fuel supplied by WMBEs. Utilities purchased \$76 million of natural gas from WMBE suppliers. This represented 2.7% of the natural gas purchases reported by the utilities.

The four largest energy utilities, Pacific Gas and Electric (PG&E), San Diego Gas and Electric (SDG&E), Southern California Edison (SCE), and SoCal accounted for 97% of the total \$2.7 billion of natural gas purchased during the reporting period. The remaining four energy utilities are CP National, Pacific Power and Light (PPL), Sierra Pacific Power Company (Sierra), and Southwest Gas Corporation (Southwest). Of these, PPL reported no natural gas purchases.

Although utilities purchase natural gas from four distinct markets, virtually all of the gas purchased from WMBE suppliers came from producers, marketers, aggregators, and brokers in the southwest market. No utility reported purchasing California, Canadian, or federal offshore gas from WMBE suppliers.

Energy utilities reported over \$1 billion purchases of fuels other than natural gas. WMBE penetration in these markets is virtually non-existent.

The non-energy utilities (telephone companies) purchased fuel to power vehicles, heat facilities, and maintain small reserves for generation in emergency situations.

Staff Petition to Modify

Ordering Paragraph 7 of D.88-09-024 states that the "continuation of the exclusion [of fuel] beyond one year is

contingent on affirmative showings by the utilities that there is insignificant participation of WMBEs in fuel markets."

Based on the information supplied by the energy utilities, WMBE staff concludes that WMBEs are participating to a significant extent in the nearly \$3 billion natural gas market and that there is no longer a need for a blanket exclusion of fuel purchases from the Commission's WMBE program.

On March 29, 1990, WMBE staff filed a Petition to Modify D.88-09-024 which requested elimination of the fuel exclusion and recommended that the following be incorporated into GO 156:

1. Exclude all fuel from the procurement base on which the overall achievement of WMBE goals is measured.

Fuel procurement shall be measured separately.
2. The energy utilities shall establish one year, three-year, and five-year WMBE goals for the purchase of natural gas. The long-term goals shall be consistent with General Order 156.
3. Quarterly, the energy utilities shall report to the Commission the results of all fuel purchases.
 - a. Purchases shall be reported by market origin and fuel type.
 - b. Purchases shall be reported by volume and dollar magnitude.
 - c. Purchases shall be reported on the term of sale e.g., spot, intermediate, long term, etc.
 - d. Purchases shall be reported by ethnicity and gender.
 - e. Each utility shall explain how existing and/or changing market conditions are affecting the utility's ability to meet or exceed its WMBE goals for fuel.

4. Quarterly, each utility shall report the outreach efforts made to increase the utilization of WMBEs in each fuel category.
5. The Commission will conduct workshops to develop reporting dates and reporting formats.

SoCal, PG&E, SCE, SDG&E, AT&T, Southwest, and PPL responded to staff's petition. No party requested hearings.

On June 1, 1990, pursuant to Order Instituting Investigation (OII) 90-02-044, the Commission's annual generic WMBE proceeding, WMBE staff submitted its report to the Administrative Law Judge (ALJ). This report sets forth staff's analysis of utility WMBE programs. In addition to analyzing the 1989 utility WMBE procurement results, policies and programs, staff made several recommendations, one of which was that the fuel exclusion issue be reviewed in the generic proceeding.

In a ruling dated September 13, 1990, the ALJ rejected staff's recommendation on the ground that the fuel exclusion issue was already adequately developed in the current proceeding.

Staff's Petition to Modify raises the following issues:

1. Should the Commission discontinue its exclusion of fuel purchases from its WMBE program, require separate reporting of fuel purchases, and modify D.88-09-024 and GO 156 accordingly?
2. What types of fuel should be included in the fuel procurement base?
3. Should energy utilities be required to establish one, three, and five-year goals for the purchase of natural gas, with the long-term goals being consistent with those set forth in GO 156 for other procurement categories?
4. Should quarterly reports be required?
5. Should workshops be required?

We will address these issues one by one.

1. Should the Commission discontinue its exclusion of fuel purchases from its WMBE program, require separate reporting of fuel purchases, and modify D.88-09-024 and GO 156 accordingly?

Staff believes that the broad fuel exclusion adopted in D.88-09-024 should be discontinued because the special fuels reports provided by the utilities reveal significant WMBE participation in the natural gas market and thus preclude the utilities from making the affirmative showing required to justify the exclusion. Staff cites as an example SoCal's statement that it expected in 1990 to purchase 5% of its natural gas needs from WMBEs.

Staff suggests that fuel purchases be reported separately from nonfuel purchases, as several utilities recommended in their fuel reports.

All utilities responding to staff's Petition to Modify agree that fuel procurement should be reported separately from the purchases of other products and services. Some utilities, such as Southwest, PPL and AT&T, conditioned their approval of staff's proposal to eliminate the current fuel exclusion upon the adoption of a separate reporting requirement. Although each phrases it somewhat differently, all utilities express concern that the current low level of WMBE participation in fuel markets would distort the achievements utilities have made in procuring other types of products and services from WMBE suppliers.

SoCal, for example, supports separate reporting because it believes utility fuel markets have unique characteristics that make combined reporting inappropriate. These include the current absence of active WMBE participation in the California, Canadian, and federal offshore natural gas markets, and the gas markets' current state of rapid transition.

SCE states that separate reporting of generation fuels (natural gas, fuel oil, coal, and nuclear fuel) is justified because certain sectors of the generation fuels market currently do not provide realistic opportunities for WMBE participation and that inclusion of these fuels in the overall procurement base would be misleading and unfair.

SDG&E believes that fuel procurement should be measured separately since the relatively larger volumes and dollars involved in fuel purchases would distort the results of other purchases if fuel and nonfuel purchases were measured in the same WMBE procurement base.

Discussion

There appears to be a consensus that the blanket fuel exclusion adopted in D.88-09-024 should be discontinued so long as fuel procurement is measured separately from nonfuel procurement.

We will adopt staff's recommendation to discontinue the fuel exclusion. In order to preserve utility flexibility, however, we will permit, rather than require, separate reporting of progress in procuring fuel from WMBE suppliers.

Inclusion of fuel in the WMBE program will help ensure that the program encompasses all products and services which can be supplied by WMBEs. And separate reporting will ensure that the large size of utility fuel purchases in comparison to utility purchases of other products and services, and the relatively low current level of WMBE participation in fuel markets, does not distort the progress utilities have made in other procurement categories.

We will modify D.88-09-024 and GO 156 accordingly.

2. What types of fuel should be included in the fuel procurement base?

A number of energy utilities, including PG&E, SDG&E, and PPL, believe that certain types of fuel should be excluded from the

fuel procurement base because they are not currently available from WMBE suppliers.

PG&E and SCE proposed that several types of fuel be included in the overall procurement base instead of the proposed fuel procurement base. PG&E, for example, believes that fuels purchased for vehicles, for heating facilities, or in small quantities for the purpose of operating portable or emergency generators should not be reported separately from the nonfuel procurement base. PG&E recommends that only fuel used for commercial power generation, or which is resold to customers, be excluded from the overall procurement base. SCE believes that the fuel report should not include purchases of transportation fuel, which would continue to be included within its overall WMBE procurement base.

Staff did not address these issues directly, although it proposed the exclusion of all fuels from the overall procurement base and the setting of goals only for the procurement of natural gas.

We will address both these issues now in order to clarify the scope of the WMBE fuel procurement program we adopt today.

All energy utilities except SCE recommend that the WMBE fuel procurement base be limited to fuel categories in which there is significant participation by WMBE fuel suppliers.

SDG&E cites staff's conclusion that WMBE penetration in the low and intermediate sulfur fuel oil, distillates, geothermal, nuclear, and coal markets is virtually non-existent, and recommends that the fuel procurement base be limited to natural gas.

PPL asserts that WMBEs do not participate in the coal and diesel fuel markets, and that it fails to see why all fuel should be included in the WMBE program solely because of the successful penetration of WMBE vendors in the natural gas market.

SCE notes the limited opportunities for WMBEs in the coal, nuclear, and low sulfur fuel oil markets, but stops short of

recommending that the fuel procurement base be limited to natural gas. SCE simply recommends that "generation" fuels such as fuel oil, natural gas, coal, and nuclear fuel be reported separately from the nonfuel procurement base.

SoCal and PG&E favor limiting the procurement base to southwest natural gas. Both utilities suggest reasons why it is unrealistic to expect increased participation by WMBEs in the California, Canadian, and federal offshore gas markets in the near future, and why it would be unfair not to consider the diverse nature of natural gas markets when establishing a WMBE fuels program.

SoCal suggests that the large capital investment necessary to penetrate gas production markets may be responsible for the absence of WMBE suppliers of California gas. SoCal adds that the federal offshore market is characterized by large, multinational oil and gas production companies, and contends that it is practically impossible for WMBEs to participate. SoCal cites the gas markets' present state of rapid transition as another reason why natural gas costs should be treated separately.

SoCal argues that the disparate participation of WMBEs in the various natural gas markets means that the Commission must either exclude from the fuel procurement base those natural gas markets in which WMBEs do not participate, or adjust downward any natural gas procurement goals to reflect the inclusion of those markets in the fuel procurement base.

PG&E feels that including nuclear fuel, geothermal steam, low sulfur fuel oil, Canadian gas, and other fuel categories in which there is insignificant WMBE participation would make it hard to realistically compare utility fuel procurement results and would unfairly subject utilities with relatively lower WMBE procurement statistics to criticism which could damage ongoing utility-WMBE relationships.

PG&E states that Public Utilities (PU) Code § 785.5 requires utilities to purchase California gas produced in their service territory if it is competitively priced and compatible with their gas plant and argues that it makes no sense to include California gas unless the purpose is merely to verify the WMBE status of California gas producers.

Next, PG&E states that under the GO 156 definition of a WMBE, Canadian gas can never qualify as WMBE gas and thus should be excluded from any procurement base used to measure WMBE participation in gas markets.

PG&E argues that federal offshore gas should also be excluded from any WMBE fuel procurement base. Federal offshore gas fields are leased by the federal government to major gas producers. PG&E contends that since utilities are unable to affect who wins such leases, they are unable to increase the nonexistent WMBE participation in this market.

The rationale for the utilities' desire to limit the scope of the fuel procurement base is essentially the same as their rationale for separate reporting of fuel and nonfuel purchases. They fear that combined reporting of fuel procurement in markets in which WMBEs participate and in markets in which WMBEs do not participate will divert attention from utility progress in procuring fuel from WMBEs in the only markets currently providing realistic opportunities for such progress.

Discussion

We believe it makes sense to limit the separate fuels procurement base to fuels which WMBEs are able to supply. We conclude that the minimum fuel procurement base need only include natural gas because there is no significant participation by WMBEs in other fuel markets.

We note, however, that the situation of each utility may be unique, and if a specific utility can obtain from WMBEs fuel other than natural gas, then that utility will be unable to justify

the continued exclusion of that fuel from its WMBE program. GO 156 exclusions, including the ones authorized by this decision, are not carved in stone. The general order allows exclusions to continue only as long as they are truly needed, and thus exclusions must be re-justified on an annual basis pursuant to GO 156 § 6.5. If it were otherwise, the exclusion program could act as a barrier to WMBE progress.

We decline to further restrict the fuel procurement base to only southwest natural gas because we believe it is reasonable to assume that WMBEs which successfully supply gas from one market will branch out into other gas markets or that new WMBEs will arise to supply fuel from those markets in the relatively near future.

Although WMBEs do not yet actively participate in the California gas market, there appear to be no innate barriers to such participation. If SoCal were correct that the high cost of gas production precludes WMBE participation in the California market, we would expect that high production cost would preclude WMBE participation in the southwest market as well. PG&E's arguments for exclusion of California gas are similarly unconvincing. The fact that the law requires the purchase of California gas which is competitively priced and is compatible with utility plant reveals nothing about the ability of WMBEs to participate in the market. We presume that WMBEs could acquire California gas production facilities, or act as brokers for California gas producers, just as they do in the southwest gas market.

We also cannot accept PG&E's argument regarding the inability of WMBEs to market Canadian gas. While GO 156 § 1.3.4 requires that WMBEs be owned and operated by United States citizens or legal aliens with permanent residence status in the United States, it does not say that WMBEs can supply only products and services originating in the United States. We take official notice that the rules adopted in D.90-09-089 in Order Instituting

Rulemaking (OIR) 90-02-008 require PG&E to make a portion of its affiliated Pacific Gas Transmission (PGT) pipeline capacity available to noncore customers. These rules, when implemented, will remove a significant barrier to WMBE purchase and resale of Canadian gas.

We do, however, recognize that it may be some time before the removal of the PGT access barrier will translate into real opportunities for WMBEs to supply Canadian natural gas. For this reason, we will allow utilities to continue to exclude Canadian natural gas from their WMBE fuel procurement bases at this time.

We understand that WMBE opportunities in the federal offshore natural gas market may be limited by the large capital investment needed to enter the market. We also recognize that utilities may have little influence over the federal government's leasing of offshore gas fields, and thus may have little opportunity to increase the currently nonexistent WMBE participation in this market. For these reasons, we will allow utilities to exclude federal offshore gas purchases from their fuel procurement base.

We agree with PG&E and SCE that fuels used to power vehicles, heat utility facilities, and supply emergency generators should be included within the standard procurement base. The relatively small magnitude of such purchases makes them substantially different from the fuel purchases for which we establish a separate procurement base.

We will authorize utilities to continue to exclude, pursuant to GO 156 § 6.5, fuels other than domestic onshore natural gas; vehicle fuels; fuel used to heat utility facilities; and fuel used for emergency generators. We will, of course, require utilities to comply with all GO 156 provisions concerning exclusions in order to ensure that any fuel exclusions continue to exist no longer than necessary.

GO 156 § 6.10 provides that: "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 in areas that are considered technical in nature." (Emphasis added.)² GO 156 § 7.1.7 requires utilities to provide in their annual WMBE report a summary of purchases and/or contracts for products and services in excluded categories. GO 156 §§ 7.1.9 and 8.1.4 require utilities to report on progress in, and plans for, seeking out WMBE suppliers for such excluded products and services.

Because we understand utilities' concerns over the potential for poor public relations if they are perceived as failing to meet WMBE goals for fuel procurement, we point out that utilities have control over their statistical fuel procurement image to a large extent since they can and should disaggregate fuel purchases among the different natural gas markets and explain the difference in their success in WMBE procurement in each market.

We will modify D.88-09-024 and GO 156 in accord with the above discussion.

3. Should the energy utilities be required to establish one, three, and five-year goals for the purchase of natural gas, with the long-term goals being consistent with those in GO 156?

Staff recommends that utilities be required to establish one, three and five-year goals for the procurement of natural gas from WMBEs, and that the long-term goals be consistent with GO 156. Staff notes that GO 156 § 6 requires each utility to set such goals for the utilization of WMBEs in each major category which provides

² We note that the GO 156 §§ 7.1.8 and 8.1.3 examples of categories of products and services where WMBE utilization has been low are similar, but not identical, to the examples in § 6.10. We will modify those sections to make them consistent with § 6.10.

opportunities for procurement and argues that there is no reason to treat natural gas purchases differently.

Staff points out that GO 156 § 6.1 requires that during the goal setting process utilities must consider purchasing projections, the availability of WMBE contractors to supply the products and services, market dynamics based on historical data and trends, and other factors which would increase the WMBEs' share of utility business.

Staff believes that the utilities should set long-term fuel purchase goals of 15% from MBEs and 5% from WBEs. This would make long-term fuel goals consistent with the long-term goals established in GO 156 for other products and services.

Staff notes that utilities are not expected to jeopardize fuel security or fuel economy in situations where WMBEs do not exist or are incapable of supplying fuel at competitive prices. Staff points out that GO 156 § 7.1.4 allows utilities to describe in their annual reports to the Commission their progress in meeting or exceeding set goals and to explain the circumstances that may have caused them to fall short of their goals. The volatility of the fuel markets might be one such factor.

Utilities raise a number of objections to the setting of goals for fuel purchases. Some object to any goals. Others emphasize the need to limit fuel procurement goals to the southwest natural gas market.

SoCal, PG&E, SDG&E, and Southwest argue that we should not set goals until after they have had a chance to review the results of OIR 90-02-008, which may have a substantial impact on utility fuel procurement.

For example, SoCal states that the rules proposed in OIR 90-02-008 (now promulgated in D.90-09-089) would essentially prohibit utilities from procuring spot gas for the noncore market, and argues that the existence of the OIR makes it necessary to suspend any attempt to set gas goals at this time. Next, SoCal

notes that even the southwest market is not a sure source of WMBE gas supplies because that market is currently undergoing a period of business consolidation and ever more intense competition and because most WMBE fuel suppliers are small, undercapitalized, fledgling businesses who may fall prey to larger competitors or to the rigors of discharging their financial liability to the utility in the event they are unable to perform their side of a contract.

SoCal recommends that medium and long term WMBE procurement goals for natural gas be evaluated at some future time in a special WMBE fuels proceeding. The utility also recommends that in the meantime utilities continue to report WMBE gas purchases and make good faith efforts to increase such purchases.

SoCal notes its intention to purchase up to 5% of its 1990 gas portfolio from WMBE suppliers, assuming the OIR does not change its procurement operations significantly.

PG&E cites the possible negative impact of the proposed rules on its ability to serve the noncore and utility electric generation (UEG) markets, and notes that power plants would compete with other noncore customers for access to interstate pipeline capacity, gas storage facilities, and distribution utility priority. PG&E also believes that the handful of utilities which now compete for WMBE gas may have to compete for those same supplies with perhaps hundreds of noncore customers, power plants, and independent non-utility gas marketing companies. PG&E asks that the subject of goals be deferred to the 1992 WMBE OII because it assumes that the commencement of the 1991 WMBE OII will occur too soon to evaluate the post-OIR market.

PG&E argues that staff provides no evidence that WMBEs hold or control sufficient southwest gas to make the attainment of 15% MBE and 5% WBE goals possible. PG&E contends that the difficulty of entry into the market, the new Canadian and other gas supplies that may be entering California in the near future via new pipelines, and the possible hundreds of gas purchasers in the

market at the conclusion of the gas procurement OIR make it evident that the long-term goals staff suggests are unattainable.

PG&E further argues that for a variety of regulatory and statutory reasons, utilities have no means of increasing WMBE participation in the California, Canadian, or federal offshore gas markets, and that this means that utilities would have to compete for the only WMBE gas available in the limited southwest market. Utility competition for such gas would drive the price up, PG&E contends, to the benefit of out of state WMBEs and to the detriment of California consumers.

SDG&E cites OIR 90-02-008's possible restriction in the way utilities purchase core vs. noncore gas as one uncertainty standing in the way of specific long-term gas goals. SDG&E is also concerned about its uncertain access to firm interstate gas transportation. Finally, SDG&E cautions against setting across the board goals which do not take into account the differing abilities of utilities to contract for gas supply.

Southwest fears that OIR 90-02-008 may prevent local gas distribution companies (LDCs) from participating in all noncore and UEG markets and thus severely curtail their opportunities to purchase gas in the spot market in which WMBE suppliers are most prevalent. Southwest believes the number or percentage of an LDC's WMBE natural gas suppliers would be dramatically reduced in direct proportion to the decline of an LDC's short term or spot market purchases. Southwest thinks utilities may face stiffer competition for WMBE gas supplies from noncore and UEG customers.

Southwest also believes that it is highly unlikely that the relatively small number of WMBE suppliers could meet the WMBE goal needs of all California energy utilities within the next five years.

SCE is the only utility which does not believe OIR 90-02-008 will have an adverse impact on its WMBE fuels program. SCE states that even if it gains access to Canadian gas through an

extension of the PGT pipeline, any purchases of such gas will displace purchases from other utilities rather than purchases from WMBEs.

SCE is also the only utility which supports the establishment of one, three, and five-year goals, to begin in 1991, for natural gas procurement. SCE does not, however, suggest any specific figures.

Discussion

We agree with staff that it is necessary to set goals for fuel procurement and that the long-term goals for such procurement should be consistent with the 15% and 5% goals established by GO 156 for the procurement of other products and services.

While we understand the reluctance of SoCal, PG&E, and SDG&E to endorse goals before they gain experience with the rules developed in OIR 90-02-008, we note that the September 25, 1990 issuance of D.90-09-089 in that rulemaking should provide a degree of certainty not present earlier. Although only time will tell the precise impact of D.90-09-089, we see nothing in that decision which would hamper utility efforts to meet WMBE fuel procurement goals. Indeed, we believe the decision is likely to have a positive impact on such procurement efforts.

We will now address the specific concerns raised in the utilities' analyses of the proposed OIR 90-02-008 rules.

We first note that if utilities are forced to purchase less spot or short-term gas because the rules limit their ability to serve noncore customers, they are likely to either shift toward longer term contracts or reduce their overall gas purchases. If a utility shifts toward longer term contracts, WMBEs will benefit from the stability such contracts offer. If, on the other hand, a utility simply buys less fuel, then its WMBE fuel goals will apply to a smaller procurement base. If fuel purchases from WMBEs remain constant, those purchases will represent a larger percentage of the reduced fuel procurement base and thus make it easier for the

utility to meet its WMBE goals. Furthermore, any reduction in utility purchases will almost certainly result in increased purchases by noncore customers and thus create an additional market for WMBE suppliers. This new market should help ensure WMBE viability. Thus, neither outcome would harm the utility's efforts to procure fuels from WMBEs.

Moving on, we think that utilities which fear that increased noncore customer or utility competition for WMBE gas will drive prices up are not taking into account the fact that these customers are likely to select WMBE suppliers only so long as their prices remain competitive. If a WMBE prices its gas too high, there are plenty of other fuel suppliers ready to take its place.

We conclude that utility fears regarding the possible impact of OIR 90-02-008 are highly speculative at this time and do not provide an adequate reason to delay goal setting.

Regarding SDG&E's concern over its uncertain access to firm interstate gas transportation, we take official notice that Resolution G-2921, adopted by the Commission on May 22, 1990, affirms a five year agreement signed by SDG&E and SoCal which results in SDG&E receiving firm interstate gas transportation, increased storage capability, and improved priority for gas destined for powerplant use. This agreement should relieve SDG&E's concerns over access to firm gas transportation.

We note that the natural gas market has changed immensely in the past five years since SoCal's first transportation tariffs were under consideration, and predict that the next five years will see many changes as well. If we delayed goal setting until all gas procurement uncertainty were removed, we would get nowhere fast.

Recognizing that the future is hard to predict, and that each utility is unique, we conclude it is both unnecessary and unwise for the Commission to impose specific one and three-year goals. We think the Commission need only impose a single five-year goal that is consistent with the long-term goals for procurement of

other products and services in order to provide an adequate incentive for utility progress in procuring fuel from WMBEs.

We understand the concern that natural gas market uncertainty makes it impossible for utilities to be sure they can meet such a long-term goal, thus we remind the utilities that goals are just that - goals, and that if a utility cannot meet the goals it need only provide a reasonable explanation of its failure to do so. We emphasize that GO 156 does not create a set aside program for WMBEs, but rather simply opens the door for them to compete with established utility suppliers. If WMBEs cannot provide a needed product or service at a competitive price, they should not get the business.

We do not require the impossible, we merely wish to make clear that we consider this program important enough to take all steps necessary to ensure achievement of the possible.

4. Should quarterly reports be required?

Staff recommends that utilities be required to file with the Commission quarterly fuel purchases reports which include: (1) the market origin and fuel type of each purchase, (2) the volume and dollar magnitude of each purchase, (3) the term of each purchase, (4) the ethnicity and gender of each fuel supplier, (5) a discussion of how existing or changing market conditions are affecting the utility's ability to meet or exceed its WMBE fuel goals, and (6) a description of outreach efforts made to increase the utilization of WMBEs in each fuel category. Staff notes that quarterly reporting of fuel procurement and outreach efforts will provide an ongoing review of market conditions and the availability of WMBEs to supply fuel.

With one voice, the utilities oppose quarterly reporting. They argue that quarterly fuel procurement progress reports are unnecessary, burdensome, and even meaningless, given traditional seasonal variations in gas purchases. Annual reports should suffice, they argue, just as they do in other procurement

categories. Some utilities note that the Commission already has access to most of the information it requests through the information provided by the utilities in their monthly fuel filings. The utilities note that staff does not provide any evidence which suggests that quarterly reports would serve a WMBE fuel program any better than the annual report required for the existing WMBE program.

Discussion

We agree with the utilities that staff has not presented a convincing case for quarterly reporting of fuel purchases. We therefore reject staff's proposal that GO 156 be modified to require such quarterly reporting. We will, however, require utilities to file with the Commission on an annual basis the information requested by staff in its Petition for Modification.

5. Should workshops be required?

Staff recommends that the Commission conduct workshops to develop reporting dates and formats.

SDG&E expresses the hope that any fuel procurement program will be ordered in a sufficiently clear manner that workshops will only be necessary to provide guidance for the relatively minor details of the program.

SCE believes that a separate format for the reporting of fuel procurement is not necessary, but supports limited-scope workshops to resolve issues related to the format of the report and the applicable filing dates.

PG&E believes that certain information staff requests must remain confidential. If the Commission is not prepared to maintain the confidentiality of this information, PG&E argues, then it should hold formal hearings on the issue. Although PG&E requests hearings rather than a workshop, it is clearly concerned about the reporting format. Since staff suggests a format workshop, we will address PG&E's concerns in our response to staff's workshop proposal.

No other utility specifically commented on the workshop issue.

Discussion

We believe it would be useful to require workshops for the limited purpose of determining the format for reporting fuel procurement.

We see no reason why the date for the annual fuel report should not be identical to the date for reports on procurement of other types of products and services. Thus, we do not believe it is necessary to discuss the filing date in a workshop.

We think that a modified version of the report staff recommends should be adequate to evaluate utility progress in increasing procurement from WMBE fuel suppliers. Since PG&E expressed a similar opinion, we believe that confidentiality should no longer be an issue. If PG&E is dissatisfied with our resolution of this issue, it can raise its concerns at the format workshop.

Findings of Fact

1. SoCal, PG&E, SCE, SDG&E, AT&T, Southwest, and PPL responded to staff's petition.
2. No party requested hearings.
3. D.88-09-024 required utilities to file within one year a report on WMBE participation in fuel markets and efforts made to expand this participation.
4. The reports filed by the utilities in compliance with D.88-09-024 reveal that utilities purchased \$2.7 billion of natural gas. WMBEs supplied \$76 million, or 2.7%, of this natural gas.
5. The reports filed by the utilities reveal that utilities also purchased over \$1 billion of other fuels, including coal, nuclear, low and intermediate sulfur fuel oil, geothermal steam, and distillates. WMBEs supplied an insignificant percentage of these fuels.

6. Although utilities purchase natural gas from the southwest, California, Canadian, and federal offshore markets, all natural gas supplied to the utilities by WMBEs was purchased in the southwest gas market.

7. Most utilities responding to staff's Petition to Modify D.88-09-024 support staff's recommendation that fuel be excluded from the overall procurement base upon which WMBE progress is measured and that fuel purchases be reported in a separate procurement base.

8. Most utilities recommend that the fuel procurement base be limited to fuels for which there are WMBE suppliers.

9. SCE recommends that the fuel procurement base be limited to "generation fuels," which it defines as coal, nuclear, low sulfur fuel oil, and natural gas. SCE recommends that transportation fuels be included in the overall nonfuel procurement base.

10. PG&E recommends that fuels used to power vehicles, heat utility facilities, and supply emergency generators be included in the overall nonfuel procurement base.

11. It is reasonable to require that fuels used to power vehicles, heat utility facilities, and supply emergency generators be included in the overall nonfuel procurement base because there is no evidence that WMBEs do not supply such products or that inclusion of these products in the procurement base will skew overall WMBE results.

12. General Order 156 permits utilities to exclude from their WMBE procurement bases only those categories of products and services which are not available from WMBEs. Therefore, it is reasonable to require utilities to include in their fuel procurement bases all types of fuel which are available from WMBE suppliers.

13. SoCal and PG&E assert that there are substantial barriers to WMBE participation in the California, Canadian, and federal offshore natural gas markets.

14. PG&E recommends that the fuel procurement base should be limited to southwest natural gas.

15. SoCal recommends that either the fuel procurement base be limited to the southwest market or that any fuel goals be adjusted downward to reflect the asserted unavailability of WMBE suppliers in other natural gas markets.

16. The fact that PU Code § 785.5 requires gas corporations to purchase California gas which is competitively priced and compatible with the utility's gas plant reveals nothing about the ability of WMBEs to participate in the California gas market.

17. There is nothing in the record of this proceeding to support a finding that WMBEs are incapable of producing, brokering, or otherwise marketing California gas just as they produce, broker, or otherwise market other domestic onshore natural gas. Thus, there is no need to exclude such natural gas from the fuel procurement base.

18. Although GO 156 § 1.3.4 states that the owners and operators of WMBEs must be United States citizens or legal aliens with permanent residence status in the United States, it does not say that all products and services provided under the WMBE program must originate in the United States. Nothing in GO 156 prohibits the provision of Canadian natural gas by WMBEs.

19. The ability of WMBEs and others not associated with PG&E to transport Canadian natural gas to California is limited by the current absence of access to pipeline capacity.

20. D.90-09-089, in OIR 90-02-008, adopts rules which require PG&E's affiliate PGT to make a portion of its pipeline capacity available to noncore customers. These rules, when implemented, will remove a significant barrier to WMBE participation in the Canadian natural gas market.

21. Until the PGT pipeline access provisions of the rules adopted in D.90-09-089 are fully implemented and pipeline capacity becomes available, it is reasonable to allow utilities to exclude Canadian natural gas from the WMBE fuel procurement base.

22. Because current limitations on the ability of WMBEs to transport Canadian gas are likely to be removed soon, it will be necessary to reevaluate the need for a Canadian natural gas exclusion in the near future.

23. WMBE opportunities to participate in the federal offshore natural gas market may be limited by the large capital investment need to enter that market.

24. Utilities have little influence over federal government leasing of offshore natural gas fields, and thus may have limited opportunities to increase WMBE participation in this market.

25. It is reasonable to allow utilities to exclude federal offshore natural gas from their WMBE fuel procurement bases until there is evidence that WMBEs can or do participate in this market.

26. It is reasonable to treat domestic onshore natural gas markets (such as the southwest and California markets) in which WMBE fuel suppliers are currently able to participate differently from federal offshore and Canadian markets in which WMBEs are currently unable to participate in because of transportation or financial constraints.

27. SoCal expects to purchase 5% of its 1990 natural gas requirements from WMBEs. This figure includes its purchases in all natural gas markets.

28. The natural gas industry has been in a state of transition since at least 1985, when the Commission was considering SoCal's initial proposals for natural gas transportation tariffs.

29. Most utilities contend that the Commission should not set goals for fuel procurement until they have reviewed the results of the rules developed in OIR 90-02-008 (now promulgated in D.90-09-089).

30. The rules adopted in D.90-09-089, do not appear to contain provisions which would hamper utilities' ability to meet WMBE fuel procurement goals.

31. Utility fears regarding the possible negative impact of OIR 90-02-008 on fuel procurement from WMBEs are highly speculative at this time and do not provide an adequate reason to delay goal setting.

32. Resolution G-2921, adopted by the Commission on May 22, 1990, affirms a five-year agreement between SDG&E and SoCal which results in SDG&E receiving firm interstate gas transportation, increased storage capacity, and improved priority for gas destined for powerplant use.

33. It is reasonable to adopt long-term goals for the procurement of domestic onshore natural gas which are consistent with the long-term goals established in G0 156 for other categories of products and services.

34. In light of the varying capabilities of individual utilities, and the near term uncertainty in natural gas markets, it is reasonable to allow each utility to adopt its own short-term (one year) and mid-term (three year) goals for procurement of natural gas from WMBEs.

35. Since staff did not present a compelling case for quarterly fuel procurement reports, it is reasonable to adopt the annual fuel procurement reporting requirement advocated by the utilities.

36. The information requested in staff's Petition to Modify provides a sound foundation for the fuel procurement reporting necessary to allow the Commission to evaluate utility progress in this area.

37. Because it is desirable to address promptly any concerns over the format of utility fuel procurement reports, it is reasonable to require a workshop to address such concerns.

38. It is reasonable to require that utilities file their annual fuel procurement reports on the same date they file their reports on the procurement of other products and services.

39. It is reasonable to renumber certain sections of GO 156 in order to correct a typographical error in the numbering sequence.

Conclusions of Law

1. The fuel exclusion permitted by Ordering Paragraph 4 of D.88-09-024 should be discontinued, and a separate fuel procurement base authorized.

2. At a minimum, the separate fuel procurement base should include natural gas from domestic onshore natural gas markets such as the southwest and California because it is evident that there are WMBE suppliers of southwest natural gas and that there are no innate barriers preventing WMBEs from supplying California or other domestic onshore natural gas.

3. Utilities should be allowed to exclude Canadian and federal offshore natural gas from their WMBE fuel procurement bases, pursuant to GO 156 Section 6.5, until there is evidence that WMBEs can or do participate in these markets.

4. Utilities should include in their standard WMBE procurement base fuel used to power vehicles, heat utility facilities, and supply emergency generators.

5. Utilities which purchase fuel other than natural gas should be required to report such purchases. If such fuel is purchased from WMBEs, it should be reported in either the standard procurement base or the fuel procurement base.

6. If it is clearly evident that WMBEs do not provide a specific type of fuel, a utility may exclude the cost of purchasing such fuel from its WMBE procurement base pursuant to GO 156 Section 6.5, except as provided in Conclusion of Law 2.

7. Each utility should be required to establish one, three, and five-year goals for the procurement of fuel in categories where WMBE suppliers are available.

8. Long-term fuel goals should not be less than 15% for MBES and 5% for WBEs, consistent with GO 156 Section 6.2.

9. Utilities should be required to file annual reports on their progress in increasing fuel purchases from WMBEs on the same date they file their annual reports on the procurement of other products and services.

10. A workshop should be scheduled to address concerns regarding the format of the annual fuel reports.

11. Staff's petition to modify D.88-09-024 should be granted to the extent provided by this order.

12. Sections 7.1.8 and 8.1.3 of GO 156 should be modified to include fuel procurement in the list of examples of products and services in which there has been low WMBE participation, so that these sections will be consistent with GO 156 Section 6.10.

13. Section 1.1.13 of GO 156 should be renumbered as Section 1.3.13, current Sections 1.3.13 through 1.3.20.2 should be renumbered, and Section 3.3 j. should be modified to correct a typographical error in the numbering sequence.

O R D E R

IT IS ORDERED that:

1. Section 1.1.13 of GO 156 is renumbered as Section 1.3.13, current Sections 1.3.13 through 1.3.20.2 are renumbered as Sections 1.3.14 through 1.3.21.2, and Section 3.3 j. is modified to read as follows: "Small utilities as defined by 1.3.18."

2. Section 6 of GO 156 is modified by the addition of the following paragraph to require utilities to set one, three, and five-year goals, beginning in 1991, for the purchase of natural gas from WMBE suppliers:

Each utility which elects to report fuel purchases separately shall set short, mid, and long-term goals for each category of fuel in the separate fuel procurement base authorized by Section 6.9.1. Long-term fuel goals shall be consistent with Section 6.2.

3. Section 6.8 of GO 156 is modified to read as follows:

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, or which are included in a fuel procurement base established pursuant to Section 6.9.1.

4. Ordering Paragraph 4 of D.88-09-024 is modified to read as follows:

Section 6.9 of GO 156 is modified as follows:

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

6.9.1 Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:

a. Fuel used to power vehicles, heat utility facilities, and supply emergency generators may not be included in the fuel procurement base. Such fuel must be included in the standard procurement base used to establish goals, unless the fuel is purchased from another utility and thus subject to the exclusion authorized in Section 6.9;

- b. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic onshore natural gas markets;
- c. Utilities which purchase from WMBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 6.5 does not permit utilities to exclude product and services categories for which there are available WMBE suppliers;
- d. Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under Section 6.5 and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMBEs as required by Sections 7.1.8, 7.1.9, 8.1.3 and 8.1.4.

5. Sections 7.1.8 and 8.1.3 of GO 156 are modified as follows:

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

6. Ordering Paragraph 6 of D.88-09-024 is modified to read as follows:

GO 156 is modified to include Section 7.1.10, which reads as follows:

7.1.10 Each utility which elects to report fuel procurement separately must file with the Executive Director by March 1 of each year, beginning in 1991, a separate detailed and verifiable report on WMBE participation in fuel markets. These reports must include, at a minimum, the results of purchases in each fuel category.

a. Each utility shall report purchases by:

1. Market origin and fuel type;
2. Volume and dollar magnitude;
3. Term of sale, e.g., spot, intermediate, long term;
4. Ethnicity and gender of the supplier;

b. Each utility shall provide:

1. An explanation of how existing and/or changing market conditions are affecting the utility's ability to meet or exceed its WMBE goals for fuel;
2. A comprehensive description of the specific outreach programs used to seek WMBE fuel suppliers in each market in which fuel is purchased;
3. A justification for any exclusion of a specific fuel category from the utility's fuel procurement base.

7. Ordering Paragraph 7 of D.88-09-024 is rescinded, since we are in the current order addressing the need for a continued fuel cost exclusion in light of the fuel reports filed by the utilities in compliance with Ordering Paragraph 6 of D.88-09-024.

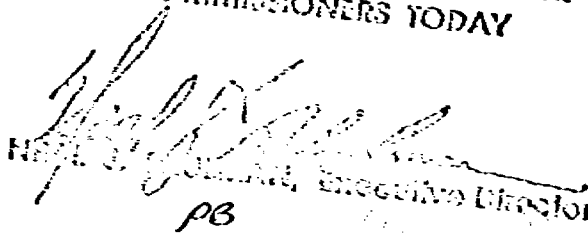
8. The modified general order contained in Appendix A is adopted.

This order is effective today.

Dated December 6, 1990, at San Francisco, California.

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

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


NEIL S. JOHNSON, Executive Director
PB

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GENERAL ORDER 156

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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

Adopted April 27, 1988. Effective May 30, 1988.

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

Modified by Decisions 88-09-024, 89-08-041, 90-11-053, and
90-12-027.

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.

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1.1.3

In cases where the application of any of these rules results in undue hardship or unreasonable expense to a utility, the utility may request relief by filing an application in accordance with the Commission's Rules of Practice and Procedure. Where the relief requested is of minor importance or temporary in nature, the utility may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on all parties on the service list of this proceeding.

1.2 Applicability

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

1.3 Definitions

1.3.1

"Commission" means The California Public Utilities Commission.³

1.3.2

"Women-owned business" means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.3

"Minority-owned business" means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and (2) whose management and daily business

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

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operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.

- 1.3.4 "WMBE" means a women owned or minority owned business enterprise; under these rules, the women and/or minorities owning such an enterprise 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

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Secretary of Commerce pursuant to
Section 5 of Executive Order 11625.

- 1.3.10 "Control" means exercising the power to make policy decisions.
- 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.
- 1.3.13 "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.
- 1.3.14 "Short-term goal" means a goal applicable to a period of (1) one year.
- 1.3.15 "Mid-term goal" means a goal applicable to a period of (3) three years.
- 1.3.16 "Long-term goal" means a goal applicable to a period of (5) five years.
- 1.3.17 "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.
- 1.3.18 "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

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to the most recent annual report filed with the Commission.

1.3.19 "Interexchange telecommunications corporation" means any corporation authorized by the Commission to provide intrastate, interLATA services within California.

1.3.20 "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.

1.3.21 "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):

1.3.21.1 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

1.3.21.2 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

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corporations, as specified in Section 2.2, to verify the WMBE status of participants in its WMBE program. The standard form may be modified by the Clearinghouse Advisory Board as necessary, so long as it requires the same essential information.

2.2

An interexchange telecommunications corporation may use its own internally-developed verification form if the use of such form is necessary to comply with an established nationwide or multi-state WMBE program or federally mandated WMBE requirements, provided it is approved by the Executive Director 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.

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

- 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.

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- 2.8 WMBE verification forms shall be available for inspection by the Commission.
- 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.

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shall consist of a non-voting representative of the Executive Director's Office, 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 § 1.3.18
- 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 Section 3.3 shall select its own representative. If a group is unable to select its representative, it may petition the Executive Director 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

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substantially less than the costs allocated to the large utilities.

- 3.6 Within thirty (30) days after the effective date of this general order, the Advisory Board shall meet to develop operational guidelines for the clearinghouse, and to select a contractor to operate it. The Advisory Board shall consult with Caltrans to determine whether the utilization of that agency's present clearinghouse operation would meet the needs of the utilities and WMBEs while avoiding duplication of state agency effort. These proposed guidelines shall be submitted to the Commission within ninety (90) days after the effective date of this order. These guidelines will be subject to the approval of the Director of the Commission Advisory and Compliance Division. Thereafter, the Advisory Board shall meet at least annually to review the operational guidelines for the clearinghouse and to implement any necessary modifications.
- 3.7 The Advisory Board shall file an annual report with the Executive Director 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

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to WMBEs. The following minimum program elements shall be incorporated into each utility's WMBE program.

4.1 Internal Utility Program Development

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

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

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4.2 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

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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

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to the procurement of products and services in excluded categories.

4.3.4

Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMBEs as subcontractors. These plans may be incorporated into the contract between the utility and the prime contractor. The prime contractor may submit periodic reports on its compliance with the plan to the utility.

4.3.5

Each utility is encouraged to incorporate in all purchase orders, requests for bid proposals, and other appropriate procurement documents related to procurement efforts subject to the subcontracting program, a statement similar to the following: .

UTILIZATION OF WOMEN AND MINORITY OWNED BUSINESS ENTERPRISES

- a. It is the policy of the utility that women and minority owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts.
- b. The contractor agrees to use his or her best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract.
- c. The contractor agrees to provide prospective WMBE subcontractors with a copy of a WMBE status verification form approved by the California Public Utilities Commission, which is to be

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completed by the WMBE and forwarded to the central clearinghouse for verification.

- 4.3.6 Each utility is encouraged to inform suppliers of products and services that subcontracting with WMBEs is a factor that will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.
- 4.3.7 Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMBE subcontractors.
- 4.3.8 Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and 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

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twenty (20) working days of receipt of the complaint;

5. WMBE COMPLAINTS TO THE COMMISSION

In the event that a WMBE believes that a utility WMBE program administrator's decision, or any other act or omission of the utility, violates any provision of law or of any order or rule of the Commission, the WMBE may file a complaint with the Commission pursuant to Public Utilities Code Section 1702 and Article 3 of the Commission's Rules of Practice and Procedure (Title 5, 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 substantial⁶ 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

5 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.

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

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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).

Each utility which elects to report the fuel purchases separately shall set short, mid, and long-term goals for each category of fuel in the separate fuel procurement base authorized by Section 6.9.1. Long-term fuel goals shall be consistent with Section 6.2.

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 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. For the purposes of this section, contracts with minority women owned business enterprises can be counted toward either the minority owned business enterprise goal or the women owned

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business enterprise goal, but not toward both. 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.

6.3 Goals shall also be established for both minority women owned business enterprises and non-minority women owned business enterprises. These goals are to be a subset of the overall goal for WMBES established by Section 6.2 (initially 20% for both women owned business enterprises and minority owned business enterprises). These goals are intended to ensure that utilities do not direct their WMBE procurement programs toward non-minority women and minority men owned business enterprises to the detriment or exclusion of minority women owned business enterprises.

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

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demonstrating the unavailability of WMBEs capable of supplying such products or services. Because there may in the future be WMBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of any excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMBE program progress and future plans.

6.6

A utility which is presently purchasing products or services from affiliates may subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing goals for purchases from WMBE providers of these categories of products or services, provided that the utility encourages the affiliate to establish an appropriate subcontracting program where such affiliate employs subcontractors. Any utility which takes advantage of this section must in its annual report to the Commission state whether the affiliates have established a subcontracting program and describe the results of any such program. The utility's annual plan must describe any future plans to encourage such a subcontracting program. This section applies only to those utilities which are purchasing products or services from affiliates as of the effective date of this general order.

6.7

Goals for each specific product or service category shall be expressed as a percentage of total dollars awarded by a utility to outside vendors in that category.

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- 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, or which are included in a fuel procurement base established pursuant to Section 6.9.1.
- 6.9 Payments to other utilities and franchise tax fees need not be included in the standard procurement base used to establish goals.
- 6.9.1 Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:
- a. Fuel used to power vehicles, heat utility facilities, and supply emergency generators may not be included in the fuel procurement base. Such fuel must be included in the standard procurement base used to establish goals, unless the fuel is purchased from another utility and thus subject to the exclusion authorized in Section 6.9;
 - b. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic onshore natural gas markets;
 - c. Utilities which purchase from WMBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel

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procurement base because Section 6.5 does not permit utilities to exclude product and services categories for which there are available WMBE suppliers;

- d. Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under Section 6.5 and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMBEs as required by Sections 7.1.8, 7.1.9, 8.1.3 and 8.1.4.

- 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.
- 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.

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7. ANNUAL REPORT

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

7.1

The Annual Report shall contain at least the following elements:

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

7.1.2 A summary of WMBE purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total utility contract dollars awarded to outside vendors in those categories;

7.1.3 An itemization of WMBE program expenses;

7.1.4 A description of progress in meeting or exceeding set goals and an explanation of any circumstances that may have caused the utility to fall short of its goals;

7.1.5 A summary of prime contractor utilization of WMBE subcontractors;

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

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

7.1.8 A description of any efforts made to recruit WMBE suppliers of products or services in procurement categories where WMBE utilization

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has been low, such as legal and financial services, fuel procurement, 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.

7.1.10 Each utility which elects to report fuel procurement separately must file with the Executive Director by March 1 of each year, beginning in 1991, a separate detailed and verifiable report on WMBE participation in fuel markets. These reports must include, at a minimum, the results of purchases in each fuel category.

- a. Each utility shall report purchases by:
 - 1. Market origin and fuel type;
 - 2. Volume and dollar magnitude;
 - 3. Term of sale, e.g., spot, intermediate, long term;
 - 4. Ethnicity and gender of the supplier;
- b. Each utility shall provide:
 - 1. An explanation of how existing and/or changing market conditions are

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affecting the utility's ability to meet or exceed its WMBE goals for fuel;

2. A comprehensive description of the specific outreach programs used to seek WMBE fuel suppliers in each market in which fuel is purchased;
3. A justification for any exclusion of a specific fuel category from the utility's fuel procurement base.

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

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

7.4 Nothing in this general order shall prohibit any utility from breaking down specific categories further than presently required (for example, reporting contracts awarded to Filipino Americans separately from those awarded to Asian Pacific Americans, or reporting male and female results within minority-owned classifications).

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8. ANNUAL PLAN

Utilities shall file with the Executive Director, 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 6, 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 where WMBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.

8.1.4 Plans for seeking and or recruiting WMBE suppliers of products or services in any "excluded category" of products or services which has been removed from the procurement dollar base used to set goals because of the established unavailability of WMBE suppliers.

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

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

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

9. COMMISSION REPORT

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

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

Adopted and dated December 6, 1990 at San Francisco, California.