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Decision 91-02-015 February 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into)
the policies, practices, procedures)
and costs of women and minority)
business enterprises programs)
established under General Order 156)
for the year 1990, and related)
matters.)

ORIGINAL

I.90-02-044

(Filed February 23, 1990)

OPINION

Summary

This decision adopts recommendations of the Women and Minority Business Enterprises (WMBE) staff to require reporting of actual subcontractor expenditures as defined herein, adopts a uniform reporting format for cost itemization in the annual WMBE reports and approves the review of the seven major utilities' 1989 reports. A companion order instituting rulemaking, opened today, deals with other recommendations, made by the WMBE program manager in his June 1, 1990 report in the Order Instituting Investigation (OII) which necessitate modifications of General Order (GO) 156.

Procedural Background

On February 23, 1990, we opened this OII for the year 1990 to address issues involving the policies, practices, procedures, and costs of WMBE programs established by participating utilities under AB 3678 and GO 156. The investigation was instituted pursuant to Decision (D.) 89-08-026 which removed WMBE compliance from general rate cases and instead placed it in a special annual generic OII for the affected utilities as a group. This year is the first such generic OII.

The Commission ordered that the OII address the WMBE compliance issues centering on the review of the 1989 annual report of each respondent, except Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCalGas), and the 1990 annual report of all respondents, and the consideration of related

compliance matters. Also to be addressed were the issues surrounding the review of projected program costs through 1990 for all respondents, except PG&E and SoCalGas, and projected 1991 program costs for all respondents.

Pursuant to the OII, after each respondent filed its annual report and cost exhibit on March 1, 1990, the parties pursued discovery and workshops conducted by the WMBE program manager and his staff for the purposes of reviewing the utilities' WMBE programs and identifying and narrowing issues. On June 1, 1990, the WMBE program manager submitted his written evaluation of the 1989 WMBE annual reports, his review of the 1990 WMBE annual reports and cost exhibits, and the results of workshops conducted by him for the purpose of reviewing WMBE programs and identifying and narrowing the issues (WMBE Staff Report). This WMBE Staff Report contained recommendations for further proceedings in the OII. Participating utilities then filed comments on the WMBE Staff Report, as did other interested parties.

On September 13, 1990, administrative law judge (ALJ) Watson issued her ruling delineating the scope of the 1990 OII proceeding. In the ruling, she reviewed the various recommendations of the WMBE program manager and set forth a procedural framework to be utilized in this and all future generic WMBE OIIs. She noted that the primary function of the OII is to examine and review the annual report and plans mandated by Sections 7 and 8 of GO 156. An ancillary function is to review, generically, policy, practices, and procedures associated with the WMBE program, with the input of all interested parties. The purpose of the annual WMBE Staff Report is to recommend possible changes to the program to facilitate its efficacy. Such changes may be interpretive or administrative under the GO or may involve modifications of the GO.

The ALJ noted her function is to rule on those matters of a procedural nature and those matters of interpretation of GO 156.

However, whether contested or uncontested, recommendations which would culminate in changes to GO 156 must be resolved by an Order Instituting Rulemaking (OIR) issued concurrently with the Commission's decision on the annual OII. She noted that this approach is consistent with Rule 14.2(b) of the Commission's Rules of Practice and Procedure and Public Utilities Code § 1708. She also observed that, where appropriate, some matters may be found to be best addressed in a proceeding separate from the annual OII. Matters properly before the Commission in the annual OII, if contested, would require further consideration through workshops and staff reviews, followed by the program manager's response (WMBE Staff Response) and further comments of participants, with any subsequent requests for evidentiary hearings supported by offers of proof. At that juncture, the ALJ would decide on the necessity for hearings. Matters which are uncontested, after ALJ review and evaluation, may be subject to action by the Commission in its final decision in the OII without further comment by participants.

Therefore, the ALJ established a procedural sequence of events for the annual WMBE OII as follows:

- Utilities' annual report and plans filed.
- WMBE Staff Report filed.
- Comments on WMBE Staff Report filed.
- ALJ ruling refining the scope of the year's OII and requiring workshops, if needed.
- Necessary workshops held and utilities' reports reviewed by staff.
- Filing of program manager's response on workshops and staff review of reports.
- Filing of participants' comments on program manager's response, with offers of proof if evidentiary hearings are requested.
- Evidentiary hearings, if necessary.
- Commission decision on OII, which may be accompanied by companion OIR.
- Participants' comments on OIR's proposed rules filed.
- Workshops, evidentiary hearings, and/or oral arguments, if warranted.
- Commission decision on OIR.

We find that this procedure should be followed each year in the WMBE OII and we hereby approve these procedural guidelines.

On November 15, 1990, the interim manager of the WMBE program filed the WMBE Staff Response. Comments on the WMBE Staff Response were filed on December 3, 1990 by AT&T Communications of California, Inc. (AT&T), the Greenlining Coalition (Coalition), GTE California Incorporated (GTEC), PG&E, and Southwest Gas Corporation (SWGAS). In general, the comments supported the recommendations in the WMBE Staff Response. The Coalition's comments, however, attempted to reargue issues decided in the ALJ ruling of September 13, 1990 and requested discovery in administrative hearings on those issues and the WMBE annual reports prior to the issuance of the Commission final decision. By ruling dated December 21, 1990, the ALJ denied the request for hearing and found that the offer of proof supporting the hearing request did not rise to the level of specificity required for an offer of proof to support hearings, but was instead a mere request for discovery in the hearing room. She stated that the Coalition should have pursued informal discovery as to the annual reports to obtain information on which to base the offer of proof for hearing on specified issues, rather than attempt to conduct its discovery in the hearing room. We hereby approve the ruling of the ALJ, as well as her finding that the offer of proof was insufficient and that the hearing room is not the proper place to conduct discovery.

We issue today not only this decision on the 1990 WMBE OII, but also a companion OIR to deal with the changes recommended by the WMBE Staff Report which necessitate modifications to GO 156. Modifications to the GO must be done by rulemaking or petition to modify, rather than in the annual OII. Those issues which necessitate consideration in the OIR are not discussed herein, but are instead addressed in the companion OIR.

DiscussionI. Reporting of Actual Subcontractor Expenditures

The WMBE Staff Report cited a need to clarify what kind of expenditures are to be counted in the subcontracting component of WMBE. Presently, most utilities have been reporting committed expenditures and some definitional confusion over committed expenditures was found to exist. What was actually purchased from WMBE subcontractors was generally not being reported. Staff asserted that reporting actual expenditures would furnish a more accurate perception of the success of the WMBE program's subcontracting component. In the initial round of comments, very few comments were received on this issue.

AT&T, PG&E, and GTEC all supported the staff recommendation. Only the joint comments submitted by Citizens Utilities Company of California (Citizens) and Roseville Telephone Company (Roseville) opposed reporting of actual expenditures. The ALJ ruled that workshops should be held, followed by the program manager's report and recommendation.

On October 10, 1990, the Commission's WMBE staff conducted a workshop in which the issue of tracking and reporting subcontracting expenditures was addressed. During the workshop, staff defined committed expenditures to constitute estimated monies set forth in the language of a contract for subcontracting purposes, while actual expenditures were defined as those monies the prime contractor actually tendered to the subcontractor. The staff also noted that, at present, there was lack of uniformity in the subcontract reporting because some utilities reported committed monies while others reported actual expenditures. As reflected in the WMBE Staff Report, staff's original belief was that both totals should be reported in order to obtain a more complete and accurate picture of the utilities' subcontracting efforts. In the workshop,

the utilities expressed opposition to reporting committed dollars, but a willingness to report actual expenditures. Common reasons for opposition to reporting committed dollars were a lack of resources available to devote to capturing such costs and the fact the administrative costs would be prohibitive to implement a procedure to capture committed dollars. The utilities also argued that reporting committed dollars would not provide a realistic picture of the WMBE subcontracting component because in a contract the needs often change from what was originally anticipated, resulting in a vast difference between committed and actual dollars. Thus, the staff's proposal to monitor committed dollars to evaluate the success of a utility's subcontracting program was challenged successfully. As a result of the views aired at the workshop, the WMBE Staff Response recommended that the utilities be ordered to report only actual subcontracting expenditures with WMBE vendors. In the comments to the WMBE Staff Response, AT&T, GTEC, PG&E, and SWGas supported the recommendation that only actual expenditures, as so defined, be reported. The Coalition made no comment on this issue. Citizens and Roseville filed no comments to the WMBE Staff Response.

We concur that an administrative change should be made to require the reporting of actual expenditures to WMBE subcontractor vendors. Actual expenditures should be defined as those monies that a prime contractor actually tenders to a WMBE subcontractor. The March 1, 1991 reports should be so formatted to increase uniformity in reporting and facilitate review by the WMBE compliance staff.

II. Uniform Reporting Format for WMBE Program Cost Itemization

Section 7.1.3 of GO 156 requires each utility to provide an itemization of WMBE program expenses. Ordering paragraph 1b of D.89-08-026 requires the utilities to file an exhibit containing

projected and other WMBE costs which have not been reviewed by the Commission, but requires that the costs be reviewed in this year's OII. Staff's initial review of the program costs found that there is no common reporting format among the utilities for either the past year's costs or projected costs. The WMBE Staff Report noted that some utilities summarized costs and expenditures in only two categories: labor and nonlabor expenses. However, other utilities further categorized costs as wages, internal outreach, external outreach, training, contracts, employee expenses, and marketing expenses with additional subcategories thereunder. Other utilities itemized costs into wages, salaries, and other operating expenses, with multiple subcategories under other operating expenses. The utilities did not describe whether labor costs included only the direct costs of their WMBE staff or also included the labor costs of legal or regulatory support staff.

The WMBE Staff Report asserted that it was not possible to use program costs and projected costs as an evaluative tool to measure individual utility WMBE programs because lack of consistency in reporting formats and categorizations precludes a reliable analysis as to the efficiency of the programs and their specific elements. The staff requested that workshops be held to develop a uniform reporting format for WMBE cost itemization.

In her September ruling, the ALJ declared that workshops should be held to develop the uniform program cost itemization format. She directed the program manager to thereafter file the recommended format and permit the participating utilities to comment upon it prior to its adoption by the Commission.

In the WMBE Staff Response, a report was given on the October 11, 1990 workshop on the cost itemization format. Staff stated that various approaches were used among the utilities to capture program costs and to define what costs were related to the program. The utilities reviewed the staff's proposed format, attached as Exhibit A to this decision. Exhibit A requires, under

its column A, that WMBE program expenses be broken down into seven categories: wages, other employee expenses, program expenses, reporting expenses, training, consultants, and other. The format then defines each of these seven categories. Columns B through F request a breakdown of the seven categories between: internal program, external program, central clearinghouse, complaints, and administration. Column G requires the totals be given in each of the column A seven categories for the costs broken down in columns B through F. The utilities questioned whether their accounting systems could conform to the proposed cost itemization format. The utilities stated they could only estimate many of the allocations to the functional categories in columns B through F of the proposed format and requested they be allowed to report the total amounts in column G, giving the detail requested in columns B - F only on a voluntary basis.

In the WMBE Staff Response, it was found that changing the cost accounting systems of the utilities, in order to provide the proposed detail for every functional category in the proposed format, would either require additional compliance costs or a diversion of resources from other WMBE program components such as outreach and training. Staff stated that this could result in an unacceptable reduction in the effectiveness of WMBE efforts. Therefore, staff recommended that the utilities be required to report, at a minimum, the WMBE program costs in columns A and G of the proposed cost itemization format. Staff recommended that the utilities be encouraged to include the information delineated in columns B through F, but only on a voluntary basis. Finally, staff recommended additional workshops be held to develop a standard description of the costs to be reported under the format's categories.

AT&T and GTEC supported both the proposed format and workshops to develop a standard description of costs. The Coalition did not comment on this issue. PG&E supported the

proposed format and noted that it already collects much of this information and reports more information than required by the proposed cost itemization format. PG&E also supported the workshops and suggested that the staff conduct them prior to the filing of the March 1, 1991 annual report so the utilities could ask questions regarding the definitions of the categories for which the WMBE program expenses are to be reported.

SWGas stated that it shared the desire to achieve some degree of standardization in the reporting of WMBE expenditures in order to increase the evaluation and analysis of the WMBE contracting and subcontracting programs and to compare the annual reports. It concurred with the minimum reporting of the costs reflected in columns A and C of the proposed format, but stated it felt that the proposed format was a good starting point and a reasonable approach for reporting uniformity as to WMBE expenditures. SWGas then offered recommendations to further improve upon Exhibit A. It noted that the definitions of the seven categories under column A need to be clarified and suggested that the definitions for columns B through F (internal program, external program, central clearinghouse, complaints, and administrative) also be developed. SWGas requested that an eighth category under column A be created to separately allocate travel, meals, and accommodations. However, SWGas did not explain why this was not adequately embraced under category 2 "other employee expenses" which the format defines to include "office space, travel and other nonwage costs." SWGas also suggested that category 4, "reporting expenses," which is to include computer, accounting, printing, and other expenses in preparing reports to the Commission, be changed so that utilities, rather than listing these individual expenses, be permitted to allocate a certain portion of their general corporate overhead to administration of the WMBE program. SWGas' rationale is that it is difficult for utilities to isolate or identify accounting, computer, printing, and other

comparable costs attributable only to the WMBE reports to the Commission. SWGas also concurred that workshops should be held to further develop standard and uniform reporting formats in the categorization and reporting of WMBE expenditures to the Commission.

We find that as much standardization as is feasible under the cost constraints under which the utilities' WMBE programs operate should be effected. We adopt the Exhibit A WMBE program expenses' cost itemization format as proposed by the WMBE staff. We direct that workshops be held, as much prior to the March 1, 1991 annual reporting date as is feasible, in order to develop the clarity of definition necessary to make effective use of the cost itemization format in the 1991 annual reports. We presently reject the argument of SWGas that travel, meals, and accommodations should be separately broken out from the present category "other employee expenses" in which they now reside. However, we are open to further consideration of this issue should WMBE staff wish to raise it in the 1991 OII as a result of further workshops to be held on the cost itemization format. We do adopt the suggestion of SWGas that not only the seven categories under column A be the subject of further definition and clarification in workshops, but also that columns B through F be defined and clarified. We reject SWGas' recommendation that category 4 "reporting expenses" be an allocation of a portion of general corporate overhead to administration of the WMBE program. However, as with the issue of travel, meals, and accommodations, this approach should be a subject of discussions at the workshops for defining and clarifying categories on the cost itemization format and may be the subject of staff recommendations in the 1991 OII.

IXI. Clearinghouse Concerns of PG&E

On May 4, 1990, PG&E filed a request that the Commission address certain concerns it had about certification of WMBEs by the clearinghouse (PG&E Request). PG&E asserted that the clearinghouse certification process is too burdensome; WMBE vendors who do not provide the required information within a specified time should not be dropped from the data base; the clearinghouse should accept reciprocal verifications from other other entities; the WMBE data base is not user friendly; and clearinghouse costs should be audited. In the WMBE Staff Report, staff observed that these matters were being reviewed either on an ongoing basis by the Clearinghouse Advisory Board (CAB), of which PG&E is a member, or when specific issues arise during the course of operations. Staff asserted that, since the clearinghouse had only been in full operation for four months at the time of the PG&E Request and five months at the time of the WMBE Staff Report, it was premature to critically evaluate the clearinghouse. Therefore, staff recommended that the implementation issues addressed in the PG&E Request be referred to the CAB for resolution. PG&E was the only utility to contest this approach, although other interested parties commented on issues raised in the PG&E Request.

The ALJ in her ruling found that Section 3.6 of GO 156 requires CAB to review the operational guidelines for the clearinghouse and to implement any modifications. She found that the PG&E Request's concerns regarding the verification procedures fell within the parameters of this duty. The ALJ also agreed with the staff's belief that the short time period referenced by the PG&E Request was an inadequate basis upon which to assess the complaints raised. Therefore, she ruled that the CAB should review the concerns of PG&E and others based on a minimum of one year's clearinghouse operations. She found that CAB should then be

required to report to the WMBE staff its findings and recommendations no later than March 1, 1991. Thereafter, staff's June 1, 1991 report in the 1991 OII should recommend consideration of any remaining issues as part of the 1991 generic WMBE OII. We hereby approve this course of action.

IV. Review of Seven Major Utilities' Annual Reports and Cost Exhibits

In March 1990, 16 utilities filed annual reports and cost exhibits. In the WMBE Staff Report, staff proposed to review, in depth, the seven major utilities' filings and report to the ALJ on their findings. Staff proposed to examine the smaller utilities' reports and exhibits as part of the 1991 OII. No objections were raised by the utilities to this bifurcated review.

Part of the June WMBE Staff Report was a recommendation that all exclusions permitted by GO 156 be eliminated. WMBE staff stated that it would work with Commission Advisory and Compliance Division (CACD) to review all exclusions reported by utilities in their annual reports. GTEC's use of exclusions in its annual report was the subject of specific complaint by the Coalition. As a result of these complaints, GTEC's report was then amended on August 9, 1990 and corrected again on August 14, 1990.

In her September ruling, the ALJ found that this year's OII should not be a forum to modify GO 156 so as to eliminate all exclusions. Instead, she instructed the WMBE program manager to report, as part of his review on the major utilities' WMBE annual reports, on GTEC's exclusions and any other major abuses or problems WMBE staff or CACD perceived as a result of the review. The program manager was directed to include any recommendations for further action in this year's OII as to the exclusions. The ALJ also stated that the utilities were expected to correct such problems in their 1990 reports which are due March 1, 1991. If a

pattern of abuse is revealed upon review of these reports, she found that consideration of modification of GO 156's exclusion provisions might then be appropriate. The ALJ noted that she was sensitive to the fact that this was the first year for review of participating utilities' reports in the OII forum, so that only major abuses, if any were found, should be addressed herein. She also observed that, during the course of the review by WMBE staff and CACD, the parties could informally investigate all reports and communicate any specific concerns they had. She directed that the staff's investigation should focus on the specific issues raised by participating utilities' reports. She instructed the staff to address, but not be limited to, the issues of misleading exclusions, use of exclusions in general, the integrity of the reporting process of the seven largest utilities, and inadequate tracking and reporting of subcontracting expenditures. However, she declared that the review should not include concerns addressed to the overall integrity of the reporting process, the propriety of the definition of exclusions in the GO, the need for a more inclusive analysis of male family ownership of alleged women-owned businesses, or separate reporting of Filipino Americans, as requested by the Coalition.

As noted previously, the Coalition requested full scale discovery as to the reports in administrative hearing, a request properly denied by the ALJ. However, alternatively, the Coalition asserted that were the Commission to be unwilling to permit such discovery, the Commission should accept GTEC's 27% achievement for 1989 as achievable by all utilities and change the requirement that all utilities have a 20% WMBE program component, as set forth in GO 156 Section 6.2, to 30% by 1992. We reject this alternative contention.

In the WMBE Staff Response, the report on the annual report review process was broken into two categories: (1) a review of the policies and procedures for determining exclusions from the

purchasing base and (2) the integrity of the utilities' WMBE procurement reporting. We will also discuss the two issues separately.

A. Exclusions from Procurement Base

Section 6 of GO 156 requires each utility to set goals to purchase from women and minority-owned business enterprises a total of at least 20% of its products and services. However, the goals need not include products or services which fall within an excluded category created pursuant to Section 6.5. The bases of an excluded category are products or services for which it is clearly evident WMBEs do not provide or for which sole source procurement is the only available procurement method. Section 6.5 places the burden of demonstrating the unavailability of WMBEs capable of supplying such products or services upon the utility claiming the exclusion. In its annual report, a utility must justify the continued existence of any excluded category. The effect of placement of products or services in an excluded category is that the excluded items are deducted from total purchases prior to calculating the percentage of WMBE purchases when meeting the goals set by Section 6.2.

The staff stated its purpose was to review utility policies and procedures to determine if utilities were following Section 6.5 in the creation of excluded categories and to determine if utilities were consistent in their interpretation and application of Section 6.5 exclusions. Staff reviewed the policies and procedures of six of the seven largest utilities: AT&T, GTEC, PG&E, Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and SoCalGas. Pacific Bell was not reviewed because it did not claim any exclusions in its 1989 annual report.

The staff found the general policy at each utility was not to exclude a product or service if there were any doubt whether or not a WMBE supplier exists for it. This is done in order to

meet the standard of the "clearly evident" test found in Section 6.5. The staff noted that each utility utilizes its WMBE staff to work with company executives and purchasing managers to set the required goals, to provide training to company procurement personnel on compliance with GO 156, to assist purchasing personnel to comply with the goals, to locate WMBE suppliers, and to generally monitor the utility's efforts to comply with the WMBE program. All six utilities reviewed have a policy of including compliance with WMBE goals in the job performance evaluations of employees who are responsible for company procurement, from the buyer level up to the executive level. The staff found that this policy helps to foster a commitment to comply with GO 156. The staff concluded that the following WMBE outreach methods were utilized by the utilities reviewed: consultants; WMBE organizations and special interest groups; trade fairs, expositions and workshops; WMBE directories and periodicals; employees; direct contact with vendors; trade journals; and the CPUC clearinghouse. All methods were utilized by the six utilities, with the exception of AT&T and SDG&E, which do not use consultants. However, the emphasis placed on each of the methods listed varied by utility.

The staff's review disclosed that comparison of the exclusions for the four energy utilities revealed consistency in some excluded items, but not for all. Staff observed that it would have been helpful if the categories of products and services had been uniform for all similar companies and had more detail than included within each category. Staff noted that the utilities' WMBE staffs are in contact and can help one another to locate WMBEs. Therefore, staff expected the exclusion categories to be similar. Uniform reporting categories for products and services and more detail about excluded items would assist staff in comparing and evaluating the annual reports. In order to accomplish this goal, the WMBE Staff Response recommended workshops or meetings with similar utilities to better define excluded items

and agree on more detail to increase the comparability of the annual reports. Staff also believed that workshops would assist the utilities in identification of more WMBEs through the sharing of the detailed information.

PG&E made no comments on the review of the energy utilities' reports. However, it supported the recommendation for workshops or meetings with similar types of utilities, but requested they be held each year prior to the filing of March 1 annual report. PG&E believes that Commission staff can increase the amount of uniformity in the various utilities' annual report by utilizing such workshops.

SWGas did not have its annual report reviewed. However, in its comments, it concurred with staff that categories for excluded items should be more specifically defined in detail, so the annual reports will be more easily reviewed, analyzed, and compared by Commission staff.

The staff separately reviewed the GTEC exclusions due to the fact the initial amount excluded was very high (\$500 million dollars) in relation to total purchases (\$940 million dollars) in 1989. However, discussions with staff disclosed this high amount was caused by an error in GTEC's report due to the fact that most amounts included under its affiliate purchases were actually operating costs for work such as billing and other services performed by the affiliates and therefore should not have been included. Also, GTEC reported some amounts as direct purchases when they should have been reported as purchases from affiliates. Therefore, the August, 1990 amended annual report of GTEC corrected the errors, resulting in a reduction in exclusions from \$500 million dollars to \$280 million dollars and the reduction of total purchases from \$940 million dollars to \$720 million dollars. The nonexcluded purchases did not change and remain the same at \$440 million dollars. Staff opined that the amended report made a substantial improvement in the clarity of the report and helped

reassure staff that GTEC is complying with Section 6.5. Staff also noted that GTEC is currently purchasing a larger than normal amount of central office equipment (COE) and that when the purchases reverted back to a more normal practice, GTEC's exclusions would decline substantially. Staff recommended that the Commission monitor GTEC's future reports and evaluate how completion of its COE upgrade, the subject of a large sole source exclusion, affects GTEC's exclusions.

GTEC accepted the recommendations and conclusions proposed by the WMBE staff in regard to exclusions. GTEC stated it would continue to follow the guidelines utilized in making the August, 1990 amended filing of its annual WMBE report and will continue its ongoing review of excluded products to determine if WMBE vendors can be identified for them. GTEC also agreed to closely monitor how its COE upgrade program affects the excluded category.

Staff's review of AT&T's annual report disclosed that the only questionable exclusion was for building leases. AT&T had excluded building leases, in part, because most leases were executed prior to the enactment of AB 3678 and, in part, because it concluded that minority groups generally do not own the types of buildings which are required by AT&T. Staff concurred that AT&T should not be penalized for leases executed prior to the enactment of AB 3678, but stated that it did not believe there were sufficient grounds to exclude the subsequent leases at this time. Staff asserted that those leases should be reviewed on a case by case basis and not be excluded as a category.

In its comments on the WMBE Staff Response, AT&T agreed that it had excluded from its procurement base the expenditures associated with both building and real estate leases. Therefore, AT&T proposed to limit its exclusion of leases to those let prior to the enactment of AB 3678. AT&T also stated that it is committed to intensify its efforts to identify and utilize WMBE vendors for

this category of expenditures. AT&T also concurred with the staff recommendation that workshops to better define and delineate the scope of permissible exclusions should be held.

We find that the goals set forth in Section 6.2 of GO 156 should not be modified. We direct that the nine smaller utilities' reports and cost exhibits should be reviewed as part of the 1991 WMBE OII and approve the reports and exhibits of the seven major utilities as reviewed in this OII. Workshops should be held by WMBE staff, as much prior to the March 1, 1991 filing deadline as is feasible, to better define excluded items, to agree on more detail to increase comparability of annual reports, and to assist the utilities in identification of more WMBEs in order to decrease excluded categories. Staff should monitor GTEC's exclusions in future reports and evaluate how completion of the COE upgrade affects GTEC's exclusions. In the future, GTEC should follow the format utilized in its August, 1990 amended annual report, in order to facilitate the ongoing review. AT&T should only exclude building and real estate leases let prior to enactment of AB 3678.

Although the ALJ in her September ruling found that this year's generic OII proceeding should not be a forum to modify GO 156 in regard to all exclusions, the staff in its response did comment upon the propriety of doing so and concluded that exclusions should not be eliminated. We find the analysis of the staff in this regard is worthy of comment. The staff stated that, although eliminating exclusions would increase the amount of products and services which a utility must purchase from WMBEs, it could result in widely varying results in WMBE purchases among the utilities and in the percentage of WMBE purchases for each utility from year to year. Staff concluded that permitting exclusions results in a more accurate statistical base on WMBE purchase activities. Staff also found that allowing exclusions would make the results more comparable from year to year and from utility to utility. It noted that the utilities have policies encompassing

the requirements of Section 6.5 and the procedures for implementing the policies and are making substantial efforts to limit exclusions. Staff concluded that the allowance of exclusions helped to focus attention on problems, such as those noted in the reviews of GTEC and AT&T's annual reports. Staff found this analogous to setting category specific goals to direct attention and efforts on items with low WMBE participation. It found that exclusions helped to expand procurement from WMBEs by concentrating attention and efforts where those efforts will be most productive. Therefore, staff concluded that exclusions should be retained while the utilities continue their outreach efforts to eliminate the bases for the exclusions under Section 6.5. We concur with these findings of the staff and will not eliminate the exclusions as set forth in GO 156.

B. Integrity of Utility WMBE Procurement Reporting

As a result of its review of the annual reports of the seven major utilities, staff requested a change in the annual reports as required under Section 7 of GO 156. The WMBE Staff Response requested a separate and confidential report to permit staff to cross reference the WMBE eligibility of specifically listed vendors in order to audit the integrity of claimed participation levels. Various utilities filed comments regarding this recommendation. However, we find that Section 7.1.2 of GO 156 merely requires 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. Section 7.4 merely permits utilities to break down specific categories further than presently required by the GO. We find that accepting the recommendations of the staff in regard to the separate confidential reports would necessitate a modification to the GO, which we decline to make in an OIR proceeding. For this reason, the companion OIR issued today discusses this recommendation.

Findings of Fact

1. The primary function of the OII is to examine and review the annual report and plans mandated by Sections 7 and 8 of GO 156. An ancillary function is to review, generically, policy, practices, and procedures associated with the WMBE program, with the input of all interested parties. The purpose of the annual WMBE Staff Report is to recommend possible changes to the program to facilitate its efficacy. Such changes may be interpretive or administrative under the GO or may involve modifications of the GO.

2. Whether contested or uncontested, recommendations which would culminate in changes to GO 156 should be resolved by an OIR issued concurrently with the Commission's decision on the annual OII.

3. Where appropriate, some matters may be found to be best addressed in a proceeding separate from the annual OII.

4. There is a need to clarify what kind of expenditures are to be counted in the subcontracting component of WMBE. Presently, most utilities have been reporting committed expenditures and some definitional confusion over committed expenditures was found to exist. What was actually purchased from WMBE subcontractors was generally not being reported. Reporting actual expenditures would furnish a more accurate perception of the success of the WMBE program's subcontracting component.

5. The utilities expressed opposition to reporting committed dollars, but a willingness to report actual expenditures.

6. Section 7.1.3 of GO 156 requires each utility to provide an itemization of WMBE program expenses. Ordering paragraph 1b of D.89-08-026 requires the utilities to file an exhibit containing projected and other WMBE costs which have not been reviewed by the Commission, but requires that the costs be reviewed in this year's OII. There is no common reporting format among the utilities for either the past year's costs or projected costs.

7. Lack of consistency in reporting formats and categorizations precludes a reliable analysis as to the efficiency of the programs and their specific elements.

8. The utilities reviewed the staff's proposed format, attached as Exhibit A to this decision and commented thereon.

9. Changing the cost accounting systems of the utilities, in order to provide the proposed detail for every functional category in the proposed format, would either require additional compliance costs or a diversion of resources from other WMBE program components such as outreach and training. This could result an unacceptable reduction in the effectiveness of WMBE efforts.

10. Travel, meals, and accommodations should not be separately broken out from the present category "other employee expenses" in which they now reside.

11. Category 4 "reporting expenses" should not be an allocation of a portion of general corporate overhead to administration of the WMBE program.

12. On May 4, 1990, PG&E filed a request that the Commission address certain concerns it had about certification of WMBEs by the clearinghouse (PG&E Request).

13. Staff observed that these matters were being reviewed either on an ongoing basis by the CAB, of which PG&E is a member, or when specific issues arise during the course of operations. Staff asserted that, since the clearinghouse had only been in full operation for four months at the time of the PG&E Request and five months at the time of the WMBE Staff Report, it was premature to critically evaluate the clearinghouse. Staff recommended that the implementation issues addressed in the PG&E Request be referred to the CAB for resolution. PG&E was the only utility to contest this approach, although other interested parties commented on issues raised in the PG&E Request.

14. The short time period referenced by the PG&E Request is an inadequate basis upon which to assess the complaints raised.

15. In March 1990, 16 utilities filed annual reports and cost exhibits. Staff proposed to review, in depth, the seven major utilities' filings and report to the ALJ on their findings and to examine the smaller utilities' reports and exhibits as part of the 1991 OII. No objections were raised by the utilities to this bifurcated review.

16. The Coalition requested full scale discovery as to the reports in administrative hearing, a request properly denied by the ALJ.

17. Alternatively, the Coalition asserted that were the Commission to be unwilling to permit such discovery, the Commission should accept GTEC's 27% achievement for 1989 as achievable by all utilities and change the requirement that all utilities have a 20% WMBE program component, as set forth in GO 156 Section 6.2, to 30% by 1992. We reject this alternative contention.

18. Staff reviewed the exclusion policies and procedures of six of the seven largest utilities: AT&T, GTEC, PG&E, Edison, SDG&E, and SoCalGas. Pacific Bell was not reviewed because it did not claim any exclusions in its 1989 annual report.

19. The general policy at each utility was not to exclude a product or service if there were any doubt whether or not a WMBE supplier exists for it. This is done in order to meet the standard of the "clearly evident" test found in Section 6.5. Each utility utilizes its WMBE staff to work with company executives and purchasing managers to set the required goals, to provide training to company procurement personnel on compliance with GO 156, to assist purchasing personnel to comply with the goals, to locate WMBE suppliers, and to generally monitor the utility's efforts to comply with the WMBE program. All six utilities reviewed have a policy of including compliance with WMBE goals in the job performance evaluations of employees who are responsible for company procurement, from the buyer level up to the executive

level. This policy helps to foster a commitment to comply with GO 156.

20. Review disclosed that comparison of the exclusions for the four energy utilities revealed consistency in some excluded items, but not for all.

21. Uniform reporting categories for products and services and more detail about excluded items would assist staff in comparing and evaluating the annual reports. In order to accomplish this goal, the WMBE Staff Response recommended workshops or meetings with similar utilities to better define excluded items and agree on more detail to increase the comparability of the annual reports. Workshops would also assist the utilities in identification of more WMBEs through the sharing of the detailed information.

22. The staff separately reviewed the GTEC exclusions due to the fact the initial amount excluded was very high (\$500 million dollars) in relation to total purchases (\$940 million dollars) in 1989. However, discussions with staff disclosed this high amount was caused by an error in GTEC's report due to the fact that most amounts included under its affiliate purchases were actually operating costs for work such as billing and other services performed by the affiliates and therefore should not have been included. Also, GTEC reported some amounts as direct purchases when they should have been reported as purchases from affiliates. Therefore, the August, 1990 amended annual report of GTEC corrected the errors, resulting in a reduction in exclusions from \$500 million dollars to \$280 million dollars and the reduction of total purchases from \$940 million dollars to \$720 million dollars. The nonexcluded purchases did not change and remain the same at \$440 million dollars. The amended report made a substantial improvement in the clarity of the report and helped reassure staff that GTEC is complying with Section 6.5. GTEC is currently purchasing a larger than normal amount of COE and, when the purchases revert back to a

more normal practice, GTEC's exclusions would decline substantially. Staff recommended that the Commission monitor GTEC's future reports and evaluate how completion of its COE upgrade, the subject of a large sole source exclusion, affects GTEC's exclusions.

23. GTEC accepted the recommendations and conclusions proposed by the WMBE staff in regard to exclusions. GTEC stated it would continue to follow the guidelines utilized in making the August, 1990 amended filing of its annual WMBE report and will continue its ongoing review of excluded products to determine if WMBE vendors can be identified for them. GTEC also agreed to closely monitor how its COE upgrade program affects the excluded category.

24. Staff's review of AT&T's annual report disclosed that the only questionable exclusion was for building leases. AT&T had excluded building leases, in part, because most leases were executed prior to the enactment of AB 3678 and, in part, because it concluded that minority groups generally do not own the types of buildings which are required by AT&T.

25. AT&T agreed that it had excluded from its procurement base the expenditures associated with all building and real estate leases. AT&T proposed to limit its exclusion of leases to those let prior to the enactment of AB 3678.

26. Although eliminating exclusions would increase the amount of products and services which a utility must purchase from WMBEs, it could result in widely varying results in WMBE purchases among the utilities and in the percentage of WMBE purchases for each utility from year to year.

27. Permitting exclusions results in a more accurate statistical base on WMBE purchase activities. Allowing exclusions also makes the results more comparable from year to year and from utility to utility.

28. The allowance of exclusions helps to focus attention on problems, such as those noted in the reviews of GTEC and AT&T's annual reports.

29. Exclusions should be retained while the utilities continue their outreach efforts to eliminate the bases for the exclusions under Section 6.5.

30. Staff requested a change in the annual reports as required under Section 7 of GO 156. The WMBE Staff Response requested a separate and confidential report to permit staff to cross reference the WMBE eligibility of specifically listed vendors in order to audit the integrity of claimed participation levels.

31. Section 7.1.2 of GO 156 merely requires 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. Section 7.4 merely permits utilities to break down specific categories further than presently required by the GO. We find that accepting the recommendations of the staff in regard to the separate confidential reports would necessitate a modification to the GO, which we decline to make in an OII proceeding.

Conclusions of Law

1. A procedural sequence of events for the annual WMBE OII should be as follows:

Utilities' annual report and plans filed.

WMBE Staff Report filed.

Comments on WMBE Staff Report filed.

ALJ ruling refining the scope of the year's OII and requiring workshops, if needed.

Necessary workshops held and utilities' reports reviewed by staff.

Filing of program manager's response on workshops and staff review of reports.

Filing of participants' comments on program manager's response, with offers of proof if evidentiary hearings are requested.

Evidentiary hearings, if necessary.

Commission decision on OII, which may be accompanied by companion OIR.

Participants' comments on OIR's proposed rules filed.

Workshops, evidentiary hearings, and/or oral arguments, if warranted.

Commission decision on OIR.

2. An administrative change should be made to require the reporting of actual expenditures to WMBE subcontractor vendors. Actual expenditures should be defined as those monies that a prime contractor actually tenders to a WMBE subcontractor. The March 1, 1991 reports should be so formatted to increase uniformity in reporting and facilitate review by the WMBE compliance staff.

3. We adopt the Exhibit A WMBE program expenses' cost itemization format. The utilities should be required to report, at a minimum, the WMBE program costs in columns A and G of the proposed cost itemization format. The utilities should be encouraged to include the information delineated in columns B through F, but only on a voluntary basis. We direct that workshops be held, as much prior to the March 1, 1991 annual reporting date as is feasible, in order to develop the clarity of definition necessary to make effective use of the cost itemization format in the 1991 annual reports. The seven categories under column A should be the subject of further definition and clarification in workshops and columns B through F should be defined and clarified.

4. Section 3.6 of GO 156 requires CAB to review the operational guidelines for the clearinghouse and to implement any modifications. The PG&E Request's concerns regarding the verification procedures fall within the parameters of this duty.

5. CAB should review the concerns of PG&E and others based on a minimum of one year's clearinghouse operations. CAB should report to the WMBE program manager its findings and recommendations no later than March 1, 1991. Staff's June 1, 1991 report in the 1991 OII should recommend consideration of any remaining issues as part of the 1991 WMBE OII.

6. The goals set forth in Section 6.2 of GO 156 should not be modified.

7. The nine smaller utilities' reports and cost exhibits should be reviewed as part of the 1991 WMBE OIR. We approve the reports and exhibits of the seven major utilities as reviewed in this OIR.

8. Workshops should be held by WMBE staff, as much prior to the March 1, 1991 filing deadline as is feasible, to better define excluded items, to agree on more detail to increase comparability of annual reports, and to assist the utilities in identification of more WMBEs in order to decrease excluded categories.

9. Staff should monitor GTEC's exclusions in future reports and evaluate how completion of the COE upgrade affects GTEC's exclusions. In the future, GTEC should follow the format utilized in its August, 1990 amended annual report, in order to facilitate the ongoing review.

10. AT&T should only exclude building and real estate leases let prior to enactment of AB 3678.

11. We will not eliminate the exclusions as set forth in GO 156.

12. We will not adopt the annual confidential reports, as proposed by staff in this OIR, but defer consideration to an OIR proceeding.

ORDER

IT IS ORDERED that:

1. Participating utilities shall report actual expenditures to Women and Minority Business Enterprises (WMBE) subcontractor vendors. Actual expenditures are those monies that a prime contractor actually tenders to a WMBE subcontractor. The 1990 annual reports shall be so formatted.

2. The WMBE program expenses' cost itemization format, attached as Exhibit A to this order, is adopted. Utilities shall report the WMBE program costs in columns A and G and are encouraged to include the information in columns B through F on a voluntary basis.

3. The WMBE staff shall conduct workshops, as much prior to the March 1, 1991 annual reporting date as is feasible, in order to develop the clarity of definition of Exhibit A's seven categories under column A and columns B through F.

4. The Clearinghouse Advisory Board (CAB) shall review the concerns of Pacific Gas and Electric Company (PG&E), set forth in its May 4, 1990 request, as well as the concerns of others regarding it raised in this proceeding, based on one year's operations of the CAB. CAB shall report its findings and recommendations to the WMBE program manager no later than March 1, 1991. Staff's June 1, 1991 report in the 1991 annual WMBE Order Instituting Investigation (OII) shall recommend consideration of any remaining issues as part of the 1991 WMBE OII.

5. The goals set forth in General Order (GO) 156 Section 6.2 shall not be modified in this proceeding.

6. The 1989 annual reports and cost exhibits of AT&T Communications of California, Inc. (AT&T), GTE California Incorporated (GTEC), PG&E, Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company, and Pacific Bell are approved. The 1989 reports and cost exhibits of the nine smaller utilities, Citizens Utilities Company of California, Contel of California, Inc., CP National Corporation, MCI Communications Corporation, Pacific Power and Light Company, Roseville Telephone Company, Sierra Pacific Power Company, Southwest Gas Corporation, and US Sprint Communications Company, shall be reviewed as part of the 1991 WMBE OII, along with their 1990 annual reports and cost exhibits.

7. Workshops shall be held by WMBE staff, as much as prior to the March 1, 1991 filing deadline as is feasible, to better define excluded items under Section 6.5 of GO 156, to agree on more detail to increase comparability of annual reports, and to assist the utilities in identification of more WMBEs in order to decrease excluded categories.

8. Staff shall monitor GTEC's exclusions in future reports and evaluate how completion of the central office equipment upgrade affects the exclusions. In future annual reports, GTEC shall follow the format utilized in its August 1990 amended 1989 annual report.

9. AT&T shall only exclude building and real estate leases let prior to enactment of AB 3678 in the 1990 annual report and those subsequent thereto.

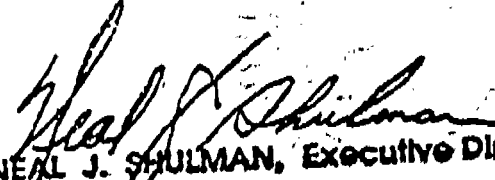
10. Exclusions set forth in Section 6.5 of GO 156 shall not be eliminated.

This order is effective today.

Dated February 6, 1991, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director
PB

WMBE Program Expenses							
	A	B	C	D	E	F	G
		Internal Program	External Program	Central Clearinghouse	Complaints	Admin	Total
1 Wages							
2 Other Employee Exp							
3 Program Expenses							
4 Reporting Expenses							
5 Training							
6 Consultants							
7 Other							
8 Total							

Wages: Salary and payroll related costs of employees working on WMBE matters.

Other Employee Expenses: Office space, travel and other non-wage costs.

Program Expenses: Printing, postage, supplies, and other costs directly related to programs.

Reporting Expenses: Computer, accounting, printing and other expenses in preparing reports to the Commission.

Training: Costs related to training employees (internal) and vendors (external).

Consultants: Costs of hiring consultants to assist with WMBE programs.

Other: Costs which do not fit in another category.

Note: Detail within the above categories would be very useful, but is not required.