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Decision 92-06-030 June 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on  
the Commission's Own Motion to  
Revise General Order 156.

**ORIGINAL**  
R.91-02-011  
(Filed February 6, 1991)

Order Instituting Rulemaking into  
the Implementation of Public  
Utilities Code Sections 8281-8285  
Relating to Women and Minority  
Business Enterprises (Petition  
to Modify D.90-12-027 to Include  
Disabled Veterans Business  
Enterprises.

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

Order Instituting Rulemaking into  
the Implementation of Public  
Utilities Code §§ 8281-8285  
Relating to Women and Minority  
Business Enterprises (U 904 G)  
(Petition of San Diego Gas &  
Electric Company).

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

Order Instituting Rulemaking into  
the Implementation of Public  
Utilities Code Sections 8281-8285  
Relating to Women and Minority  
Business Enterprises. (Petition  
of C.H.A.N.G.E.S, INC.)

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

INTERIM OPINION

On February 6, 1991, we issued an Order Instituting Rulemaking (R.) 91-02-011 in which we delineated specific issues, proposed changes to General Order 156 (GO-156), and requested comments on those issues. Subsequently, three rounds of comments were submitted.

During the pendency of proceedings in R.91-02-011, the Commission's Women/Minority Business Enterprise (WMBE) Program

Manager filed a Petition to Modify Decision (D.) 90-12-027 in R.87-02-026, to include Disabled Veterans Business Enterprises (DVBES) within the coverage of GO-156. Further, on July 18, 1991, the Consortium to Help Advance Natural Gas and Energy Suppliers (C.H.A.N.G.E.S.) filed a Petition to Modify D.90-12-027 in R.87-02-026, to eliminate Canadian gas from the category of fuels which may be excluded from a utility's standard procurement base or separate fuel procurement base pursuant to Sections 6.5 and 6.9.1 of GO-156. In addition, on August 13, 1991, San Diego Gas & Electric Company (SDG&E) filed a Petition to Modify D.89-08-026 in R.87-02-026, to allow a temporary return to WMBE program cost approval and recovery through the general rate case process to recover its 1992 WMBE program costs. In D.89-08-026, we indicated that WMBE program costs should be considered in a yearly generic proceeding instituted to consider proposed changes in GO-156 and other aspects of the WMBE program.

In order to maximize resource utilization, the three pleadings filed in R.87-02-026 were associated informally with R.91-02-011, so that the issues in those cases which related to or affected the Commission's WMBE program could be considered simultaneously with the issues in R.91-02-011.

On March 18, 1992, after service of notice to all parties of record in each of the above described cases, a joint prehearing conference was held to consider the status of efforts by the parties in the various cases to settle pending issues, both within the context of the individual case and as part of the Commission's overall WMBE program objectives under consideration in R.91-02-011. At the prehearing conference, it was indicated that an agreement addressing the issues in each of the referenced cases, with the exception of the petition of SDG&E and the petition filed by C.H.A.N.G.E.S., and disposing of all but four of those issues, had been reached and was to be submitted to the Commission for its consideration and approval. The agreement was thereafter filed on

March 18, 1992, and served on all parties of record in each of the cases in accordance with Rule 51.3 of the Commission's Rules of Practice and Procedure.

With regard to the petition filed by C.H.A.N.G.E.S., it was determined that the issues raised in that petition would not be considered in this proceeding, but would be resolved in a separate proceeding under Docket R.87-02-026.

With respect to the petition of SDG&E regarding Women/Minority/Disabled Veterans Business Enterprises (WMDVBE) program cost recovery, it was felt by all parties involved that the Commission should issue a separate Order Instituting Investigation (OII) to consider the appropriate method to recover (a) "transition costs" incurred by the Commission for the Clearinghouse contract, reimbursement of WMDVBE representative expenses, and contract administrator when retained, and (b) internal WMDVBE program costs of the affected utilities.

By the settlement agreement for which approval of this Commission is sought, the Commission staff and the utilities have, among other things, agreed to request modification of GO-156 to provide that the Commission maintain the Clearinghouse program and directly contract with the WMBE Clearinghouse operator. Under the proposal, the Commission would assume the contractual obligations of the utilities currently contracting with the WMBE Clearinghouse.

The utilities will reimburse the Commission for its contract cost in the following manner:

- a. The Commission will take all necessary steps to collect its entire WMDVBE Program budget, including the cost of the Clearinghouse contract, contract administrator, and other costs associated with running the Clearinghouse, through its budget process.

The costs will be billed to utilities through the Commission's Public Utility Reimbursement Account (Public Utilities

Code Section 431, et seq.). It is recognized that such budget treatment cannot be implemented until the 1993-94 budget year.

- b. Prior to July 1, 1993, the Commission shall bill the contracting utilities for Clearinghouse contract costs as follows:

1. From the date the Commission approves this settlement until September 30, 1992, allocation of costs will be in the same manner and by the same process as Clearinghouse costs are currently allocated; and,
2. From October 1, 1992, a "transition cost" methodology which (a) allocates contract costs among utility classes in the fashion currently utilized for Commission overhead expenses through the Reimbursement Account, and (b) sub-allocates among contracting utilities within the utility class by use of an approximation of the budget process allocation methodology. This methodology results in the following allocation:

ALLTEL/CP National	0.02%
AT&T	4.64%
Citizens	0.13%
Contel	0.63%
GTEC	6.82%
MCI	1.02%
PacBell	19.51%
PG&E	29.74%
PPL	0.20%
Roseville	0.10%
SDG&E	5.14%
Sierra	0.11%
SCE	19.07%
SoCalGas	12.26%
SW Gas	0.18%
U.S. Sprint	0.43%

- c. From the date the Commission approves this settlement until July 1, 1993, the utilities will be required to establish and fund two separate escrow accounts. The

utilities will fund these accounts on a monthly basis.

The first escrow account will fund the operations of the WMBE Clearinghouse. Subject to the Executive Director's approval, the contract administrator will review, verify and make disbursements from the account for all Clearinghouse operations.

The second escrow account will fund the payment of the contract administrator. The Commission's WMBE staff will notify the utilities of the sum needed to fund this escrow account, will audit and review the activities of the contract administrator and will approve payment of all Clearinghouse related activities.

The agreement further contemplates the reporting of only verified vendors. In this regard, the settlement agreement requires:

- a. An exhibit providing verification status will be furnished by the utilities to the Commission staff for calendar years 1991 and 1992. The use of this information will be resolved in a workshop. This workshop is to be chaired by the Commission's WMDVBE Program Manager or his designee. Each utility will provide to Commission staff the following information:
  1. Total WMBE procurement dollars reported.
  2. Clearinghouse verified dollars.
  3. Percentage of vendors utilized that are verified by the Clearinghouse.
  4. A breakdown of the above by ethnicity and gender.

The above information is to be provided to the Commission staff not later than June 15, 1992. The information for calendar year 1992 is to be provided

contemporaneously with submission of the utility's 1992 WMDVBE Annual report.

- b. The utilities are required to provide only verified WMDVBE vendor information starting with the 1993 Annual Report to be filed not later than March 1, 1994.

The 30-day comment period provided for in Rule 51.4 has expired and no comments opposing or contesting any portion of the settlement agreement have been filed.

After consideration of the settlement agreement, a copy of which is annexed hereto as Attachment A, we are of the opinion that the same should be approved in its entirety, and the methodology suggested therein for the resolution of the four issues remaining unresolved should be undertaken at the earliest possible time. The four unresolved issues, which we defer to Phase II of R.91-02-011, are set forth at page 10 of the agreement:

1. Whether to revise GO-156, Section 2, to provide detailed verification standards and, if so, what standards should be incorporated into the General Order?
2. Under what conditions should Service Disabled Veterans (SDVs) be merged into the existing GO-156 program including, whether separate goals should be established for SDVs, and, what should be the verification process for SDVs?
3. Under what circumstances, whether or how the exhibits discussed in Section II.B.3 [of the agreement] can be used?
4. What should the schedule be for the annual, generic WMBE proceeding?

With respect to issue 2., we wish to underscore that deferral of these details to workshops, and if necessary, to evidentiary hearings, should not delay utility compliance with SB 2398, which amended Public Utilities Code §§ 8281 - 8285 to incorporate DVBEs. Today's order, by adopting the settlement

parties' agreement, formally amends GO-156 to define DVBEs with reference to the criteria for verification and certification of DVBE status. This should provide sufficient guidance for the utilities subject to GO-156, with their several years' experience in WMBE outreach and procurement, to take steps to encourage DVBE participation immediately, if they have not done so already.

To ensure compliance with the law pending resolution of Phase II issues, we will require each utility to exert its best efforts to:

- a. Establish a responsible individual within the utility organization to implement DVBE participation;
- b. Establish an outreach program to identify current and potential DVBEs; and
- c. Establish procedures to implement DVBE participation in utility procurement of services and products.

Each utility subject to GO-156 shall report to the Commission by December 31, 1992 the name and title, if any, of the responsible person designated pursuant to item a., above; the number of DVBEs identified pursuant to item b.; and total DVBE procurement pursuant to item c., both by total dollars and by number of transactions with verified DVBEs. Utilities may, if they wish, provide a list of product and service categories in which DVBE procurement occurred and any other information they deem pertinent to our understanding of their DVBE programs.

Findings of Fact

1. The settlement is reasonable, consistent with law, and in the public interest.
2. The settlement is uncontested.
3. The question of WMDVBE program cost recovery is outside the scope of the settlement proceeding and should be the subject of investigation pursuant to a separate OII.

4. The petition of C.H.A.N.G.E.S. should not be considered in this proceeding, but in a separate proceeding under Docket R.87-02-026.

5. From the date of this order until July 1, 1993, the utilities will need to establish and fund two separate escrow accounts, on a monthly basis, for funding WMBE Clearinghouse operations and payment of the contract administrator.

6. The settlement amends GO-156 to define disabled veteran business enterprise.

Conclusions of Law

1. The settlement agreement should be approved.

2. The methodology suggested in the settlement agreement for the resolution of the four issues remaining unresolved should be undertaken as soon as possible through workshops to be chaired by the Commission's WMDVBE Program Manager who will promptly advise the presiding administrative law judge (ALJ) of the results of said workshops. In the event impasse is reached in the resolution of any issue, the presiding ALJ is to be notified and is to schedule a hearing on the contested issue without delay. Upon the conclusion of workshops and/or hearings, a further opinion shall be issued.

3. The petition filed by C.H.A.N.G.E.S. should not be considered in this proceeding, but should be considered in a separate proceeding under Docket R.87-02-026.

4. An OII should be issued for the purpose of considering the appropriate method to recover (a) "transition costs" incurred by the Commission for the Clearinghouse contract, reimbursement of WMDVBE representative expenses, and contract administrator when retained, and (b) internal WMDVBE program costs of the affected utilities.

5. The establishment of two separate escrow accounts, funded by the utilities on a monthly basis, is an appropriate method for funding WMBE Clearinghouse operations and payment of the contract administrator from the date of this order until July 1, 1993.



6. It is reasonable to require utilities, with their several years' experience in WMBE outreach and procurement, to take interim steps to encourage DVBE participation in utility procurement of products and services, effective immediately upon the date of this order.

INTERIM OPINION

IT IS ORDERED that:

1. The settlement agreement (Attachment A) is approved.
2. The official text of General Order 156 (GO-156) is hereby amended as set forth in the settlement agreement (Attachment A).
3. The parties are to forthwith commence negotiations to resolve the four outstanding issues utilizing the methodology suggested in the settlement agreement.
4. In the event impasse is reached in the resolution of any outstanding issue, the presiding administrative law judge (ALJ) is to immediately be notified. Upon receipt of such notification, the presiding ALJ is to schedule a hearing on the contested issue without delay. Following completion of all necessary proceedings in relation to the outstanding issues, a further opinion will be issued by this Commission.
5. The petition filed by the Consortium to Help Advance Natural Gas and Energy Suppliers is not to be considered in this proceeding, but is to be considered in a separate proceeding under Docket R.87-02-026.
6. The utilities are required to provide only verified Women/Minority/Disabled Veterans Business Enterprises (WMDVBE) vendor information starting with the 1993 Annual Report to be filed not later than March 1, 1994.
7. An order instituting investigation is to be issued for the purpose of considering the appropriate method to recover (a) "transition costs" incurred by the Commission for the

Clearinghouse contract, reimbursement of WMDVBE representative expenses, and contract administrator when retained, and  
(b) internal WMDVBE program costs of the affected utilities.

8. From the date of this order until July 1, 1993, the utilities shall establish and fund two separate escrow accounts. The utilities will need to fund these accounts on a monthly basis.

- a. The first escrow account shall fund the operations of the WMBE Clearinghouse. Subject to the Executive Director's approval, the contract administrator shall view, verify and make disbursements from the account for all Clearinghouse operations.
- b. The second escrow account shall fund the payment of the contract administrator. The Commission's WMDVBE staff shall notify the utilities of the sum needed to fund this escrow account, shall audit and review the activities of the contract administrator and shall approve payment of all Clearinghouse related activities.

9. The current contract between the utilities and Cordoba Corporation shall be terminated, and replaced by a new contract between the Commission and Cordoba Corporation. The utilities and the Commission's WMDVBE staff shall coordinate the timing of this contract termination and replacement.

10. Effective immediately upon the issuance of this order, the utilities subject to GO-156 shall exert their best efforts to:

- a. Establish a responsible individual within the utility organization to implement DVBE participation;
- b. Establish an outreach program to identify current and potential DVBEs; and
- c. Establish procedures to implement DVBE participation in utility procurement of services and products.

11. Each utility subject to GO-156 shall report to the Commission by December 31, 1992:

- a. The name and title, if any, of the responsible person designated pursuant to Ordering Paragraph 10.a.;
- b. The number of DVBEs identified pursuant to Ordering Paragraph 10.b.; and
- c. The total DVBE procurement pursuant to Ordering Paragraph 10.c., both by total dollars and by number of transactions with verified DVBEs.

This order is effective today.

Dated June 3, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

*Neal J. Shulman*  
NEAL J. SHULMAN, Executive Director

BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

FILED

MAR 20 1992

Order Instituting Rulemaking on )  
the Commission's Own Motion to )  
Revise General Order 156 )

SAN FRANCISCO OFFICE  
Docket No. R.91-02-011

Order Instituting Rulemaking into )  
the Implementation of Public )  
Utilities Code Sections 8281-8285 )  
Relating to Women and Minority )  
Business Enterprises (Petition to )  
Modify D.90-12-027 to Include )  
Disabled Veterans Business )  
Enterprises) and (Petition of )  
C.H.A.N.G.E.S. to Modify )  
D.90-12-027 and G0156 Concerning )  
WMBE Fuel Procurement.) )

Docket No. R.87-02-026

SETTLEMENT, STIPULATION AND AGREEMENT

Commission WMDVBE Staff  
ALLTEL/CP National Corporation  
AT&T Communications of California, Inc.  
Citizens Utilities Company of California  
Contel of California, Inc.  
GTE California Incorporated  
MCI Communications Corporation  
Pacific Bell  
Pacific Gas and Electric Company  
Pacific Power and Light Company  
Roseville Telephone Company  
San Diego Gas & Electric Company  
Sierra Pacific Power Company  
Southern California Edison Company  
Southern California Gas Company  
Southwest Gas Corporation  
U.S. Sprint Communications Company,  
Limited Partnership

Dated: March 20, 1992.



The following individual companies are each participating herein as members of the Indicated Utilities:

ALLTEL/CP National Corporation  
AT&T Communications of California, Inc.  
Citizens Utilities Company of California  
Contel of California, Inc.  
GTE California Incorporated  
MCI Communications Corporation  
Pacific Bell  
Pacific Gas and Electric Company  
Pacific Power and Light Company  
Roseville Telephone Company  
San Diego Gas & Electric Company  
Sierra Pacific Power Company  
Southern California Edison Company  
Southern California Gas Company  
Southwest Gas Corporation  
U.S. Sprint Communications Company,  
Limited Partnership

The parties respectfully request that the Commission promptly approve the Settlement as a full, fair, final and reasonable resolution of all the issues in this proceeding.

I. EXPLANATORY STATEMENT

The Settlement resolves issues of fact and law among the parties. It is requested that the Commission adopt this Settlement as a procedural or substantive resolution of all the issues in this proceeding.

This proceeding currently considers issues raised to revise G.O. 156 and the Commission program to implement Public Utilities Code Section 8281, et seq. Included within this Settlement are all issues raised in the current OIR proceeding (R.91-02-011) and the several petitions to modify G.O.156 filed since the commencement of the OIR proceeding (R.87-02-026).

The Indicated Utilities and the Staff believe that the issues in the above-referenced proceedings should be resolved through settlement. The issues are divided in this settlement into two categories: first, those issues that can be resolved by settlement at this time; and, second, those issues that should be deferred to a Phase II of Docket No. R.91-02-011. Should there be any issues not specifically referenced herein, they are deemed to be withdrawn from consideration. The Settlement also anticipates two proceedings: First, an OII for program and transition cost recovery; and second, a Phase II to Docket No. R.91-02-011. The items agreed to herein require a significant number of revisions to G.O. 156. A revised General Order incorporating the agreed upon changes is attached hereto as Appendix A.

It is understood and agreed by the parties hereto that this Settlement is made for the purpose of reaching a mutually acceptable outcome in this proceeding. A formal settlement conference as to this matter was noticed on March 6, 1992, and convened on March 17, 1992. A copy of the notice and the attendance list is attached hereto as Appendix B.

## II. RESOLVED ISSUES

### A. MOTION OF WMDVBE STAFF FOR EXPANSION OF [R.91-02-011] TO INCLUDE CONSIDERATION OF ADDITIONAL PROPOSALS

On November 7, 1991, the Staff filed a detailed motion concerning certain programmatic changes. The Indicated Utilities and the Staff have jointly agreed that the issues raised by the Staff motion should be resolved as follows:

1. General Order 156 should be modified to provide that the Commission maintain the clearinghouse program and shall directly contract with the WMBE Clearinghouse operator. In that regard, the Commission will assume the current contractual obligations of the utilities currently contracting with the WMBE Clearinghouse ("Contracting Utilities") subject to certain conditions as expressed below.

2. The Commission should be reimbursed for its contract costs by the utilities in the following fashion:

1. The Commission will take all necessary steps to collect its entire WMDVBE Staff budget, including clearinghouse contract costs, through its budget process. The costs will be billed to utilities through the Commission's Public Utility Reimbursement Account (Public Utilities Code Sections 431, et seq.). It is recognized that such budget treatment cannot be implemented until the 1993-94 budget year.



ii. Prior to July 1, 1993, the Commission shall bill the Contracting Utilities for Clearinghouse contract costs as described below:

(a) From the date of Commission approval of this Settlement until September 30, 1992, allocation of costs will be as allocated under the current process by which clearinghouse costs are treated; and,

(b) From October 1, 1992, a "transition cost" methodology which 1) allocates contract costs among utility classes in the fashion currently utilized for Commission overhead expenses through the Reimbursement Account, and, 2) sub-allocates among Contracting Utilities within the utility class by use of an approximation of the budget process allocation methodology. This methodology results in the following allocation:

ALLTEL/CP National	0.02%
AT&T	4.64%
Citizens	0.13%
Contel	0.63%
GTEC	6.82%
MCI	1.02%
PacBell	19.51%
PG&E	29.74%
PPL	0.20%
Roseville	0.10%
SDG&E	5.14%
Sierra	0.11%
SCE	19.07%
SoCalGas	12.26%
SW Gas	0.18%
U.S. Sprint	0.43%

3. As a result of the agreements contained within this document, any other proposals in the Staff Motion not specifically identified for settlement or reserved for a second phase of this proceeding are deemed withdrawn or denied.

4. In accordance with D.89-08-026, the parties urge the Commission to open by April 1, 1992, or a date as soon thereafter as reasonably possible, an OII to consider the appropriate method to recover a) "transition costs" incurred by the Commission for the clearinghouse contract, reimbursement of WMDVBE representative expenses, and contract administrator when retained, and b) internal WMDVBE program costs of the affected utilities. This provision is not intended to restrict any utility from filing earlier with the Commission for any particular cost recovery mechanism or treatment.

5. General Order 156, Section 3.2, relating to the Clearinghouse Advisory Board should be modified. The Board should be renamed "General Order 156 Advisory Board" ("Board"). The Board should meet no less than every other month. Membership on the Board will be one member for each utility and the current WMDVBE community representatives. A Service Disabled Veteran representative will be added as a permanent representative following the adoption of this Settlement by the Commission. Participation on the Board is voluntary and utilities are free to attend, or not, and may coordinate attendance or join with other utilities of

similar size or interests. The General Order 156 Advisory Board is limited to providing advice to the Commission Staff on matters relating to General Order 156 and Public Utilities Code Sections applicable to the General Order.

B. ISSUES FOR DECISION IN R.91-02-011

By Order dated February 6, 1991, the Commission instituted the instant OIR. The OIR process resulted in the delineation of specific issues and a request for comments on those issues. Three rounds of comments were submitted. Any issues not resolved or reserved herein are deemed withdrawn or denied. The Indicated Utilities and the Staff propose the following resolution of the delineated issues:

1. Utilities should not be ordered to track and report non-WMBE subcontracting expenditures.
2. The complaint provisions of General Order 156 (Sections 4.4 and 5) should be revised to reflect the significant changes encompassed within this Settlement. Further, the Commission has now given specific guidance to the parties as to its preference for handling of complaints through its decision in Scott Engineering vs. WMBE Clearinghouse (D.91-12-058). This guidance must be reflected in the General Order. The suggested changes to the General Order associated with the complaint process are attached herein as part of Appendix A.

3. An exhibit providing verification status of WMBE vendors will be provided by the utilities to the Commission Staff for calendar years 1991 and 1992. The use of the information will be resolved in Phase II. The parties will provide aggregate information by utility to the Staff concerning:

- i. Total WMBE Procurement dollars reported
- ii. Clearinghouse verified dollars
- iii. Percentage of vendors utilized that are verified by the clearinghouse.
- iv. Number of verified vendors used
- v. A breakdown of the above by ethnicity and gender.

This information for 1991 will be provided to the Commission Staff by May 1, 1992. The information for 1992 will be provided contemporaneous with the 1992 Annual Report. The Staff agrees that this information will be treated as confidential pursuant to Public Utilities Code Section 583 and General Order 66(c). Utilities are required to provide only verified WMBE vendor information starting with the 1993 Annual Report to be filed on March 1, 1994.

C. STAFF PETITION TO MODIFY R.87-02-026 CONCERNING SERVICE DISABLED VETERANS

1. The Indicated Utilities and the Staff agree that Service Disabled Veterans ("SDVs") shall be included within a separate section (new Section 4) of General Order 156, attached hereto. Section 4 reflects an interim program to incorporate SDVs into the G.O. 156 Program. It sets

forth the definition of SDVs in the California Public Utilities Code and the California Military and Veterans Code (§ 999).

2. Workshops will be held concerning the further details as to definitions, verification process and criteria for the incorporation of SDVs into the General Order 156 process and will be a topic for decision or settlement in Phase II of R.91-02-011.

D. SAN DIEGO GAS & ELECTRIC COMPANY PETITION TO MODIFY, OR ALTERNATIVELY TO INSTITUTE AN INVESTIGATION TO FACILITATE RECOVERY OF 1992 WMBE PROGRAM COSTS.

The parties agree that this matter is resolved by the procedure adopted for handling the Commission Staff motion filed November, 1991, specifically Section II.A.4, above.

E. PETITIONS OF C.H.A.N.G.E.S. TO MODIFY GENERAL ORDER 156 RE: WMBE FUEL PROCUREMENT.

These petitions are not included within this Settlement.

III. DEFERRED ISSUES

The Indicated Utilities and the Staff hereto agree that the following list of issues should be addressed in a supplemental, second phase of this proceeding (R.91-02-011). A procedural schedule for such issues should be adopted at a Prehearing Conference to be convened following approval of

this Settlement. The deferred Phase II issues are as follows:

1. Whether to revise G.O. 156, Section 2, to provide detailed verification standards and, if so, what standards should be incorporated into the General Order?
2. Under what conditions should SDVs be merged into the existing G.O. 156 program including; whether separate goals should be established for SDVs, and, what should be the verification process for SDVs?
3. Under what circumstances, whether or how the exhibits discussed in Section II.B.3 can be used?
4. What should the schedule be for the annual, generic WMBE proceeding?

#### IV. RESERVATIONS

The Settlement herein proposed was achieved after investigation, written comments and extensive settlement efforts. It represents a negotiated resolution of issues including those which the Commission has set for consideration. On balance, the parties believe the Settlement is fair and reasonable and in the public interest.

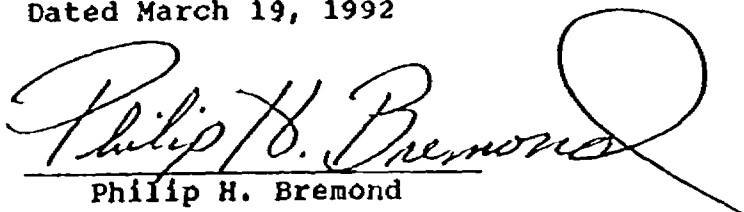
This Offer of Settlement is submitted pursuant to Rule 51 of the Commission's Rules of Practice and Procedure. Unless the settlement becomes effective, the Settlement, Stipulation and Agreement shall be privileged and shall not

be utilized in any manner. In any event, nothing contained therein shall constitute an admission or acceptance of any principle contained therein.

Neither this Settlement, Stipulation and Agreement nor any provision hereof shall become effective unless and until the Commission shall have entered an order approving this Settlement, Stipulation and Agreement without modification or condition, and such order shall have become final and no longer subject to rehearing. It is further agreed by all parties and the Staff that the various provisions of the Settlement are not severable, and that unless and until the Settlement becomes effective, it shall not be admissible in any proceeding.

WHEREFORE, the parties have agreed to this Settlement, Stipulation and Agreement as executed by their duly authorized representatives as of the date below and urge prompt Commission approval.

Dated March 19, 1992

  
Philip H. Bremond

WMDVBE Program Manager  
California Public Utilities  
Commission  
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San Francisco, CA 94102

  
David L. Huard

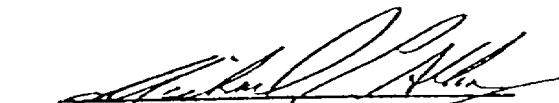
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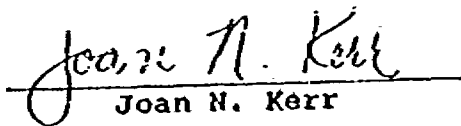
  
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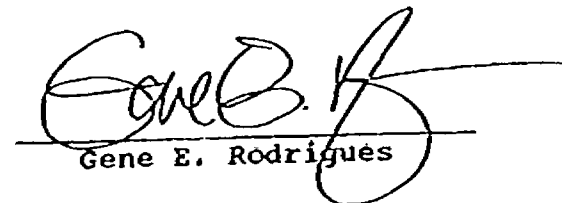
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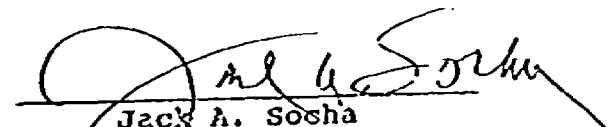
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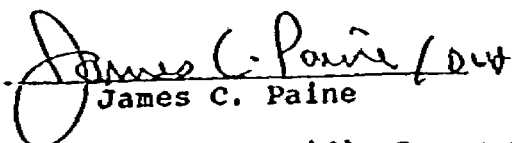
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GENERAL ORDER 156

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS TO INCREASE  
PARTICIPATION OF WOMEN, MINORITY AND DISABLED VETERAN  
BUSINESS ENTERPRISES IN PROCUREMENT OF CONTRACTS FROM  
UTILITIES AS REQUIRED BY PUBLIC UTILITIES CODE SECTIONS  
8281-8286

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,

90-12-027 and 92-\_\_\_\_-\_\_\_\_.

1. GENERAL

1.1 Intent

1.1.1 Purpose - These rules implement PU Code Sections 8281-8286 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 women, minority and disabled veteran business enterprises' (WMDVBE) procurement in all categories.

1.1.2 Revisions of Scope - These rules may be revised on the basis of experience gained in their application and/or changes in legislation. Utilities and other interested parties may individually or collectively file an application with the Commission for the purpose of amending these rules. Any such application shall clearly set forth the changes proposed and the supporting rationale.

1.1.3 In cases where the application of any of these rules results in undue hardship or unreasonable expense to a utility, the utility may request relief by filing an application in accordance with the Commission's Rules of Practice 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 as provided for in Article XII of the California Constitution.

- 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 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 must 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 the Small Business Act as amended (15 U.S.C. 637(d)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.
- 1.3.10 Disabled Veteran - a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.
- 1.3.11 "Control" means exercising the power to make policy decisions.
- 1.3.12 "Operate" means being actively involved in the day-to-day management and not merely acting as officers or directors.
- 1.3.13 "Goal" means a target which when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.
- 1.3.14 "Excluded category" means a category of products or services which may be removed from the dollar base used to establish goals, pursuant to Section 8.5

of this general order, because of the established unavailability of WMDVBES capable of supplying those products or services.

- 1.3.15 "Short-term goal" means a goal applicable to a period of (1) one year.
- 1.3.16 "Mid-term goal" means a goal applicable to a period of (3) three years.
- 1.3.17 "Long-term goal" means a goal applicable to a period of (5) five years.
- 1.3.18 "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.
- 1.3.19 "Clearinghouse" means a Commission-supervised program that shall conduct WMBE verifications and maintain a database of WMDVBES for the use of utilities and the Commission.
- 1.3.20 "Subcontract" means any agreement or arrangement between a contractor and any party or person (in which the parties do not stand in the relationship of an employer and an employee):
  - 1.3.20.1 For the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or
  - 1.3.20.2 Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

## 2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of women and minority business enterprises (WMBEs) for participation in utility WMDVBZ procurement programs.

- 2.1 The clearinghouse described in Section 3 of this General Order shall supply a verification form to applicants. An applicant may complete the verification forms and return them to the clearinghouse for processing and inclusion in the database.
- 2.2 In assessing the suitability of a WMDVBE 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 WMDVBE.
- 2.3 WMBEs shall be required to submit verification forms at least once every three years.
- 2.4 Completion of the verification application only initiates a verification of the business's WMBE status. Filing of an application does not guarantee verification.
- 2.5 The fact that a verified WMDVBE is included in the clearinghouse database shall neither be construed as an endorsement of its ability to perform nor shall such inclusion guarantee its business with the utilities.
- 2.6 WMBE verification forms shall be available for inspection by the Commission.
- 2.7 Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code Section 8285.

### 3. CLEARINGHOUSE

The Commission shall maintain a clearinghouse for the sharing of WMDVBE identification and verification information.

- 3.1 The primary purpose of the clearinghouse shall be to audit and verify the status of WMBEs, and to establish and maintain a database of WMDVBEs that is accessible to the Commission and to participating utilities.
- 3.2 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.

- 3.3 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 utilities that the WMBE will not be listed as a verified WMBE in the shared database until the renewal is completed.

#### 4. DISABLED VETERANS

The following rules and guidelines shall apply to service disabled veteran business enterprises (DVBE). "Disabled veteran" is defined in Section 1.3.10 of this General Order.

- 4.1 "Disabled veteran business enterprise" means a business concern certified by the administering agency as meeting all of the following requirements:

4.1.1 It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.

4.1.2 The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.

4.1.3 It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

4.2 "Administering Agency" means the California State Office of Small and Minority Business.

4.3 In order to qualify as a DVBE, businesses must meet the criteria in Section 4.1 and must present a current certificate from the California State Office of Small and Minority Business verifying that such criteria has been met.

5. GENERAL ORDER 156 ADVISORY BOARD

The Commission WMDVBE Staff shall consult with a General Order 156 Advisory Board (Board) to seek advice on matters relating to this General Order and to the Public Utilities Code sections applicable to this General Order.

5.1 The Board shall consist of a representative of each of the attending utilities and Black Americans (§1.3.5), Hispanic Americans (§1.3.6), Native Americans (§1.3.7), Asian Pacific Americans (§1.3.8), Women, and Disabled Veterans (§1.3.10).

5.2 Each non-utility group identified in Section 5.1 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 two-year terms. Representatives may serve multiple terms if reselected by the group they represent.

5.3 Participation on the Board is voluntary and the utilities are free to attend, or not, and may coordinate attendance or join with other utilities of similar size or interests.

5.4 The Board shall meet no less than every other month.

6. UTILITY IMPLEMENTATION

Each utility's WMDVBE program shall be designed to ensure that a fair proportion of product and services contracts are awarded to WMDVBES. The following minimum program elements shall be incorporated into each utility's WMDVBE program.

6.1 Internal Utility Program Development

Each utility shall maintain an appropriately sized staff to provide overall WMDVBE program direction and guidance and to implement WMDVBE program requirements.

6.1.1

Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMDVBE 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:

- (1) Review of WMDVBE 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;
- (2) Meetings or seminars to familiarize employees with WMDVBE program objectives, goals, and operations, and with the special problems confronting WMDVBES;
- (3) Programs to train and encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMDVBES.

6.2 External Outreach

Each utility shall implement an outreach program to inform and recruit WMDVBES to apply for procurement contracts.

6.2.1

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:

- (1) Actively seek out opportunities to identify WMDVBE contractors and to expand WMDVBE source pools;
- (2) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVBE contractors;

- (3) Work with WMDVBE 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) At the request of any unsuccessful WMDVBE bidder, provide information concerning the relative range/ranking of the WMDVBE 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;
- (5) To the extent possible, make available to WMDVBE contractors lists of utility purchase/contract categories which offer them the best opportunity for success;
- (6) Encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMDVBES;
- (7) Summarize this general order in its outreach program handouts. Such summaries shall state that WMDVBES will be furnished a complete copy of this general order upon request.

### 6.3 Subcontracting Program

Each utility shall establish and maintain a subcontracting program for the purpose of encouraging its prime contractors to utilize WMDVBE subcontractors.

- 6.3.1 The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMDVBE prime contractor outreach program.

- 6.3.2 The subcontracting program shall apply to the following:
- (1) Purchases/contracts exceeding \$500,000 for products and services;
  - (2) Construction contracts exceeding \$1,000,000;
  - (3) Purchases/contracts which offer WMDVBE subcontracting opportunities, regardless of value, where appropriate.

6.3.3 The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like, or to the procurement of products and services in excluded categories.

6.3.4 Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMDVBES as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMDVBES 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.

6.3.5 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, MINORITY AND  
DISABLED VETERAN OWNED BUSINESS  
ENTERPRISES

- (1) It is the policy of the utility that women, minority and disabled veteran owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts.

- (2) 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.
- (3) The contractor agrees to inform prospective WMDVBE subcontractors of their opportunity to request from the clearinghouse a verification application form and to return the completed form to the clearinghouse for processing and inclusion in the database.

- 6.3.6 Each utility is encouraged to inform suppliers of products and services that subcontracting with WMDVBES 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.
- 6.3.7 Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMDVBE subcontractors.
- 6.3.8 Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and grantees to engage WMDVBE subcontractors in all procurement categories which provide subcontracting opportunities.
- 6.3.9 Each utility may include awards to verified WMDVBE subcontractors in its WMBE results.

7. COMPLAINT PROCESS

The following rules and guidelines shall be used for complaints relating to this General Order.

7.1 Internal Utility Appeals Process

Each utility shall provide a mechanism through which WMDVBES or prospective WMDVBES can present complaints to the utility's management.

- 7.1.1 Complaints shall first be submitted to a WMDVBE program administrator within a

reasonable time after the event complained of. WMDVBES should be encouraged to make their complaints in writing;

- 7.1.2 Complaints shall be reviewed and investigated by the administrator and the administrator's decision communicated to the complainant within twenty (20) working days of receipt of the complaint by the WMDVBE program administrator;

7.2 WMDVBE Complaints to the Commission

In the event that a WMDVBE believes that a utility WMDVBE 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 WMDVBE 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 20, Chapter 1, of the California Code of Regulations). 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-related disputes between a utility and an existing or prospective WMDVBE, such as failure to win a contract award.

- 7.2.1 WMDVBE 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 Commission WMDVBE 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.

- 7.2.2 The Commission's Office of the Public Advisor may assist WMDVBES in preparing to file complaints against utilities.

### 7.3 Complaints Concerning WMBE Verification Decisions

All complaints concerning a verification decision of the clearinghouse will be governed by the following procedures.

7.3.1 Business enterprises whose WMBE status has been denied by the clearinghouse, or who have been deverified by the clearinghouse, may appeal the clearinghouse' decision to the Commission after exhausting their remedies under the internal appeal process implemented by the clearinghouse, a copy of which will be provided by the clearinghouse upon request by the affected business enterprise.

7.3.2 Third parties may file complaints challenging the WMBE status of businesses whose WMBE verification is pending, or who have already been verified by the clearinghouse. Such complaints must: 1) be in writing and be addressed to the clearinghouse; 2) set forth with specificity the grounds for the challenge in ordinary and concise language; 3) include the name and address of the complainant; and, (4) be served on the affected WMBE. Such complaints may include supporting documentation.

The clearinghouse will review third party complaints to determine whether there appears to be a factual basis for questioning the challenged party's WMBE status. If the clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall inform the complainant and affected WMBE of this determination in writing within 20 business days of the receipt of the complaint. The clearinghouse shall inform the complainant of its right to appeal this determination to the Commission.

7.3.3 If the clearinghouse determines that there appears to be a sufficient factual basis for questioning the challenged party's WMBE status, it shall require the challenged party to provide the



clearinghouse information sufficient to permit the evaluation of its WMBE status. Following a thorough review and evaluation of the information presented by both parties, and an opportunity for each party to respond to the clearinghouse proposed resolution of the verification challenge, the clearinghouse shall notify the parties of its final verification decision and of their right to appeal this decision to the Commission.

7.3.4 During the pendency of a third party challenge of a verified WMBE, the presumption that the challenged party is a WMBE will remain in effect.

7.3.5 If a third party complaint does not include the minimum criteria set forth above, or if the third party rescinds its complaint, the clearinghouse may review the complaint to determine whether it merits unilateral consideration by the clearinghouse.

7.4 Commission Review of WMBE Verification Complaints

Complaints regarding clearinghouse verification decisions shall comply with Article 3 of the Commission's Rules of Practice and Procedure, except that the clearinghouse, rather than one or more utilities, shall be named as the defendant. When reviewing appeals of clearinghouse verification decisions, the Commission shall determine whether there is substantial evidence in the record, when considered as a whole, to support the conclusion reached by the clearinghouse.

8. GOALS

Each utility shall annually set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBEs. Goals shall be set annually for each major product and service category which provides opportunities for procurement. "Substantial goals" mean goals which are realistic and clearly demonstrate a utility's commitment to increase WMDVBES share of the utility's purchases and contracts.

8.1 The utilities shall consider the following factors in setting their goals:

- 8.1.1 Total utility purchasing and/or contracting projections;
  - 8.1.2 Availability of WMDVBES and competitiveness in the geographical area served by the utility;
  - 8.1.3 Market dynamics based on historical data and trends;
  - 8.1.4 Other appropriate factors which would increase the WMDVBES' share of utility business.
- 8.2 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, contracts with minority women owned business enterprises can be counted toward either the minority owned business enterprise goal or the women owned business enterprise goal, but not toward both. Similarly, contracts with disabled veteran business enterprises can be counted either as disabled veteran business enterprise procurement or the appropriate women or minority business enterprise goal, but not toward both.
- 8.3 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.
- 8.4 Goals shall also be established for 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 8.2 (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.
- 8.4.1 Goals shall be set for each major category of products or services. Goals need not be set for products or services

which fall within an "excluded category" created by a utility pursuant to Section 8.5.

- 3.5 A utility may create an "excluded category" of products or services where it is clearly evident that WMDVBES 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 WMDVBES capable of supplying such products or services. Because there may in the future be WMDVBES 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 WMDVBE program progress and future plans.
- 8.6 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 WMDVBES 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 (May 30, 1988).
- 8.7 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; however, where appropriate, non-numeric goals may also be included.
- 8.8 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 .

8.5, or which are included in a fuel procurement base established pursuant to Section 8.10.

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

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

8.10.1 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 herein;

8.10.2 The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic onshore natural gas markets;

8.10.3 Utilities which purchase from WMDVBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.5 does not permit utilities to exclude product and services categories for which there are available WMDVBES;

8.10.4 Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under Section 8.5 and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMDVBES.

8.11 Each utility shall make special efforts to increase utilization and encourage entry into the marketplace of WMDVBES in product or service categories where there has been low utilization of WMDVBES, such as legal and financial services,

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

8.12 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.

8.13 Utilities shall report their goals in their annual plans.

9. ANNUAL REPORT

Utilities shall serve twelve (12) copies on the Executive Director, by March 1 of each year, beginning in 1989, an Annual Report on their WMDVBE Program.

9.1 The Annual Report shall contain at least the following elements:

- 9.1.1 A description of WMDVBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities;
- 9.1.2 A summary of WMDVBE 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;
- 9.1.3 An itemization of WMDVBE program expenses provided in the format required by the Cost Exhibit in D.89-08-026;
- 9.1.4 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;
- 9.1.5 A summary of prime contractor utilization of WMDVBE subcontractors;
- 9.1.6 A list of WMDVBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status;

ATTACHMENT A

- 9.1.7 A summary of purchases and/or contracts for products and services in excluded categories.
- 9.1.8 A description of any efforts made to recruit WMDVBE suppliers of products or services in procurement categories where WMDVBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- 9.1.9 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 WMDVBE suppliers. Such justification must include a description of any efforts made to find and/or recruit WMDVBE suppliers of products or services in the excluded category.
- 9.1.10 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 WMDVBE 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 WMDVBE goals for fuel;

2. A comprehensive description of the specific outreach programs used to seek WMDVBE 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.

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

9.3 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).

#### 10. ANNUAL PLAN

Utilities shall serve twelve (12) copies on the Executive Director, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for increasing women, minority and disabled veteran business enterprises procurement in all categories.

10.1 The Annual Plan shall contain at least the following elements:

- 10.1.1 Short, mid, and long term goals set as required by Section 6, supra;
- 10.1.2 A description of WMDVBE program activities planned for the next calendar year. This description shall include both internal and external activities;
- 10.1.3 Plans for recruiting WMDVBE suppliers of products or services where WMDVBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- 10.1.4 Plans for seeking and/or recruiting WMDVBE 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 WMDVBE suppliers.

10.1.5 Plans for encouraging both prime contractors and grantees to engage WMDVBES in subcontracts in all categories which provide subcontracting opportunities.

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

#### 11. 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 8286 and this general order, as required by Section 8283 (e).

11.1 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.

11.2 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 \_\_\_\_\_, 1992, at San Francisco, California.



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the ) R. 91-02-011  
Commission's Own Motion to revise )  
General Order 156. )

Order Instituting Rulemaking into )  
the implementation of Public )  
Utilities Code Sections 8281-8285 ) R. 87-02-026  
relating to women and minority )  
business enterprises. )  
(Petition to Modify D. 90-12-027 )  
to include Disabled Veterans )  
Business Enterprises.) )

Order Instituting Rulemaking into )  
the implementation of Public )  
Utilities Code Sections 8281-8285 ) R. 87-02-026  
relating to women and minority )  
business enterprises. )  
(Petition of C.H.A.N.G.E.S. to )  
Modify D. 90-12-027 and GO 156 )  
re: WMBE fuel procurement.) )

NOTICE OF SETTLEMENT CONFERENCE

Pursuant to Rule 51.1(b) of the Commission's Rules of Practice and Procedure, the utilities listed below (the "Indicated Utilities") and the WNDVBE Staff of the California Public Utilities Commission ("Staff") have scheduled a settlement conference in an attempt to resolve procedurally and substantively all issues pending before the Commission in the above referenced dockets. All parties are invited to attend.

The settlement conference will begin at 10:00 A.M. on Tuesday, March 17, 1992 at the Commission's offices, State Office

ATTACHMENT A

Building, 505 Van Ness Avenue, San Francisco, California.

Dated March 6, 1992.

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ATTACHMENT A

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached NOTICE OF SETTLEMENT CONFERENCE have been served on all parties of record in Rulemaking Nos. 91-02-011 and 87-02-026, as shown on attached Service List, by mailing of copy thereof to each such party and to his attorney of record, properly stamped and addressed.

BY: *x Diane David x David*  
Diane David

DATE: March 6, 1992

## ATTACHMENT A

ATTENDANCE LIST  
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March 17, 1992

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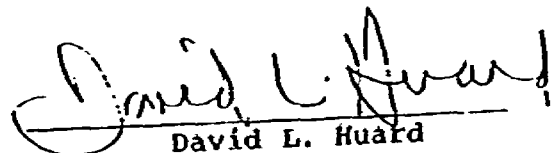
R.91-02-011 et al.

ATTACHMENT A  
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties as shown on the attached service list pursuant to the Commission's rules of practice and procedure.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at Los Angeles, California, this 20th day of March, 1992.

  
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