

Decision 22-04-035 April 7, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise General Order 156 to Include Certain Electric Service Providers and Community Choice Aggregators and Encourage Voluntary Participation by Other Non-Utility Entities Pursuant to Senate Bill 255; Consider LGBT Business Enterprise Voluntary Target Procurement Percentage Goals; Incorporate Disabled Business Enterprises; Modify the Required Reports and Audits; and Update Other Related Matters.

Rulemaking 21-03-010

DECISION REVISING GENERAL ORDER 156 SUPPLIER DIVERSITY PROGRAM TO IMPLEMENT SENATE BILL 255, ADOPT A VOLUNTARY PROCUREMENT GOAL FOR LGBT BUSINESS ENTERPRISES, INCORPORATE PERSONS WITH DISABILITIES BUSINESS ENTERPRISES, AND OTHER UPDATES

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Appendix B - Adopted Version of General Order 156

DECISION REVISING GENERAL ORDER 156 SUPPLIER DIVERSITY PROGRAM TO IMPLEMENT SENATE BILL 255, ADOPT A VOLUNTARY PROCUREMENT GOAL FOR LGBT BUSINESS ENTERPRISES, INCORPORATE PERSONS WITH DISABILITIES BUSINESS ENTERPRISES, AND OTHER UPDATES

Summary

In accordance with Senate Bill 255 (Bradford, Stat. 2019, Ch. 407), this decision revises the California Public Utilities Commission's (Commission) Supplier Diversity Program set forth in General Order 156 to incorporate community choice aggregators and electric service providers. The decision also incorporates a voluntary procurement goal for Lesbian, Gay, Bisexual, and Transgender (LGBT) business enterprises and adds a new group of business enterprises, those owned and controlled by persons with disabilities.

Additionally, this decision adopts workforce and board diversity reporting and makes other program revisions to reflect recent Commission decisions on the Supplier Diversity Program. The newly adopted General Order 156 is attached as Appendix B. Additional issues may be considered by the Commission in a phase 2 of this proceeding.

This proceeding remains open.

1. Background

In 1986, the California Legislature approved Assembly Bill (AB) 3678 (Moore, Stats. 1986, Ch. 1259) to encourage utilities to award a proportionate share of total utility procurement contracts to women and minority business enterprises. In subsequent years and pursuant to Public Utilities Code (Pub. Util.) Code §§ 8281-8286, the California Public Utilities Commission (Commission) adopted a Supplier Diversity Program and expanded qualifying

business enterprises to include disabled veteran business enterprises¹ and Lesbian, Gay, Bisexual, and Transgender (LGBT) business enterprises.²

The core principle of the Commission's Supplier Diversity Program is set forth in Pub. Util. Code § 8281(a), which declares that the economic well-being of the state of California "cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed."³ Since 1988, the Commission has implemented this state policy through its Supplier Diversity Program set forth in General Order 156 (GO 156). The Commission has revised GO 156 several times. Most

¹ Senate Bill (SB) 2398 (Dills, Stats. 1990, Ch. 516) amended Pub. Util. Code §§ 8281-8286 to include disabled veteran business enterprises as an additional entity eligible under the Commission's Supplier Diversity Program. In 1992, in Decision (D.) 92-06-030, the Commission incorporated disabled veteran business enterprises into General Order 156. In 1995, the Commission established a 1.5% target procurement goal for disabled veteran business enterprises.

² AB 1678 (Gordon, Stats. 2014, Ch. 633) amended Pub. Util. Code §§ 8281-8286 to include LGBT business enterprises. On June 11, 2015, the Commission adopted D.15-06-007, which revised the Supplier Diversity Program to begin implementation of AB 1678.

³ Pub. Util. Code § 8281(a) provides, in full: "The Legislature hereby finds and declares that the essence of the American economic system of private enterprise is free, open, and transparent competition. Only through free, open, and transparent competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be ensured. The preservation and expansion of that competition are basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of women, minority, disabled veteran, and LGBT business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, are awarded to women, minority, disabled veteran, and LGBT business enterprises, and to maintain and strengthen the overall economy of the state."

recently, the Commission adopted revisions to GO 156 in D.15-06-007.⁴ This version of GO 156 is referred to herein as the *2015 version of GO 156*.

On March 23, 2021, the Commission adopted Rulemaking (R.) 21-03-010 to serve as the forum for considering revisions to its Supplier Diversity Program.⁵ One purpose of this rulemaking is to incorporate the requirements of SB 255 (Bradford, Stat. 2019, Ch. 407) into GO 156. SB 255 extended the scope of the Commission's Supplier Diversity Program to include certain non-utility entities, *i.e.*, community choice aggregators and electric service providers. This rulemaking also serves as the forum for adopting a voluntary procurement goal for LGBT business enterprises in furtherance of the Commission's directives in D.15-06-007⁶ and for consideration of a number of issues, including (1) expanding the Supplier Diversity Program to include businesses owned and controlled by persons with disabilities; (2) modifying the annual reporting requirements and audit requirements; (3) adding reporting requirements on workforce and board diversity; (4) clarifying the complaint procedure at Section 7 of GO 156; (5) refining the methodologies used to set voluntary procurement goals; (6) reviewing the current *en banc* hearing procedures at Section 11.3 of GO 156; and (7) determining whether the use of the term *business enterprise* instead of *owned business enterprises* in GO 156 when referring to, for

⁴ On June 11, 2015, the Commission adopted D.15-06-007, which revised GO 156 to implement Assembly Bill (AB) 1678 (Gordon, Stats. 2014, Ch. 633), adding LGBT business enterprises to the Commission's *Supplier Diversity Program*. D.15-06-007, *Decision Adopting the Amended GO 156 with Amendments Necessary to Comply with AB 1678 by Extending the Provisions of the Utilities' Supplier Diversity Program to LGBT Business Enterprises* (June 11, 2015).

⁵ All documents filed in this rulemaking can be found on the Commission's website at the *Docket Card* for this proceeding.

⁶ D.15-06-007, *Decision Adopting the Amended GO 156 with Amendments Necessary to Comply with AB 1678 by Extending the Provisions of the Utilities' Supplier Diversity Program to LGBT Business Enterprises* (June 11, 2015).

example, women business enterprises, will better align with the terminology used in Pub. Util. Code § 366.2 and §§ 8281-8286.

After the Commission issued this rulemaking, parties filed comments on the preliminary scope of issues and the preliminary schedule presented. Parties filed comments on April 12, 2021 and reply comments on April 19, 2021. The following parties filed comments: Pacific Gas and Electric Company (PG&E), Southern California Electric Company (SCE), and, jointly, Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E), Bear Valley Electric Service, Inc., Liberty Utilities (CalPeco Electric) LLC, PacifiCorp dba Pacific Power, Southwest Gas Corporation (collectively, the Small and Multi-Jurisdictional Utilities or SMJUs), Southwest Gas Corporation (Southwest Gas), Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), LLC, Bright House Networks Information Services (California), LLC (collectively, Charter), Comcast Phone of California, LLC, Cox California Telecom, Pacific Bell Telephone Company, AT&T Corp., SBC Long Distance, LLC, AT&T Mobility, Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc. (collectively, Joint Telco Parties), California Choice Energy Authority (CalChoice),⁷ California Community Choice Association (CalCCAs),⁸

⁷ CalChoice is a California joint powers authority that provides regulatory and support services to small cities that have elected to implement and operate Community Choice Aggregation programs. CalChoice submitted comments on its behalf and on behalf of the cities of Baldwin Park, Lancaster, Pico Rivera, Palmdale, Pomona, Rancho Mirage, San Jacinto, Santa Barbara and the Town of Apple Valley and their respective community choice aggregator programs.

⁸ California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, Clean Power SF, Desert Community Energy, East Bay Community Energy, Lancaster

Footnote continued on next page.

California Water Association (CalWater Association), Great Oaks Water Company (Great Oaks Water), Shell Energy North America (U.S.), L.P. and Alliance for Retail Energy Market (Shell Energy and AReM), Sierra Telephone Company, Inc., BuildOUT California (BuildOUT CA), Center For Accessible Technology (CforAT), National Diversity Coalition,⁹ National LGBT Chamber of Commerce, and Small Business Utility Advocates (SBUA).

On June 25, 2021, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo), which set forth the issues to be addressed and the schedule for the proceeding. The Scoping Memo sought to include most of the issues suggested by parties in the proceeding and indicated that any remaining issues may be considered in the future. We may consider some of these remaining issues in a phase 2 of this proceeding.

On July 16, 2021, the Commission staff issued a proposal (staff proposal) to provide parties with more information about the issues framed in the Scoping Memo and to serve as a starting point for consideration of all these issues.¹⁰ The

Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

⁹ National Diversity Coalition members include the National Asian American Coalition, Advancing the Seed, Inc., African American Chamber of Commerce, African American Fire Fighter Museum, Asian Business Association, Asian Journal, Boys of Color of Santa Ana, Community Connections LLC, COR Community Development Corporation, El Mundo, Impact Southern California, Instituto de Avance Latino, Island Pacific Supermarkets, The Jesse Miranda Center for Hispanic Leadership, Korean American Coalition LA, Latino Coalition for Community Leadership, Los Angeles Latino Chamber of Commerce, Macedonia Community Development Corporation, Network of Myanmar American Association, Santa Maria Group, OASIS Center International, Templo Calvario CDC, and Youth Business USA.

¹⁰ The staff proposal was provided to the service list of this proceeding via an ALJ ruling on July 16, 2021 and is available on the Commission's website at the *Docket Card* for this

Footnote continued on next page.

staff proposal presented ideas and recommendations on the following issues: (1) a methodology to determine the voluntary procurement goal for LGBT business enterprises, (2) incorporating non-utility entities, specifically, community choice aggregators and electric service providers, into the mandatory reporting requirements of GO 156, (3) expanding GO 156 to include businesses owned and controlled by people with disabilities, (4) clarifying reporting and audit requirements, (5) adding workforce and board diversity reporting requirements, and (6) updating the complaint/appeals process at Section 7 of GO 156.¹¹

On July 21, 2021, staff conducted a public workshop. The agenda for the workshop included the topics addressed in the staff proposal and also an overview of the methodology used by the Commission to establish prior voluntary procurement goals, proposals for a goal for LGBT business enterprises, presentations on how other states are considering directing utilities to report on workforce and board diversity, and discussions on the importance of including people with disabilities in the Commission's Supplier Diversity Program.

On August 4, 2021 and August 18, 2021, parties filed comments on staff proposal and the July 21, 2021 workshop. The following parties filed comments: PG&E, SCE, SoCalGas/SDG&E, Charter, AT&T Corp., AT&T Wireless Operations Holding, Inc., SBC Long Distance, LLC, Santa Barbara Cellular Systems, Ltd., New Cingular Wireless PCS, LLC, and Pacific Bell Telephone Company, California Community Choice Association, CalChoice, Comcast

proceeding. The staff proposal was prepared by the Commission's Executive Director, the Business and Community Outreach Group.

¹¹ Out-of-state business enterprises may participate in the Supplier Diversity Program but must meet the statutory requirements and the requirements of GO 156.

Phone of California, LLC, National Diversity Coalition, California Water Association, BuildOUT CA, CforAT, Comcast Phone of California, LLC, Great Oaks Water, Cellco Partnership, XO Communications Services, and MCI Communications Services LLC, Charter, AT&T Corp., Pacific Bell Telephone Company, SBC Long Distance, LLC, Santa Barbara Cellular Systems, Ltd., AT&T Mobility Wireless Operations Holdings, Inc., New Cingular Wireless PCS, LLC., Hispanics In Energy, Southwest Gas Corporation, Cox California Telecom, LLC dba Cox Communications (Cox Telecom), Sierra Telephone Company, Inc., Shell Energy North America (US), L.P. and Alliance for Retail Energy Markets, SBUA, and California Choice Energy Authority.

On September 14, 2021 and September 22, 2021, the staff held small workshops to discuss the contents of the reporting required by GO 156, specifically, the reporting for the new non-utility entities added to GO 156 by SB 255, community choice aggregators and electric service providers. Parties attended and participated. No workshop was held regarding the reporting for smaller utilities but may be held in the future.

On the topic of establishing a voluntary procurement goal for LGBT suppliers, the Commission received a number of letters from public officials including the California Legislative LGBTQ Caucus,¹² U.S. Senator Feinstein, U.S. Senator Alex Padilla, Assemblymember (Retired) Richard Gordon, Former State Senator Mark Leto, Mayor of El Cerrito Pro Tem Gabriel Quinto, California League of Cities, Mayor of Palm Springs Christie Holstege,

¹² Members of the California Legislative LGBTQ Caucus include Assemblymember Evan Low, Chair Senator Susan Talamantes Eggman, Vice Chair President Pro Tempore Toni Atkins, Assemblymember Sabrina Cervantes, Senator John Laird, Assemblymember Alex Lee, Assemblymember Chris Ward, and Senator Scott Wiener.

Mayor of San Diego Todd Gloria, State Controller Betty Yee, and State Insurance Commissioner Ricardo Lara.

These letters and the comments filed in the proceeding have been reviewed. The public comments submitted on the *Docket Card* of this proceeding have also been reviewed.

2. Issues

The June 25, 2021 Scoping Memo identified the below issues to be determined in this proceeding:

1. SB 255. How should the Commission revise the Supplier Diversity Program to implement the provisions of SB 255?
 - 1.1. How should the Commission revise the Supplier Diversity Program to reflect the provisions in SB 255 which changed the application of Pub. Util. Code § 8283(a), (c), and (d) to entities with gross annual California revenues above \$25 million, rather than gross annual revenues above \$25 million?
 - 1.2. How should the Commission revise the Supplier Diversity Program pursuant to SB 255 to include community choice aggregators¹³ with gross annual revenues above \$15 million as required by Pub. Util. Code § 366.2(m) and electric service providers¹⁴ with gross annual California revenues above \$25 million as required by Pub. Util. Code § 8283(a), (c), and (d)?
 - 1.3. How should the Commission implement the annual reporting and annual plans requirement in SB 255 imposed on the newly added community choice aggregators pursuant to Pub. Util. Code § 366.2(m)

¹³ Community choice aggregator is an entity created by counties and cities under the authority of Pub. Util. Code § 366.2 to competitively procure electricity in the market for customers within the county or city.

¹⁴ Electric service provider is defined in Pub. Util. Code § 394 as a non-utility entity that offers electric service to customers within the service territory of an electric utility.

and that these requirements must be in “a form that the commission may require”?

- 1.4. When implementing the directive in SB 255 pursuant to Pub. Util. Code § 8283 to incorporate electric service providers into the Supplier Diversity Program, should the Commission require simplified reporting information compared to the reporting information currently required of utilities? If so, what reporting information should be included?
- 1.5. Pursuant to Pub. Util. Code § 366.2(m)(3) in SB 255, should the Commission revise the Supplier Diversity Program to reflect the provisions of SB 255 that “encourage” community choice aggregators with gross annual revenues under \$15 million “to voluntarily adopt a plan for increasing procurement from small, local, and diverse business enterprises in all categories”?
- 1.6. How should the Commission implement the directive in SB 255 to revise the Supplier Diversity Program to include smaller utilities and electric service providers, *i.e.*, those with total annual California revenues between \$15 million and \$25 million as required by Pub. Util. Code § 8283(f), and how should the Commission implement the directive in Pub. Util. Code § 8283(f) for the Commission to adopt “simplified” reporting requirements for these smaller utilities and electric service providers?
- 1.7. When implementing the directives in SB 255 to incorporate community choice aggregators and electric service providers into the Supplier Diversity Program, should the Commission extend the audit requirements in Section 9.1.10 of GO 156 to any community choice aggregators and electric service providers?
- 1.8. Pursuant to Pub. Util. Code § 8283(e)(1), should the Commission revise the Supplier Diversity Program

to reflect the provisions of SB 255 that “encourage” certain smaller utilities and electric service providers, *i.e.*, those with gross annual California revenues under \$15 million, “to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement” and submit a report to the Legislature?

- 1.9. Pursuant to Pub. Util. Code § 8283(e)(2), should the Commission revise the Supplier Diversity Program to add exempt wholesale generators, distributed energy resource contractors, and energy storage system companies as “encouraged to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis”?
2. LGBT Business Enterprises. What is an appropriate target procurement percentage goal for LGBT business enterprises to be included in the Supplier Diversity Program considering existing methodologies and how should the target procurement percentage goal take into consideration the December 31, 2020 proposal by some utilities to the Commission’s staff to adopt a goal of 0.5 percent?
3. Person with Disabilities Business Enterprises. Should the Commission expand the Supplier Diversity Program to include business enterprises owned and controlled by persons with disabilities? If so, should the Commission designate an entity or entities for certifying a person or entity as a business enterprise owned and controlled by persons with disabilities and, in addition, should the Commission adopt a voluntary target procurement percentage goal for business enterprises owned and controlled by persons with disabilities and what process should the Commission rely upon to consider and adopt such a target?

4. Other Revisions to General Order 156. Should the Commission revise GO 156 to include economic impact of the Supplier Diversity Program and workforce and corporate board diversity data? Should the Commission modify GO 156 to authorize the Commission's staff to conduct audits, in addition to those audits described at Section 9.1.10 of GO 156, of any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Supplier Diversity Program? Should the Commission clarify the complaint process at Section 7 of GO 156 as it applies to any entity falling within the Supplier Diversity Program, including community choice aggregators, electric service providers, and utilities? Should the Commission refine the *en banc* hearing process at Section 11.3 of GO 156?

3. Discussion

The Commission addresses the above issues in the following sequence:

(1) incorporating the directives in SB 255 into GO 156, (2) the voluntary procurement goal for LGBT business enterprises, (3) business enterprises owned and controlled by person with disabilities, and (4) other revisions to GO 156.

3.1 Senate Bill 255

3.1.1 Non-Utility Entities, Smaller Utilities, and Revenue Thresholds

SB 255 amended Pub. Util. Code § 366.2 and §§ 8281-8286 to add certain community choice aggregators, electric service providers, and smaller utilities to the Supplier Diversity Program. SB 255 also adopted thresholds based on revenues to determine whether a community choice aggregator, electric service provider, or small utility falls within the legislation.

According to SB 255, the revenue threshold for community choice aggregators is \$15 million in gross annual California revenues. SB 255 modified the revenue threshold applicable to larger utilities to gross annual California

revenues above \$25 million and adopted the same threshold for newly added electric service providers. SB 255 also added revenue thresholds to include smaller utilities and smaller electric service providers, those with gross annual California revenues between \$15 million and \$25 million.

In comments regarding potential revisions to GO 156 on these statutory changes, no parties oppose adding these new entities and modifying the revenue thresholds in GO 156. Parties do offer suggestions on how the Commission should implement the annual requirement to submit plans and reports by community choice aggregators, electric service providers, and smaller utilities. The Commission addresses these issues below.

In this decision, consistent with the statutory directives in SB 255 and in the absence of opposition, the Commission incorporates community choice aggregators, electric service providers, and smaller utilities together with the corresponding new and revised revenue thresholds into GO 156. We adopt March 2023 as the due date for the first submissions of the required documents to the Commission for all newly added entities.¹⁵

3.1.2 Annual Plans and Reports for Community Choice Aggregators

SB 255 amended Pub. Util. Code § 366.2(m) to require annual plans and reports for the newly added community choice aggregators.

The Commission is directed to adopt rules for these annual reports in “a form that the commission may require.”¹⁶ Reflecting more specific directive for annual plans, SB 255 requires that “each community choice aggregator with

¹⁵ Parties may file a request for an extension of time under Rule 16.6 of the Commission’s Rules of Practice and Procedure.

¹⁶ Pub. Util. Code § 366.2(m)(2).

gross annual revenues exceeding fifteen million dollars (\$15,000,000) annually submit a detailed and verifiable plan to the commission for increasing procurement from small, local, and diverse business enterprises.”¹⁷ Regarding annual reports, community choice aggregators are required to “submit a report to the commission regarding its procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories.”¹⁸

The staff proposal suggests that these newly added entities be subject to the same rules and requirements for annual reports and plans as currently exist for utilities.¹⁹ National Diversity Coalition agrees, stating that community choice aggregators should submit the same information as the utilities and, in addition, use a standard reporting form to allow for straightforward comparisons between all participants.²⁰

Other parties suggest the Commission should require no information or much less information from these entities. CalCCAs raise a potential legal conflict if community choice aggregators attempt to comply with both Proposition 209 and the GO 156 reporting requirements of procurement goals that now apply to utilities.²¹ CalCCAs state that, to legally include community choice aggregators in the Supplier Diversity Program, GO 156 must be substantially revised to avoid legal conflicts with Proposition 209. CalCCAs

¹⁷ Pub. Util. Code § 366.2(m)(1).

¹⁸ Pub. Util. Code § 366.2 (m)(2)(A).

¹⁹ July 16, 2021 Staff Proposal at 11-12.

²⁰ National Diversity Coalition August 4, 2021 Comments at 16.

²¹ Proposition 209 refers to a California ballot proposition which, upon approval in November 1996, amended the state constitution to prohibit state governmental institutions from considering race, sex, or ethnicity, specifically in the areas of public employment, public contracting, and public education.

point to further legal concerns, stating that the reporting requirements in the 2015 version of GO 156 do not reflect state and local directives and related contracting laws that apply to community choice aggregators as local government entities. Furthermore, CalCCAs point out that the Commission's reporting requirements for community choice aggregators must reflect the fact that, based on the business model of the typical community choice aggregator, a smaller pool of eligible suppliers exists, since procurement is almost entirely electricity supply - which accounts for 94% of spend by a typically community choice aggregator.²²

Similarly, CalChoice suggests the Commission adopt lesser or no annual reporting and plan requirements for smaller community choice aggregators, such as those operating below 700 GWh.²³ For this reason, CalChoice urges the Commission not to adopt the staff proposal because it does not recommend different reporting requirements for small and large community choice aggregators.²⁴ CalChoice further offers support for the position of Shell Energy and AReM, Comcast, and CalWater Association that the Commission staff should collaborate with both electric service providers and community choice aggregators to develop less burdensome regulatory requirements.²⁵ Comcast states that any required information in the annual reports and plans should be created to facilitate easy participation by these newly added entities.²⁶ CalWater Association agrees, stating that the Commission should reduce the existing

²² CalCCAs August 4, 2021 Comments at 3-5.

²³ CalChoice August 4, 2021 Comments at 3.

²⁴ CalChoice August 4, 2021 Comments at 4 and 7-8

²⁵ CalChoice Reply Comments at 3.

²⁶ Comcast August 4, 2021 Comments at 9.

regulatory requirements, as applied to community choice aggregators, because they would be too burdensome.

Based on these comments, the Commission finds that Pub. Util. Code § 366.2(m)(1) requires community choice aggregators to submit annual plans that include opportunities for increasing procurement from “small, local, and diverse business enterprises,” but not necessarily from specific business enterprises.

Regarding the annual reports submitted by community choice aggregators, the Commission finds it reasonable to permit more limited reporting than currently required of utilities due to their business model but the annual reports must include all business enterprises under GO 156. In making this decision, the Commission relies on Pub. Util. Code § 366.2(m)(2)(B), which provides the Commission with discretion to create reporting requirements for community choice aggregators that are different from those applicable to utilities. More specifically, we find that the annual reports should reflect the fact that energy procurement represents the majority of expenses for a typical community choice aggregator, at approximately 94%. As such, the business model for community choice aggregators provides fewer opportunities to contract with all suppliers.

In addition, energy procurement historically has not included a large number of eligible suppliers. We want to see progress in this area of energy procurement and staff is currently working with relevant covered entities subject to GO 156 to increase spending with eligible suppliers in this area.

Staff will meet with community choice aggregators and other interested stakeholders, as needed, to gather information on the procurement areas where reporting would be meaningful. Staff will develop annual report requirements for community choice aggregators, which are more limited than those required

of utilities. Staff may modify the plan and report requirements (and any related forms). Staff will place these plan and report requirements (and any related forms) on the Commission's webpage for the GO 156 Supplier Diversity Program as well as send the plan and report requirements (and any related forms) and the website link to community choice aggregators, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156). If staff modifies the plan and report requirements (or any related forms), staff will provide a copy of these revisions to community choice aggregators, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156).

The Commission declines to carve out an exception for smaller community choice aggregators from the reporting requirements, such as those operating below 700 GWh, as suggested by some parties. All community choice aggregators with \$15 million in gross annual California revenues must comply with the reporting requirements.

3.1.3 Annual Reports and Plans for Larger Electric Service Providers

SB 255 amended Pub. Util. Code § 8283 to incorporate electric service providers into the Supplier Diversity Program. The amendments to Pub. Util. Code § 8283 include a requirement that certain electric service providers submit annual plans and annual reports to the Commission.²⁷ SB 255 creates two general categories of electric service providers and permits different reporting based on revenues.²⁸ In this section, the Commission establishes requirements for annual reports and annual plans applicable to electric service providers with gross

²⁷ Pub. Util. Code § 8283(a) and (d).

²⁸ Pub. Util. Code § 8283(f) instructs the Commission to rely on "*a simplified form*" for reporting purposes.

annual California revenues exceeding \$25 million.²⁹ Next, we address the requirements for smaller electric service providers, *i.e.*, those with gross annual California revenues between \$15 million and \$25 million.

The staff proposal makes general recommendations to modify the reporting requirements in GO 156.³⁰ Several parties provided comments on this topic, which largely align with the issues discussed above regarding the appropriate scope of the reporting requirements for community choice aggregators.

Regarding electric service providers, Shell Energy and AReM state that the majority of expenses of electric service providers are energy procurement contracts.³¹ Shell Energy and AReM also state that, because electric service providers are not regulated by the Commission and do not have guaranteed cost recovery for expenses related to reporting, as do utilities, that electric service providers should be subject to lesser requirements.³² Shell Energy and AReM suggest the Commission adopt a variety of limited reporting requirements, such as permitting electric service providers to report a summary of corporate (parent and affiliates) activity with eligible suppliers, provide copies of reports already submitted to other state agencies, or offer attestation by corporate officers of efforts to pursue procurement from eligible suppliers.³³ The Regents of the University of California state that some electric service providers are also public

²⁹ Pub. Util. Code § 8283(a).

³⁰ July 16, 2021 Staff Proposal at 5-6.

³¹ Shell Energy and AReM August 4, 2021 Comments at 4.

³² Shell Energy and AReM August 4, 2021 Comments at 4.

³³ Shell Energy and AReM August 4, 2021 Comments at 6.

agencies and, as a result, must comply with Proposition 209 when collecting and submitting data regarding diversity matters.³⁴

Based on these comments, the Commission finds it reasonable to adopt the same requirements applied to utilities with the same revenue threshold under the statute but that the required annual reports and annual plans for electric service providers with gross annual California revenues over \$25 million, may reflect the fact that energy procurement represents most of the expenses for a typical electric service provider.

To the extent that an electric service provider is also a public agency, the Commission acknowledges that additional legal restrictions on data collection may apply.³⁵ For these reasons, staff is directed to take into consideration both the limited scope of business of electric service providers and, in certain circumstances, legal constraints that may limit annual plans for public agencies when developing forms. Regarding annual reports, an electric service provider that is also a public agency is required to submit a report to the commission regarding its procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories. No other convincing reasons were presented to apply a different standard to larger electric service providers than apply to similarly sized utilities.

As acknowledged above, the business model for electric service providers provides fewer opportunities for contracts with suppliers beyond energy procurement and is a sector that historically does not include many eligible

³⁴ Regents of University of California March 7, 2022 Comments to Proposed Decision at 1-3.

³⁵ Regents of University of California March 7, 2022 Comments to Proposed Decision at 2.

suppliers. Again, we want to see progress in this area and staff is currently working with stakeholders on this topic.

Staff will meet as needed with electric service providers with annual gross California revenue above \$25 million, including those electric service providers that are also public agencies, and interested stakeholders to gather information from these electric service providers and develop requirements for annual plans and annual reports (and any related forms) that include the information generally consistent with Section 9 and 10 of GO 156, while taking into consideration the more limited scope of business of an electric service provider and, in certain circumstances, the limited abilities of electric service providers that are public agencies to present data in annual plans.

Staff will place these reporting requirements (and any related forms) on the Commission's webpage for the GO 156 Supplier Diversity Program as well as send reporting requirements and the website link to electric service providers, stakeholders, and the service list of this proceeding (or a successor proceeding related to GO 156). Staff may modify the reporting requirements (and any related forms) for these electric service providers. If staff makes modifications, staff will provide these revisions to these electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156).

3.1.4 Reporting for Smaller Electric Service Providers and Smaller Utilities

SB 255 added subsection (f) to Pub. Util. Code § 8283, which includes a requirement that smaller utilities and electric service providers, *i.e.*, those with gross annual California revenues between \$15 million and \$25 million, provide the Commission with data regarding procurement from the identified business

enterprises. Pub. Util. Code § 8283(f) provides that the Commission must adopt a “simplified form” for these smaller utilities and electric service providers “to annually submit data ...to the commission on its procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories.” Unlike Pub. Util. Code § 8283(a), SB 255 does not direct the Commission to require that these smaller utilities and electric service providers to submit plans for “increasing procurement” from women, minority, disabled veteran, and LGBT business enterprises. Instead, SB 255 states at Pub. Util. Code § 8283(f) that the Commission direct smaller utilities and electric service providers to submit data on “procurement” from the eligible suppliers.

The staff proposal explains this aspect of SB 255 but does not offer a specific approach for the Commission to implement this statutory language.³⁶ Several parties provide comments interpreting the reference to “simplified form” for smaller utilities and electric service providers, as set forth in Pub. Util. Code § 8283(f). Great Oaks Water states that the Commission must, consistent with SB 255, adopt a “simplified form” for submission on an annual basis and that the Commission should direct staff to work with smaller utilities to develop this form.³⁷ Great Oaks Water suggests, for example, that the Commission adopt the same requirements that currently applies to larger utilities and then staff should hold workshops to refine the required materials into a more simplified format.³⁸ Additionally, Great Oaks Water offers to help create this form and requests that the first time the “simplified form” is presented for review, not be in the

³⁶ July 16, 2021 Staff Proposal at 5-6.

³⁷ Great Oaks Water August 4, 2021 Comments at 7-8.

³⁸ Great Oaks Water August 4, 2021 Comments at 7-8.

proposed decision for this proceeding.³⁹ Sierra Telephone points out that Pub. Util. Code § 8283(f) directs the Commission to adopt a simplified form, which must mean a different form than exists to reflect the fact that small utilities have less resources to allocate to reporting.⁴⁰ Sierra Telephone suggests that, starting in 2022, the Commission adopt simplified requirements with only a narrative description of activities during the past calendar year regarding outreach and exploring procurement opportunities with eligible suppliers, with a list of contracts with eligible suppliers, including a general description of the procurement categories, the classification of the supplier, and the expected value of the contract.⁴¹ CalWater Association states that the Commission should direct staff to work with smaller electric service providers and utilities to develop simplified reporting requirements that do not merely duplicate the existing requirements for larger utilities.⁴² Similarly, Shell Energy and AReM state that the Commission should direct staff to meet with smaller utilities and electric service providers to develop “simplified” reporting requirements.⁴³

We agree with parties and find that, while SB 255 does not expand upon the meaning of the term “simplified form” in Pub. Util. Code § 8283(f), the Commission interprets this term to mean simplified as compared to the existing requirements. For this reason, consistent with the recommendations of parties and the language in Pub. Util. Code § 8283(f), the Commission adopts less burdensome requirements. We direct staff to meet with these smaller utilities

³⁹ Great Oaks Water August 4, 2021 Comments at 8.

⁴⁰ Sierra Telephone April 12, 2021 Comments at 1-2.

⁴¹ Sierra Telephone April 12, 2021 Comments at 1-2.

⁴² CalWater Association August 4, 2021 Comments at 7.

⁴³ Shell Energy and AReM August 4, 2021 Comments at 2.

and electric service providers to develop simplified annual reporting requirements.

Staff will meet, as needed, with smaller utilities and electric service providers, *i.e.*, those with annual gross California revenue between \$15 million and \$25 million and other interested parties in 2022 to gather information from parties on areas where annual reporting would be meaningful. We further authorize staff to develop reporting that is more limited than set forth in Section 9 and Section 10 of GO 156.

Staff will place these reporting requirements (and any related forms) on the Commission's webpage for the GO 156 Supplier Diversity Program as well as send these reporting requirements and the website link to smaller utilities and smaller electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156). Staff may modify the reporting requirements (and any related forms) and will provide any revisions to smaller utilities and smaller electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156).

3.1.5 Voluntary Plans by Other Entities

SB 255 made several revisions to the provisions of Pub. Util. Code § 366.2 and §§ 8281-8286 to encourage other entities to increase procurement from eligible suppliers. No statutory directives require these entities to submit reports or plans to the Commission. Instead, these entities are encouraged by SB 255 to develop plans to increase procurement from eligible suppliers and submit reports to the Legislature on their progress. Below is a brief review of these voluntary provisions.

First, SB 255 added Pub. Util. Code § 366.2(m)(3) to "encourage" community choice aggregators with gross annual revenues under \$15 million "to

voluntarily adopt a plan for increasing procurement from small, local, and diverse business enterprises....”

Second, SB 255 modified Pub. Util. Code § 8283(e)(1) to “encourage” certain small utilities and electric service providers, *i.e.*, those with gross annual California revenues under \$25 million, “to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement.”

Third, SB 255 also revised Pub. Util. Code § 8283(e)(2) to add exempt wholesale generators, distributed energy resource contractors, and energy storage system companies to other already identified types of businesses that are “encouraged to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis.”

Parties did not offer comments on the addition or revisions related to these voluntary provisions of Pub. Util. Code §§ 8281-8286 for increasing procurement from eligible suppliers. The staff proposal did not address this aspect of SB 255.

In response, the Commission finds that adding a section to GO 156 that identifies those businesses encouraged by statute to voluntarily increase procurement from eligible suppliers and, in more limited instances, report to the Legislature, will serve to promote the state policy of increasing procurement from these eligible suppliers, as set forth in Pub. Util. Code §§ 8281-8286. Adding a section to GO 156 on this topic will also serve to memorialize the voluntary efforts of these smaller utilities, smaller community choice aggregators, smaller electric service providers, and other types of businesses to increase procurement from eligible suppliers and submit voluntarily reports of their efforts to the Legislature.

3.2 LGBT Business Enterprises – Voluntary Procurement Goal

In compliance with Pub. Util. Code §§ 8281-8286, the Commission has adopted voluntary procurement goals for women, minority, and disabled-veteran business enterprises. No penalties or sanctions exists if these voluntary goals are not achieved. Currently, these voluntary procurement goals total 21.5% of contracts, divided as follows: women business enterprises at 5%, minority business enterprises at 15%, and disabled veteran business enterprises at 1.5%. In D.15-06-007, the Commission added LGBT business enterprises to the Supplier Diversity Program but not a voluntary procurement goal.⁴⁴ The Commission adopted a five-year process that involved gathering data to be used later to adopt a voluntary procurement goal. The Commission now seeks to adopt such a voluntary procurement goal. In the Scoping Memo, the assigned Commissioner asked parties to make recommendations on the appropriate voluntary procurement goal for LGBT business enterprises for the Supplier Diversity Program. In response, the parties presented the Commission with percentages ranging from 0.5% to at least 1.5%.

The staff proposal suggests that the goal for LGBT should be attainable and aspirational.⁴⁵ Based on the average utility historical spend over the past five years of 0.135%, the staff proposal recommends the Commission defer adopting a final goal and instead adopt a provisional goal of 0.5% with a

⁴⁴ D.15-06-007, *Decision Adopting the Amended General Order 156 with Amendments Necessary to Comply with Assembly Bill 1678 by Extending the Provisions of the Utilities' Supplier Diversity Program to Lesbian, Gay, Bisexual and/or Transgender (LGBT) Business Enterprises* (June 11, 2015). In D.15-06-007, the Commission added LGBT-owned business enterprises to the *Supplier Diversity Program*. Additional modifications were made D.11-05-019, with minor corrections in D.12-01-030 and D.12-01-031.

⁴⁵ July 16, 2021 Staff Proposal at 8-9.

4-year extension period, during which time the utilities and LGBT representatives work together to increase awareness and enrollment of LGBT business enterprises in the Supplier Clearinghouse, and then Commission should reevaluate the goal based on the new average utility spending.⁴⁶

Some parties express disappointment that the Commission relied upon a five-year process, rather than a shorter process, for developing a goal. BuildOut CA states that the Commission should have acted much quicker.⁴⁷ In retrospect, a more streamlined means of establishing a goal would have been preferable.

Elected officials also sent letters to the Commission urging the Commission to adopt a goal of at least 1.5% for LGBT business enterprises.⁴⁸ These public officials state that, for example:

As you know, there is no penalty for failing to meet this goal. It is also important to note that these procurement goals are more than a matter of diversity – they are a statement of the CPUC’s values. Setting the procurement goal for LGBTQ business so far below other participants sends a message that the CPUC does not value our community.⁴⁹

BuildOUT CA and NGLCC, urge the Commission to adopt a goal of at least 1.5% because, they state, sufficient LGBT businesses enterprises exist and the goal

⁴⁶ July 16, 2021 Staff Proposal at 8-9.

⁴⁷ BuildOut CA August 4, 2021 Comments at 2.

⁴⁸ The Commission received letters from the California Legislative LGBTQ Caucus, U.S. Senator Alex Padilla, Assemblymember (Retired) Richard Gordon, Former State Senator Mark Leto, Mayor of El Cerrito Pro Tem Gabriel Quinto, California League of Cities, Mayor of Palm Springs Christie Holstege, Mayor of San Diego Todd Gloria, State Controller Betty Yee, and State Insurance Commissioner Ricardo Lara. These public officials urged the Commission to adopt a percentage procurement goal of at least 1.5% for LGBT Business Enterprises.

⁴⁹ Letter of September 10, 2021 from the California Legislative LGBTQ Caucus.

should be aspirational.⁵⁰ BuildOUT CA characterizes the 0.5% goal as too low⁵¹ and argues that LGBT business enterprises should be treated similarly to other diverse businesses, such as disabled veteran business enterprises, and provided with a 1.5% goal.⁵² SBUA states that sufficient LGBT business enterprises exist to adopt a 1.5% goal.⁵³

Meanwhile, some parties note that there are challenges in reaching 1.5% immediately. At a July 21, 2021 workshop, the Joint Utilities⁵⁴ and the Los Angeles LGBT Chamber of Commerce note that the Supplier Clearinghouse does not include many certified LGBT business enterprises in general nor in the Standard Industry Classification with available contract opportunities.⁵⁵ CalWater Association explains that to increase the pool of LGBT entities available for contracting, the Commission must establish an expedited and streamlined system for incorporating LGBT businesses already certified by national entities as recognized by the Supplier Clearinghouse so that contract spend can be recorded as diverse spend under the Commission's Supplier Diversity program.⁵⁶

⁵⁰ BuildOUT CA August 4, 2021 at 6 and NGLCC April 12, 2021 Comments at 3-4.

⁵¹ BuildOUT CA April 12, 2021 Comments at 3-4.

⁵² NGLCC April 14, 2021 Comments at 4.

⁵³ SBUA August 18, 2021 Reply Comments at 3.

⁵⁴ The Joint Utilities describe themselves as a group of industry professionals representing CPUC-regulated utilities that gather periodically to discuss issues and share best practices specific to supplier diversity program activities and advancing opportunities for diverse business enterprises.

⁵⁵ Standard Industry Classification (SIC) may include different business categories such as heavy construction contractors, communications, and depository institutions.

⁵⁶ CalWater Association March 1, 2022 Comments on Proposed Decision at 2-3.

Other groups argue for using existing data as the basis for developing targets that are attainable. The utilities, individually and through the “Joint Utilities,” recommend the Commission adopt a 0.5% goal based on historical data collected by various utilities over the past five years.⁵⁷ The recommendation of the Joint Utilities was prepared in response to a directive by the Commission in D.15-06-007, which set forth a multi-step and multi-year process for utilities to gather data on utility contracting with LGBT business enterprises and to use that historical data gathered over that five year period to support a recommendation for a goal that the Commission could consider adopting.⁵⁸ The Joint Utilities state that the average four-year (2016–2019) average spend totaled 0.135%.⁵⁹ Based on this average, the Joint Utilities state that an aspirational goal would be 0.5%. SDG&E/SoCalGas point out that the goal of 0.5% for LGBT would result in an overall goal for diverse spend of 22%.⁶⁰

National Diversity Coalition does not offer a specific percentage for consideration but states that the goal must be reasonable and recommends the Commission consider both historical spend over the past five years and

⁵⁷ The Joint Utilities recommendations was submitted to the Commission’s staff by email dated December 31, 2020.

⁵⁸ D.15-06-007, Ordering Paragraph 6(e)(ii) at 43, the Commission directed all covered utilities to “...file a joint report and recommendation for the Commission’s review of whether the Commission should, going forward, set a numerically-based percentage target goal, as appropriate, for LGBTBE procurement...” (LGBTBE is an acronym for LGBT Business Enterprises.)

⁵⁹ As evidence of the other efforts made to increase procurement, the Joint Utilities state that “Over the past four years, the utilities have contributed more than \$1.3 million in sponsorship funding to support development, outreach, and other program activities for LGBTBE firms. In addition, the utilities have attended and participated in multiple conferences, matchmaking sessions, and other events.”

⁶⁰ SDG&E and SoCalGas April 12, 2021 Comments at 2.

demographic data,⁶¹ such as the estimated percentage of LGBT population in the relevant service territory.⁶² National Diversity Coalition also suggests that the goals should be based on the LGBT proportion of population and the number of LGBT certified in the database of the Supplier Clearinghouse.⁶³

Comcast suggests the Commission consider permitting the covered entities⁶⁴ to individually set goals beyond the 0.5% to “allow flexibility for entities with different operations, needs for services, and available contracting opportunities.”⁶⁵ Comcast also suggests that, after three years, the Commission could revisit whether to change the target goal of 0.5%.⁶⁶ Comcast argues that the goal of 0.5% is supported by data collected pursuant to the process adopted in D.15-06-007.

In response to the suggestion the Commission rely on historical data to set a goal, BuildOUT CA presented some limitations of using historical data for the LGBT goal. BuildOUT CA states that over the past several years, in the absence of any adopted goal, utilities were not sufficiently committed to increasing procurement from LGBT business enterprises which, in turn, is reflected in a lower procurement spend during the past five years. They reason that

⁶¹ BuildOUT CA August 4, 2021 Comments at 12-13, stating that demographic data suggests that LGBT workforce is approximately 6% of population in California and National Diversity Coalition August 4, 2021 Comments at 12 stating “available information indicates LGBT individuals comprise approximately 5% of the California population.”

⁶² National Diversity Coalition August 4, 2021 Comments at 9 and 12.

⁶³ National Diversity Coalition March 1, 2022 Comments at 4.

⁶⁴ The terms “covered entities” is used herein to mean all the companies subject to the mandatory reporting requirements in Pub. Util. Code § 366.2 and §§ 8281-8286 and GO 156, including utilities, community choice aggregators, and electric service providers meeting certain revenue thresholds.

⁶⁵ Comcast April 12, 2021 Comments at 2.

⁶⁶ Comcast April 12, 2021 Comments at 2.

subsequent use of that procurement data to establish the LGBT goal would create an unreasonably low goal.⁶⁷ BuildOUT CA also reasons that historical data is inherently reflective of the past societal discrimination and should not be a sole determinate for setting goals.⁶⁸

The Commission considers establishing LGBT procurement goals to be critical for increasing the engagement and participation of LGBT business enterprises in the Supplier Diversity Program. While the data collected during the intervening years is informative in establishing a goal, we are also persuaded that relying on historical data is not enough to implement the statutory directives in Pub. Util. Code § 8281(b)(2)(A) to “[e]ncourage greater economic opportunity” and increase procurement for LGBT business enterprises in Pub. Util. Code § 8283(a). Historical data reflects past barriers to full participation in the utility industry and may also reflect too little effort by some utilities to increase opportunities to contract with LGBT business enterprises. Our adopted voluntary procurement goal should promote greater engagement by utilities and other entities toward increasing participation by LGBT business enterprises in supplier procurement opportunities. In other words, the goal must be ambitious too.

For these reasons, we adopt the following voluntary procurement goals for LGBT business enterprises over the next three years: 2022 of 0.5%, 2023 of 1.0%, and 2024 of 1.5%. Our directive balances the reliance on historical data with our objective of increasing procurement from LGBT business enterprise amidst unique barriers to entry.

⁶⁷ BuildOUT CA April 18, 2021 Reply Comments at 6.

⁶⁸ BuildOUT CA August 8, 2021 Comments at 2.

The Commission commits to work, alongside covered entities, to promote the 1.5% procurement goal, including reaching out to the community to identify LGBT businesses that can work with covered entities and encouraging more LGBT businesses to become certified with the Supplier Clearinghouse. We also direct the Supplier Clearinghouse to streamline certification of LGBT businesses already certified by national certification entities.

Lastly, the Commission notes that the recommendation provided on December 31, 2020 by the Joint Utilities includes next steps toward increasing procurement from LGBT business enterprises. We strongly encourage all utilities, community choice service providers, electric service providers, and relevant LGBT business enterprises and organizations to incorporate these next steps, or make similar efforts, to promote increased procurement from LGBT business enterprises set forth below:⁶⁹

(1) Joint Utilities, individually and/or collectively:

- Continue to promote and publicize technical assistance and capacity building programs to facilitate LGBT Business Enterprises supplier awareness and drive attendance.
- Assess and identify sponsorship opportunities with LGBT advocacy, chamber, and community-based organizations, specifically to support the creation and development of enhanced programs - Joint Utilities member companies to support at least one LGBT organization in their area.
- Expand sharing of current and upcoming contracting opportunities with LGBT Business Enterprises suppliers and advocacy organizations.

⁶⁹ R.21-03-010 at Attachment A-E, December 31, 2020 Joint Utilities Group: *LGBTBE Spend Goal Recommendation*.

(2) LGBT Advocacy, Chamber, and Community-Based Organizations:

- Develop engagement strategy to drive and increase LGBT Business Enterprises participation at outreach and other events.
- Establish a centralized email address (accessible by each LGBT advocacy, chamber, community-based organization) for Joint Utilities member companies to share their contracting opportunities and other information.
- Collaborate with Joint Utilities member companies to develop targeted technical assistance and capacity building events, including programs to address LGBT Business Enterprises' interest in working with regulated utilities and increase the number of LGBT Business Enterprises available across key purchasing categories - Continue Procurement Series: How to Get Certified (*i.e.*, Supplier Clearinghouse, NGLCC, other options), Contract Readiness, Requesting A Debrief or Feedback, Strategic Sourcing, Pre/Post Award, etc., and Tier 1 Educational Series.

(3) Both Joint Utilities and LGBT Organizations:

- Assess feasibility to recognize firms certified through agencies beyond the Supplier Clearinghouse and the CAV process; expand pool of LGBT Business Enterprise suppliers and opportunity for reportable spend.
- Partner on developing a strategy to increase Tier 2 subcontracting spend with LGBT Business Enterprises, including expanding engagement of Prime/Tier 1 suppliers.

3.3 Persons with Disabilities Business Enterprises

In R.21-03-010, the Commission announced its intention to consider adding business enterprises owned and controlled by persons with disabilities

into General Order 156.⁷⁰ The Commission noted that this topic was raised at the Commission's September 29, 2020 *En Banc* hearing, a public meeting the Commission convenes annually to discuss all topics related to the Supplier Diversity Program.⁷¹ In the Scoping Memo for this proceeding, the assigned Commissioner presented a number of additional related issues, such as whether to designate an entity for certifying these business enterprises and whether to adopt a voluntary procurement percentage. The July 16, 2021 staff proposal addressed these issues. In addition, parties filed comments on these questions. We address each question, separately, below.

3.3.1 Incorporating Persons with Disabilities Business Enterprises into GO 156

Most parties support including business enterprises owned and controlled by persons with disabilities, including PG&E, SCE, Comcast, Cox California Telecom, Joint Telco Parties, CforAT, Charter, Southwest Gas and SBUA.

CforAT explains 23% of Californians have some type of disability.⁷² CforAT also addresses employment-related issues and explains that people with disabilities face barriers to participation in many areas of California's economy, are unrepresented or underrepresented in employment, and are disproportionately low income.⁷³ According to studies cited by CforAT, 22.8% of people with disabilities in California live in poverty, as compared to 10.7% without disabilities, a poverty gap of 12.1%.⁷⁴ SCE states that including this

⁷⁰ R.21-03-010 at 3.

⁷¹ R.21-03-010 at 3.

⁷² CforAT April 12, 2021 Comments at 3.

⁷³ CforAT April 12, 2021 Comments at 3.

⁷⁴ CforAT April 12, 2021 Comments at 4.

group in the Commission's Supplier Diversity Program will serve to address these employment-related issues, further diversify in the supply chain, and provide more innovative ideas, unique perspectives, and collaborations.⁷⁵

Some of the parties that support including persons with disabilities in the program nevertheless express reservations based on the fact that the underlying statutory framework for the Commission's Supplier Diversity Program, Pub. Util. Code §§ 8281-8286, does not include business enterprises owned and controlled by persons with disabilities, beyond disabled veterans.⁷⁶ These parties suggest the Commission wait to add this group until after the Legislature directs the Commission to make this modification. For example, Comcast "supports in principle the expansion of the Supplier Diversity Program to include business enterprises owned and controlled by non-veteran disabled persons, ultimately, the Commission may not have the legislative authority to do so. ... So far, there has been no legislative mandate...."⁷⁷ Cox California Telecom suggests the Commission wait but also proactively engage the Legislature to amend the statute to include business enterprises owned and controlled by persons with disabilities in the program.⁷⁸

After considering the comments, we find now is the right time to incorporate persons with disabilities into the Supplier Diversity Program because incorporating persons with disabilities into our program is consistent with the

⁷⁵ SCE August 4, 2021 Comments at 5.

⁷⁶ The Commission added disabled veterans to the Supplier Diversity Program by D.92-06-030, *Interim Opinion* (June 3, 1992) pursuant to SB 2398 (Dills, Stats. 1990, Ch. 516) amended Pub. Util. Code §§ 8281-8286 to include disabled veteran business enterprises as an additional entity eligible under the Commission's *Supplier Diversity Program*.

⁷⁷ Comcast April 12, 2021 Comments at 3. (fn. omitted.)

⁷⁸ Cox California Telecom August 4, 2021 Comments at 3.

intent of Pub. Util. Code §§ 8281-8286 and will further the goal of the program to include historically unrepresented or underrepresented groups in contracting with utilities, community choice aggregators and electric service providers. While in the past the Commission has added business enterprises to GO 156 pursuant to directives from the Legislature, the Commission is not prohibited from identifying a group to further enhance its Supplier Diversity Program.

In this regard, we find the comments by CforAT persuasive. The intent of the Commission's Supplier Diversity Program is to advance the well-being of the state by supporting the growth of business enterprises operated by members of groups that have faced historical disadvantages in certain aspects of the utility industry. People with disabilities, similar to women, minorities, disabled veterans, and LGBT persons, face barriers to participation in many areas of the state's economy. As a result, it is well documented that persons with disabilities are unrepresented or underrepresented in employment and are disproportionately low income. For all these reasons, the Commission finds that now is the appropriate time to include persons with disabilities in the Commission's Supplier Diversity Program even if this group is not included in a statutory directive. The Commission finds that including person with disabilities in the Supplier Diversity Program is consistent with the intent of the existing statutes to support persons who face historical disadvantages in certain areas of the utility industry.

Therefore, we expand the program to include the business enterprises owned and controlled by people with disabilities to further their inclusion in the utility-related business community. The Commission suggests this group be referred to as *persons with disabilities business enterprises* for purposes of General

Order 156, consistent with the suggestion by CforAT.⁷⁹ CforAT also suggests that all business enterprises currently certified as disabled veteran businesses enterprises be permitted to automatically be certified under this new group, persons with disabilities business enterprises.⁸⁰ We agree with CforAT and direct Supplier Clearinghouse to implement a process to automatically certify disabled veteran business enterprises as persons with disabilities business enterprises upon presentation of evidence of such certification by disabled veteran business enterprises from the Department of General Services.

3.3.2 Definition of Persons with Disabilities Business Enterprises

Based on our decision to incorporate persons with disabilities business enterprises into the Supplier Diversity Program, the Commission now addresses implementation questions. First, we address how to define this group for purposes of GO 156.

The staff proposal suggests a definition, which is supported by Disability:IN, as follows: a for-profit business at least 51% owned, managed, and controlled by a person with a disability.⁸¹

In contrast, a definition that tracks the definitions for woman, minorities, and LGBT business enterprise would be the following: Persons with Disabilities Business Enterprise means (1) a business enterprise (a) that is at least 51% owned by a person or persons with a disability or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more persons with a

⁷⁹ CforAT August 4, 2021 Comments at 4.

⁸⁰ CforAT August 4, 2021 Comments at 4 and 8.

⁸¹ July 16, 2021 ALJ Ruling, Attachment - Staff Proposal at 9.

disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.⁸²

We find that a definition that is consistent with the definitions adopted in the statute and for other business enterprise will create a more consistent approach when applying the requirements of this program to this new group. For this reason, we adopt the following definition for GO 156:

Persons with Disabilities Business Enterprise means (1) a business enterprise (a) that is at least 51% owned by a person or persons with a disability or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more persons with a disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.

This definition does not include a requirement that the owner be domiciled in California.

3.3.3 Reporting Requirements for Persons with Disabilities Business Enterprises

Next, we address whether the Commission should adopt reporting requirements and, if so, what should those requirements include. We agree with CforAT that reporting of procurement with persons with disabilities business enterprise should start as soon as possible. CforAT states that, “The Commission should require that reporting entities report their spending with business enterprises owned and controlled by persons with disabilities, which would create substantial, verifiable economic benefits for those business enterprises and the communities in which they operate.”⁸³ We find that reporting will provide the Commission and stakeholders with valuable information to further

⁸² The 2015 version of General Order 156 at Sections 1.3.4; Pub. Util. Code § 8283.

⁸³ CforAT August 4, 2021 Comments at 3.

understand how to encourage participation from persons with disabilities business enterprises. Therefore, we direct covered entities to submit information on Persons with Disabilities Business Enterprises in their annual reports and annual plans due in March 2024. This reporting will be done in a manner consistent with other eligible suppliers under GO 156.

3.3.4 Types of Proof to Establish Persons with Disabilities Business Enterprises

The next question we address for purposes of implementing our decision to incorporate persons with disabilities business enterprises into GO 156 is what types of proof should be submitted to establish a company falls within this new group. Regarding the type of proof needed to establish that a business enterprise is owned and controlled by individuals with disabilities, CforAT provides suggestions based on the types of proof currently accepted by the Supplier Clearinghouse for other eligible persons or groups.⁸⁴

We find the suggestions of the types of proof by CforAT, which are similar to the existing types of proof used by Supplier Clearinghouse to certify a woman, minority, and LGBT business enterprises, are reasonable.⁸⁵ Therefore, we adopt

⁸⁴ CforAT August 4, 2021 Comments for 4-6.

⁸⁵ At this time, the Commission is aware of only one entity that certifies suppliers as owned and controlled by a person with a disability, Disability:IN. The website for Disability:IN is as follows: <https://disabilityin.org/resource/supplier-certification-checklist/>. The list of disability qualifiers appearing on its website include: (one required for each eligible owner): (1) Records issued from a licensed, registered, or certified vocational rehabilitation specialist (i.e., State or private) stating that the applicant individual is a person with a disability; (2) An Individualized Education Program (IEP) can also be submitted for an applicant who has a learning disability; (3) Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits stating that the applicant individual is a person with a disability; (4) Disability:IN Physician's Form from a licensed medical professional (e.g., a physician or other medical professional duly certified to practice medicine by a State, the District of Columbia, or a U.S. Territory) stating that the applicant individual is a person with a disability; and (5) Service-Disabled Veteran-Owned Business Enterprise, must

Footnote continued on next page.

the following and, in addition, authorize staff to add to this list so that the list reflects any appropriate changes in this area in a timely manner:

- documentation from a licensed, registered, or state or private certified vocational rehabilitation specialist affirming that the applicant/person is a person with a disability;
- documentation from a federal or state agency (including the District of Columbia or a U.S. territory) that issues or provides disability benefits confirming the owner has a disability;
- documentation from a licensed medical professional (*e.g.*, a physician or other medical professional duly certified to practice medicine by a state, the District of Columbia or a U.S. Territory) confirming the owner has a disability;
- an Individualized Education Program (IEP) for an owner who has a learning disability;
- a letter/written signed statement from a leader of the Disability Chamber of Commerce or an affiliate chamber confirming to the disability status of the owner;
- three letters of reference from personal contacts who:
(a) have known the owner for over one year and (b) can attest, in a signed statement, to the owner's disability status;
- a letter/written signed statement by a leader or board member from a disability advocacy organization attesting to the owner's disability status;
- proof of media coverage, including publications, newspapers, or articles, explicitly stating the disability status of the owner;
- a letter/written signed statement from a physician or attorney establishing the disability status of the owner;

submit a Department of Defense Form 214 (DD214), as well as their Disability Ratings Letter from the Veterans Administration.

- certificates, awards, recognition of the owner as outstanding members of the disability community; or
- documentation of participation in a program by owner that provides benefits based on disability.

3.3.5 Entity to Certify Persons with Disabilities Business Enterprises

Another question we address for purposes of implementing our decision to incorporate persons with disabilities business enterprises into GO 156 is whether to designate a particular entity or entities, beyond the Supplier Clearinghouse, to serve the purpose of certifying or verifying a business enterprise is owned and controlled by a person with a disability.

The staff proposal recommends utilizing the Supplier Clearinghouse and/or a comparable agency to perform certification of eligibility to participate in the program, which the staff proposal states would also be consistent with the past practice of the Commission.⁸⁶ Likewise, several parties suggest adopting a process similar to the process relied upon by the Supplier Clearinghouse and also permit verification by a comparable agency. Some parties also specifically identify a certain agency for this purpose, Disability:IN (formerly known as US Business Leadership Network or USBLN), and suggest the Commission authorize it to perform this role.⁸⁷ Disability:IN is a non-profit organization that certifies business enterprises owned and controlled by persons with disabilities (also by disabled veterans) and links these businesses to organizations seeking

⁸⁶ ALJ Ruling July 16, 2021, Attachment – July 16, 2021 Staff Proposal at 9.

⁸⁷ Comcast April 12, 2021 Comments at 3-5; CforAT April 12, 2021 Comments at 5; Charter August 4, 2021 Comments at 6; Comcast August 4, 2021 Comments at 6; CalWater Association August 4, 2021 Comments at 5-6.

diversity in their supply chains.⁸⁸ CforAT provides background information on Disability:IN and compares its certification process to the certification process used by Supplier Clearinghouse for women, minorities, and LGBT.⁸⁹ CforAT states that Supplier Clearinghouse provides a broader set of methods to establish certification for these groups, *i.e.*, women, minorities, and LGBT, than provided by Disability:IN for those with disabilities.⁹⁰ On that basis, CforAT suggests that, to ensure equitable treatment across all business enterprises, the Commission direct Supplier Clearinghouse to adopt certification methods for those with disabilities that are the same as for women, minorities, and LGBT. Beyond suggesting Disability:IN as a certifying entity, parties offer few other details on certification for those with disabilities but suggest that flexibility is needed for this certifying process.

Based on the comments presented and because the Commission currently functions in an oversight capacity (rather than a direct contracting relationship) with the Supplier Clearinghouse pursuant to D.06-08-031, the Commission finds that providing certification options to businesses owned and controlled by a person with a disability will facilitate expeditious inclusion of these businesses into the Supplier Diversity Program.⁹¹ Therefore, businesses seeking to be certified as a persons with disabilities business enterprise may submit an application to the Supplier Clearinghouse, consistent with the existing process for women, minority, and LGBT applicants. Also, the Commission designates

⁸⁸ CforAT April 12, 2021 Comments at 6 (fn. 17) providing as follows: “Disability:IN, Supplier Diversity Standards and Procedures, (Sept. 2020), available at <https://disabilityin.org/what-we-do/supplier-diversity/get-certified/> (last accessed April 8, 2021).”

⁸⁹ CforAT April 12, 2021 Comments at 5.

⁹⁰ CforAT April 12, 2021 Comments at 5.

⁹¹ D.06-08-031, *Opinion Amending General Order 156* (August 24, 2006).

Disability:IN as a “third-party agency” under GO 156. All businesses certified by Disability:IN automatically qualify under GO 156. The Supplier Clearinghouse will develop a streamlined verification process for certification of any businesses already certified by Disability:IN. As a result, a business with an existing certification from Disability:IN will be able to submit a streamlined request to Supplier Clearinghouse for certification.

Furthermore, the Commission anticipates that the actual application processes relied upon by Supplier Clearinghouse may need to be revised to accommodate access by people with different types of disabilities and facilitate the submission of applications by this newly added group. Accordingly, the Commission directs Supplier Clearinghouse to begin this work immediately. The Commission’s expectation is that persons with disabilities will be provided with reasonable accommodations concerning all aspects of the application process currently administered by Supplier Clearinghouse under the framework adopted by the Commission in D.06-08-031. To further cultivate participation in the Supplier Diversity Program by persons with disabilities, the Commission directs all covered entities, *i.e.*, certain utilities, community choice aggregators, and electric service providers, to modify their education and outreach methods and materials to facilitate broad engagement with persons with disabilities on contracting opportunities.

3.3.6 Voluntary Procurement Goal for Persons with Disabilities Business Enterprises

The last question we address regarding persons with disabilities business enterprises is whether to adopt a voluntary procurement goal for this new group now. The staff proposal does not offer a recommendation on this topic, and few parties comment upon it.

CforAT states that “There does not appear to be sufficient data currently available to immediately set a target procurement percentage goal for businesses owned by disabled individuals.”⁹² CforAT further states that the Commission should rely on a methodology similar to that used to establish a goal for LGBT but that the five-year period used to gather data for consideration of a LGBT goal was too long.⁹³ Instead, CforAT recommends no more three years to gather data and adopt a goal.⁹⁴

Based upon the comments, the Commission finds that setting a voluntary procurement goal for this newly added group should be resolved after data is collected and in approximately three years, as recommended by CforAT. Toward this end, the Commission intends to initiate a rulemaking proceeding in approximately two years to set this voluntary procurement goal and incorporate this goal into GO 156. At that time, the Commission may consider different methods for setting such a goal based on historical data and other inputs. The Commission may also consider other modifications to enhance the effectiveness of the Supplier Diversity Program.

Moreover, in response to parties seeking to improve notice of the utilities’ contracting opportunities and improve the exchange of information between the newly added group, persons with disabilities, and all eligible suppliers, we direct covered entities to include on their websites an email address and telephone

⁹² CforAT April 12, 2021 Comments at 10 and fn. 24. CforAT identifies the following as an example of reporting: “2019 Diversity Procurement Report and 2020 Plan of Cox Communications California, LLC and Cox California Telcom, LLC (March 2, 2020), available at https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/BusinessCommunityOutreach/GO156ProcurementPlans/2019/Supplier%20Diversity%202020-Cox.pdf (last accessed April 11, 2021).”

⁹³ CforAT April 12, 2021 Comments at 10-11.

⁹⁴ CforAT April 12, 2021 Comments at 2, 11-12.

number to contact staff in response to questions about their internal programs. We also urge covered entities to modify their websites related to their supplier programs, as needed, to ensure these websites are widely accessible to persons with disabilities.

3.4 Other Revisions to General Order 156

In the Scoping Memo, the following additional topics were framed:

- Should the Commission revise GO 156 to include economic impact of the Supplier Diversity Program and workforce and corporate board diversity data?
- Should the Commission modify GO 156 to authorize the Commission's staff to conduct audits, in addition to those audits described at Section 9.1.10 of GO 156, of any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Supplier Diversity Program?
- Should the Commission clarify the complaint process at Section 7 of GO 156 as it applies to any entity falling within the Supplier Diversity Program, including community choice aggregators, electric service providers, and utilities?
- Should the Commission refine the *en banc* hearing process at Section 11.3 of GO 156?

We address each topic below.

3.4.1 Reporting on Economic Impact of the Supplier Diversity Program

In R.21-03-010, the Commission stated the intention of potentially modifying the required content of the required annual reports submitted pursuant to Pub. Util. Code § 8283(d) and Section 9 of GO 156 to include the economic impact of

the Supplier Diversity Program.⁹⁵ This possibility was reflected in the June 25, 2021 Scoping Memo.⁹⁶

In general, the parties did not present detailed comments on this topic. The SMJUs state that “[U]tilities do not have the information or expertise to evaluate additional economic impacts beyond the initial payments to those diverse suppliers.”⁹⁷ CalWater Association similarly points out that, while it is supportive of this effort, this information is not readily available and would be costly to collect, analyze, and report, stating “With respect to including information regarding the economic impact of the Supplier Diversity Program in annual reports, CWA does not oppose evaluating and providing some information to the Commission in general”⁹⁸ but “[G]iven the time and expense required to produce such information [CWA] recommend[s] providing it only once every three to five years...[It] would require water utilities to engage third party vendors with statistical, financial, tax and business analytics knowledge and experience. It would also require a significant investment of resources on the part of the water utility itself to gather data.”⁹⁹

Based on the comments by parties, we find that the addition of economic impact data at this time will not measurably increase our efforts to improve the Supplier Diversity Program and could be overly burdensome in combination with the other new reporting requirements adopted today.

⁹⁵ R.21-03-010 at 15 and 17.

⁹⁶ June 25, 2021 Scoping Memo at 7.

⁹⁷ SMJA April 12, 2021 Comments at 4.

⁹⁸ CalWater Association April 12, 2021 Comments at 3.

⁹⁹ CalWater Association April 12, 2021 Comments at 3.

3.4.2 Annual Reporting on Workforce Diversity

The Scoping Memo requested that parties comment on whether the Commission should incorporate data on workforce diversity into the annual reports submitted under GO 156.¹⁰⁰ The comments filed by parties on this topic present a variety of opinions. Supportive parties include Comcast, Southwest Gas, SBUA, CforAT, National Diversity Coalition, and Hispanics In Energy. Parties in opposition include PG&E, SCE, SoCalGas/SDG&E, AT&T, CalCCAs, Cox California Telecom, Great Oaks Water, Verizon, CalChoice, and CalWater Association.

The staff proposal recommends that the Commission incorporate workforce diversity data into the annual reports required under GO 156 on the basis that such reporting would further the goals of Pub. Util. Code § 8281 to realize the economic well-being of the state of California by encouraging diversity and inclusion within the utility industry through transparent reporting.¹⁰¹ In support of its recommendation, the staff proposal cites a number of initiatives by states and the federal government to track this data.¹⁰² The staff proposal states that the U.S. Equal Employment Opportunity Commission (EEOC) requires reports on workforce data.

¹⁰⁰ June 25, 2021 Scoping Memo at 3 and 7.

¹⁰¹ July 16, 2021 ALJ Ruling at Attachment, Staff Proposal at 10-11.

¹⁰² July 16, 2021 ALJ Ruling at Attachment, Staff Proposal at 9-11 (fn. omitted), stating: "Utility commissions in other states collect workforce diversity data or will soon start to collect this data. For example, since 2000, the Texas Public Utility Commission has required electrical and telecommunications utilities to annually report workforce diversity data under Texas Utilities Code (Tex. Util. Code) §§ 39.90949 and 52.256. In December 2020, the Pennsylvania Public Utility Commission voted to encourage major jurisdictional utilities to file annual diversity reports. More recently, in February 2021, the Wisconsin Public Service Commission announced that all water, sewer, gas, and electric utilities must report workforce and corporate board diversity data by June 1, 2021."

Parties opposing this recommendation state that reporting on workforce diversity extends beyond the statutory mandates. These parties argue that such a requirement may be inconsistent with state law and would be duplicative, since similar data is being reported to the California Secretary of State, EEOC, and U.S. Securities and Exchange Commission (SEC). Additionally, these parties argue that this reporting would detract from the existing efforts to expand contracting opportunities with eligible suppliers and would limit resources available to promote supplier contracts with diverse firms because the same staff and budgets would be assigned to implement this new reporting obligation. Lastly, these parties argue that this material could be confidential. The community choice aggregators and electric service providers additionally recommend that the Commission find their organizations exempt based on the related financial burdens of reporting and potential duplication of efforts.

In response, parties supporting this recommendation state that reporting on workforce diversity would not be burdensome because this information is largely collected already. These parties also present a number of recommendations to minimize any burdens, including allowing stakeholders to reference existing reports made to other government agencies or simply provide an update during the annual *en banc*. Others suggested that this reporting requirement be voluntary and limited to publicly available data.

We find that incorporating this data into the GO 156 annual reports submitted by all covered entities will increase the Commission's understanding of the composition of the relevant workforces. This reporting will not be overly burdensome, as it reflects information many of the covered entities already collect.

To implement this reporting requirement, the Commission in the next phase of this proceeding will develop and add provisions to the forms for the GO 156 annual reports to include workforce diversity and rely on a process that considers stakeholder input. Staff will develop forms for all covered entities and seek to include all business enterprises in the Supplier Diversity Program, including women, minorities, disabled veterans, person with disabilities, and LGBT. The Commission directs staff to develop annual reporting forms that are informative, not overly burdensome, and protect any confidential employee information. Staff will work with covered entities to develop reporting requirements and any collection protocols. Following staff development of these forms, covered entities will be required to submit workforce diversity data with their next annual reports. We identify EEO-1 and EEO-4 (forms developed by the EEOC) as a form that may serve as a useful guide when developing these reporting requirements. The Commission directs staff to provide the final version of these forms to the service list of this proceeding (or a successor proceeding) and place the final version of these forms on the Commission's webpage for GO 156.

Furthermore, all covered entities must include a brief description of any existing reports and electronic links to data submitted in other jurisdictions pertaining to workforce diversity, including any data provided to the EEOC, in all future annual reports, starting in March 2023, submitted under GO 156.

3.4.3 Annual Reporting on Corporate Board Diversity

The Scoping Memo requested that parties comment on whether the Commission should require reporting on corporate board diversity as part of the reporting requirements under GO 156.¹⁰³

In support, the staff proposal cites recent state legislation, SB 826 (Jackson, 2018) and AB 979 (Holden, 2020), requiring publicly held companies headquartered in California to include a minimum number of women and people from “underrepresented communities” on their corporate boards and requiring the California Secretary of State to ensure compliance with these requirements.¹⁰⁴

In comments, some parties present strong opinions opposing a requirement for reporting on board diversity, stating, generally that the value of such data is minimal or perhaps nonexistent and that no legal basis exists for requiring such data. These parties include PG&E, SCE, SoCalGas/SDG&E, AT&T, CalCCAs, Cox California Telecom, Great Oaks Water, Verizon, CalChoice, and CalWater Association. These parties state that reporting on board diversity falls beyond the statutory mandates of §§ 8281-8286, is unnecessary, duplicative, will distract from the objective of GO 156, may include confidential information, is overly burdensome, and cannot be provided with the next annual reports due in March 2022 because it will take time to collect this data.

¹⁰³ June 25, 2021 Scoping Memo at 3 and 7.

¹⁰⁴ July 16, 2021 ALJ Ruling at Attachment, Staff Proposal at 10-11; Corporations Code § 301.3 and § 301.4.

Other parties strongly support the inclusion of board diversity data in the annual reporting under GO 156. These parties included Comcast, Southwest Gas, SBUA, CforAT, National Diversity Coalition, and Hispanics In Energy. National Diversity Coalition summarizes its support for these additional reporting requirements, as follows:

Transparent reporting on workforce and Board diversity will encourage diversity and inclusion within the utility industries. NDC strongly supports comments made by Lori Murphy Lee, Manager of Regulatory Affairs for PJM Interconnection LLC at the GO 156 workshop for this proceeding held on July 21, 2021. "Utilities provide essential services; and therefore, their workforce should reflect the communities that they serve... diversity at all levels of utilities is essential because utilities provide good-paying middle-class jobs, many of which do not require a college degree. This means that utilities can have a significant impact on the local economy through their employment practices."¹⁰⁵

We find the recent legislative mandates in this area instructive. The intent of SB 826 (Jackson, 2018) was to proactively increase the representation of women on boards to improve the well-being of citizens of California, declaring, as follows:

More women directors serving on boards of directors of publicly held corporations will boost the California economy, improve opportunities for women in the workplace, and protect California taxpayers, shareholders, and retirees, including retired California state employees and teachers whose pensions are managed by CalPERS and CalSTRS. Yet studies predict that it will take 40 or 50 years to achieve gender parity, if something is not done proactively.¹⁰⁶

¹⁰⁵ July 21, 2021 Workshop on General Order 156 (Supplier Diversity Program) Order Instituting Rulemaking 21-03-010, starting at timestamp 1:40:45. Available at <http://www.adminmonitor.com/ca/cpuc/workshop/202107212/>.

¹⁰⁶ SB 826 (Jackson, 2018), Sec. 1(a).

Similarly, the intent of AB 979 (Holden, 2020) was to address the disproportionately low representation of directors from underrepresented communities,¹⁰⁷ including certain minorities, on corporate boards and create more balanced representation, declaring as follows:

- (a) According to the United States Bureau of Labor Statistics, only 31 percent of African Americans and 22 percent of Latinos worked in management, professional, and related occupations while 54 percent of Asians and 41 percent of Whites worked in the same occupation.
- (b) According to 2018 data from Deloitte and the Alliance for Board Diversity, the percentages of Fortune 500 company board seats held by people identified as African American/Black, Hispanic/Latino(a), and Asian/Pacific Islander were 8.6 percent, 3.8 percent, and 3.7 percent, respectively.
- (c) The United States Bureau of Labor Statistics also reported that in the year 2019, 90 percent of chief executives were White.
- (d) According to the Latino Corporate Directors Association, there are 662 publicly traded companies headquartered in California. Two hundred thirty-three of these companies have all White boards of directors as of this year.
- (e) Data from the Latino Corporate Directors Association also shows that in the boards of these 662 publicly traded companies, only 13 percent have at least one Latino board member, 16 percent have at least one African American board member, 42 percent have at least one Asian board member, and 6 percent have at least one non-White or Other board member as of May 2020. In contrast,

¹⁰⁷ Corp. Code § 301.4(c)(1) (1) states: “Director from an underrepresented community” means an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.

100 percent of these boards have at least one White board member.¹⁰⁸

Similar to the intent of this recent legislation, the Commission finds it reasonable to track diversity on boards by requiring all covered entities under GO 156, *i.e.*, utilities, community choice aggregators, and electric service providers with certain revenue thresholds, to report on the number of board members that correspond to the business enterprises defined in GO 156, *i.e.*, board members that identify as women, minorities, disabled veterans, persons with disabilities, and LGBT, in the GO 156 annual reports.

This is a reporting requirement and not a directive that boards of covered entities include a minimum number of persons who identify as women, minorities, disabled veterans, persons with disabilities, or LGBT.

Similar to the new reporting requirements for workforce diversity and to implement this board diversity reporting requirement, the Commission in the next phase of this proceeding will develop and add provisions to forms for GO 156 annual reports to include board diversity and rely on a process that considers stakeholder input. In addition, the same procedural steps set forth above regarding staff development of the workforce diversity forms will be followed. The Commission directs staff to develop forms that are informative, not overly burdensome, and protect any confidential information. Following staff development of these board diversity forms, covered entities will be required to submit board diversity data with their next annual reports. The Commission directs staff to provide the final version of these forms to the service

¹⁰⁸ AB 979 (Holden, 2020) at Sec. 1(a)-(e).

list of this proceeding (or a successor proceeding) and place the final version of these forms on the Commission's webpage for GO 156.

Furthermore, all covered entities must include a brief description of any existing reports and electronic links to data submitted in other jurisdictions pertaining to board diversity, including any data provided to the Secretary of State, in all future annual reports, starting in March 2023, submitted under GO 156.

3.4.4 Commission Audits

The 2015 version of GO 156 permits the Commission staff to conduct audits to confirm the accuracy of the annual reports, annual plans, and other information related to the Commission's Supplier Diversity Program. This process is set forth in Section 9.1.10. of the 2015 version of GO 156.

Some parties state that the current scope of the staff's authority is not clear and this lack of clarity has resulted in confusion around staff's requests for these audits. At the same time, parties object to any clarifications that may increase the number of audits due to the time and expense consumed by such audits.

The Commission finds these audits are a valuable tool to verify the accuracy of the reporting and that additional clarity around the scope of the staff's authority would be useful to improve the audit process. The Commission modifies GO 156 to clarify that (1) the Commission's staff may conduct audits as they deem necessary, and (2) in addition to the audits described at Section 9.1.10. of GO 156, staff may conduct audits on any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Commission's Supplier Diversity Program. The Commission adopts revisions to GO 156 to reflect these clarifications.

3.4.5 Complaints, Notices of Appeal, and Internal Reviews by Supplier Clearinghouse

The Scoping Memo included a review of the process set forth in Section 7 of GO 156 in the scope of this proceeding.¹⁰⁹ Section 7 address complaints, Notices of Appeal, and internal reviews of certification denials by the Supplier Clearinghouse. After review of the comments filed on these issues, we revise GO 156 to achieve the following: (1) clarify the use of the word “complaints” in GO 156, and (2) incorporate the recent revisions to the Notice of Appeal processes set forth in Resolution ALJ-377. These two topics are addressed below.

3.4.5.1 Complaints and Related Processes

Section 7 of GO 156 is titled “Complaints.” In Section 7 of the 2015 version of GO 156, the word “complaints” is used broadly to also include Notices of Appeal and requests to the Supplier Clearinghouse to review denials of certification. The revisions to GO 156 we adopt today seek to clarify the use of the word “complaints” by distinguishing it from Notices of Appeal and the internal review process within the Supplier Clearinghouse. Today’s revisions limit the use of the word “complaints” to mean complaints filed under Rule 4.1 through Rule 4.6 of the Commission’s Rules of Practice and Procedures. We also clarify that the meaning of the word “complaint” as used in Section 9.1.6. is different. In Section 9.1.6, the word complaint is used to describe the information required in annual reports and means any written or verbal statement from an eligible supplier or third-party that the program administered by the utility or other covered entity is unsatisfactory or unacceptable.

¹⁰⁹ June 25, 2021 Scoping Memo at 3 and 7.

3.4.5.2 Resolution ALJ-377 and Notices of Appeal

The current process for contesting a denial of certification by the Supplier Clearinghouse is set forth in a number of different documents, including Section 7 of GO 156, Resolution ALJ-377, and the Commission's Rules of Practice and Procedure. The Commission's goal is to provide a fair and efficient process for those that seek to contest a denial of certification by the Supplier Clearinghouse. Toward this end, the Commission adopts revisions to GO 156, Section 7 to promote a fair and efficient process.

The revisions we adopt today clarify that a distinction exists between the internal review process at the Supplier Clearinghouse, which an applicant can rely upon when it is denied certification, and the applicant's right to file a Notice of Appeal with the Commission for reconsideration of a denial by the Supplier Clearinghouse.

In addition, the Commission revises GO 156, Section 7 to incorporate reference to the provisions of Resolutions ALJ-377 which address Notices of Appeals under GO 156. The Commission last modified the provisions related to Notices of Appeal in 2006 through R.06-04-011, which stated as follows:

The proposed amendments to Section 7 set forth an expedited appeals process to the Commission. This process is fashioned after a process recently adopted for citation appeals set forth in Resolution ALJ-187.¹¹⁰ This process is available for business enterprises contesting clearinghouse verification decisions and for third parties challenging the verification of other business enterprises. ...Because these complaints are not against utilities or

¹¹⁰ Resolution ALJ-187 (Sept. 22, 2005) *Procedures for Appeal of Citations Issued to Household Goods Carriers, Charter Party Carriers, and Passenger Stage Corporations.* (fn. not in original.)

other regulated entities, the Commission's formal complaint procedures are not available.¹¹¹

In D.06-08-031, the Commission adopted revisions to GO 156 that largely reflected the process set forth in Resolution ALJ-187, which presented a more streamlined process. Since then, the Commission has further refined the process for filing Notices of Appeal as applied to the Supplier Diversity Program but without revisions to GO 156.

For example, the Commission revised this process in 2020 by Resolution ALJ-377, the decision by the Commission adopting procedure for citation appeals, Notice of Appeals under GO 156, and other matters. Because Resolution ALJ-377 addresses a number of topics related to Notices of Appeal under GO 156, we do not repeat these provisions here but we revise GO 156 to incorporate by reference the provisions of Resolution ALJ-377 (or a successor decision) pertaining to Notice of Appeals under GO 156.

3.4.6 *En Banc* Hearing

The Scoping Memo asked parties to comment on possible refinements to the *en banc* hearing process. Section 11.3 of the 2015 version of GO 156 provides that “The Commission shall hold an annual *en banc* hearing or other proceeding in order to provide utilities and members of the public, including community-based organizations, the opportunity to share ideas and make recommendations for effectively implementing legislative policy and this General Order.” As discussed below, this decision makes minor modifications to the *en banc* provisions of GO 156.

¹¹¹ R.06-04-011, *Order Instituting Rulemaking for the Purpose of Amending General Order 156* (April 13, 2006) at 5. (fn. omitted.)

The staff proposal did not address this topic. Parties provided few comments on this topic. Hispanics in Energy suggest holding more *en banc* hearings, perhaps twice per year, in an effort to provide more frequent updates to the Commission.¹¹² SoCalGas/SDG&E suggest the existing process and current frequency, once per year, is sufficient and “valuable.”¹¹³ SoCalGas/SDG&E do not recommend any changes to the *en banc* hearing process.¹¹⁴

Based on the comments, no parties raised issues that justify revising the frequency of the *en banc* hearings or the process at this time. We will maintain the current required frequency, once per year, but will considering holding additional hearings, if needed. However, to ensure as broad participation as possible at this annual hearing and engage newly interested stakeholders, the Commission clarifies the notice requirements related to this hearing and directs notice of the *en banc* hearing be provided broadly, in a manner that reaches as many stakeholders as possible, including to the service list for the most recent proceeding pertaining to GO 156 and any service lists pertaining to related topics.

3.5 Use of *Business Enterprise* Rather Than *Owned Business Enterprise*

In R.21-03-010, the Commission stated its intention to consider the use of the term *business enterprise*, rather than *owned business enterprise*, in GO 156 to better align with the statute¹¹⁵ and reduce industry confusion. For example,

¹¹² Hispanics In Energy August 4, 2021 Comments at 7.

¹¹³ SoCalGas/SDG&E April 12, 2021 Comments at 4.

¹¹⁴ SoCalGas/SDG&E April 12, 2021 Comments at 4.

¹¹⁵ R.21-03-010 at 16.

currently, GO 156 uses the term *women-owned business enterprises* and statute uses the term *women business enterprises*.

Several parties state their support for this suggested revision. No parties oppose this suggestion.

The Commission finds the term *business enterprise* is consistent with the statute and would promote the understanding that the Supplier Diversity Program applies to a business enterprise both owned and controlled by women, minorities, disabled veterans, LGBT or persons with disabilities. The Commission revises GO 156 to reflect this modification.

3.6 Resolution Exec-001 and Annual Report by Commission to Legislature

Our directive in Resolution Exec-001 provides that staff will monitor and evaluate the Supplier Clearinghouse “on a periodic basis.” As part of staff’s monitoring and evaluating of the Supplier Clearinghouse, staff will incorporate into the Commission’s Annual Report to the Legislature, which is required by Pub. Util. Code § 8283(e)(1), the results of its oversight, including, as we stated in Resolution Exec-001, an analysis of the existing contract between Supplier Clearinghouse and the utilities (*e.g.*, audits of revenues and expenditures associated with the certification program).

4. Phase 2 of Proceeding

We intend to hold a phase 2 of this proceeding. The assigned Commissioner will issue an amended scoping memo pursuant to Rule 7.3 of the Rules of Practice and Procedure to initiate phase 2. This amended scoping memo will set the scope of issues to be considered in phase 2 and the schedule for the proceeding.

Based on this first phase of this proceeding, we suggest that proposals on the following issues be considered:

- (1) increase the percentages for the voluntary procurement goals for eligible business enterprises;
- (2) update the definition of minority;
- (3) review the Supplier Clearinghouse “guidelines” used to determine certification as an eligible supplier; and
- (4) develop forms for workforce and board diversity reporting and consider public disclosure.

5. Comments on Proposed Decision

The proposed decision of Commissioner Rechtschaffen in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311 and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed by CalCCAs, California Efficiency and Demand Management Council, Pacific Bell Telephone Company dba AT&T California (U1001C), AT&T Corp. (U5002C), SBC Long Distance, LLC (U5800C), and AT&T Mobility¹¹⁶ (collectively, AT&T), BuildOUT CA, National LGBT Chamber of Commerce, SMUA, CalWater Association, Cox California Telcom (U5684C), dba Cox Communications, Shell Energy and AReM, National Diversity Coalition, SoCalGas/SDG&E, Charter, MCI Communications Services LLC (U5378C), XO Communications Services, (U5553C), and Cellco Partnership (U3001C) on behalf of itself and its wireless affiliates (collectively, Verizon), Comcast Phone of California, LLC, PG&E, and CforAT on March 1, 2022. Reply comments were filed by Verizon, Regents of University of California, CforAT, AT&T, CalCCAs, Shell Energy and AReM, Comcast Phone of California, LLC

¹¹⁶ AT&T Mobility refers to, collectively, AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C); New Cingular Wireless PCS, LLC (U 3060 C) dba AT&T Mobility; and Santa Barbara Cellular Systems, Ltd. (U3015C).

(U5698C), BuildOUT CA, SMUA, National Diversity Coalition, SCE, and on March 7, 2022. The proposed decision is revised in response to these comments as follows:

1. Remove language that suggests that non-profits are included as eligible suppliers because the Commission has not determined that the ownership structure of non-profits is consistent with the statutory requirement that eligible suppliers be owned by a diverse supplier.
2. Clarify that the starting date is March 2023 for community choice aggregators, electric service providers, and smaller utilities to submit data to the Commission, which provides an opportunity to develop the format for reporting and gather information to meet this new reporting requirement.
3. Direct Supplier Clearinghouse to establish a streamlined system to certify LGBT businesses which are already certified by a national organization to increase the pool of available businesses.
4. Revise the starting date that covered entities must submit data on persons with disabilities to March 2024 (for 2023 results) because it is late in 2022 to start collecting 2022 data for reporting in 2023.
5. Clarify that the annual plans for community choice aggregators do not necessarily encompass specific information on all diverse business enterprises, consistent with the statute.
6. Clarify that the business models of community choice aggregators and electric service providers and, in certain circumstances, the legal limitations imposed on public entities, may be taken into consideration when staff develops reporting forms for annual plans and reports under GO 156.
7. Modify implementation of the reporting on workforce and board diversity to provide additional time to develop forms but also direct all covered entities in the

March 2023 annual reports to provide information included in existing reporting in other jurisdictions on workforce and board diversity.

8. Clarify statements and correct typographical errors.

6. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SB 255 amended Pub. Util. Code § 366.2 and §§ 8281-8286 to add community choice aggregators, electric service providers, and smaller utilities with certain revenue thresholds to the mandatory annual reporting requirements in the Supplier Diversity Program set forth in GO 156.

2. The business model for community choice aggregators provides fewer opportunities than available to utilities to contract with eligible suppliers since energy procurement represents the majority of expenses for a typical community choice aggregator, at approximately 94%.

3. Energy procurement represents most of the expenses for a typical electric service provider.

4. Community choice aggregators and electric service providers may also be public agencies.

5. The term “simplified form” in Pub. Util. Code § 8283(f) regarding smaller electric service providers and smaller utilities means simplified as compared to the existing requirements in Sections 9 and 10 of the 2015 version of GO 156.

6. SB 255 encourages the following entities to voluntarily increase procurement from eligible suppliers and, in some instances, voluntarily report to the Legislature: (1) community choice aggregators with gross annual revenues under \$15 million, (2) utilities and electric service providers with gross annual

California revenues under \$15 million, (3) exempt wholesale generators, distributed energy resource contractors, and energy storage system companies.

7. Adding a section to GO 156 about the entities encouraged to voluntarily comply with Pub. Util. Code § 366.2(m)(3) and §§ 8281-8286 will promote the state policy of increasing procurement from eligible suppliers and serve to memorialize the voluntary efforts of smaller utilities, smaller community choice aggregators, smaller electric service providers, and other types of businesses to increase procurement from eligible suppliers.

8. Establishing a LGBT voluntary procurement goal is critical for increasing the engagement and participation of LGBT business enterprises in the Supplier Diversity Program set forth in GO 156.

9. The data collected over the past several years on LGBT business enterprises is informative in establishing a voluntary procurement goal but relying on historical data is not enough to implement the statutory directives in Pub. Util. Code § 8281(b)(2)(A) to “[e]ncourage greater economic opportunity” and in Pub. Util. Code § 8283 to increase procurement from LGBT business enterprises.

10. Historical data reflects past barriers to full participation in the utility industry and may also reflect too little effort by some utilities to increase opportunities to contract with LGBT business enterprises.

11. People with disabilities, similar to women, minorities, disabled veterans, and LGBT persons, face barriers to participation in many areas of the state’s economy, are unrepresented or underrepresented in employment, and are disproportionately low income.

12. Including persons with disabilities in the Supplier Diversity Program is consistent with the intent of Pub. Util. Code §§ 8281-8286 to support those who face historical disadvantages in certain areas of the utility industry.

13. In the past, the Commission has added eligible suppliers to GO 156 pursuant to directives from the Legislature, but the Commission is not prohibited from identifying and adding a group to GO 156 to further enhance the goals of its Supplier Diversity Program.

14. A definition for persons with disabilities similar to the definitions adopted in the statute for other business enterprise will create a consistent approach when applying the requirements of the Supplier Diversity Program to this new eligible supplier.

15. Including mandatory submissions of annual plans and annual reports will provide the Commission and stakeholders with valuable information to further understand how to encourage participation from persons with disabilities business enterprises in the Supplier Diversity Program.

16. To certify persons with disabilities business enterprises as eligible suppliers under GO 156, the types of proof accepted should be similar to those used by Supplier Clearinghouse to certify a woman, minority, and LGBT business enterprises.

17. Providing certification options to business enterprises owned and controlled by persons with disabilities will facilitate expeditious incorporation of these business enterprises into the Supplier Diversity Program.

18. Data should be collected and considered on the participation of persons with disabilities business enterprises before adopting a voluntary procurement goal for the Supplier Diversity Program.

19. Improvements in the methods used to publicize contracting opportunities within the Supplier Diversity Program are needed so that potential contracting opportunities are provided to this newly added group, persons with disabilities, and to all other eligible suppliers.

20. At this time, the addition of economic impact data in the mandatory reporting required under GO 156 will not measurably increase the Commission's efforts to improve the Supplier Diversity Program and could be overly burdensome in combination with the other new mandatory reporting requirements adopted in this decision.

21. Incorporating workforce data pertaining to women, minorities, disabled veterans, persons with disabilities, and LGBT into the GO 156 annual reports will increase the Commission's understanding of the composition of the workforce of the covered entities and will not be overly burdensome, as it reflects information many of these covered entities already collect.

22. SB 826 (Jackson, 2018) and AB 979 (Holden, 2020) require publicly held companies headquartered in California to include a minimum number of women and people from "underrepresented communities" on their corporate boards and requires the California Secretary of State to ensure compliance with these requirements.

23. SB 826 seeks to proactively increase the representation of women on corporate boards to improve the well-being of citizens of California.

24. AB 979 seeks to address the disproportionately low representation of certain underrepresented communities on corporate boards and promote more balanced representation.

25. Similar to the intent of this recent legislation, it is reasonable to track diversity on boards by requiring all covered entities under GO 156, *i.e.*, utilities,

community choice aggregators, and electric service providers with certain revenue thresholds, to report on the number of board members that correspond to the business enterprises defined in GO 156, *i.e.*, board members that identify as women, minorities, disabled veterans, persons with disabilities, and LGBT, in the GO 156 annual reports.

26. Commission audits are a valuable tool to verify the accuracy of the GO 156 reporting, and the audit process could improve by providing additional clarity around the scope of the Commission staff's authority in this area.

27. The use of the word "complaints" in Section 7 of the 2015 version of GO 156 has caused confusion because the word "complaints" is used to refer to Notices of Appeal, which are filed with the Commission, and also to refer to requests to the Supplier Clearinghouse to review denials of certification.

28. The current process for contesting a denial of certification by the Supplier Clearinghouse is set forth in a number of different documents, including Section 7 of GO 156, Resolution ALJ-377, and the Commission's Rules of Practice and Procedure.

29. No issues have been identified to justify revising the frequency of the *en banc* hearings under GO 156 or other processes pertaining to the *en banc* hearing at this time.

30. Currently, GO 156 uses the term *-owned business enterprises* but the statute uses the term *business enterprises*, which causes unnecessary confusion.

31. Resolution Exec-001 found that staff must monitor and evaluate the Supplier Clearinghouse "on a periodic basis."

32. A phase 2 of this proceeding may be initiated to address additional issues pertaining to GO 156.

Conclusions of Law

1. Consistent with the statutory directives in SB 255, and in the absence of opposition, it is reasonable to incorporate into GO 156 those community choice aggregators, electric service providers, and additional utilities that meet certain revenue thresholds and set March 2023 as the due date for the first submissions.

2. More limited mandatory reporting requirements for community choice aggregators than those currently required of utilities is reasonable based on Pub. Util. Code § 366.2(m)(2)(B), which provides the Commission with discretion to create reporting requirements for community choice aggregators that are different from those applicable to utilities.

3. Adopting an exception to the mandatory reporting for smaller community choice aggregators, such as those operating below 700 GWh, is not reasonable since the statute's mandatory reporting requirements applies to all community choice aggregators with at least \$15 million in gross annual California revenues.

4. It is reasonable to adopt the same plan and report requirements for larger electric service providers, meaning those with annual gross California revenues over \$25 million, as applied to similarly sized utilities while also taking into consideration the more limited scope of business of an electric service provider and, in certain circumstances, the more limited ability to report by electric service providers that are public agencies.

5. Under Pub. Util. Code § 8283(f), it is reasonable to adopt less burdensome mandatory reporting requirements for smaller utilities and smaller electric service providers, meaning those with between \$15 million and \$25 million in annual gross California revenues, than apply to larger similar entities based on the more limited size of their businesses.

6. Adding a section to GO 156 that identifies those businesses encouraged by Pub. Util. Code § 366.2 and §§ 8281-8286 to voluntarily increase procurement from eligible suppliers and, in some instances, voluntarily report progress to the Legislature is reasonable as this addition will serve to promote the state policy of increasing procurement from eligible suppliers and to memorialize the voluntary efforts of these smaller utilities, smaller community choice aggregators, smaller electric service providers, and other types of businesses to increase procurement in these areas.

7. In balancing the Commission's reliance on historical data with the objective of increasing procurement from LGBT business enterprises amidst unique barriers to entry into utility procurement, it is reasonable to adopt the following voluntary procurement goals for LGBT business enterprises which increase over the next three years: 2022 of 0.5%, 2023 of 1.0%, and 2024 of 1.5%.

8. It is reasonable to expand the Supplier Diversity Program to include business enterprises owned and controlled by persons with disabilities because this group has historically faced disadvantages and to further their inclusion in utility-related procurement.

9. Based on existing definitions of eligible suppliers, it is reasonable to adopt the following similar definition for persons with disabilities and incorporate this definition into GO 156:

Persons with Disabilities Business Enterprise means (1) a business enterprise (a) that is at least 51% owned by a person or persons with a disability or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more persons with a disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.

10. It is reasonable to require covered entities under GO 156 to report on 2022 procurement from persons with disabilities business enterprises in a

manner consistent with other eligible suppliers in mandatory annual reports and annual plans due in March 2024.

11. It is reasonable to adopt the following types of proof to establish a business enterprise owned and controlled by a person with a disability as an eligible supplier, which are similar to those available to women, minority, and LGBT business enterprises, and staff is authorized to add to this list so that it timely reflects any appropriate changes in this area:

- documentation from a licensed, registered, or state or private certified vocational rehabilitation specialist affirming that the applicant/person is a person with a disability;
- documentation from a federal or state agency (including the District of Columbia or a U.S. territory) that issues or provides disability benefits confirming the owner has a disability;
- documentation from a licensed medical professional (*e.g.*, a physician or other medical professional duly certified to practice medicine by a state, the District of Columbia or a U.S. Territory) confirming the owner has a disability;
- an Individualized Education Program (IEP) for an owner who has a learning disability;
- a letter/written signed statement from a leader of the Disability Chamber of Commerce or an affiliate chamber confirming to the disability status of the owner;
- three letters of reference from personal contacts who: (a) have known the owner for over one year and (b) can attest, in a signed statement, to the owner's disability status;
- a letter/written signed statement by a leader or board member from a disability advocacy organization attesting to the owner's disability status;

- proof of media coverage, including publications, newspapers, or articles, explicitly stating the disability status of the owner;
- a letter/written signed statement from a physician or attorney establishing the disability status of the owner;
- certificates, awards, recognition of the owner as outstanding members of the disability community; or
- documentation of participation in a program by owner that provides benefits based on disability.

12. To expedite certifications as an eligible supplier, it is reasonable to designate Disability:IN as a “third-party agency” under GO 156 and direct Supplier Clearinghouse to develop a streamlined verification process for certification as an eligible supplier under GO 156 of any business already certified by Disability:IN.

13. To provide adequate notice of procurement opportunities, it is reasonable that covered entities under GO 156 modify their education and outreach methods and related materials to facilitate broad engagement with persons with disabilities.

14. To set a voluntary procurement goal for persons with disabilities business enterprises as part of the Supplier Diversity Program, it is reasonable to collect and consider data first and then adopt a goal in approximately three years.

15. To improve access to and notice of contracting opportunities to the newly added group, persons with disabilities, and to all other eligible suppliers, it is reasonable to direct covered entities under GO 156 to include on their websites the email address and telephone number to contact their staff to respond to questions about their internal supplier programs and covered entities are encourage to modify their websites related to their supplier programs, as needed, to ensure websites are widely accessible to persons with disabilities.

16. As this time, it is reasonable to not incorporate economic impact data in the reporting required under GO 156 because it will not measurably increase the Commission's efforts to improve the Supplier Diversity Program and could be overly burdensome in combination with implementing the other new reporting requirements adopted in this decision.

17. Requiring covered entities under GO 156 to provide workforce data pertaining to persons who identify as women, minorities, disabled veterans, persons with disabilities, and LGBT into their GO 156 annual reports is reasonable because it will increase the Commission's understanding of the composition of the workforce of the covered entities and will not be overly burdensome, as it reflects information many of these entities already collect, and is consistent with Commission authority. This reporting will commence after forms are developed in the next phase of this proceeding and, after development of these forms, this data will be included in all future annual reports.

18. Based on the intent of recent state legislation in SB 826 (Jackson, 2018) and AB 979 (Holden, 2020) to increase the diversity of board representation, it is reasonable to track the board diversity by requiring covered entities under GO 156, *i.e.*, utilities, community choice aggregators, and electric service providers that meet certain revenue thresholds, to report on the number of persons serving on their boards that identify as women, minorities, disabled veterans, persons with disabilities, and LGBT in the GO 156 annual reports after staff develops forms for reporting this data in the next phase of this proceeding. After forms are developed, board diversity data will be included all future annual reports.

19. Because additional clarity on the scope of the staff's authority pertaining to audits under GO 156 will improve the use of audits as a valuable tool to verify

the accuracy of the GO 156 reporting, the Commission modifies the audit provisions of GO 156 to clarify that (1) the Commission's staff may conduct audits as they deem necessary, and (2) in addition to the audits described at Section 9.1.10 of the 2015 version of GO 156, staff may conduct audits on any reports or data provided to the Commission by utilities, community choice aggregators, and electric service providers regarding the Commission's Supplier Diversity Program.

20. Based on past confusion about the difference between the internal review process by the Supplier Clearinghouse to contest denials of certification, Notices of Appeal filed with the Commission, and complaints, it is reasonable to revise GO 156 to clarify that the word "complaints" usually means complaints filed under Rule 4.1 through Rule 4.6 of the Commission's Rules of Practice and Procedures but that the meaning of the word "complaint" as used in Section 9.1.6. is different.

21. The word "complaints" in Section 9.1.6 of the 2015 version of GO 156 is any written or verbal statement from an eligible supplier or third-party that the program administered by the utility or other covered entity is unsatisfactory or unacceptable.

22. It is reasonable to adopt revisions to the 2015 version of GO 156 at Section 7 to clarify the distinction between the internal review process within the Supplier Clearinghouse to contest denials of certification and Notices of Appeal filed with the Commission to promote a fair and efficient process for those that seek to contest a denial of certification by the Supplier Clearinghouse.

23. To ensure as broad participation as possible at the GO 156 *en banc* annual hearing and to engage newly interested stakeholders, GO 156 is clarified regarding the notice requirements related to this hearing to direct staff to provide

notice of the *en banc* hearing broadly, in a manner that reaches as many stakeholders as possible, including the service list for the most recent proceeding pertaining to GO 156 and any service lists pertaining to related topics.

24. Because the term *business enterprise* is consistent with the statute and would promote the understanding that the Supplier Diversity Program applies to a business enterprise both owned and controlled by women, minorities, disabled veterans, LGBT, or persons with disabilities, it is reasonable to revise GO 156 to reflect this modification.

25. As part of Commission staff's monitoring and evaluating of the Supplier Clearinghouse under Resolution Exec-001, it is reasonable for staff to incorporate into the Commission's Annual Report to the Legislature, a report already required by Pub. Util. Code § 8283(e)(1), meaning the results of its oversight of the Supplier Clearinghouse, including a response to the existing requirement in Resolution Exec-001 for a staff analysis of the existing contract between Supplier Clearinghouse and the utilities (*e.g.*, audits of revenues and expenditures associated with the certification program).

26. At the discretion of the Commission, a phase 2 of this proceeding would be reasonable to address additional issues and an amended scoping memo would set the scope of issues to be considered and the schedule for this phase 2.

O R D E R

IT IS ORDERED that:

1. General Order (GO) 156 is revised to reflect the determinations herein at Appendix A (redlined version) and Appendix B (adopted version). All rules and regulations set forth in Appendix B are adopted and effective immediately. Appendix B shall be placed on the Commission's website as the currently effective General Order 156.
2. The utilities, community choice aggregators, and electric service providers that meet the revenue thresholds set forth in Public Utilities Code § 366.2 and §§ 8281-8286 shall immediately conform their internal business practices to reflect the mandatory reporting requirements incorporated into General Order 156, as set forth herein.
3. The utilities, community choice aggregators, and electric service providers that meet the revenue thresholds set forth in Public Utilities Code § 366.2 and §§ 8281-8286 shall immediately add to their websites, at a minimum, an email address and telephone number to contact staff to respond to questions about the covered entity's own supplier diversity program.

4. Rulemaking 21-03-010 remains open.

This order is effective today.

Dated April 8, 2022, at San Francisco, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN R.D. REYNOLDS
Commissioners

APPENDIX B:
Adopted Version of General Order 156

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS TO INCREASE PARTICIPATION OF WOMEN, MINORITY, DISABLED VETERAN, LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT)¹ AND PERSONS WITH DISABILITIES BUSINESS ENTERPRISES IN PROCUREMENT OF CONTRACTS FROM UTILITIES, COMMUNITY CHOICE AGGREGATORS, AND ELECTRIC SERVICE PROVIDERS, AS REQUIRED BY PUBLIC UTILITIES CODE SECTIONS 366.2 and 8281-8286

**Adopted April 27, 1988. Effective May 30, 1988.
Decision (D.) 88-04-057 in Rulemaking 87-02-026.**

Modified by D.88-09-024, D.89-08-041, D.90-11-053, D.90-12-027, D.92-06-030, D.95-12-045, D.96-12-081, D.98-11-030, D.03-11-024, D.05-12-023, D.06-08-031, D.11-05-019, D.15-06-007, and D.22-04-035. Also modified by Resolution Exec-001 and Resolution ALJ-377.

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1. GENERAL

1.1. Intent

1.1.1. Purpose

These rules implement California Public Utilities Code (Pub. Util. Code) § 366.2 and §§ 8281-8286, which require the Commission to establish rules for (1) electric utilities, gas utilities, water utilities, wireless telecommunications service providers, telephone utilities, and electric service providers with gross annual California revenues exceeding \$15,000,000 and their Commission-regulated subsidiaries and affiliates and (2) community choice aggregators with gross annual revenues exceeding \$15,000,000 to submit annual plans and reports, excepted as noted below, for purposes of increasing procurement in all categories from business enterprises owned and controlled by women, minority, disabled veteran, and LGBT. Persons with disabilities was added to the Supplier Diversity Program by the Commission. Additionally, pursuant to Pub. Util. Code § 366. 2(m)(1), these rules direct community choice aggregators to submit different information for annual plans, meaning detailed and verifiable annual plans to address increasing procurement from small and local business enterprises. All utilities are referred to herein as “utilities.” Non-utility entities, meaning electric service providers and community choice aggregators, are collectively referred to herein as “other covered entities.”

1.1.2. Scope

The Commission may revise GO 156 on the basis of experience gained in the application and/or changes in legislation.

1.1.3. Relief for Undue Hardship

In cases where these rules result in undue hardship or unreasonable expense to a utility or other covered entity, the utility or other covered entity may request relief from the Commission in accordance with the Commission's Rules of Practice and Procedure. Where the relief requested is minor or temporary in nature, a utility may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on the service list of Rulemaking 21-03-010 (or successor proceeding).

1.2. Applicability

To the extent set forth herein, these rules apply to electric utilities, gas utilities, water utilities, wireless telecommunications service providers, telephone utilities, and electric service providers with gross annual California revenues exceeding \$15,000,000 and their commission-regulated subsidiaries and affiliates. To the extent set forth herein, these rules also apply to community choice aggregators with gross annual revenues exceeding \$15,000,000.

1.3. Definitions

1.3.1. Commission

“Commission” means the California Public Utilities Commission, as provided for in Article XII of the California Constitution.

1.3.2. U.S. Citizens or Legal Alien

Under these rules, persons owning an eligible suppliers must be either U.S. citizens or legal aliens with permanent residence status in the United States.

1.3.3. Women Business Enterprise

“Women business enterprise” 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.

1.3.4. Minority Business Enterprise

“Minority business enterprise” 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 or other covered entity shall presume that minority includes, but is not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups as defined herein.

1.3.5. LGBT Business Enterprise

“LGBT business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a lesbian, gay, bisexual, or transgender person or persons or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.6. Persons with Disabilities Business Enterprise

“Persons with disabilities business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a person or persons with a disability or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more persons with a disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.7. Disabled Veteran

“Disabled veteran” refers to 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.

1.3.8. Disabled Veteran Business Enterprise

“Disabled veteran business enterprise” is defined in Section 4, herein.

1.3.9. African American Person

“African American person,” for purposes of GO 156, refers to a person having origins in

any black racial groups of Africa.

1.3.10. Hispanic American Person

“Hispanic American person,” for purposes of GO 156, refers to a person of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.

1.3.11. Native American Person

“Native American person,” for purposes of GO 156, refers to a person having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

1.3.12. Asian Pacific American Person

“Asian Pacific American person,” for purposes of GO 156, refers to a person having origin 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.

1.3.13. Other Groups and Individuals

“Other groups or individuals” means persons found to be disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637 (a)) or the U.S. Secretary of Commerce, pursuant to Section 5 of Executive Order 11625.

1.3.14. Control

"Control" means exercising the power to make policy decisions.

1.3.15. Operate

To "operate" means to be actively involved in the day-to-day management. It is not enough to merely be an officer or director.

1.3.16. Goal

"Goal" means a target which, when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.

1.3.17. Excluded Category

"Excluded category" means a category of products or services which may be removed from the dollar base used to establish goals, pursuant to former Section 8.5 of this General Order, because of the established unavailability of eligible suppliers capable of supplying those products or services.

1.3.18. Short-Term Goal

"Short-term goal" means a goal applicable to a period of one (1) year.

1.3.19. Mid-Term Goal

"Mid-term goal" means a goal applicable to a period of three (3) years.

1.3.20. Long-Term Goal

"Long-term goal" means a goal applicable to a period of five (5) years.

1.3.21. Utility

"Utility" means electric utilities, gas utilities, water utilities, wireless telecommunications service providers, and telephone utilities with gross annual California revenues exceeding \$15,000,000 and their Commission-regulated subsidiaries and affiliates.

1.3.22. Clearinghouse

"Clearinghouse" means a Commission-supervised program or entity that shall conduct certifications/verifications and maintain a database of eligible suppliers for the use of utilities and other covered entities under the Commission's Supplier Diversity Program.

1.3.23. Subcontract

"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) 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 (2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

1.3.24. Product and Service Categories

"Product and service categories" means product and service categories as defined by the Standard Industrial Classification (SIC) system maintained by the United States Department of Labor, Occupational Safety and Health Administration, as they currently read or as amended or as defined by any other updated classification system that supersedes the SIC system.

1.3.25. Other Covered Entity

"Other covered entity" means electric service providers and community choice aggregators.

1.3.26. Electric Service Provider

"Electric service provider" means as that term is defined in Pub. Util. Code § 218.3 and used in Pub. Util. Code § 8281-8286.

1.3.27. Community Choice Aggregator

"Community choice aggregator" means (1) an entity created pursuant to Pub. Util. Code §366.2; and (2) with gross annual revenues exceeding \$15,000,000, except when used herein to specifically reference community choice aggregators with gross annual revenues of less than \$15,000,000.

2. VERIFICATION/CERTIFICATION OF ELIGIBILITY

The following rules shall be used to verify the eligibility of business enterprises owned and controlled by women, minority, LGBT, or persons with disabilities for participation in procurement contracts under the Commission's Supplier Diversity Program. Disabled veterans are addressed in a separate section herein.

2.1. Clearinghouse to Supply Verification Form to Applicant

The Clearinghouse, as described in Section 3, shall supply a verification form to the applicant. An applicant completes the verification form and returns it to the Clearinghouse for processing. Suppliers/applicants that are certified/verified under GO 156 are referred to herein as "eligible suppliers."

2.2. Assessing Suitability of Eligible Supplier to Bid on Procurement Contracts

In assessing the suitability of an eligible supplier to bid for procurement contracts, a utility or other covered entity 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, and bonding limits. A utility or other covered entity may not require additional information to verify that a business is in fact an eligible supplier under the Commission's Supplier Diversity Program.

2.3. Eligible Suppliers Submit Verification Forms Every Three Years

Eligible suppliers shall be required to submit verification forms at least once every three years to the Clearinghouse.

2.4. Completion of Verification Forms

Completion and submission of the verification form to the Clearinghouse serves to initiate a verification of the business as an eligible supplier under the Commission's Supplier Diversity Program. Submission of a verification form does not guarantee verification.

2.5. Endorsement of Ability to Perform

The fact that a business is certified/verified as an eligible supplier under the Commission's Supplier Diversity Program and included in the Clearinghouse's database of eligible suppliers is not an endorsement of its ability to perform and does not guarantee contracts with the utilities or other covered entities.

2.6. Availability of Verification Forms for Inspection

An applicant's verification form shall be available for inspection by the Commission.

2.7. Penalty for Falsification

Falsification of information by the applicant on the verification form is subject to penalties, as provided in Pub. Util. Code § 8285.

3. CLEARINGHOUSE

The Commission shall provide for a clearinghouse to share the name of and verification status of eligible suppliers under the Commission's Supplier Diversity Program.

(1) The Commission may establish and operate such a clearinghouse internally or authorize, by decision or resolution, a utility-formed entity or arrangement to fund the operation of such a clearinghouse. In authorizing a utility-formed entity or arrangement, the Commission will specify sufficient terms and conditions to specify how verifications and audits shall be performed and to ascertain and ensure that the Clearinghouse is operated in accordance with this General Order, Pub. Util. Code § 366.2, §§ 8281-8286, and other applicable legal requirements.

(2) The purpose of the Clearinghouse shall be to audit and verify the status of business enterprises as eligible suppliers under the Commission's Supplier Diversity Program and to establish and maintain a database of eligible suppliers that is accessible to the Commission, utilities, and other covered entities.

(3) The Clearinghouse auditing and verification program of suppliers shall preclude the need for a utility or other covered entity to audit and verify whether a business enterprise is an eligible supplier under the Commission's Supplier Diversity Program.

(4) The Clearinghouse shall distribute renewal verification forms to the eligible suppliers that are already verified at least once every three years. If the eligible supplier does not complete and return the renewal within a reasonable time, the Clearinghouse shall notify the eligible supplier that the eligible supplier will not be listed as an eligible supplier in the shared database until the renewal is completed and approved.

(5) The Clearinghouse shall post on its website a calendar of procurement-related information sharing and educational events and activities scheduled by utilities and other covered entities in furtherance of legislative policy and this General Order and may post additional information regarding procurement and/or educational opportunities.

(6) In addition to the Clearinghouse, the Commission may approve of third-party agencies to perform verifications of applicants. The Clearinghouse is authorized to accept certifications by approved third-party agencies, as appropriate, and to develop and implement a streamlined comparable agency verification process for any applicant that already has a certification through an approved third-party agency. For purposes of LGBT certification, the Clearinghouse shall establish a streamlined method of certification for entities already certified by a national organization. For purposes of certification of entities owned/controlled by persons with disabilities, the Clearinghouse shall establish a streamlined method of certification for entities already certified by the California Department of General Services or Disability:IN. After the Commission has approved of a third-party agency, applicants may choose between the option of (1) going directly to the Clearinghouse for verification or (2) going through an approved third-party agency, followed by a streamlined verification process with the Clearinghouse. If an applicant already has a certification through an approved third-party agency, the

applicant is encouraged to apply to the Clearinghouse through the streamlined verification process.

- (7) The following shall be the process for a third-party agency seeking to become a verifying agency under this General Order:
- (a) The requesting third-party agency shall submit a written request (herein “Request”) to the Commission’s GO 156 Staff;
 - (b) The Request shall include a detailed explanation showing that the requesting third-party agency’s objectives, eligibility requirements, required documentation, and review and certification processes are substantially similar to those of the Clearinghouse;
 - (c) The Commission’s GO 156 Staff must evaluate the Request and make a recommendation to the Commission within 60 days of receiving a Request;¹ and
 - (d) Upon review of the Request by the Commission’s GO 156 Staff, the GO 156 Staff will publish a draft resolution under the Commission’s Rules of Practice and Procedure granting or denying the requesting third-party agency its verifying agency status. This draft resolution shall be placed on the Commission’s Agenda for a vote.

4. DISABLED VETERANS

The following rules shall apply to disabled veteran business enterprises (also referred to as “DVBE”). The term "disabled veteran" is defined in Section 1.3.6 of this General Order.

4.1. Disabled Veteran Business Enterprise

Disabled veteran business enterprise is defined in Military and Veterans Code § 999, as required by D.92-06-030, to mean a business enterprise certified by the California Department of General Services as meeting all of the following requirements.

- (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.
- (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.
- (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

¹ See *e.g.*, D.06-08-031 and Resolution Exec.-001 (July 9, 2009).

¹All references to “days” shall be calculated as set forth in Rule 1.15 of the Commission’s Rules of Practice and Procedure.

firm, or other foreign-based business.

4.2. Certifying Agency

Pursuant to Pub. Util. Code § 8284(a)(2), DVBEs are verified/certified by the California Department of General Services. The Office of Small Business and Disabled Veterans Business Enterprise Services currently performs this verification/certification. The Clearinghouse shall accept the verifications/certifications by the Department of General Services as though the DVBE has been verified/certified by the Clearinghouse and include such DVBE in the Clearinghouse's database of the verified/certified eligible suppliers.

4.3. Qualifying as a Disabled Veteran Business Enterprise

In order to qualify as a DVBE, a business enterprise must meet the criteria in Section 4.1 and must present a current certificate from the California Department of General Services verifying that such criteria have been met.

5. LESBIAN, GAY, BISEXUAL, AND TRANSGENDER

Pursuant to D.15-06-007 and D.22-04-035, these rules shall apply to LGBT business enterprises (also referred to as "LGBTBEs"). By or before September 1, 2015 and thereafter, the Clearinghouse shall maintain a database associated with the LGBTBEs for purposes of the Commission's Supplier Diversity Program. To the extent permitted by law, utilities and other covered entities shall include LGBT business enterprises in annual reports and annual plans.

6. IMPLEMENTATION

Each utility and other covered entity shall design and implement a program to ensure that eligible suppliers in the Commission's Supplier Diversity Program are encouraged to become eligible suppliers of products and services to the utilities and other covered entities. Nothing in GO 156 authorizes or permits a utility or other covered entity to utilize set-asides, preferences, or quotas in the administration of its program in compliance with GO 156. The utility or other covered entity retains authority to use its legitimate business judgment to select the supplier for a particular contract.

6.1. Internal Program Development and Employee Training

Each utility or other covered entity shall maintain an appropriately sized staff to provide overall direction and guidance and to implement their own program requirements consistent with the Commission's Supplier Diversity Program and applicable law. Each utility and other covered entity shall provide an email address and telephone number on the website of the utility or other covered entity in a prominent location so that eligible suppliers and applicants are able to promptly obtain more information about these internal programs.

Each utility or other entity shall ensure that its staff with procurement responsibilities receive training in the implementation of the Commission's Supplier Diversity Program.

6.2. External Outreach and Activities

To the extent permitted by law, each utility or other covered entity shall implement an outreach program to inform and recruit eligible suppliers to apply for procurement contracts.

Outreach activities may vary for each utility or other covered entity depending on size, service territory, and specific lines of business. However, each utility or other covered entity shall, at a minimum, and to the extent permitted by law:

- (1) Actively seek out opportunities to identify eligible suppliers under the Commission's Supplier Diversity Program and to expand source pools;
- (2) Actively support the efforts of organizations experienced in the field who promote the interests of eligible suppliers under the Commission's Supplier Diversity Program;
- (3) Work with eligible suppliers under the Commission's Supplier Diversity Program to facilitate contracting relationships by explaining 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 bidder, provide information concerning the relative range/ranking of the 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 eligible suppliers under the Commission's Supplier Diversity Program lists of 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 eligible suppliers under the Commission's Supplier Diversity Program;
- (7) Summarize this General Order in outreach program handouts and electronic notices. Such summaries shall state that eligible suppliers under the Commission's Supplier Diversity will be furnished a complete copy of this General Order upon request; and
- (8) Offer the same assistance set forth in Section 6.2. to any interested person or entity, upon request.

6.3. Subcontracting Program

To the extent permitted by law, each utility or other covered entity shall establish and maintain a subcontracting program for the purpose of encouraging contractors to utilize eligible suppliers as subcontractors.

- (1) The subcontracting program shall serve as an enhancement to, not a replacement for, the utility's or other covered entity's outreach program to eligible suppliers under

the Commission's Supplier Diversity Program.

(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; and (3) Purchases/contracts which offer subcontracting opportunities, regardless of value, where appropriate.

(3) The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like.

(4) To the extent permitted by law, each utility or other covered entity shall encourage and assist its prime contractors to develop plans to increase the utilization of eligible suppliers under the Commission's Supplier Diversity Program as subcontractors. Prime contractors shall be encouraged to submit to the utility or other covered entity plans that include goals for the utilization of eligible suppliers under the Commission's Supplier Diversity Program as subcontractors. These plans may be incorporated into the contract between the utility or other covered entity and the prime contractor. The prime contractor may submit periodic reports on its compliance with the plan to the utility or other covered entity.

(5) Each utility or other covered entity 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 BUSINESS ENTERPRISES OWNED and
CONTROLLED BY WOMEN, MINORITIES, DISABLED
VETERANS, LGBT, AND PERSONS WITH DISABILITIES**

It is the policy of this company that business enterprises owned and controlled by women, minorities, disabled veterans, LGBT, and persons with disabilities (herein "diverse suppliers") shall have the maximum practicable opportunity to participate in the performance of contracts.

However, this policy shall not be used to exclude any qualified businesses from participating in contracting opportunities.

The contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor agrees to inform all prospective subcontractors of the opportunity to request from the Clearinghouse a verification application to be certified as a diverse supplier, return the completed application to the Clearinghouse for processing, and, if verified/certified, the prospective supplier will be included in the database, as a diverse supplier.

(6) Each utility or other covered entity is encouraged to inform its prime contractors that the prime contractor's good faith efforts to subcontract with eligible suppliers under the Commission's Supplier Diversity Program is a factor that, to the extent permitted by law, will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.

(7) To the extent permitted by law, each utility or other covered entity shall monitor and include in its annual report to the Commission a summary of progress and efforts by prime contractors to increase the participation of eligible suppliers under the Commission's Supplier Diversity Program.

(8) To the extent permitted by law, each utility or other covered entity shall include in its annual plan to the Commission a description of future plans for encouraging both prime contractors and grantees to engage eligible suppliers under the Commission's Supplier Diversity Program in all procurement categories which provide subcontracting opportunities.

(9) Each utility or other covered entity may include awards to eligible supplier subcontractors in GO 156 reporting results.

7. REVIEW OF CERTIFICATIONS AND DENIALS OF CERTIFICATIONS

This section sets forth the review process for when an applicant seeks (1) a reconsideration of a denial to verify/certify by the Clearinghouse and (2) to file a Notice of Appeal with the Commission after the Clearinghouse confirms its denial. This section also sets forth a process for a third-party to challenge a verification/certification of an eligible supplier by the Clearinghouse.

7.1. Internal Review Process

The review process for a denial of verification/certification by the Clearinghouse includes two steps. First, the applicant may seek internal review from the Clearinghouse. If the Clearinghouse confirms the denial, as the second step, the applicant may seek review of the denial with the Commission by filing a Notice of Appeal under Resolution ALJ-377 (or successor rules) and the processes set forth therein. This resolution is available on the Commission's website. Resolution ALJ-377 sometimes refers to Notice of Appeals as complaints.

The Clearinghouse must implement an efficient internal review process and must promptly provide a copy of confirmation or reversal of the denial to the applicant.

7.2. Notices of Appeal

The Notice of Appeal is filed and docketed as a formal proceeding with the Commission. All docketed matters are accessible on the Commission's website. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the Notice of Appeal.

The Administrative Law Judge shall make best efforts to notice the Notice of Appeal for hearing between 10 and 20 days after being assigned to hear the Notice of Appeal. The Administrative Law Judge may confer with parties to determine whether any material facts are in dispute prior to scheduling a hearing and consider whether a hearing is warranted. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing and, instead, schedule and notice the hearing beyond the time period noted above.

A party or jointly the parties may order an expedited transcript of the hearing. Costs may be associated with an order for an expedited transcript, in accordance with the Commission's requirements. In the absence of an expedited transcript, the Commission may address this matter after approximately 8 weeks, the length of time for preparation of a transcript (when no expedited order is placed).

A party may be represented at the hearing by an attorney or other representative.

At the hearing, the applicant carries the burden of proof and shall open and close but the Administrative Law Judge has the discretion to alter the order of presentation. Formal rules of evidence do not apply.

All relevant and reliable evidence may be received in the discretion of the Administrative Law Judge. No deference will be accorded to the underlying denial by the Clearinghouse. The standard of proof is preponderance of evidence.

The Administrative Law Judge shall issue a draft resolution for the Commission's consideration resolving the Notice of Appeal as soon as possible but no later than 30 days after the record of the Notice of Appeal is submitted. The draft resolution will be placed on the Commission's first available agenda, consistent with the Commission's Rules of Practice and Procedure. In the event the transcript of the hearing is not available, the Administrative Law Judge may delay issuing a draft resolution. This timeline would therefore be longer than set forth in Resolution ALJ-377.

From the date the Notice of Appeal is filed and served to and including the date the Commission's final resolution is published, neither party (or an attorney or agent acting on behalf of a party) shall engage in ex parte communications, except for procedural matters. More information about ex parte communications is available in the Commission's Rules of Practice and Procedure.

7.3. Third-Party Challenges

A third-party may challenge the certification/verification by the Clearinghouse of an applicant/eligible supplier under the Supplier Diversity Program whether the certification/verification is pending or completed. Third-party challenges must comply with all the following: (1) be in writing and sent 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 third-party; and (4) be served on the affected applicant or eligible supplier on the same day sent to the Clearinghouse. Such challenges may include supporting documentation.

The Clearinghouse will review third-party challenges to determine whether a factual basis for the questioning exists.

If the Clearinghouse determines insufficient factual basis for the challenge exists, it shall act as follows: (a) inform the third-party and subject applicant or eligible supplier of this determination in writing within 20 business days of the receipt of the challenge and (b) inform the third-party of the right to file a Notice of Appeal to the Commission. Resolution ALJ-377(or successor rules) sets forth the process for filing the Notice of Appeal. Additional procedures related to Notices of Appeal are set forth herein.

If the Clearinghouse determines that sufficient factual basis for the challenge exists, the

Clearinghouse shall require the applicant/eligible supplier to provide the Clearinghouse with any additional information needed to permit further evaluation of the verification/certification of the applicant/eligible supplier. Following the Clearinghouse's review and evaluation of the information presented by both the third-party and the applicant/eligible supplier, the Clearinghouse will propose a resolution and provide for an opportunity to respond to the Clearinghouse's proposed resolution. Then the Clearinghouse shall notify the third-party and the applicant or eligible supplier of its final verification decision and of the right to file a Notice of Appeal of this determination with the Commission pursuant to Resolution ALJ-377 (or successor rules) and the processes set forth herein.

During the pendency of a third-party challenge of a business enterprise already verified/certified by the Clearinghouse, the business enterprise will remain certified/verified.

If a third-party challenge does not include the minimum criteria set forth above or it withdraws its challenge, the Clearinghouse may continue its review to determine whether the challenge merits consideration.

7.4. Contract Disputes

Disputes regarding general contract-related matters, such as failure to win a contract award, must be brought before the appropriate court or other forum. The Commission's jurisdiction on contract related matters is limited. Some disputes or complaints regarding the Commission's GO 156 Supplier Diversity Program, such as complaints about non-compliance with GO 156, may fall under the complaint process set forth in the Commission's Rules of Practice and Procedure. The Notice of Appeal, described herein, is also available.

8. GOALS

Each utility and other covered entity shall set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of eligible suppliers under the Commission's Supplier Diversity Program. Goals shall be set annually for each major product and service category which provides opportunities for procurement. "Substantial and verifiable Goals" mean goals which are realistic and clearly demonstrate a commitment to encourage the participation of eligible suppliers. in contracts. Section 8 applies to community choice aggregators and electric service providers that are public entities to the extent permitted by law.

8.1. Setting Goals

The utilities and other covered entities shall consider the following factors in setting goals: (1) Total utility or other covered entity purchasing and/or contracting projections; (2) Availability of eligible suppliers under the Commission's Supplier Diversity Program and competitiveness in the geographical area served by the utility or other entity; (3) Market dynamics based on historical data and trends; and (4) Other appropriate factors which may increase the share of business for eligible suppliers under the Commission's Supplier Diversity Program.

8.2. Initial Minimum Goals

Each utility and other covered entity shall establish minimum long-term procurement goals for each major category of products and services purchased from eligible suppliers of not less than the following: 15% for minority business enterprises; 5% for women business enterprises; 1.5% for disabled veteran business enterprises; and 0.5% for 2022, 1.0% for 2023, and 1.5% for 2024 and beyond for LGBT business enterprises. No procurement goal has been adopted for persons with disabilities business enterprises. Contracts or purchases with eligible suppliers under the Commission's Supplier Diversity Program may only count toward one procurement goal. For example, a minority and women business enterprises may be counted toward one goal, either the minority business enterprise goal or the women business enterprise goal but not both.

8.3. Parity

The specification of initial long-term procurement goals shall not prevent the utilities or other covered entities from seeking to reach parity with those public agencies and other companies, which the Legislature states in Pub. Util. Code § 8281(b)(1)(B) are awarding 30% or more of their contracts to women, minority, disabled veteran, and LGBT business enterprises.

8.4. Other Goals

Procurement goals shall also be established for both minority women business enterprises and non-minority women business enterprises. These goals are intended to ensure that utilities and other covered entities do not direct procurement programs toward non-minority women business enterprises and minority men business enterprises to the detriment or exclusion of minority women business enterprises.

8.5. Subsets of Goals

Procurement 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" pursuant to former Section 8.5.²

8.6. Setting of Goals by Major Category of Products/ Services

For each major category of products and services where the minimum long-term procurement goals required by Section 8.2. are not met, the utility or other covered entity shall include a comprehensive discussion of all efforts made to find or recruit eligible suppliers of products or services. The utility and other covered entity may also explain in detail in its annual report how its ability to meet its procurement goals are affected because eligible suppliers capable of supplying certain products and services are unavailable or because sole source procurement is the only

² In D.03-11-024, the Commission revised GO 156 and modified Section 8.7. Prior to D.03-11-024, Section 8.5 provided: 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 its excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMDVBE program progress and future plans.

available procurement method. As part of this explanation, the utility and other covered entity may also include data with exclusions pursuant to former Section 8.5. If such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility or other covered entities report must contain the data without exclusions in the first sentence.

8.7. Excluded Category of Products/Services

A utility or other covered entity 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 procurement goals for purchases from eligible suppliers of these categories of products or services, provided that the utility or other covered entity encourages the affiliate to establish an appropriate subcontracting program where such affiliate employs subcontractors. Any utility or other covered entity 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 or other covered entities annual plan must describe any future plans to encourage such a sub-contracting program. This section applies only to those utilities which are purchasing products or services from affiliates as of the effective date of the General Order adopted on May 30, 1988.

8.8. Procurement Goals Expressed

Procurement goals for each specific product or service category shall be expressed as a percentage of total dollars awarded by a utility and other covered entity to outside suppliers in that category; however, where appropriate, non-numeric goals may also be included.

8.9. Specific Product/Services Goals Expressed

Overall program procurement goals shall be expressed as a percentage of total dollars awarded to outside suppliers in all categories of products and services purchased by a utility or other covered entity other than products and services which are included in a fuel procurement base established pursuant to Section 8.11.

8.10. Method of Expressing Program Goals

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

8.11. Payments

Each utility and other covered entity may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from eligible suppliers under the Commission's Supplier Diversity Program. Utilities or other covered entities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below: (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; (2) The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas

markets; (3) A utility or other covered entity which purchases eligible supplier's fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.7. of this amended General Order does not permit utilities or other covered entities to exclude product and services categories for which there are available eligible suppliers; and (4) A utility or other covered entity may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under former Section 8.5. and if the utility or other covered entity plans for and reports on progress in increasing the procurement of such fuels from eligible suppliers.

8.12. Low Utilization

Each utility and other covered entity shall make special efforts to increase utilization and encourage entry into the marketplace of eligible suppliers in product or service categories where there has been low utilization of eligible suppliers, such as legal and financial services, fuel procurement, and areas that are considered technical.

8.13. No Penalty

No penalty shall be imposed for failure of any utility or other covered entity to meet or exceed procurement goals.

8.14. Report of Procurement Goals

Utilities and other covered entities shall report their procurement goals in their annual plans.

9. ANNUAL REPORT

Utilities and other covered entities shall provide an electronic copy of their Annual Report to the Commission's Executive Director on or before March 1 of each year. The Annual Report must provide details on the utilities' or other covered entities' programs created to comply with the Commission's Supplier Diversity Program. Section 9 does not apply to utilities and electric service providers with gross annual California revenues of \$15 million or less or community choice aggregators with gross annual revenues of \$15 million or less. Entities added to the Commission's Supplier Diversity Program by Senate Bill 255 (2019), e.g., certain community choice aggregators, electric service providers, and utilities, shall submit their first annual reports in March 2023. Annual reports shall include data on person with disabilities business enterprises starting March 2024.

9.1. Contents of Report

The Annual Report shall contain at least the following elements:

(1) A description of program activities engaged in during the previous calendar year. This description shall include both internal and external activities, and include the approximate amount of funding, to the extent available, directly expended on development and distribution of technical assistance to small and diverse businesses.

(2) A summary of purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total contract dollars awarded to outside suppliers in those categories, and with information regarding the total number of

contracts, and the dollars awarded to eligible suppliers under the Commission's Supplier Diversity Program. Each utility or other covered entity shall report the number of eligible suppliers under the Commission's Supplier Diversity Program who have the majority of their workforce working in California, to the extent such information is readily accessible. Each utility or other covered entity shall also report the number of eligible suppliers under the Commission's Supplier Diversity Program that received direct spend during the reporting year.

(3) An itemization of program expenses provided in the format approved by Commission staff, as guided by Attachment A to D.95-12-045, D.15-06-007, and other relevant decisions.

(4) A description of progress in meeting or exceeding set procurement goals and an explanation of any circumstances that may have resulted in not meeting those goals. This subsection may not apply to community choice aggregators and electric service providers that are public agencies.

(5) A summary of prime contractor utilization of eligible subcontractors suppliers under the Commission's Supplier Diversity Program.

(6) A list of complaints received from eligible suppliers in the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status. For purposes of this subsection, a *complaint* means any written or verbal statement from an eligible supplier or third-party that the utility's or other covered entity's program is unsatisfactory or unacceptable.

(7) A description of any efforts made to recruit eligible suppliers for products or services in procurement categories where utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered technical. This subsection may not apply to community choice aggregators and electric service providers that are public agencies.

(8) Utilities and other covered entities shall retain all documents and data they rely on in preparing their annual reports for the longer of either three years or in conformance with the document retention policies of the utility or other covered entity. The utility or other covered entity shall provide these documents and data to the Commission, upon request.

(9) The utilities and other covered entities shall summarize purchases and/or contracts from eligible suppliers under the Commission's Supplier Diversity Program in product and service categories that include energy storage systems, vegetation management, renewable and non-renewable energy, wireless communications, broadband, smart grid, rail projects and electronic procurement, in addition to their current reporting categories. Utilities have discretion to segregate overlapped dollars. Utilities and other covered entities shall report renewable and nonrenewable energy procurement in a manner similar to their reporting of fuel procurement.

(10) The Commission's staff may conduct as many audits of utilities and other covered entities as it deems necessary but shall audit at least one annual GO 156 report randomly selected every two years from a different utility industry to confirm that the reported spend is accurate. The Commission's staff may determine the selection process

for this random selection and the audit methodology. The Commission's staff may conduct audits of any reports or data provided to the Commission by utilities and other covered entities regarding their participation in the Supplier Diversity Program.

(11) Each utility or other covered entity which elects to report fuel procurement separately must file with the Commission's Executive Director on or before March 1 of each year a separate detailed and verifiable report on participation in fuel markets by eligible suppliers under the Commission's Supplier Diversity Program. These reports must include, at a minimum, the results of purchases in each fuel category.

(a) Each utility or other covered entity 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; and
- (4) Ethnicity and gender of the supplier.

(b) Each utility and other covered entity shall provide:

- (1) An explanation of how existing and/or changing market conditions are affecting the utility's or other covered entity's ability to meet or exceed its procurement goals for fuel (this subsection may not apply to community choice aggregators and electric service providers that are public agencies as laws may prohibit such procurement goals);
- (2) A comprehensive description of the specific out-reach programs used to seek eligible supplier fuel suppliers in each market in which fuel is purchased (this subsection may not apply to community choice aggregators and electric service providers that are also public agencies as laws may prohibit such procurement goals); and
- (3) A justification for any exclusion of a specific fuel category from the utility's or other covered entity's fuel procurement base.

9.2. Erosion of Internal Programs

This General Order is not intended to permit erosion of programs and reporting presently engaged in by a utility or other covered entity.

9.3. Further Breakdown of Reporting Authorized

Nothing in this General Order shall prohibit any utility or other covered entity 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 business enterprise classifications).

10. ANNUAL PLAN

The utilities and other covered entities shall provide an electronic copy of their Annual Plan to the Commission's Executive Director on or before March 1 of each year, that

includes a detailed and verifiable plan for encouraging procurement in all categories of eligible suppliers under the Commission's Supplier Diversity Program. Section 10 does not apply to utilities and electric service providers with gross annual California revenues between \$15 million and \$25 million. Section 10.1. does not apply to community choice aggregators or electric service providers that are also public agencies. Pursuant to Pub. Util. Code § 366.2(m)(1) and Section 10.2. below, the Annual Plans of community choice aggregators shall include a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects. Entities added to the Commission's Supplier Diversity Program by Senate Bill 255 (2019), e.g., certain community choice aggregators, electric service provides, and utilities, shall submit their first annual plan in March 2023. Annual plans shall include, to the extent permitted by law, person with disabilities business enterprises starting in March 2024.

10.1. Utilities and Other Covered Entities:

The Annual Plan shall contain at least the following elements:

- (1) Short-term, mid-term, and long-term procurement goals, as required by Section 8, herein;
- (2) A description of program activities planned for the next calendar year. This description shall include both internal and external activities;
- (3) A plan for recruiting eligible suppliers of those products or services where utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered technical .
Plans for recruiting Eligible Suppliers in any "excluded category"
- (4) A plan for seeking and or cultivating eligible suppliers of those products and services where eligible suppliers are currently unavailable.
- (5) Plans for encouraging prime contractors and grantees to engage eligible suppliers
A plan for encouraging both prime contractors and grantees to engage eligible suppliers in subcontracts in all categories which provide subcontracting opportunities.
- (6) A plan for complying with the program guidelines established by the Commission, as required by Pub. Util. Code § 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.

10.2. Community Choice Aggregators and Electric Service Providers that are Public Agencies

As set forth in Section 11, below, for community choice aggregators and electric service providers that are also public agencies, the annual plan shall contain at least the following elements: descriptions of program activities to increase procurement related to small, local, and diverse business enterprises planned for the next year in all categories, including, but not limited to, renewable energy, energy storage systems, and smart grid projects.

11. ANNUAL PLANS FOR COMMUNITY CHOICE AGGREGATORS AND ELECTRIC SERVICE PROVIDERS THAT ARE PUBLIC AGENCIES

As set forth in D.22-04-035, community choice aggregators and electric service providers shall comply with similar annual plan requirements as utilities and other covered entities, except that these annual plan requirements may be modified to reflect limitations in the law applicable to public agencies, as well as the fact that, at this time, energy procurement represents the majority of expenses for a typical community choice aggregator and electric service providers. In addition, for community choice aggregators these annual plans are limited by statute to increasing procurement from small, local, and diverse business enterprises. Staff will meet with community choice aggregators, electric service providers that are also public agencies, and stakeholders to develop the annual plan requirements, as needed. Staff will provide a copy of any revised reporting requirements to community choice aggregators, electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156). To the extent permitted by law, these annual plan requirements must continue to promote the state policy of increasing contracts with (1) eligible suppliers and (2) small, local, and diverse business enterprises. Community choice aggregators and electric service providers shall submit their first annual plan in March 2023.

12. ANNUAL FORMS FOR SMALLER UTILITIES AND SMALLER ELECTRIC SERVICE PROVIDERS

Pursuant to Pub. Util. Code § 8283(f), this section sets forth the rules that apply to smaller utilities and smaller electric service providers that fall within the Commission's Supplier Diversity Program pursuant to statute, i.e., those with gross annual California revenues between \$15 million and \$25 million. These smaller utilities and smaller electric service providers shall annually, on or before March 1, electronically submit a "simplified form" to the Commission's Executive Director. The information to be included in the form shall be developed by the Commission's staff together with these smaller utilities and smaller electric service providers, as set forth in D.22-04-035. The Commission's staff will provide a copy of this simplified form via email to the service list of Rulemaking 21-03-010 (or the successor proceeding). The reporting requirements in Section 9 and Section 10 do not necessarily apply to these smaller utilities and smaller electric service providers. These smaller utilities and smaller electric service providers shall submit their first annual "simplified form" in March 2023.

13. COMMISSION ANNUAL REPORT TO LEGISLATURE

As required by Pub. Util. Code § 8283(e), the Commission shall provide an annual report to the Legislature (beginning January 1989) on the progress of activities undertaken by each utility or other covered entity to implement Pub. Util. Code § 366.2 and §§ 8281-8286 and this General Order.

In this annual report to the Legislature, the Commission shall recommend a program for carrying out the policy declared in the above-mentioned sections of the Pub. Util. Code, together with recommendations for any legislation it deems necessary or desirable to further that policy.

This annual report to the Legislature shall include recommendations to the utilities and other covered entities for the achievement of maximum results in implementing legislative policy and this General Order.

This annual report to the Legislature shall include information initially identified in Resolution Exec-001, which provides for monitoring and evaluation of the Supplier Clearinghouse “on a periodic basis.” As part of this monitoring and evaluation of the Supplier Clearinghouse, the Commission’s annual report to the Legislature will include an analysis of the existing contract between the Clearinghouse and the utilities (e.g., audits of revenues and expenditures associated with the certification program), as required by Resolution Exec-001.

14. WORKFORCE DIVERSITY AND BOARD DIVERSITY REPORTING

All utilities and other covered entities will include information regarding current reporting in other jurisdictions on workforce diversity and board diversity in annual reports, starting March 2023. The Commission’s staff will develop further reporting requirement during a phase 2 of Rulemaking 21-03-010. The Commission’s staff will provide the reporting requirements to the service list of Rulemaking 21-03-010 (or successor proceeding) and place the requirements on the Commission’s webpage for GO 156.

15. VOLUNTARY COMPLIANCE AND REPORTING

The Commission supports all efforts to voluntarily comply with the state policy of increasing procurement from diverse suppliers set forth in Pub. Util. Code §§ 8281-8286.

Pub. Util. Code § 366.2(m)(3) encourages community choice aggregators with gross annual revenues under \$15 million to adopt a plan for increasing procurement from small, local, and diverse business enterprises in all categories.

Pub. Util. Code § 8283(e)(1) encourages certain small utilities and electric service providers, i.e., those with gross annual California revenues under \$15 million, to adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement.

Pub. Util. Code § 8283(e)(2) encourages exempt wholesale generators, distributed energy resource contractors, and energy storage system companies to adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis. Cable television corporations and direct broadcast satellite providers were previously included in Pub. Util. Code § 8283(e)(2).

16. COMMISSION ANNUAL *EN BANC* MEETING

The Commission shall hold an annual *en banc* hearing or other proceeding to provide all stakeholders, such as utilities, other covered entities, members of the public, community-based organizations, and eligible suppliers under the Commission's Supplier Diversity Program the opportunity to share ideas and make recommendations for effectively implementing legislative policy under Pub. Util. Code § 366.2 and §§ 8281-8286 and this General Order. The Commission's staff shall provide notice of the annual *en banc* broadly, including to the service list for the most recent proceeding pertaining to General Order 156 and any service lists pertaining to related topics. Notice shall also appear on the Commission's Daily Calendar.

(END OF APPENDIX B to D.22-04-035)