

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

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R2103010

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.

R.21-03-010

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S  
COMMENTS ON THE PROPOSED DECISION**

Evelyn Kahl  
General Counsel and Director of Policy  
Leanne Bober  
Senior Counsel  
CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION  
One Concord Center  
2300 Clayton Road, Suite 1150  
Concord, CA 94520  
(415) 254-5454  
[regulatory@cal-cca.org](mailto:regulatory@cal-cca.org)

March 1, 2022

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## **SUBJECT MATTER INDEX**

### **SPECIFICATION OF ERROR**

1. The Proposed Decision and the Proposed Decision's revised General Order 156 (GO 156) fail to incorporate the express limits of Public Utilities Code Section 366.2(m) on participation of community choice aggregators (CCA) in the Commission's Supplier Diversity Program due to California Proposition 209 prohibitions on CCA preferential contracting.
2. The Proposed Decision and the Proposed Decision's revised GO 156 unlawfully apply the workforce and board diversity reporting requirements to CCAs.

### **RECOMMENDED CHANGES**

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1. Modify the Proposed Decision and the Proposed Decision's GO 156 as set forth in Attachments A and B hereto to limit the requirements on CCAs as set forth in Section 366.2(m) to ensure CCAs remain in compliance with Proposition 209.
  2. Modify the Proposed Decision and the Proposed Decision's GO 156 to allow CCAs to voluntarily report on workforce and board diversity to the extent practicable and permitted by law.

**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.

R.21-03-010

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S  
COMMENTS ON THE PROPOSED DECISION**

The California Community Choice Association (CalCCA)<sup>1</sup> submits these Comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed *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* (Proposed Decision or PD), issued on February 9, 2022.

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<sup>1</sup> California Community Choice Association represents the interests of 23 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, 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, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

## I. INTRODUCTION

The PD and the PD's proposed revisions to General Order 156 (GO 156) aim to implement Senate Bill (SB) 255 which, among other items, adds Section 366.2(m) to the Public Utilities Code. Section 366.2(m) incorporates Community Choice Aggregators (CCAs) into the Commission's Supplier Diversity Program (Program) by imposing distinct reporting requirements on CCAs. Since SB 255 was adopted in 2019, Commission staff has guided the CCAs through the requirements of Section 366.2(m), resulting in the 2021 filings of the first CCA Supplier Diversity Annual Reports and Plans. This Rulemaking proposes to formalize the requirements of SB 255 in GO 156.

The Commission incorporates CCAs into GO 156 for the first time through the PD and GO 156 revisions. However, the revisions unlawfully sweep CCAs into all of the requirements imposed on investor-owned utilities (IOUs) and electric service providers (ESPs), failing to accurately implement the distinct limitations on application of GO 156 to CCAs set forth in Section 366.2(m). The PD rests on the following legal errors:

- ✘ The Proposed Decision and the Proposed Decision's revised General Order 156 (GO 156) fail to accurately incorporate the express limits of Section 366.2(m) on participation of community choice aggregators (CCA) in the Commission's Supplier Diversity Program due to California Proposition 209 prohibitions on CCA preferential contracting.
- ✘ The Proposed Decision and revised GO 156 unlawfully apply the workforce and board diversity reporting requirements on CCAs.

The Commission should modify the PD as follows to correct these legal errors:

- ✓ Modify the Proposed Decision and GO 156 as set forth in Attachments A and B hereto to limit the requirements on CCAs as set forth in Section 366.2(m) to ensure CCAs can remain in compliance with Proposition 209.
- ✓ Modify the Proposed Decision and GO 156 to allow CCAs to voluntarily report on workforce and board diversity to the extent practicable and permitted by law.

## II. BACKGROUND

### A. The Supplier Diversity Program and SB 255's Addition of Community Choice Aggregators and Electric Service Providers

Public Utilities Code Sections 8281-8286 contain the original framework adopted in 1986 for the Program, encouraging utilities to award a share of procurement contracts to women and minority business enterprises.<sup>2</sup> Sections 8281-8286 have been amended over the years to incorporate additional categories of suppliers including disabled veteran and lesbian, gay, bisexual, or transgender (LGBT) owned business enterprises (BEs). Sections 8281-8286, applicable to IOUs, include mandates that the Commission: (1) follow overall state policies governing supplier diversity; (2) require that IOUs file annual reports and plans including goals and timetables for increasing procurement from women, minority, disabled veteran, and LGBT BEs, (3) establish guidelines for supplier diversity programs; (4) require IOUs to annually submit data on diverse procurement; (5) adopt criteria for eligibility of diverse suppliers; (6) require IOUs to implement outreach programs to recruit diverse suppliers; and (7) enforce penalties for false representations of diversity by suppliers.<sup>3</sup> The Commission adopted GO 156 in 1988 (and has revised it several times since) to implement the statutory directives set forth in Sections 8281-8286.<sup>4</sup>

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<sup>2</sup> Assembly Bill 3678 (Moore 1986) (implementing the Supplier Diversity Program).

<sup>3</sup> Cal. Pub. Util. Code §§ 8281-8286.

<sup>4</sup> PD at 3.

The legislature passed SB 255 in 2019, adding two types of participants to the Program – ESPs and CCAs.<sup>5</sup> ESPs, but not CCAs, were expressly incorporated into all of the Program’s requirements set forth in Sections 8281-8286.<sup>6</sup> CCAs were only incorporated into the Program through the addition of Public Utilities Code Section 366.2(m), which places the following distinct reporting requirements on operating CCAs with gross annual revenues exceeding \$15 million:

- ✓ “[S]ubmit a detailed and verifiable *plan* to the commission 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.”<sup>7</sup>
- ✓ “[S]ubmit a *report* to the Commission regarding its procurement from *women, minority, disabled veteran, and LGBT business enterprises* in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects.”<sup>8</sup>

As discussed below, the statutory framework for CCAs was carefully crafted by the legislature to ensure that the rules would not infringe on the prohibitions against discrimination through public contracting imposed on CCAs (and inapplicable to IOUs and ESPs) through California Proposition 209.<sup>9</sup>

## **B. Proposition 209 – Applicable to Community Choice Aggregators**

Proposition 209, passed as a California constitutional amendment on November 5, 1996, orders that “[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation

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<sup>5</sup> SB 255 (Bradford 2019).

<sup>6</sup> *Id.*

<sup>7</sup> Cal. Pub. Util. Code § 366.2(m)(1) (emphasis supplied).

<sup>8</sup> *Id.*, § 366.2(m)(2) (emphasis supplied). The only other requirement is that a CCA in the process of forming must include in its implementation plan its methods to ensure procurement from small, local and diverse business enterprises. *Id.*, § 366.2(c)(3)(H).

<sup>9</sup> See Senate Rules Committee, SB 255 (Sept. 9, 2019), at 5-6.

of public employment, public education, or public contracting.”<sup>10</sup> “State” includes “any city, county, city and county, . . . or any other political subdivision or governmental instrumentality of or within the State.”<sup>11</sup> CCAs, as agencies within local counties or cities, fall within Proposition 209’s definition of “State” and therefore are subject to its limitations.<sup>12</sup>

For best practice compliance with Proposition 209, CCA procurement should be complete, and a contract awarded, before a CCA can survey a vendor regarding any certification or qualification under the Program. Once the information is collected, the CCA must take appropriate measures to keep this information out of any discussion of future procurement to avoid violating Proposition 209. CCAs also cannot recruit or set procurement targets for the classified groups set forth in Proposition 209. For the Annual Reports and Plans required by Section 366.2(m), CCA Annual Plans are required to contain *future* contracting plans only with small, local and diverse vendors (*i.e.*, not including the classified groups subject to Proposition 209 limitations). For the Annual Reports, CCAs can report on the *past year’s* procurement from the classified groups subject to Proposition 209 limitations and still remain in compliance with Proposition 209.

### **C. 2021 CCA First Supplier Diversity Annual Reports/Plans**

Since SB 255 was passed, Commission staff have worked closely with CCAs to implement and interpret the unique reporting requirements applicable to CCAs. The fourteen CCAs subject to SB 255’s reporting requirement thresholds submitted their first Supplier

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<sup>10</sup> California Constitution, Article 1, Section 31(a), located at: [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1)

<sup>11</sup> *Id.*, Section 31(f).

<sup>12</sup> The Commission’s Staff Proposal recognizes that “CCAs are considered municipalities and must follow [Proposition 209] . . .” *Staff Proposal to Revise General Order 156 for the Supplier Diversity Program*, R.21-03-010 (July 16, 2021), at 11.

Diversity 2020 Report and 2021 Plan on March 1, 2021.<sup>13</sup> The Commission's report to the Legislature in September 2021 lauded the achievements of CCAs in their first year of participation in the Program:

The CPUC congratulates the CCAs for taking the initial steps towards supplier diversity despite the challenges, specifically Proposition 209. Currently, the CPUC is working with the CCAs and organizations in the energy industry to find solutions, provide guidance, identify best practices, engage diverse suppliers, and build relationships with ethnic chambers of commerce and local business organizations.<sup>14</sup>

Subsequent meetings and workshops between the CCAs and Commission Staff have further defined the content of the CCA Reports and Plans required by Section 366.2(m). The CCAs look forward to their continuing collaboration with Commission Staff to improve the Reports and Plans and the CCAs' supplier diversity efforts.

### **III. THE PROPOSED DECISION FAILS TO ACCURATELY IMPLEMENT SECTION 366.2(M) INTO GO 156 RESULTING IN LEGAL ERROR**

This Rulemaking includes formalizing the requirements of SB 255 into the Commission's GO 156, and therefore for the first time incorporates ESPs and CCAs into GO 156. While ESPs are appropriately added to the provisions applicable to IOUs consistent with SB 255, the PD and revisions to GO 156 also subject CCAs to the same requirements and therefore inaccurately incorporate the requirements of Section 366.2(m), resulting in legal error. Accordingly, the PD and revised GO 156 must be materially modified as set forth in Attachments A and B attached hereto.

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<sup>13</sup> See <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/business-and-community-outreach/utility-supplier-diversity-program/community-choice-aggregators-supplier-diversity-reports>.

<sup>14</sup> See *California Public Utilities Commission Year 2020 Utilities Procurement of Goods, Services, and Fuel From Women, Minority, Disabled Veteran, and LGBT Business Enterprises* (Sept. 2021), at 51.

**A. The Limited Statutory Mandates for Including CCAs in the Commission’s Supplier Diversity Program are Unambiguously Set Forth in Public Utilities Code Section 366.2**

SB 255 was carefully crafted to add CCAs to the Program through Section 366.2(m) considering the limitations posed by Proposition 209. The plain language of Section 366.2(m) requires CCAs only to state in their Annual Plans how they can increase procurement in the next year from small, local, and diverse business enterprises (which are not classified groups subject to Proposition 209 limitations). The requirements for CCAs differ from the requirements on IOUs and ESPs in Section 8283(a) to report in their Annual Plans on procurement goals for, as well as increasing recruiting and contracting with, eligible suppliers, which includes classified groups subject to Proposition 209 limitations. The requirements for the Annual Reports of IOUs, ESPs, and CCAs, however, are identical in Sections 8283(d) for IOUs and ESPs, and Section 366.2(m)(2) for CCAs, both of which require reports on the past year’s contracting with eligible suppliers (including classified groups subject to Proposition 209 limitations).

In interpreting its statutory authority, such as here when incorporating Section 366.2(m) into GO 156, the Commission is to “ascertain the Legislature’s intent so as to effectuate the purpose of the law.”<sup>15</sup> To that end, the Commission must “look first to the words of the statute, giving the language its usual, ordinary meaning.”<sup>16</sup> The Commission has observed that when interpreting a statute, it must:

[L]ook to the statute’s words and give them their usual and ordinary meaning. The statute’s **plain meaning** controls the court’s interpretation unless its words are ambiguous. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy....<sup>17</sup>

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<sup>15</sup> *Hunt v. Superior Court*, 21 Cal.4<sup>th</sup> 984, 1000 (1999) 31 Cal.4<sup>th</sup> 1051, 1056 (citations omitted).

<sup>16</sup> *Ibid.*

<sup>17</sup> D.12-05-035 (quoting *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4<sup>th</sup> 381, 387-388).

Here the statutory provisions in Sections 8281-8286 and 366.2(m) are very clear as to the Program requirements for IOUs, ESPs and CCAs.

Even if the Commission finds the statutory language ambiguous, however, the legislative history clarifies that the legislature was keenly aware of the legal restrictions on CCAs posed by Proposition 209:

[l]egal restrictions make obtaining information related to protected classes challenging. California’s Proposition 209 prohibits the State from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. The Proposition limits the degree to which any governmental entity within California, including CCAs, can compel information about certain protected classes to support contract decision-making. However, the Proposition does not prohibit after-the-fact reporting on outcomes from contracting. This bill requires CCAs to develop plans for small, local, and diverse business contracting; however, it requires CCAs to report after-the-fact on contracting with [protected classes].<sup>18</sup>

SB 255 therefore incorporates CCAs into the Program not by imposing the broad requirements of Sections 8281-8286 on CCAs, but rather only imposing distinct reporting requirements set forth in Section 366.2(m).

**B. The PD and Proposed GO 156 Must Be Modified to Accurately Incorporate CCAs into GO 156**

In the PD, the Commission appropriately “finds it reasonable to permit more limited reporting requirements for [CCAs] than those currently required of utilities.”<sup>19</sup> The Commission relies on Public Utilities Code Section 366.2(m)(2)(B)<sup>20</sup> providing the Commission discretion to determine the form of reporting for CCAs which can differ from that applicable to IOUs and

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<sup>18</sup> Senate Rules Committee, Analysis of SB 255 (Sept. 9, 2019), at 5.

<sup>19</sup> PD at 16.

<sup>20</sup> The PD states that the Commission is relying on Pub. Util. Code § 399.2(m)(2)(B) which appears to be in error – the correct section is 366.2(m)(2)(B).

ESPs.<sup>21</sup> The PD and Section 11 of the GO 156 revisions also reflect that approximately 94 percent of CCA expenditures are in power procurement, which has few eligible suppliers as represented in the reports of utilities, ESPs and CCAs.<sup>22</sup> Therefore Section 11 of the PD’s revisions to GO 156 states that the reporting requirements may be modified to reflect the unique situation of CCAs with respect to diverse spend in power procurement, and then diverse spend for non-power procurements categories. However, while the Commission noted CalCCA’s concern of a legal conflict for CCAs to comply with both Proposition 209 and the existing GO 156 reporting requirements, the Commission failed to address this concern in both the PD and the proposed GO 156 revisions.<sup>23</sup>

The PD and the proposed revisions to GO 156 must be modified to remove requirements for CCAs that fall outside of the statutory mandates set forth in Section 366.2(m). As currently drafted, the rules sweep CCAs into the same requirements as IOUs and ESPs with respect to not only the Reports and Plans, but also recruitment and procurement goals for diverse suppliers that would violate Proposition 209 and are set forth throughout GO 156, and particularly in Sections 6 (Implementation by Utilities and Other Covered Entities), 8 (Procurement Goals), 9 (Required Annual Reports), and 10 (Required Annual Plans). In fact, the new Section 11 specific to CCAs states that the CCA Reports and Plans “will still include the information in Section 9 and Section 10, herein,” requiring Reports and Plans to contain efforts to recruit eligible suppliers and meet procurement goals, both of which were excluded by Section 366.2(m) specifically to avoid CCA

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<sup>21</sup> PD at 16.

<sup>22</sup> For example, the Commission’s Year 2020 report to the Legislature on Supplier Diversity noted the challenges in diversifying power procurement for utilities in 2020. See [\*California Public Utilities Commission Year 2020 Utilities Procurement of Goods, Services, and Fuel From Women, Minority, Disabled Veteran, and LGBT Business Enterprises\*](#) (Sept. 2021) at 45-46 (2020 diverse percentage of spend in power procurement versus total procurement spend: PG&E – 0.05%; SCE – 0.6%; SDG&E – 2.5%).

<sup>23</sup> PD at 14.

violations of Proposition 209. In addition, Section 1.2 of the revised GO 156 specifically applies *all* of the rules set forth in GO 156 to CCAs with gross annual revenues exceeding \$15,000,000, which would sweep CCAs into *all* of the recruitment, procurement target and other provisions outside of the requirements of Section 366.2(m). In short, GO 156 would place requirements on CCAs that could result in violations of Proposition 209, which was not intended by the legislature in enacting SB 255. For these reasons, adoption of the PD and the PD's proposed revised GO 156 would constitute legal error.

Attachment B, attached hereto, contains the redline revisions necessary to prevent such legal error.<sup>24</sup> Importantly, all of CalCCA's proposed revisions are consistent with and follow the guidance provided by Commission staff concerning the reporting requirements for CCAs. As noted in CalCCA's April 12, 2021 Response to the Order Instituting Rulemaking in this proceeding, Commission Staff sent an e-mail to CCAs on April 1, 2020 containing draft templates and a checklist (attached to those Comments as Appendix A-2) explaining which GO 156 reporting categories were applicable to CCAs and which were not.<sup>25</sup> Since that time, Commission Staff and the CCAs have engaged in substantial discussions, meetings, and workshops to tailor the reporting requirements to ensure CCAs are in compliance with Section 366.2(m). Therefore, the revisions to GO 156 set forth in Attachment B hereto must be adopted to incorporate those discussions, ensure compliance with Section 366.2(m), and prevent the legal error which currently exists in the PD and the PD's proposed revised GO 156.

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<sup>24</sup> Proposed revisions to Section 14 are discussed in Section IV. of these Comments.

<sup>25</sup> R.21-03-010, *California Community Choice Association's Comments on Order Instituting Rulemaking to Revise General Order 156 – Supplier Diversity Program* (Apr. 12, 2021).

#### **IV. THE PD AND REVISED GO 156 MUST BE MODIFIED TO ALLOW CCAS TO REPORT ON WORKFORCE AND BOARD DIVERSITY TO THE EXTENT PRACTICABLE AND PERMITTED BY LAW**

The PD and proposed revisions to GO 156 incorporate requirements for IOUs, ESPs and CCAs to report on workforce and board diversity beginning in March of 2024 (reflecting 2023 data). The Commission, however, has no explicit authority, either through SB 255 or any other statute, to require CCAs to report on workforce and board diversity.<sup>26</sup> Instead, the Commission uses its general authority under Section 8281 to “realize the economic well-being of the state of California by encouraging diversity and inclusion within the utility industry through transparent reporting.”<sup>27</sup> Section 8281, however, applies to “regulated public utilities,” and not CCAs. In addition, the PD’s analysis of such reporting requirements relies upon interpretation of state law applicable to corporations. CCAs are public entities with elected or appointed boards and have no control over the makeup of their boards. Even if CCAs did have some control over their governing board composition, CCAs would be limited by Proposition 209 in their ability to recruit potential board members based on classified group status. Therefore, in many pertinent ways, CCAs are distinguishable from corporations and limited in their ability to ensure diversity throughout their boards and workforce.

Despite the limitations on CCA workforce and board diversity reporting and the lack of statutory authority of the Commission to require it, CCAs do generally agree that collecting such information is important to understand the status of diversity within the energy industry. In fact, several CCAs are already collecting such information to the extent possible and including it in

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<sup>26</sup> *Id.*

<sup>27</sup> PD at 44, 49.

their Supplier Diversity Annual Reports.<sup>28</sup> Therefore, CalCCA’s revisions to GO 156 set forth in Attachment B, hereto, acknowledge that CCAs may provide information concerning workforce and board diversity in their Annual Reports, starting March 2024 (or earlier if possible), to the extent practicable and permitted by law.

## V. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the PD and revised GO 156 as provided in Attachments A and B.

Respectfully submitted,



Evelyn Kahl  
General Counsel and Director of Policy  
CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION

March 1, 2022

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<sup>28</sup> For example, Clean Power Alliance provided staff diversity data based on voluntary self-reporting in its 2020-21 Annual Report & Plan and expects to collect board diversity data from voluntary surveys beginning in 2021. In addition, Sonoma Clean Power provided information on its internal polices focusing on diversity and equity in its 2020 Annual Report and 2021 Annual Plan.

## ATTACHMENT A

### PROPOSED CHANGES TO PROPOSED DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

#### PROPOSED DECISION

P. 16: In making this decision, we rely on Pub. Util. Code § ~~399.2(m)(2)(B)~~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.

#### FINDINGS OF FACT

7. Establishing a LGBT voluntary procurement goal for utilities and electric service providers is critical for increasing the engagement and participation of LGBT business enterprises in the Supplier Diversity Program set forth in GO 156.
20. 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~~ the utilities and electric service providers and will not be overly burdensome, as it reflects information many of these ~~covered entities~~ utilities and electric service providers already collect.

#### CONCLUSIONS OF LAW

1. More limited mandatory reporting requirements for community choice aggregators than those currently required of utilities is reasonable based on Pub. Util. Code § ~~399.2(m)(2)(B)~~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.
17. Requiring ~~covered entities~~ utilities and electric service providers 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~~ utilities and electric service providers and will not be overly burdensome, as it reflects information many of these entities already collect, and is consistent with Commission authority. Community choice aggregators may provide such workforce data to the extent practicable and permitted by law. This reporting will commence with the GO 156 annual reports beginning in March of 2024 (reflecting 2023 data) and 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 beginning in March of 2024 (reflecting 2023 data) and in all future annual reports. Community choice aggregators may provide such board composition data to the extent practicable and permitted by law.

## **ORDERING PARAGRAPHS**

No changes.

**ATTACHMENT B**

**CALCCA PROPOSED REVISIONS TO PD,  
APPENDIX B (CLEAN VERSION OF GENERAL ORDER 156)**



PROPOSED DECISION

FILED  
02/09/22

**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) 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  
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- 1.3.22. Product and Service Categories

**2. VERIFICATION**

- 2.1. Clearinghouse to supply verification form to applicant
- 2.2. Assessing suitability of Eligible Supplier to bid on procurement contracts
- 2.3. Eligible Suppliers to submit verification forms every three years
- 2.4. Completion of verification application
- 2.5. Endorsement of ability to perform
- 2.6. Availability of verification forms for inspection
- 2.7. Penalty for falsification

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- 3.1. Authorization to establish and operate the Clearinghouse
- 3.2. Purpose of the Clearinghouse
- 3.3. Effect of utility participation in auditing and verification program
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**7. REVIEW PROCESS, NOTICES OF APPEAL, AND COMPLAINT PROCESS**

- 7.1. Internal Appeal of Clearinghouse Verification Denials
- 7.2. Notice of Appeals
- 7.3. Third-Party Challenges
- 7.4. Contract Disputes

**8. PROCUREMENT GOALS**

**9. REQUIRED ANNUAL REPORT**

- 9.1. Contents of Report
  - 9.1.1. Description of program activities
  - 9.1.2. Summary of purchases/ contracts
  - 9.1.3. Itemization of program expense
  - 9.1.4. Description of progress in meeting or exceeding set procurement goals
  - 9.1.5. Summary of prime contractor utilization of subcontractors
  - 9.1.6. List of complaints about the programs of the utility and other covered entities
  - 9.1.7. Summary of purchases/contracts for products/services in excluded categories
  - 9.1.8. Description of efforts to recruit Eligible Suppliers
  - 9.1.9. Justification for continued existence of any "excluded category"
  - 9.1.10. Summary of purchases in product and service categories that include renewable and non-renewable energy, wireless communications, broadband, smart grid, and rail projects, in addition to their current reporting categories.
  - 9.1.11. File verifiable report on participation of Eligible Suppliers in fuel markets

- 9.2. General Order not intended to permit erosion of internal programs
- 9.3. Further breakdown of reporting statistics authorized
- 9.4. Compliance with LGBT-specific requirements

**10. REQUIRED ANNUAL PLAN**

- 10.1. Contents of Plan
  - 10.1.1. Goals
  - 10.1.2. Description of program activities
  - 10.1.3. Plans for recruiting eligible suppliers where utilization of eligible suppliers has been low
  - 10.1.4. Plans for recruiting Eligible Suppliers in any "excluded category"
  - 10.1.5. Plans for encouraging prime contractors and grantees to engage eligible suppliers
  - 10.1.6. Plans for complying with program guidelines

**11. Annual Reports and Annual Plans for Community Choice Aggregators**

- 11.1. Program recommendations for carrying out policy

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

**13. COMMISSION ANNUAL REPORT**

**14. WORKFORCE DIVERSITY AND BOARD DIVERSITY REPORTING**

**15. VOLUNTARY COMPLIANCE AND REPORTING**

**16. COMMISSION ANNUAL EN BANC MEETING**

**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 requires the Commission to establish rules for ~~(1) electric utilities (as defined herein) and other covered entities (as defined herein),~~ 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 for purposes of increasing procurement in all categories from business enterprises owned and controlled by women, minority, disabled veteran, LGBT, and persons with disabilities. ~~These rules also implement Pursuant to~~ Public Utilities Code § 366. 2(m)(1) and (2), ~~these rules also which mandate that the Commission require direct each~~ community choice aggregator as defined herein to (1) annually submit a detailed and verifiable plans ~~to address for~~ increasing procurement from small, ~~and~~ local, ~~and~~ diverse business enterprises, ~~and (2) annually submit a report regarding its procurement from women, minority, disabled veteran, and LGBT business enterprises. in annual plans. Non-utility entities, meaning electric service providers and community choice aggregators, that must comply with the annual report and annual plan requirements under Pub. Util. Code §366.2 and §§ 8281-8286 are referred to herein as “other covered entities.”~~

1.1.2. Scope - These rules may be revised on the basis of experience gained in their application and/or changes in legislation.

1.1.3. Relief for Hardship - In cases where these rules results in undue hardship or unreasonable expense to a utility, ~~or~~ other covered entity, or community choice aggregator, the utility, ~~or~~ other covered entity, or community choice aggregator may request relief from the Commission in accordance with the Commission's Rules of Practice and Procedure. Where the relief requested is of minor importance or temporary in nature, the utility, other covered entity, or community choice aggregator may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on all parties on the service list of this proceeding.

1.2. Applicability

These rules apply to ~~electric utilities (as defined herein), and other covered entities (as defined herein), 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.~~ These rules also apply to ~~all~~ community choice aggregators (as defined herein), ~~with gross annual California revenues exceeding \$15,000,000. Nothing in these rules require a community choice aggregator to take any action that would violate Proposition 209 (as defined herein).~~

1.3. Definitions

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

1.3.2. "Women 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.

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- 1.3.3. "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 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.
- 1.3.4. "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.
- "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.
- 1.3.5. Under these rules, the persons owning an eligible suppliers must be either U.S. citizens or legal aliens with permanent residence status in the United States.
- 1.3.6. "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.
- 1.3.7. "Disabled veteran business enterprise" is defined in Section 4, herein.
- ~~1.3.9.~~
- 1.3.10. "African American person," for purposes of this General Order, refers to a person having origins in any black racial groups of Africa.
- 1.3.11. "Hispanic American person," for purposes of this General Order, refers to a person of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.
- 1.3.12. "Native American person," for purposes of this General Order, 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.
- 1.3.13. "Asian Pacific American person," for purposes of this General Order, 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.
- 1.3.14. "Other groups or individuals" means persons found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of Small Business Act amended (15 U.S.C. 637 (a)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.
- 1.3.15. "Control" means exercising the power to make policy decisions.
- 1.3.16. To "operate" means to be actively involved in the day-to-day management. It is not enough to merely be an officer or director.
- 1.3.17. "Goal" means a target which, when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.
- 1.3.18. "Excluded category" means a category of products or services which may be

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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.

- 1.3.19. "Short-term goal" means a goal applicable to a period of one (1) year.
- 1.3.20. "Mid-term goal" means a goal applicable to a period of three (3) years.
- 1.3.21. "Long-term goal" means a goal applicable to a period of five (5) years.
- 1.3.22. "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.
- 1.3.23. The "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, and community choice aggregators under the Commission's Supplier Diversity Program.
- 1.3.24. "Subcontract" means any agreement or arrangement between a contractor and any party or person (in which the parties do not stand in the relationship of an employer and an employee):
- 1.3.24.1. For the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or
  - 1.3.24.2. Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.
- 1.3.25. "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.
- 1.3.26. "Proposition 209" means Article 1, Section 31 of the California Constitution (added November 5, 1996 by Proposition 209), which prohibits the "state," subdivision or governmental instrumentality of or within the State," from "discriminat[ing] against, or grant[ing] preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Community choice aggregators, as public entities, are subject to Proposition 209.
- 1.3.27. "Other covered entity" means electric service provider as that term is defined in Pub. Util. Code § 218.3 and used in Pub. Util. Code § 8281-8286.
- 1.3.28. "Community choice aggregator" means (1) an entity created pursuant to Pub. Util. Code §366.2; and (2) with gross annual California revenues exceeding \$15,000,000, except where used herein to specifically reference community choice aggregators with gross annual California revenues of less than \$15,000,000.

## 2. VERIFICATION

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.

- 2.1. The Clearinghouse, as described in Section 3, shall supply a verification form to applicants. An applicant may complete the verification form and return it to the Clearinghouse for processing. Suppliers that are certified/verified under GO 156

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are referred to herein as “eligible suppliers”.

- 2.2. In assessing the suitability of a 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, or community choice aggregator may not, however, 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 shall be required to submit verification forms at least once every three years to the Clearinghouse.
- 2.4. Completion and submission of the verification application to the Clearinghouse serves to initiate a verification of the business as an eligible supplier under the Commission’s Supplier Diversity Program.  
Submission of an application does not guarantee verification.
- 2.5. The fact that a business is 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, or community choice aggregators.
- 2.6. An applicant’s verification form shall be available for inspection by the Commission.
- 2.7. Falsification of information by the applicant on the verification form is subject to the penalties provided by 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.

- 3.1. 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.
- 3.2. 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, and community choice aggregators.
- 3.3. The Clearinghouse auditing and verification program of suppliers shall preclude the need for a utility, ~~or~~ other covered entity, or community choice aggregator to audit and verify whether a business enterprise is an eligible supplier under the Commission’s Supplier Diversity Program.
- 3.4. 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.
- 3.5. The Clearinghouse shall post on its website a calendar of procurement-related information sharing and educational events and activities scheduled by utilities.

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~~and~~ other covered entities, and community choice aggregators in furtherance of legislative policy and this General Order and may post additional information regarding procurement and/or educational opportunities.

- 3.6. 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.<sup>2</sup> After the Commission has approved of a third-party agency<sup>4</sup>, applicants may choose between the option of (1) going directly to the Clearinghouse for verification or (2) 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.
- 3.7. 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;<sup>1</sup> 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" 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.
  - 4.1.1. It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
  - 4.1.2. The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.

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

<sup>1</sup>All references to "days" shall be calculated as set forth in Rule 1.15 of the Commission's Rules of Practice and Procedure.

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- 4.1.3. It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.
- 4.2. Pursuant to Pub. Util. Code § 8284(a)(2), DVBEs are verified/certified by the California State 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. 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 State Department of General Services verifying that such criteria have been met.

### 5. LESBIAN, GAY, BISEXUAL AND TRANSGENDER<sup>2</sup>

Pursuant to D.15-06-007, the following additional rules shall apply to LGBT business enterprises (also referred to as "LGBTBEs"). By or before September 1, 2015, the Clearinghouse shall begin maintaining the database associated with the LGBTBEs for purposes of the Commission's Supplier Diversity Program.

### 6. IMPLEMENTATION BY UTILITIES, ~~AND~~ OTHER COVERED ENTITIES, AND COMMUNITY CHOICE AGGREGATORS

Each utility, ~~and~~ other covered entity, and community choice aggregator (to the extent permitted by Proposition 209) 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, and community choice aggregators subject to GO 156. Nothing in GO 156 authorizes or permits a utility, ~~or~~ other covered entity, or community choice aggregator to utilize set-asides, preferences, or quotas in the administration of its program in compliance with GO 156. The utility, ~~or~~ other covered entity, or community choice aggregator retains authority to use its legitimate business judgment to select the supplier for a particular contract.

#### 6.1. Internal Program Development by Utilities, ~~and~~ Other Covered Entities, and Community Choice Aggregators

Each utility, ~~or~~ other covered entity, or community choice aggregator 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, and community choice aggregator shall provide the email address and telephone number of a contact person on the website of the utility, ~~or~~ other covered entity, or community choice aggregator in a prominent location so that eligible suppliers and applicants are able to obtain more information about these internal programs.

- 6.1.1. Each utility, ~~or~~ other covered entity, or community choice aggregator shall ensure that its staff with procurement responsibilities receive training in the implementation of the Commission's Supplier Diversity Program.

#### 6.2. External Outreach by Utilities, ~~and~~ Other Covered Entities, and Community Choice Aggregators

##### 6.2.1. Utilities and Other Covered Entities

6.2.1.1 Each utility or other covered entity shall implement an outreach program to inform and recruit eligible suppliers to apply for procurement contracts.

6.2.1.2 Outreach activities may vary for each utility or other covered entity

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depending on size, service territory, and specific lines of business. However, each utility or other covered entity shall, at a minimum:

- a) Actively seek out opportunities to identify eligible suppliers under the Commission's Supplier Diversity Program and to expand source pools;
- b) Actively support the efforts of organizations experienced in the field who promote the interests of eligible suppliers under the Commission's Supplier Diversity Program;
- c) 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;
- d) 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;
- e) To the extent possible, make available to eligible suppliers under the Commission's Supplier Diversity Program lists of utility/other covered entity purchase/contract categories which offer them the best opportunity for success;
- f) 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;
- g) Summarize this General Order in outreach program handouts and electronic notices. Such summaries shall state that eligible suppliers under the Commission's Supplier Diversity
- h) Offer the same assistance set forth in Section 6.2.1 to any interested party, upon request.

### 6.2.2. Community Choice Aggregators

6.2.2.1 Each community choice aggregator shall, to the extent permitted by Proposition 209, implement an outreach program to, at a minimum:

- a) inform suppliers, including eligible suppliers under the Commission's Supplier Diversity Program, about opportunities to apply for procurement contracts; and
- b) inform suppliers about, and provide assistance regarding, certification through, the Commission's Supplier Diversity Program Clearinghouse.

### 6.3. Subcontracting Program

#### 6.3.1 Utilities and Other Covered Entities

6.3.1.1 Each utility or other covered entity shall establish and maintain a subcontracting program for the purpose of encouraging its contractors to utilize eligible suppliers under the Commission's Supplier Diversity Program.

6.3.1.2 The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's or other covered entity's outreach program to eligible suppliers under the Commission's Supplier Diversity Program.

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6.3.1.3 The subcontracting program shall apply to the following:

6.3.2.1.1 Purchases/contracts exceeding \$500,000 for products and services;

6.3.2.1.2 Construction contracts exceeding \$1,000,000; and

6.3.2.1.3 Purchases/contracts which offer subcontracting opportunities, regardless of value, where appropriate.

6.3.1.4 The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and thelike.

6.3.1.5 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 maybe 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.

6.3.1.6 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  
OWNEDand CONTROLLED BY WOMEN,  
MINORITIES, DISABLED VETERANS, LGBT, AND  
PERSONS WITHDISABILITIES**

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.

6.3.1.7 Each utility or other covered entity is encouraged to inform its prime contractors that the prime contractor's good faith efforts to subcontract witheligible suppliers under the Commission's Supplier Diversity Program is a factor that will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.

6.3.1.8 Each utility or other covered entity shall monitor and include in its annualreport to the Commission a summary of progress and efforts by its prime contractors to increase the participation of eligible suppliers under

the Commission's Supplier Diversity Program.

6.3.1.9 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.

6.3.1.10 Each utility or other covered entity may include awards to eligible suppliersubcontractors in its GO 156 reporting results.

6.3.2 Community Choice Aggregators

6.3.2.1 Each community choice aggregator with gross annual revenues over fifteen million dollars (\$15,000,000) shall include in its annual report any eligible suppliers with whom a prime contractor or grantee of a community choice aggregator has engaged in contracts or subcontracts for all categories, including, but not limited to, renewable energy, energy storage systems, and smart grid projects.

**7. REVIEW PROCESS, NOTICE OF APPEALS, AND COMPLAINTS**

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 includes two steps. First, the applicant can seek internal review from the Clearinghouse. If the Clearinghouse confirms the denial, as the second step, the applicant can 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.

7.1.1. 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 will be docketed as a formal proceeding. 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.

7.2.1. 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.

7.2.2. 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).

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- 7.2.3. A party may be represented at the hearing by an attorney or other representative.
- 7.2.4. 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.
- 7.2.5. 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.
- 7.2.6. 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.
- 7.3.1. 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.
- 7.3.2. 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 ~~a~~ 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.<sup>3</sup>

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- 7.3.3. 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.
- 7.3.4. 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. PROCUREMENT GOALS FOR UTILITIES AND OTHER COVERED ENTITIES**

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 does not apply to community choice aggregators.

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

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- 8.5. 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.<sup>5</sup>
- 8.6. 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 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.<sup>6</sup> ~~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. 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 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. 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. 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.

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<sup>5</sup> 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.

<sup>6</sup> See *supra*.

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- 8.11. 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:
  - 8.11.1. Fuel used to power vehicles, heat utility facilities, and supply emergency generators may not be included in the fuel procurement base. Such fuel must be included in the standard procurement base used to establish goals, unless the fuel is purchased from another utility and thus subject to the exclusion authorized herein;
  - 8.11.2. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas markets;
  - 8.11.3. 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
  - 8.11.4. 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. 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 shall be imposed for failure of any utility or other covered entity to meet or exceed procurement goals.
- 8.14. Utilities and other covered entities shall report their procurement goals in their annual plans.

## 9. REQUIRED ANNUAL REPORTS

Utilities, ~~and~~ other covered entities, and community choice aggregators 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', or community choice aggregators' 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 between \$15 million and \$25 million, or community choice aggregators with gross annual revenues of \$15 million or less.

- 9.1. The Annual Report shall contain at least the following elements:
  - 9.1.1. 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.
  - 9.1.2. 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, or community choice aggregator shall report the number of ~~from~~ eligible suppliers under the Commission's Supplier Diversity Program who have the majority of their workforce working in California, to the extent such

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information is readily accessible. Each utility, ~~or~~ other covered entity, or community choice aggregator shall also report the number of ~~from~~ eligible suppliers under the Commission's Supplier Diversity Program that received direct spend during the reporting year.

- 9.1.3. 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.
- 9.1.4. Utilities and other covered entities shall provide 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 9.1.4 does not apply to community choice aggregators.
- 9.1.5. A summary of prime contractor utilization of eligible subcontractors suppliers under the Commission's Supplier Diversity Program.
- 9.1.6. 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, or community choice aggregator's program is unsatisfactory or unacceptable.
- 9.1.7. Utilities and other covered entities shall provide 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 9.1.7 does not apply to community choice aggregators.
- 9.1.8. Utilities, ~~and~~ other covered entities, and community choice aggregators 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, or community choice aggregator. The utility, ~~or~~ other covered entity, or community choice aggregator shall provide these documents and data to the Commission, upon request.
- 9.1.9. Utilities, ~~and~~ other covered entities, and community choice aggregators 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, ~~other covered entities, and community choice aggregators~~ have discretion to segregate overlapped dollars. Utilities, ~~and~~ other covered entities, and community choice aggregators shall report renewable and nonrenewable energy procurement in a manner similar to their reporting of fuel procurement.
- 9.1.10. The Commission's staff may conduct as many audits of utilities, ~~and~~ other covered entities, and community choice aggregators as it deems necessary but shall audit at least one annual GO156 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, and community choice aggregators regarding their participation in the Supplier Diversity Program.
- 9.1.11. Each utility, ~~or~~ other covered entity, or community choice aggregator which

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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, or community choice aggregator 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, and community choice aggregator shall provide, to the extent applicable:
    - (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 (b)(1) does not apply to community choice aggregators as Proposition 209 prohibits such procurement goals for community choice aggregators);
    - (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 (b)(2) does not apply to community choice aggregators as Proposition 209 prohibits such recruitment by community choice aggregators); and
    - (3) A justification for any exclusion of a specific fuel category from the utility's, ~~or~~ other covered entity's, or community choice aggregator's fuel procurement base.
- 9.2. This General Order is not intended to permit erosion of programs and reporting presently engaged in by a utility, other covered entity, or community choice aggregator.
- 9.3. Nothing in this General Order shall prohibit any utility, ~~or~~ other covered entity, or community choice aggregator 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. REQUIRED ANNUAL PLANS

Utilities, ~~and~~ other covered entities, and community choice aggregator shall provide an electronic copy of ~~its~~their Annual Plan ~~onto~~ the Commission's Executive Director on or before March 1 of each year, Pursuant to Pub. Util. Code § 8283(a) and Section 10.1 below, the Annual Plan of utilities and other covered entities with gross annual California revenues exceeding \$25 million shall, that includes a detailed and verifiable plan for encouraging procurement in all categories of eligible business enterprises under the Commission's Supplier Diversity Program. This Section 10 does not apply to utilities and electric service providers other covered entities with gross annual California revenues between \$15 million and \$25 million. Pursuant to Pub. Util. Code § 366.2(m)(1) and section 10.2 below, the Annual Plan 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.

- 10.1. Utilities and Other Covered Entities. The Annual Plan of utilities and other covered

entities shall contain at least the following elements:

- 10.1.1. Short, mid, and long term procurement goals, as required by Section 8, *herein*;
- 10.1.2. A description of its program activities planned for the next calendar year. This description shall include both internal and external activities;
- 10.1.3. 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.
- 10.1.4. A plan for seeking and or cultivating eligible suppliers of those products and services where eligible suppliers are currently unavailable.
- 10.1.5. A plan for encouraging both prime contractors and grantees to engage eligible suppliers in subcontracts in all categories which provide subcontracting opportunities.
- 10.1.6. 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. The Annual Plan of community choice aggregators shall contain at least the following elements:
  - 10.2.1. Description of program activities to increase community choice aggregator 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 REPORTS AND PLANS FOR COMMUNITY CHOICE AGGREGATORS~~Annual Reports and Annual Plans for Community Choice Aggregators:~~**

As set forth in R.21-03-010, community choice aggregators shall comply with similar ~~the same~~ reporting requirements as utilities and other covered entities except that the reporting requirements may be modified to reflect the prohibitions set forth in Proposition 209, as well as the fact that, at this time, energy procurement represents the majority of expenses for a typical community choice aggregator. Staff will develop alternative reporting requirements ~~more limited than~~ those applicable to utilities and other covered entities, but which still include the information applicable to community choice aggregators as set forth in Section 9 and Section 10, herein. Staff will meet with community choice aggregators and stakeholders ~~on-consider~~ to develop revisions to the reporting requirements, as needed. Staff will provide a copy of any revised reporting requirements to community choice aggregators, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156). These reporting requirements must continue to promote the state policy of increasing contracts (to the extent not prohibited by Proposition 209) between community choice aggregators and (1) eligible suppliers, and (2) small, local and diverse business enterprises.

**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 electric service providers, i.e., those with gross annual California revenues between \$15 million and \$25 million. These smaller other covered entities 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 other covered entities, as set forth in Rulemaking 21-03-010. 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 apply to these smaller other covered entities.

**13. COMMISSION ANNUAL REPORT TO THE 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,~~ and community choice aggregator to implement Pub. Util. Code §366.2 and §§8281 through 8286 and this General Order.

- 13.1. In this annual report, 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.
- 13.2. This annual report shall include recommendations to the utilities, ~~and other covered entities,~~ and community choice aggregators for the achievement of maximum results in implementing legislative policy and this General Order.
- 13.3. This annual report 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 Supplier Clearinghouse and the utilities (e.g., audits of revenues and expenditures associated with the certification program).

**14. WORKFORCE DIVERSITY AND BOARD DIVERSITY REPORTING**

All utilities and other covered entities shall include information regarding workforce diversity and board diversity in annual reports, starting March 2024. The Commission’s staff will implement this mandatory reporting requirement. The Commission’s staff will provide the mandatory reporting requirements to the service list of R.21-03-010 (or successor proceeding) and place the requirements on the Commission’s webpage for GO 156. To the extent practicable and permitted by law, community choice aggregators may provide information regarding workforce diversity and board diversity in annual reports, starting March 2024.

**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, community choice aggregators, members of the public, community-based organizations, and eligible suppliers under the Commission’s Supplier Diversity Program the opportunity to

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share ideas and make recommendations for effectively implementing legislative policy under Pub. Util. Code §366.2 and §§ 8281 through 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.

Approved and dated \_\_\_\_\_, at San Francisco, California.

PUBLIC UTILITIES COMMISSION STATE OF CALIFORNIA

By \_\_\_\_\_ *Executive Director*