



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

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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  
ADMINISTRATIVE LAW JUDGE'S RULING REGARDING PHASE 2**

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## SUMMARY OF RECOMMENDATIONS

- In its implementation of the workforce and board diversity reporting requirements adopted in Decision (D.) 22-04-035, the California Public Utilities Commission (Commission) should:
    - Include with any Commission summary or aggregation of community choice aggregator (CCA) data on workforce or board diversity (including the Commission’s annual Report to the Legislature required by Public Utilities Code § 910.3) an explanation that the workforce and board composition of CCAs cannot be reasonably compared to investor-owned utilities (IOUs) and electric service providers (ESPs) because of Proposition 209 prohibitions on CCA preferential treatment in hiring, and the fact that CCA boards are elected by the public or appointed;
    - Revise the Ruling’s proposed workforce and board reporting template to:
      - remove salary information, as it is not required by D.22-04-035 or General Order (GO) 156; and
      - ensure inclusivity of all genders, ethnicities, and sexual orientation of individuals;
    - Ensure the confidentiality of individual employee or Board member identity by allowing confidential submission of workforce and board composition information, and by aggregating information to ensure confidentiality of individual information;
  - Revise the proposed definition of “minority” to ensure internal consistency in the definition, and to add back in the “catchall” of “other groups and individuals” found to be disadvantaged by federal guidelines, to ensure the GO 156 definition keeps pace with such guidelines.
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R.21-03-010

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S COMMENTS ON  
ADMINISTRATIVE LAW JUDGE’S RULING REGARDING PHASE 2**

California Community Choice Association<sup>1</sup> (CalCCA) submits these comments in response to the *Administrative Law Judge’s Ruling Regarding Phase 2* (Ruling), dated November 30, 2022, and the *E-Mail Ruling Granting Request for Extension of Time to File Comments*, dated December 12, 2022.

**I. INTRODUCTION**

The broad set of revisions to General Order 156 (GO 156) accomplished in the Decision on Phase 1 of this proceeding<sup>2</sup> represent an enormous step forward for the California Public

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<sup>1</sup> California Community Choice Association represents the interests of 24 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, Energy For Palmdale’s Independent Choice, 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.

<sup>2</sup> Decision (D.) 22-04-035, *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*, R.21-03-010 (Apr. 18, 2022) (Phase 1 Decision).

Utilities Commission's (Commission's) supplier diversity program. Community choice aggregators (CCAs), incorporated into the program along with electric service providers (ESPs) through Senate Bill (SB) 255, are proud to participate in the supplier diversity program and look forward to continued engagement in this proceeding. CCAs appreciate the Commission's extensive revisions to GO 156 resulting from the Phase 1 Decision that allow CCAs to comply with both GO 156 and Proposition 209, which places restrictions on CCA preferences in public contracting and employment.<sup>3</sup>

The Ruling requests comments on additional Phase 2 scoped issues, including workforce and board diversity reporting, percentage goals for procurement from eligible business enterprises (BEs) under GO 156, updating the Supplier Clearinghouse guidelines, and revising GO 156's definition of "minority". CalCCA's comments provide recommendations on the Commission's implementation of workforce and board diversity reporting requirements and proposed template, as well as revisions to the Ruling's proposed definition of "minority".<sup>4</sup>

With respect to workforce and board diversity, CCAs face unique circumstances as compared to investor-owned utilities (IOUs) and ESPs in that CCAs as public entities are prohibited by Proposition 209 from granting preferential treatment in hiring, preventing recruitment of their workforce or boards with the goal of enhancing diversity. In addition, unlike IOU and ESP boards, CCA board members are elected officials or appointed, preventing any

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<sup>3</sup> Proposition 209, passed as a 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 of public employment, public education, or public contracting." Cal. Constitution, Art. 1, § 31(a). "State" includes "any city, county, city and county, . . . or any other political subdivision or governmental instrumentality of or within the State." *Id.*, § 31(f). CCAs, as agencies within local counties or cities, fall within Proposition 209's definition of "State" and therefore are subject to its limitations.

<sup>4</sup> CalCCA has no response at this time on whether to increase the percentage goals for voluntary procurement from eligible BEs, or whether to revise the Supplier Clearinghouse guidelines.

CCA control over board diversity. As a result, any Commission summary or aggregation of data from the GO 156 workforce or board reporting should highlight these unique circumstances faced by CCAs and the inability to do an “apples to apples” comparison of CCAs versus IOUs/ESPs with respect to workforce and board diversity.

As set forth more fully below, CalCCA provides the following recommendations in response to the Ruling questions:

- In its implementation of the workforce and board diversity reporting requirements adopted in the Phase 1 Decision, the Commission should:
  - Include with any Commission summary or aggregation of CCA data on workforce or board diversity (including the Commission’s annual Report to the Legislature required by Public Utilities Code § 910.3) an explanation that the workforce and board composition of CCAs cannot be reasonably compared to IOUs and ESPs because of Proposition 209 prohibitions on CCA preferential treatment in hiring, and the fact that CCA boards are elected by the public or appointed;
  - Revise the Ruling’s proposed workforce and board reporting template to:
    - remove salary information, as it is not required by the Phase 1 Decision or GO 156; and
    - ensure inclusivity of all genders, ethnicities, and sexual orientation of individuals;
  - Ensure the confidentiality of individual employee or Board member identity by allowing confidential submission of workforce and board composition information, and by aggregating information to ensure confidentiality of individual information;
- Revise the proposed definition of “minority” to ensure internal consistency in the definition, and to add back in the “catchall” of “other groups and individuals” found to be disadvantaged by federal guidelines, to ensure the GO 156 definition keeps pace with such guidelines.

## **II. CALCCA RESPONSES TO QUESTIONS IN RULING**

### **1. How should the Commission implement the workforce and board diversity reporting requirements adopted in D.22-04-035?**

As set forth in CalCCA’s Comments on the Phase 1 Decision, CCAs support the Commission’s efforts to gain an understanding of the composition of covered entity’s workforces

and boards.<sup>5</sup> In its implementation of the GO 156 workforce and board reporting requirements, however, the Commission should: (1) include with any Commission summary or aggregation of CCA data on workforce or board diversity (including the annual Report to the Legislature required by Public Utilities Code § 910.3) an explanation of the unique limitations faced by CCAs as a result of Proposition 209 restrictions and the fact that CCA boards are elected or appointed, and how CCAs are distinguishable from IOUs and ESPs in this regard; (2) revise the workforce and board diversity templates to remove salary information and ensure inclusivity of all individuals; and (3) ensure confidentiality of individual employee or Board member identity.

**a. Commission Reports on Workforce and Board Diversity Should Reflect CCA Workforce and Board Recruitment Restrictions**

The Commission should recognize the limitations faced by CCAs, compared to that of IOUs and ESPs, with respect to recruiting for their workforces and boards. As public entities, CCAs are limited by Proposition 209 in their ability to recruit employees or board members based on classified group status. In addition, CCA board members are elected officials or appointed, and therefore CCAs have no control over their board makeup. CCAs are distinguishable from corporations (and thus IOUs and ESPs) and limited in their ability to ensure diversity throughout their workforces and boards. To the extent the Commission requires CCAs to report on workforce and board diversity, the Commission must therefore include with any summary of covered entity workforce and board diversity (including narratives or aggregation of data), including the Commission's annual Report to the Legislature, an explanation of the unique limitations on CCAs in this area. Such an explanation should include a statement that CCA workforce and board diversity cannot be reasonably compared to that of IOUs and ESPs.

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<sup>5</sup> Rulemaking (R.) 21-03-010, *California Community Choice Association's Comments on the Proposed Decision* (Mar. 1, 2022), at 11-12.

**b. The Workforce and Board Reporting Template Should be Modified**

The proposed workforce and board reporting template should be revised to ensure accurate and inclusive information, while excluding salary information which is not required by GO 156. The Phase 1 Decision directs staff to develop annual reporting forms for workforce and board reporting “that are informative, not overly burdensome, and protect any confidential employee information.”<sup>6</sup> The proposed reporting template should be revised by removing salary information, as well as adding categories to ensure all individuals can self-report on their race/ethnicity/gender and/or sexual orientation.

First, salary information should be removed from the template. Salary information is a category of information not required by the Phase 1 Decision or the revised GO 156.

Second, the choices for self-reporting should be expanded in the following ways:

- Race/ethnicity:
  - Individuals should be able to report in more than one category (i.e., among the race(s)/ethnicity(ies) the individual identifies with);
  - A category should be added for “other” in the event an individual’s race/ethnicity is not included in the provided response fields;
- Gender identity and sexual orientation should be listed separately from race/ethnicity;
- Races/ethnicities (including “white”) should be listed in alphabetical order, rather than beginning with “white” and then listing in alphabetical order.
- Gender identity:
  - Individuals should be able to report their self-identified gender, including female, male, non-binary.

Third, employees must be given the option to not report in any of the categories (i.e., a “prefer not to say” option). CCAs cannot compel employees or board members to provide

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<sup>6</sup> Phase 1 Decision at 48 (workforce reporting), 52 (board reporting).

information regarding their race/ethnicity, gender identity, sexual orientation, disability status, or military status. All such information will be based on voluntary self-identification. Providing the “prefer not to say” category will allow CCAs to track when individuals choose to keep their information private.

**c. The Commission Must Ensure Confidentiality of Individual Employee Information**

The Commission must ensure confidentiality of any reporting of individual employee information as gleaned from a covered entity’s reports. The majority of CCAs are staffed by less than 100 employees, total. Therefore, given the small workforce on which a CCA may report, any one CCA report could inadvertently identify confidential information about an individual (especially if salary information is not removed), even when such workforce information is aggregated among that covered entity. Therefore, a CCA should be given the opportunity to submit its workforce reporting confidentially, and the Commission should only provide information aggregated across covered entities in a way that does not reveal confidential workforce information.

- 2. Whether the Commission should increase the percentages goals for the voluntary procurement from eligible business enterprises under GO 156 and, if so, what should be the amount of such increases?**

No comment at this time.

- 3. Whether the Commission should update the “guidelines” used by the Supplier Clearinghouse to certify eligible suppliers under the Supplier Diversity Program and, if so, the specific revisions that the Commission should consider?**

No comment at this time.

**4. Whether the Commission should revise the definition of “minority” set forth in GO 156? Should the Commission add alternative criteria by which an applicant may meet the definition, and if so, what specific criteria should the Commission consider?**

The Ruling’s proposed definition of “minority,” based on California Government Code § 14839(a)(10), should be updated. First, section 1.3.4. should be aligned with the updated minority group names in the proposed definitions in sections 1.3.9. through 1.3.12. (i.e., “African American” has been changed to “Black,” “Hispanic American” has been changed to “Hispanic,” and “Pacific American” has been changed to “Pacific-Asian”). Second, section 1.3.13. from the current definition of “minority” should be added to the proposed definition. Section 1.3.13. adds “other groups and individuals” found to be disadvantage by federal guidelines. By adding section 1.3.13. back in, the GO 156 definition will keep pace with federal guidelines defining “minority.”

CalCCA’s proposed revisions to 1.3.4., and addition of the existing 1.3.13., are provided in redline below:

1.3.4. Minority Business Enterprise “Minority business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility or other covered entity shall presume that minority includes, but is not limited to, individuals that are Black African Americans, Hispanic Americans, Native Americans, Pacific-Asian-Pacific Americans, and other groups as defined herein.

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

### III. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the recommendations herein and looks forward to an ongoing dialogue with the Commission and stakeholders.

Respectfully submitted,



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