



**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 REPLY COMMENTS ON
ADMINISTRATIVE LAW JUDGE'S RULING REGARDING PHASE 2**

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SUMMARY OF RECOMMENDATIONS

- The California Public Utilities Commission (Commission) should reject the National Diversity Coalition’s recommendation to expand workforce diversity reporting beyond the requirements of Decision 22-04-035 and General Order 156, as such expansion is not required by the Decision and runs afoul of the requirements of Senate Bill 255 and the California Constitution (Proposition 209); and
 - The Commission should adopt the recommendations of Pacific Gas & Electric Company, Shell Energy North America (US), L.P., Comcast Phone of California, LLC, and the California Water Association to hold a workshop to discuss the contents of the template for workforce and board reporting, and potential streamlining of the certification requirements for the Supplier Clearinghouse.
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R.21-03-010

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

California Community Choice Association¹ (CalCCA) submits these Reply 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

CalCCA submits these limited Reply Comments to recommend that the California Public Utilities Commission (Commission):

- Reject the National Diversity Coalition’s (NDC’s) recommendation to expand workforce reporting beyond the requirements of Decision (D.) 22-04-035 and General Order (GO) 156, as such expansion is not required by the Decision and runs afoul of the requirements of Senate Bill (SB) 255 and the California Constitution (Proposition 209); and

¹ 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.

- The Commission should adopt the recommendation of Pacific Gas & Electric Company (PG&E), Shell Energy North America (US), L.P. (Shell), Comcast Phone of California, LLC (Comcast), and the California Water Association (CWA) to hold a workshop to discuss the contents of the template for workforce and board reporting, and potential streamlining of the certification requirements for the Supplier Clearinghouse.

II. THE COMMISSION SHOULD REJECT NDC’S RECOMMENDATION TO EXPAND WORKFORCE REPORTING BEYOND THE REQUIREMENTS OF D.22-04-035 AND GO 156

The Commission should reject NDC’s recommendation to *expand* the requirements for Covered Entities (including community choice aggregators (CCAs)) to report on the composition of their workforces. NDC requests that the Commission require Covered Entities to:

include details on programs the covered entities have implemented to hire, retain, and promote diverse employees, along with how many employees participated and the amount of funding allocated to the programs.²

In other words, NDC requests that the Commission *expand* on the requirements of D.22-04-035 which requires Covered Entities to provide data regarding the *composition* of their workforce (and boards) in their reports. NDC’s recommendation would require Covered Entities to also provide additional extensive information about the Covered Entity’s programs to recruit, retain, and promote diverse employees, and the funding dedicated to such activities.

NDC’s recommendation should be rejected in that it (1) goes beyond the requirements of D.22-04-035 (and therefore the revised GO 156), (2) is not required by SB 255, the statute incorporating CCAs into the Supplier Diversity program, and (3) is inconsistent with the restrictions on CCAs on granting preferential treatment in public employment as set forth in the California Constitution in Proposition 209.

First, D.22-04-035 explicitly requires reporting of information about the composition of a Covered Entity’s workforce and board to allow the Commission to *track* the data to increase its

² NDC Opening Comments at 6-7.

understanding of the relevant workforces and boards.³ D.22-04-035 does *not* require reporting on a Covered Entity’s programs to recruit employees, or funding of diversity initiatives regarding the relevant workforce. Therefore NDC’s recommendations go beyond the explicit intent and requirements of D.22-04-035.

Second, SB 255 adding CCAs to the Supplier Diversity program explicitly requires CCAs to submit (1) a plan “for increasing procurement from small, local, and diverse business enterprises...,” and (2) a report regarding the past year’s procurement from “women, minority, disabled veteran, and LGBT business enterprises...”⁴ While the report is to be in “a form the commission may require,” it is already a stretch to interpret this “form” to require *any* reporting on workforce and board diversity.

Third, the California Constitution (as amended by Proposition 209) explicitly disallows preferential treatment by CCAs in public employment based on an individual belonging to a specific race, sex, color, ethnicity, or national origin.⁵ Therefore, NDC’s recommended *expanded* workforce reporting is not feasible for CCAs as they are legally prohibited from having or funding the type of programs about which NDC seeks information. As a result, NDC’s recommendations should be rejected as they are inconsistent with D.22-040-035 (and GO 156), SB 255, and the California Constitution.⁶

³ D.22-04-035 at 47, 52.

⁴ Pub. Util. Code §§ 366.2(m)(1) and (m)(2)(A).

⁵ California Constitution, Article 1, § 31(a). Proposition 209 extends to “States,” which includes “any city, county, city and county, ... or any 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 are therefore subject to its limitations. *See CPUC Staff Proposal to Revise General Order 156 for the Supplier Diversity Program*, R.21-03-010 (July 16, 2021), at 11 (recognizing that “CCAs are considered municipalities and must follow [Proposition 209] . . .”).

⁶ In addition and as set forth in CalCCA’s Opening Comments, while CCAs are able to provide the limited workforce and board diversity reporting required by the revised GO 156, any Commission aggregation or report on workforce and board diversity must include an explanation of the unique circumstances faced by CCAs given the Proposition 209 restrictions and the fact that CCA boards are elected. *See CalCCA Opening Comments* at 2-4.

III. THE COMMISSION SHOULD ADOPT THE RECOMMENDATIONS OF PG&E, SHELL, COMCAST, AND CWA TO HOLD A WORKSHOP TO CONSIDER WORKFORCE/BOARD REPORTING AND STREAMLINING OF SUPPLIER CLEARINGHOUSE CERTIFICATION REQUIREMENTS

The Commission should adopt the recommendations of PG&E, Shell, Comcast, and CWA to hold a workshop to allow parties to address the workforce and board reporting and the certification requirements for the Supplier Clearinghouse.⁷ Such a workshop will allow parties to discuss the reporting template, including its contents and confidentiality issues. In addition, CalCCA agrees with CWA that a workshop will be useful to seek input from stakeholders and registrants to the Supplier Clearinghouse on potential streamlining of the certification requirements.⁸

IV. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the recommendations herein.

Respectfully submitted,



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January 30, 2023

⁷ PG&E Opening Comments at 2; Shell Opening Comments at 5; Comcast Opening Comments at 3; CWA Opening Comments at 7.

⁸ CWA Opening Comments at 7.