

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

Rulemaking 21-03-010
(Filed March 18, 2021)

**REPLY COMMENTS OF
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL ON
ADMINISTRATIVE LAW JUDGE'S RULING REGARDING PHASE 2**

Dated: January 30, 2023

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The California Efficiency + Demand Management Council (“the Council”) respectfully submits these Reply Comments on the Administrative Law Judge’s Ruling Regarding Phase 2 (“Phase 2 Ruling”), issued in this proceeding on November 30, 2022. These Reply Comments have been timely filed and served pursuant to the Commission’s Rules of Practice and Procedure and the instructions contained in the Phase 2 Ruling. In addition, on December 12, 2022, Administrative Law Judge (“ALJ”) DeAngelis issued a Ruling extending the due date for Reply Comments on the Phase 2 Ruling to January 30, 2023.

**I.
BACKGROUND**

The Council is a statewide trade association of non-utility businesses and organizations that provide energy efficiency (“EE”), demand response (“DR”), distributed energy resources (“DER”) and data analytics services and products in California. The Council’s member companies and organizations employ many thousands of Californians throughout the state. They include EE, DR, DER, and grid services technology providers, implementation and evaluation experts, energy service companies, engineering and architecture firms, contractors, financing experts, workforce training.

II.
SUMMARY OF THE COUNCIL’S POSITION

The Council is committed to advancing diversity and inclusion in the supply chains of utilities and applauds the Commission’s efforts to evaluate and consider modifications and enhancements to the current Eligibility Standards. Modifications and enhancements to the roughly decade-old Eligibility Standards are important to continuing the encouragement and development of women, minority, disabled veteran, and LGBT business enterprises. The Council suggests the Commission revise the Supplier Clearinghouse “guidelines”¹ to better incentivize, rather than punish, Disadvantaged Business Enterprise (“DBE”) led business successes and further support the benefits posed under General Order 156 (“GO 156”).²

III.
**SUPPLIER CLEARINGHOUSE “GUIDELINES” USED TO DETERMINE
CERTIFICATION AS AN ELIGIBLE SUPPLIER SHOULD BE UPDATED TO
INCLUDE ADDITIONAL DESIGNATION FOR DBE-LED FIRMS**

The Council recognizes the intent of GO 156 is that diverse businesses have the “maximum practicable opportunity to participate in the performance of contracts,” and that the economic well-being of the state of California “cannot be realized unless the actual and potential capacity of women, minority, and disabled veteran business enterprises is encouraged and developed.”³ Additionally, the Council agrees in principle with the National Diversity Coalition (“NDC”) in their statement that: “...the intent... is to ensure that “the company [is controlled] by the minorities, women, LGBT, or Person with Disabilities individuals.””⁴

The Council contends that current standards penalize diverse companies with current designations who successfully secure growth capital. This penalization undercuts the intent of GO 156. Diverse firms are limited in their encouragement to develop and grow as external investment that may be needed for that growth could impact their majority ownership and disqualify them from certification. When DBEs do grow through external investment, current

¹ Supplier Clearinghouse information on the CPUC Website which can be found here: <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/business-and-community-outreach/supplier-diversity-program/clearinghouse>

² 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, issued in this proceeding on April 18, 2022.

³ Public Utilities Code Section 8281(a)

⁴ NDC Opening Comments, at p. 11.

certification “guidelines” do not encourage them to retain their diverse leadership and control as the benefits of certification no longer apply. This diminishes the benefits that contribute to improved diversity of senior leadership and the workforce.

The Council urges amendments in the certification process that would:

- Reduce barriers for diverse companies seeking capital and promote the growth of diverse businesses;
- Provide a model and incentive for diverse companies pursuing and successfully obtaining capital to maintain control of the company;
- Maintain standards for diverse ownership and control of the business; and
- Support diverse companies in continuing to increase employment of diverse individuals in both management and workforce positions and increase the overall diversity of their relevant industry’s workforce.

IV.

THE SUPPLIER CLEARINGHOUSE, ALONG WITH OTHER MAJOR CERTIFICATION ORGANIZATIONS, SHOULD ESTABLISH A CRITERIA FOR PREVIOUSLY CERTIFIED COMPANIES THAT EXPERIENCE A CHANGE IN THE PERCENTAGE OF DBE OWNERSHIP THROUGH THE SECURING OF EXTERNAL INVESTMENT, AND YET REMAIN LED AND MANAGED BY A DBE, TO RETAIN THE CPUC CERTIFICATION.

The Council agrees with the comments made by Comcast Phone of California, LLC (“Comcast Phone”):

To support MBEs’ growth opportunities and access to equity capital, the Commission should update the eligibility guidelines for the certification of suppliers. Specifically, the guidelines should permit the certification of MBEs that have secured equity investments from non-minority professional institutional investors provided such MBEs retain management and control and a percentage of economic equity in the business.⁵

By excluding firms that receive growth capital from the DBE designation, certification becomes another barrier to the growth of DBE firms. In addition, it reduces the pool of eligible suppliers, which is already small and, in some cases, insufficient to meet the needs of procurement organizations.⁶

⁵ Comcast Phone Opening Comments, at p. 5.

⁶ Appendix B to D.22-04-035.

The Council encourages the Supplier Clearinghouse to extend this methodology to all categories of diverse businesses, thus supporting the growth of diverse businesses and encouraging diverse businesses to retain diverse management and control upon seeking external investment.

V.

THE MANAGEMENT AND INDEPENDENCE CRITERIA ESTABLISHED IN THE ELIGIBILITY GUIDELINES SHOULD BE MAINTAINED FOR DBE-LED FIRMS AND NGOS WHILE ALLOWING FOR FLEXIBILITY WITH THE OWNERSHIP CRITERIA

Under current standards, the process for certification of non-governmental organizations (“NGOs”) is not clear: “(1) ...the ownership prong of the requirements cannot and should not apply to non-profits and (2) ... the Commission has the discretion to apply the intent of the law ‘to aid the interests of women, minority, disabled veteran, and LGBT business enterprises.’”⁷ The Council agrees with NDC’s comments that “Non-profits should qualify to participate in the Supplier Diversity Program as long as the “management and daily business operations are controlled” by a member or members of the covered diverse communities.”⁸ Expanding diversity among NGOs could be improved upon with clear DBE certification.

The Council also contends that the DBE-led designation would allow control by disadvantaged groups, not ownership, to be the determining factor for eligibility for the designation. In that case, the criteria for control would also be relevant for NGOs, who cannot meet the ownership requirement as currently stated.

VI.

THE COUNCIL PROPOSES THE FOLLOWING EDITS TO THE SUPPLIER CLEARINGHOUSE GUIDELINES

The Council agrees with many of the edits to the Supplier Clearinghouse Eligibility Standards set forth by NDC.⁹ The Council also proposes some modifications to those edits which are bolded.

⁷ Public Utilities Code Section 8281(a)).

⁸ Public Utilities Code Sections 8282(c), (d), and (g) and General Order 156 Sections 1.3.3, 1.3.4, 1.3.5, and 1.3.6.

⁹ Attachment B to the Phase 2 Ruling.

These Eligibility Standards apply to any business seeking status as a Women Business Enterprise (WBE), Minority Business Enterprise (MBE), LGBT Business Enterprise (LGBTBE) and/or Persons with Disabilities Business Enterprise (PDBE), except that organizations certified by the IRS as non-profits under IRS code 501(c)(3) and previously certified companies that lost their certification due to a change in the percentage of DBE ownership through the securing of external investment, are not subject to “Ownership” requirements. However, the management and daily business operations of applicant and certified non-profits must be controlled by minority, women, LGBT, or Person with Disabilities individual(s).¹⁰

The Council also sets forth the following recommendation for ownership on pages 1 and 2 of the standards:

In the case of an applicant concern that was a previously-certified WBE/MBE/LGBTBE/PDBE which no longer owns 51% of the annual distribution of dividends paid, they may still be eligible for certification if 1) they can demonstrate they have secured equity investments from non WBE/MBE/LGBTBE/PDBE professional institutional investors since their last certification application and 2) minorities, women, LGBT and/or Persons with Disabilities individuals retain management and control and no less than ten percent of economic equity in the business.

VII. CONCLUSION

The Council would like to see more progress made toward addressing diversity in energy procurement efforts, including those that support maintaining and/or increasing the pool of potential suppliers for utilities and other stakeholders who utilize diverse suppliers. To that end, the Council respectfully requests that the Commission consider the Council’s recommendations in these reply comments.

¹⁰ NDC Opening Comments, at p. 13.

Dated: January 30, 2023

Respectfully submitted,

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