

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 18, 2013

To: The Commission
(Meeting of March 21, 2013)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 340 (Bradford) – Public utilities: Electric Program Investment Charge: disposition.**
As introduced: February 13, 2013

RECOMMENDED POSITION: SUPPORT WITH TECHNICAL AMENDMENTS

SUMMARY OF BILL

AB 340 would mandate the California Public Utilities Commission (CPUC) to require all grants, contracts, subsidies, financing, and activities administered through the Electric Program Investment Charge (“EPIC”) to comply with General Order 156 of the CPUC. While the utilities are currently required to comply with GO 156 in all procurement associated with CPUC administered programs AB 340 would widen the scope of GO 156 to include grants, subsidies and financing for the utilities’ portion of the EPIC program. AB 340 would require the CPUC to include a section on compliance with AB 340 in its annual report filing to the Legislature.

CURRENT LAW

General Order 156 of the CPUC seeks to increase participation by women-, minority-, and disabled veteran-owned business enterprises (WMDVBEs) in utility procurement, an area where these businesses had previously received a low proportion of procurement awards. Specifically, GO 156 requires electrical, gas, water and telephone corporations with gross annual revenues exceeding \$25 million to submit annual plans for increasing WMDVBE participation in procurement and to submit annual reports on implementation of those plans. Further GO 156 requires the utilities to include in their annual reports the approximate amount of funds, to the extent available, directly expended on developing and distributing technical assistance to WMDVBEs and small businesses.

Existing law establishes incentives in the form of grants and loans to all types of customers for construction and retrofitting buildings to be more energy efficient.

AUTHOR'S PURPOSE

The author intends to ensure that the Electric Program Investment Charge comply with General Order 156 of the CPUC and encourage participation of women-, minority-, and disabled veteran-owned business enterprises in the EPIC program.

DIVISION ANALYSIS (Energy Division)

- 1) AB 340 could potentially increase the number of WMDVBE businesses competing for grants, subsidies and financing through the EPIC program. This in turn could increase the diversity of energy-related businesses in California.
- 2) In the Phase II decision of the EPIC proceeding, D.12-05-037, all administrators will be subject to an administrative expenditure cap of 10% within their individual budgets. The expanded outreach and reporting requirements might impose an additional administrative cost on the program, and thus could reduce the amount of funds available for specific projects.
- 3) Expansion of GO 156 could potentially create a new precedent. Because the rules and policies associated with GO 156 were intended to apply only to suppliers of goods and services, a new set of rules and policies might be necessary to expand GO 156 to cover subsidies, financing and grants.
- 4) CPUC staff will need to include in the annual report to the Legislature a section on compliance with AB 340, which will redirect staff resources from other mandated programs. The utilities are already required to report each year on compliance with GO 156, so a second report compiled by staff on compliance with GO 156 in the limited context of the EPIC program would create redundant work and divert staff resources away from mandated duties.

SAFETY IMPACT

AB 340 would have no foreseeable impact on the safety of California citizens.

RELIABILITY IMPACT

AB 340 would have no foreseeable impact on reliability of service.

RATEPAYER IMPACT

AB 340 would expand GO 156 to include grants subsidies and financing administered through the Electric Plan Investment Charge. The inclusion of grants, subsidies and financing the GO 156 may increase the utilities' administrative and compliance budgets, reducing the monies to be allocated to projects under the EPIC program. At the same time, increasing diversity may expand the applicant pool for grant subsidies and financing, thereby increasing competition which could lower costs in the long run.

FISCAL IMPACT

Under the EPIC program the CPUC provides oversight and will broadly approve the proposed investment plans filed by the program administrators. Once the investment plans are approved by the CPUC, the program administrators will select and award each individual project through a competitive solicitation. CPUC staff will not have an active role in selecting, approving or managing any of the projects that will ultimately receive funding through the EPIC program. Under AB 340, CPUC staff will be required to develop policies, rules and other provisions on how to expand the supplier diversity program to entities receiving grants, financing and subsidies. CPUC staff will also be responsible for drafting a report on compliance with AB 340 to be included in the CPUC annual report to the Legislature. These activities are not likely to require a full position. Therefore, the fiscal impact associated with AB 340 is minor and can be absorbed by the CPUC.

ECONOMIC IMPACT

GO 156 already applies to all utility procurement, therefore, contracting and purchases arising from the EPIC program will not be affected by this Legislation. GO 156 does not currently apply to grants, subsidies and financing, however, so AB 340 would expand the supplier diversity program to any grants issued under EPIC. Staff expects there to be some small increase in administrative costs to comply with this new requirement.

LEGAL IMPACT

AB 340 proposes to require the CPUC to "require all grants, contracts, subsidies, financing, and activities administered through the EPIC ... to comply with General Order 156 of the commission." (Proposed Section 383(b).) At present, GO 156's goals and reporting and outreach requirements apply to the IOUs' procurement activities but not to IOU grants. AB 340 appears to enlarge GO 156's scope to include grants, subsidies, and financing administered under the EPIC program.

GO 156 by its terms applies only to the IOUs. In addition to enlarging the scope of GO 156 beyond the utility procurement activities, AB 340 would encompass all administrators under the EPIC program, including the CEC. To our understanding, the CEC's contracting and grant programs currently are not subject to requirements as broad as those contained in GO 156.

AB 340's enlargement of the scope of GO 156 (in the two ways described above) would impose additional administrative costs on both IOUs and the CEC; additional costs were not foreseen when the Commission contemplated the estimated budgets (including the administrative budgets) for the 2012-2014 EPIC investment plans. AB 340 could therefore divert more EPIC funds than anticipated from core programs in the investment plans and toward compliance and administrative activities. Alternatively, such a diversion can be avoided if the administrators' EPIC budgets are increased; however,

an increase in EPIC budgets (and by extension, the EPIC surcharges) as a direct result of AB 340 might subject the bill to Proposition 26 and a 2/3 vote requirement.

LEGISLATIVE HISTORY

In 1986, the Legislature enacted Public Utilities Code §§8281-8285 which made findings about the economic benefits of full and free participation by women-, minority-, and disabled veteran-owned business enterprises (WMDVBEs) in utility procurement, an area where these businesses had previously received a low proportion of procurement awards. Stats 1986, ch. 1259.

Pursuant to Public Utilities Code §8284, the CPUC adopted GO 156 in 1988 to establish criteria for determining eligibility of WMDVBEs for procurement and to develop an outreach program to inform and recruit WMDVBE's to apply for procurement contracts.

In 1990, the Legislature extended the program to qualified veteran business enterprises. Stats. 1990, ch. 516 (AB 2938).

In 2009, the Legislature added water corporations to the list of reporting companies, although most were already voluntarily submitting reports. That change brought the number of reporting companies to about 30. Stats 2008, ch. 316 (AB 873), effective January 1, 2009.

GO 156 was amended to conform with the statutory requirements in AB 2758 (Stat. 2010, ch. 475). AB 2759 included specific reporting requirements for utilities regulated by the CPUC. Amendments to GO 156 included the express inclusion of wireless providers, reporting of renewable energy procurement, identification of WMDVBEs with a majority of the workforce in California, and use of the California Department of General Services criteria for Disabled Veteran-owned Business Enterprises. Further, the amendments require annual en banc hearings by the CPUC to review with the program's progress, commitments, and initiatives, and to hear community comments.

PROGRAM BACKGROUND

GO 156 has been modified through a number of CPUC decisions to respond to the concerns of interested parties, market considerations, and other circumstances.

Rulemaking 09-07-027 was issued on July 30, 2009 to review the impact of GO 156 and its success in encouraging CPUC-regulated utilities to seek the full and fair participation of WMDVBEs in their private procurement programs.

OTHER STATES' INFORMATION

None available.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

Staff supports AB 340 with technical amendments. AB 340 would increase diversity and encourage greater economic opportunity for women, minorities, and disabled veteran owned businesses historically left out of research, development, and demonstration programs. However, AB 340 would expand the reach of the supplier diversity program to areas the EPIC program was never intended to cover, including grants, subsidies and financing. With this consideration, staff supports AB 340 and recommends that AB 340 be amended to have the utilities comply with GO 156 in their EPIC annual reports as identified in D.12-05-037.

SUMMARY OF SUGGESTED AMENDMENTS

Phase II decision of the EPIC proceeding, Decision 12-05-037, ordered the utilities to submit annual reports detailing their respective program activities. The program administrators will file annual reports every February 28th, starting in 2014 and ending in 2020. Staff suggests that AB 340 require the utilities to comply with GO 156 by reporting their compliance with GO 156 within their EPIC annual reports.

STATUS

AB 340 is pending committee referral in the Assembly.

SUPPORT/OPPOSITION:

None on file.

VOTES

Not applicable.

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BILL LANGUAGE:

BILL NUMBER: AB 340 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Bradford

FEBRUARY 13, 2013

An act to add Section 383 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 340, as introduced, Bradford. Public utilities: Electric Program Investment Charge: disposition.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. The Reliable Electric Service Investments Act required the PUC to require the state's 3 largest electrical corporations, until January 1, 2012, to identify a separate electrical rate component, commonly referred to as the public goods charge, to collect specified amounts to fund energy efficiency, renewable energy, and research, development, and demonstration programs that enhance system reliability and provide in-state benefits. An existing decision of the PUC institutes an Electric Program Investment Charge (EPIC) to fund renewable energy and research, development, and demonstration programs.

This bill would require the PUC to require all grants, contracts, subsidies, financing, and activities administered through the EPIC to comply with General Order 156 of the PUC.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 383 is added to the Public Utilities Code, to read:

383. (a) The Legislature finds and declares that the Public Utilities Commission adopted the Electric Program Investment Charge (EPIC) pursuant to Decisions 11-12-035 (Phase 1 Decision Establishing Interim Research, Development And Demonstration, And Renewables Programs Funding Levels) and 12-05-037 (Phase 2 Decision Establishing Purposes and Governance for EPIC and Establishing Funding Collections for 2013-2020).

(b) To promote greater competition among suppliers of research, development, and demonstration programs and to expand the available base and encourage greater economic opportunity for women, minorities, and disabled veteran owned businesses historically left out of research, development, and demonstration programs, the commission shall require all grants, contracts, subsidies, financing,

and activities administered through the EPIC established by Decisions 11-12-035 and 12-05-037, and related and subsequent decisions, to comply with General Order 156 of the commission.

(c) Not later than 2014, the commission shall include a status report on its compliance with this section in its annual report to the Legislature.

(d) Nothing in this section provides the commission with any authority to order the collection of the moneys consistent with Decision 11-12-035, Decision 12-05-037, or to increase the amount collected through the EPIC.