

# A MODEL FOR ECONOMIC EMPOWERMENT: MINORITY BUSINESS DEVELOPMENT AND ADVOCACY BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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## I. INTRODUCTION

Officials in regulatory agencies are not elected and yet make more decisions than many elected legislators, decisions that have a direct and significant impact on issues such as the safety of meat and dairy products,<sup>1</sup> environmental quality,<sup>2</sup> health care,<sup>3</sup> and alternative energy.<sup>4</sup> How regulators make their decisions and what role lawyers play in the regulatory process should concern all who are interested in not only the quality of democratic governance,<sup>5</sup> but also in social justice and economic empowerment.<sup>6</sup>

In response to regulated utility requests for rate increases and a rise in commission proceedings, community-based legal organizations have increased their intervention on behalf of low-income communities.<sup>7</sup> Some intervenors arose out of from neighborhood and civic organizations, many of whose members were low-income and whose pocketbooks were directly affected by the rate increases.<sup>8</sup> Other groups addressed particular issues that they identified as important to the collective good or public interest.<sup>9</sup> As a

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1. EUGENE BARDACH & ROBERT A. KAGAN, *GOING BY THE BOOK: THE PROBLEM OF REGULATORY UNREASONABLENESS* 9 (Transaction Publishers 2002) (1982).

2. Dorothy Thornton et al., *When Social Norms and Pressures Are Not Enough: Environmental Performance in the Trucking Industry*, 43 *LAW & SOC'Y REV.* 405, 407-15 (2009); see also Timothy M. Mulvaney, *Instream Flows and the Public Trust*, 22 *TUL. ENVTL. L.J.* 315, 329-30 (2009).

3. Heather D'Antonio, Comment, *The State of Mental Health Care in Post Katrina New Orleans*, 69 *LA. L. REV.* 661, 670-71 (2009).

4. Girard Miller, *Developers See Green and Neighbors See Red: A Survey of Incentives and Mandates for the Development of Alternative Energy and the Unfolding Challenges*, 3 *TEX. J. OIL, GAS, & ENERGY L.* 117, 139 (2008).

5. Anne Larason Schneider & Helen Ingram, *The Pragmatic Policy Analyst*, in *RENASCENT PRAGMATISM: STUDIES IN LAW AND SOCIAL SCIENCE* 156, 157 (Alfonso Morales ed., Ashgate Publ'g Co. 2003).

6. *Id.* at 157-61.

7. Stefan H. Krieger, *An Advocacy Model for Representation of Low-Income Intervenors in State Public Utility Proceedings*, 22 *ARIZ. ST. L.J.* 639, 643 (1990); see also William T. Gormley, *Public Advocacy in Public Utilities Commission Proceedings*, 17 *J. APPLIED BEHAV. SCI.* 446, 446-62 (1981).

8. Gormley, *supra* note 7, at 448 (Gormley identifies four different types of grassroots advocacy groups: (1) environmental groups (such as the Environmental Defense Fund, the Natural Resources Defense Council, the Sierra Club, and Friends of the Earth), (2) antinuclear groups (such as the Clamshell Alliance in New England), (3) consumer groups (such as the Illinois Public Action Council and the Michigan Citizens Lobby), and (4) low-income groups (such as South Austin Coalition Community Council in Chicago and the New Jersey Federation of Senior Citizens).

9. Michael I. Jeffery, *Intervenor Funding as the Key to Effective Citizen Participation in Environmental Decision-Making: Putting the People Back into the Picture*, 19 *ARIZ. J. INT'L & COMP. L.* 643, 644 (2002).

result of the increased intervention in administrative proceedings on behalf of low-income communities, there has been an emergence of scholarship addressing such issues as the right of all impacted interests to participate in the administrative process or the need for public participation in responsible decision-making.<sup>10</sup>

Although the literature is filled with a discussion of the roles, rights, and responsibilities of intervenors, little examination has been made of the impacts of advocacy by community-based intervenors. Perhaps this is due to a bias in the traditional law review and social science literature against discussions of non-traditional areas of advocacy with respect to measuring successful intervention, or simply because success and impact are difficult to measure without tangible data. Given that the proceedings before public utility commissions are essentially political in nature, conventional methods of trial advocacy are not always applicable and outcomes cannot be assessed in ways comparable to traditional litigation. Intervenors must therefore often approach public utility commission proceedings with flexibility and a willingness to adapt to the social, political, and economic concerns of the individual commission.

In California, several key Commission<sup>11</sup> intervenors have emerged, focusing on issues of urban entrepreneurship, economic and social equity, minority business development, and supplier diversity.<sup>12</sup> In addition to reviewing the impact of litigation under GO 156 in California this article proposes one possible tool for measuring the success of intervenors—the adoption of formal

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10. Ernest Gellhorn, *Public Participation in Administrative Proceedings*, 81 *YALE L.J.* 359, 361 (1972) (outlining the importance of public participation in administrative proceedings). See generally Michael Kolber, *Rulemaking Without Rules: An Empirical Study of Direct Final Rulemaking*, 72 *ALB. L. REV.* 79, 86 (2009) (discussing the benefits of public participation in rulemaking). See also Krieger, *supra* note 7, at 646.

11. Throughout this article, “Commission”, “California Public Utilities Commission” and “CPUC” will be used interchangeably.

12. This article will highlight two community-based intervenors before the California Public Utilities Commission, The Greenlining Institute and Latino Issues Forum. Both organizations have been active before the Commission for over 15 years and address issues of social justice and equity for low-income Californians. The Greenlining Institute’s stated mission is, “. . . to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities.” See The Greenlining Institute: About the Greenlining Institute, <http://www.greenlining.org/about> (last visited Dec. 30, 2009). Latino Issues Forum’s stated mission is, “a non-profit public policy and advocacy institute dedicated to advancing new and innovative public policy solutions for a better, more equitable, and prosperous society.” See Latino Issues Forum, <http://lif.org/display.asp?catID=1&pageid=1> (last visited Dec. 30, 2009).

agreements within public utility commission proceedings that set transparent goals for minority business development. Further research is needed in this area and would significantly add to our understanding of administrative advocacy, social justice, and the diverse roles of community-based intervenors before public utility commissions.

*California Public Utilities Commission's  
Goal and Regulatory Scope*

The CPUC's mission and goal is to serve the public interest by "protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy."<sup>13</sup> The CPUC regulates "utility services, stimulate[s] innovation, and promote[s] competitive markets, where possible, in the communications, energy, transportation, and water industries."<sup>14</sup> It is this stated commitment to promoting a 'healthy economy' in California and focusing on the contracting practices of its regulated utilities<sup>15</sup> that has allowed intervenors, such as The Greenlining Institute and Latino Issues Forum, to develop legal and policy strategies for economic empowerment of underserved communities. Through intervention in Commission proceedings, raising issues of economic equity, social justice, minority entrepreneurship, and corporate social responsibility, these organizations have been able to not only impact the dollars invested in California's minority business enterprises, but also develop strategies to help grow economic opportunities for low-income communities through education<sup>16</sup> and

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13. Mission, Values, and Vision Statements, Cal. Pub. Util. Comm'n, <http://www.cpuc.ca.gov/PUC/aboutus/pucmission.htm> (last visited Dec. 30, 2009).

14. *Id.*

15. CAL. PUB. UTIL. COMM'N, Gen. Ord. 156 (2006), *available at* <http://docs.cpuc.ca.gov/published/Graphics/608.pdf> [hereinafter CPUC Gen. Ord. 156]; *see also* Utility Supplier Diversity Program, Cal. Pub. Util. Comm'n, <http://www.cpuc.ca.gov/PUC/supplierdiversity> (last visited Dec. 30, 2009) ("Our program monitors supplier diversity in procurements by participating utilities and oversees a clearinghouse of women, minority and disabled veteran-owned business enterprises.").

16. Press Release, Cal. Pub. Util. Comm'n, PUC Endorses Program to Promote Diversity by Providing Educational and Mentoring Opportunities to Students, June 21, 2007, *available at* [http://docs.cpuc.ca.gov/word\\_pdf/NEWS\\_RELEASE/69381.pdf](http://docs.cpuc.ca.gov/word_pdf/NEWS_RELEASE/69381.pdf); Cal. Pub. Util. Comm'n, California Aspire Achieve Lead Pipeline Project, June 21, 2007, *available at* [http://docs.cpuc.ca.gov/word\\_pdf/REPORT/69331.pdf](http://docs.cpuc.ca.gov/word_pdf/REPORT/69331.pdf).

technical assistance<sup>17</sup>. Due to the efforts of these intervenors, the CPUC has maintained a continued focus on economic equity and supplier diversity through both regulatory processes and public policy programs, establishing itself as a leader nationally.<sup>18</sup> For example, under CPUC review, in 2007 the six largest utility and broadband companies awarded approximately \$9.7 billion in contracts to diverse businesses in California.<sup>19</sup> This represents an increase of more than 10 percent from \$8.7 billion in contracts awarded, or invested, in diverse businesses in 2006.<sup>20</sup> This article provides only a snapshot of the impact intervenors can have on public utility commissions to proactively empower communities. As the data provided herein suggests, there is an opportunity for social justice advocates to further the development of initiatives that address core issues of economic equity providing sustainable and measurable results for communities.

## II. BACKGROUND

### *A. The Women and Minority Business Enterprise Law and General Order 156*

For many years, the Commission has overseen programs to increase the participation of minority-owned and women-owned businesses in public utility contracting.<sup>21</sup> Before 1986, the Commission simply required public utilities to maintain public outreach programs, which encouraged and assisted minority-owned and women-owned businesses to compete for contracts with public utilities. In 1986, however, the California Legislature passed the

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17. CAL. PUB. UTIL. COMM'N, REPORT TO THE LEGISLATURE YEAR 2007 UTILITY PROCUREMENT OF GOODS, SERVICES AND FUEL FROM WOMEN-, MINORITY-, AND DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (Sept. 2008), available at <http://www.cpuc.ca.gov/NR/rdonlyres/08B9FECD-983E-4698-9CD1-E3384E9EBD5F/0/2007WMDVBEReport.pdf> [hereinafter CPUC 2007 REPORT].

18. For example, The Greenlining Institute was instrumental in the creation of the California Utilities Diversity Council (CUDC) and was a member of the CUDC until 2008. The CUDC is the model for the National Utilities Diversity Council and is regulated by state utility commissions. See Nat'l Util. Diversity Council Website, <http://www.nudc.biz/> (last visited Dec. 30, 2009).

19. CPUC 2007 REPORT, *supra* note 17; see also Cal. Pub. Util. Comm'n Small Business Website, <http://www.cpuc.ca.gov/smbus> (last visited Dec. 30, 2009).

20. CPUC 2007 REPORT, *supra* note 17.

21. Assem. B. 3678, Reg. Sess. (Cal. 1986).

Women and Minority Business Enterprise Law,<sup>22</sup> which is codified in §§ 8281-86 of the Public Utilities Code.<sup>23</sup> The Women and Minority Business Enterprise Law authoritatively acknowledged the positive impact that equitable public policies confer upon private enterprise in California.<sup>24</sup> The purpose of §§ 8281-86 is to encourage greater economic opportunity for diverse business enterprises, promote competition among regulated public utility suppliers to enhance economic efficiency, and expand the procurement of products and services from diverse business enterprises.<sup>25</sup>

GO 156, first adopted in 1988, established Commission rules for implementing the statutory requirements set forth in §§ 8281-86. GO 156 has been amended numerous times over the years, most recently by Commission decision 05-12-023 on December 15, 2005.<sup>26</sup> GO 156's purpose is to "... establish a procedure for gas, electric, and telephone utilities with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates to submit annual detailed and verifiable plans for increasing women, minority and disabled veteran business enterprises' (WMDVBE) procurement in all categories."<sup>27</sup> Consistent with the legislative goal of maintaining and strengthening California's economy through contracting, GO156 establishes that, "[e]ach utility shall set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMBEs"<sup>28</sup> and that "[e]ach utility shall establish initial minimum long-term goals for each major category of products and services the utility purchases from outside vendors of not less than 15 percent for minority owned business enterprises and not less than 5 percent for women owned business enterprises."<sup>29</sup>

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22. *Id.*

23. CAL. PUB. UTIL. COMM'N CODE §§ 8281-86 (2009).

24. Assem. B. 3678, *supra* note 21 ("It is the declared policy of the state to aid the interests of women, minority, and disabled veteran business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated utilities are awarded to women, minority, and disabled veteran business enterprises, and to maintain and strengthen the overall economy of the state.").

25. CAL. PUB. UTIL. COMM'N CODE § 8281(b)(2) (2009).

26. CPUC Gen. Ord. 156, *supra* note 15.

27. *Id.* at § 1.1.1.

28. *Id.* at § 8.

29. *Id.*

The adoption of the Women and Minority Business Enterprise Law and GO156 clearly instituted uniform guidelines for the development of supplier diversity programs among regulated utilities in California. By setting transparent short and long-term goals for contracting, GO156 has become a tool for social justice lawyers and advocates seeking to influence corporations and increase economic investments in diverse communities through contracting relationships.<sup>30</sup> In addition to creating goals, GO 156, has also shaped the Commission's programmatic focus on small business economic development.<sup>31</sup> For example, the CPUC has established a clearinghouse for diverse enterprises<sup>32</sup> that requires annual public reports filed by regulated utilities outlining their progress to meet GO 156 goals,<sup>33</sup> provides an annual Commission report to the legislature on GO 156,<sup>34</sup> and holds an annual hearing where executive officers of the regulated utilities provide public reports to the Commission on their supplier diversity initiatives.<sup>35</sup> All of these GO 156-related initiatives, hearings, and reports have promoted the importance of economic development through business enterprises.

By understanding that minority business contracting and the development of initiatives focused on supplier diversity yield positive economic impacts in local communities by awarding

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30. *Id.* at §§ 6, 8.

31. *Id.* at § 6.

32. California Public Utilities Commission Supplier Clearinghouse, <http://www.cpuc.ca.gov/PUC/SupplierDiversity/clearing.html> (last visited Dec. 30, 2009).

33. CPUC Gen. Ord. 156, *supra* note 15, at § 8.

34. CPUC 2007 REPORT, *supra* note 17; CAL. PUB. UTIL. COMM'N, REPORT TO THE LEGISLATURE YEAR 2006 UTILITY PROCUREMENT OF GOODS, SERVICES AND FUEL FROM WOMEN-, MINORITY-, AND DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (Oct. 2007), available at <http://docs.cpuc.ca.gov/published/Graphics/74410.pdf> [hereinafter CPUC 2006 REPORT]; CAL. PUB. UTIL. COMM'N, REPORT TO THE LEGISLATURE YEAR 2005 UTILITY PROCUREMENT OF GOODS, SERVICES AND FUEL FROM WOMEN-, MINORITY-, AND DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (Sept. 2006), available at [http://docs.cpuc.ca.gov/word\\_pdf/REPORT/59674.pdf](http://docs.cpuc.ca.gov/word_pdf/REPORT/59674.pdf) [hereinafter CPUC 2005 REPORT]; CAL. PUB. UTIL. COMM'N, REPORT TO THE LEGISLATURE YEAR 2004 UTILITY PROCUREMENT OF GOODS, SERVICES AND FUEL FROM WOMEN-, MINORITY-, AND DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (Sept. 2005), available at [http://docs.cpuc.ca.gov/word\\_pdf/REPORT/50977.pdf](http://docs.cpuc.ca.gov/word_pdf/REPORT/50977.pdf) [hereinafter CPUC 2004 REPORT].

35. Cal. Pub. Util. Comm'n, CPUC's Sixth Annual Diversity Hearing, Oct. 8, 2008, [http://www.cpuc.ca.gov/PUC/SupplierDiversity/6thAnnualHearing\\_10-08-2008.htm](http://www.cpuc.ca.gov/PUC/SupplierDiversity/6thAnnualHearing_10-08-2008.htm), (last visited Dec. 30, 2009).

business to companies that represent local demographics,<sup>36</sup> intervenors have found GO 156 to be an instrument for promoting social change.<sup>37</sup> When intervenors frame legal arguments related to GO 156 in language consistent with corporate economic objectives, they have been able to develop agreements with corporate leadership that view minority business development as a strategic imperative, with a market-driven business case based on considerations of future market protection, consolidation and expansion into underdeveloped market sectors.<sup>38</sup> This creative approach to advocacy and social justice reflects a keen awareness of how economic factors impact both public and private policies.

Through the connection of the goals of the Women and Minority Business Enterprise Law, the purpose and mandates of GO 156, and corporations' desire to positively impact their bottom lines, intervenors have adapted to changing legal and social institutions.<sup>39</sup> Simply put, by using the Commission's regulatory process and intervening in rate proceedings or merger applications, community-based social justice organizations have impacted economic conditions in California.<sup>40</sup> One needs look no further than Verizon California, a regulated broadband company, for a clear example.<sup>41</sup> For years, Verizon California struggled to meet the Commission's procurement goals established by GO 156, and was far behind its competitors in the area of supplier diversity. However, in 2007, after reaching a formal accord with The Greenlining Institute and Latino Issues Forum during litigation of its 2005 merger application, the company began specific outreach to ethnic communities and fostered

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36. Vickie Cox Edmondson et al., *Exceeding Government-Mandated Social Programs: Minority Supplier Development Programs*, Management Research News 31(2), 111, 111-24 (2008).

37. See CPUC 2007 REPORT, *supra* note 17; CPUC 2006 REPORT, *supra* note 34; CPUC 2005 REPORT, *supra* note 34; CPUC 2004 REPORT, *supra* note 34.

38. *Id.*

39. *Id.*

40. *Id.*

41. In the Matter of the Joint Application of Verizon Commc'ns, Inc. and MCI, Inc. to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI, Decision Authorizing Change in Control [hereinafter In the Matter of Verizon and MCI], CPUC Decision 05-11-029, 128-130, Apr. 21, 2005, available at <http://greenlining.org/resources/pdfs/GreenliningandVerizonMergerAgreement2005.pdf>.



relationships with community leaders and organizations.<sup>42</sup> This outreach strategy and focus on minority economic business development led to not only increased interactions with diverse local companies, but also transformed Verizon California into an industry leader in supplier diversity.<sup>43</sup> Verizon California awarded 19.29 percent of its total contracts to minority business enterprises in 2007,<sup>44</sup> a percentage greater than any other regulated utility in California.<sup>45</sup> Furthermore, Verizon California's development of the African-American Supplier Engagement Collaboration, a consortium whose members include the National Black Business Council, the California Black Chamber of Commerce and the Black Business Association led the company to significantly increase its overall contracting with African American-owned business enterprises.<sup>46</sup>

*B. Changing Demographics  
and Minority Business Growth*

It is important to also consider the impact of GO 156 in the context of demographic trends and minority business enterprise growth. In the United States, small businesses represent 99 percent of all inner-city businesses<sup>47</sup> and account for almost 50 percent of private payroll.<sup>48</sup> In 2008, the 50 largest minority businesses headquartered in Los Angeles County generated \$11.7 billion in aggregate revenue<sup>49</sup>, up \$320 million from the prior year.<sup>50</sup>

42. *Id.* (“[Verizon California] make a good faith effort to increase the supplier diversity goal for minority business enterprises from the current 15% to a minimum of 20% by 2010. To achieve this goal, Verizon California anticipates spending \$1 million over five years in technical assistance to minority businesses. . .”).

43. CPUC 2007 REPORT, *supra* note 17.

44. *Id.*

45. *Id.*

46. *Id.*; see also Press Release, Verizon Commc'ns, Inc., \$250,000 Verizon Grant Will Help Create Greater Opportunities for California's African-American-Owned Businesses (Mar. 18, 2008), <http://newscenter.verizon.com/press-releases/verizon/2008/250000-verizon-grant-will.html> (last visited Dec. 30, 2009) (on file with author).

47. INITIATIVE FOR A COMPETITIVE INNER CITY, STATE OF THE INNER CITY ECONOMIES: SMALL BUSINESSES IN THE INNER CITY (Oct. 2005), available at <http://www.sba.gov/advo/research/rs260tot.pdf>.

48. Office of Advocacy, Small Business Resources for Faculty, Students, and Researchers: Answers to Frequently Asked Questions (2004), available at <http://www.sba.gov/advo/stats/arsbfaq.pdf>.

49. David Nusbaum, *Minority-Owned Businesses: L.A. County-Based Companies Ranked by 2008 Revenue*, L.A. BUS. J., Mar. 16, 2009, [http://www.thefreelibrary.com/\\_/print/PrintArticle.aspx?id=196440741](http://www.thefreelibrary.com/_/print/PrintArticle.aspx?id=196440741) (last visited Dec. 30, 2009).

California's demographics clearly reveal the significant growth potential for minorities in the United States, and highlight their undeniable economic contribution through minority business enterprises.<sup>51</sup> As minority businesses continue to expand, it will be impossible for corporations to succeed economically without contracting with diverse businesses.<sup>52</sup> This presents an opportunity for innovative advocacy before regulatory bodies charged with not only maintaining and strengthening local economies, but also improving economic equity and promoting social justice. By focusing legal and public policy advocacy before Commissioners or other regulators on issues of minority business development and urban entrepreneurship, intervenors can gain access to corporations in ways that traditional litigation cannot provide.

### III. LITIGATION UNDER GENERAL ORDER 156

#### A. *Approaching the Commission Through Consensus Building and Coalitions*

Regulators are increasingly called upon to engage the public in making policy decisions through processes variously described as "stakeholder involvement, partnerships, consultation, collaboration, regulatory negotiation, and consensus building."<sup>53</sup> The CPUC is no different. The CPUC regularly holds community meetings, public hearings, business meetings, small business expos, and seeks advice letters.<sup>54</sup> As these various modes of public participation suggest, regulatory policymakers have numerous methods for allowing the public to participate in policy processes.<sup>55</sup> This is of significant importance when considering the effectiveness of intervenors before the CPUC, who have learned that by employing strategies of

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50. *Id.*

51. U.S. DEP'T OF COM., U.S. MINORITY BUS. DEV. AGENCY, MINORITY PURCHASING POWER: 2000-2045, 1-10 (Sept. 2000), *available at* [http://www.mbda.gov/documents/purchasing\\_power.pdf](http://www.mbda.gov/documents/purchasing_power.pdf).

52. JEFFERY M. HUMPHREYS, SELIG CTR. FOR ECON. GROWTH, THE MULTICULTURAL ECONOMY 6-12 (2008).

53. Cary Coglianese, *Does Consensus Work? A Pragmatic Approach to Public Participation in the Regulatory Process*, in RENASCENT PRAGMATISM: STUDIES IN LAW AND SOCIAL SCIENCE, 180, 182 (Alfonso Morales ed., Ashgate Publ'g Co. 2003).

54. CPUC 2005 REPORT, *supra* note 34;

55. *Id.*

consensus and coalition building among diverse constituencies they are able to more effectively voice the concerns of Californians.

For example, Latino Issue Forum intervenes before the Commission as a Category 3 customer, a group or customer organized by its bylaws to represent customers.<sup>56</sup> Specifically, Latino Issue Forum represents the interests of Limited English Proficient customers, immigrants, Latino communities throughout California, and other vulnerable customers.<sup>57</sup> In an effort to promote consensus and coalition building during Commission proceedings, Latino Issue Forum participates in community collaborative meetings,<sup>58</sup> attends and presents at Commission workshops,<sup>59</sup> meets with community leaders,<sup>60</sup> engages in settlement conferences with other intervenors,<sup>61</sup> publishes public information,<sup>62</sup> and develops partnerships with Latino organizations, stakeholders, community-based organizations, and opinion leaders.<sup>63</sup> Latino Issue Forum attributes its success before the Commission to its flexibility, diverse partners, and a willingness to work as part of consumer advocate coalitions.<sup>64</sup> When considering potential litigation before the Commission, Latino Issues Forum carefully considers not only the nature of the proceeding, for example whether, it fits under the organization's mission, but also whether an opportunity exists to engage local communities.<sup>65</sup> For Latino Issues Forum, community engagement is a key aspect of its administrative advocacy strategy and is often a determining factor when it chooses whether or not to intervene in specific Commission proceedings.<sup>66</sup>

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56. Request for Intervenor Compensation for Substantial Contribution to Decision 08-06-020 by Latino Issue Forum, Rulemaking on the Commission's Own Motion to Review the Telecomm. Public Policy Programs, Rulemaking 06-05-028 (Cal. Publ. Util. Comm'n May 25, 2006), available at [http://docs.cpuc.ca.gov/word\\_pdf/AGENDA\\_DECISION/102100.pdf](http://docs.cpuc.ca.gov/word_pdf/AGENDA_DECISION/102100.pdf) (last visited Dec. 30, 2009).

57. *Id.* at 12.

58. Interview with Ana Montes, Director of Technology and Consumer Education, Latino Issues Forum, in San Francisco, Cal. (Sept. 20, 2007).

59. *Id.*

60. *Id.*

61. Interview with Enrique Gallardo, Staff Attorney, Latino Issues Forum, in San Francisco, Cal. (Sept. 20, 2007).

62. Interview with Ana Montes, *supra* note 58.

63. *Id.*

64. *Id.*

65. Interview with Enrique Gallardo, *supra* note 61.

66. *Id.*

Consider also The Greenlining Institute, which has intervened on behalf of consumers, customers, or subscribers of utilities subject to the jurisdiction of the Commission.<sup>67</sup> Similar to Latino Issues Forum, The Greenlining Institute is a formally organized group authorized, pursuant to its articles of incorporation or bylaws, to represent the interests of residential customers and small commercial electric customers.<sup>68</sup> The Greenlining Institute and its individual coalition members represent the “interests of those who have traditionally been marginalized or excluded from the public utility process: minority, low-income, inner city, and other vulnerable and underserved communities.”<sup>69</sup> The Greenlining Institute was founded by a coalition of civil rights leaders and co-founder, John Gamboa, emphasizes how coalition building is a critical aspect of the organizations’ success.<sup>70</sup> The Greenlining Institute utilizes both informal and formal processes for community-based organizations and individuals to become coalition members.<sup>71</sup> The Greenlining coalition works closely with its attorneys throughout active Commission proceedings to disseminate information, gather data, engage in settlement negotiations, meet with utilities, assess performance of utilities, and develop strategies for community

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67. Rulemaking 06-05-028, *supra* note 64, at 10.

68. Order Instituting Rulemaking to Address the Needs of Telecommunications Customers Who Have Limited English Proficiency, Organizational By-Laws of the Greenlining Institute, Rulemaking 07-01-021 (2007) (on file with author).

69. *Id.*; The Greenlining Coalition includes but is not limited to the following groups: Allen Temple Baptist Church; American GI Forum; Antioch Baptist Church; Asian Business Association; Black Business Association; California Hispanic Chambers of Commerce; California Journal for Filipino Americans; California Rural Legal Assistance; CHARO Community Development Corporation; Chicana/Latina Foundation; Chicano Federation, San Diego; Council of Asian American Business Association; Economic Business Development; El Concilio of San Mateo County; Filipino-American Political Association; First AME Church, Los Angeles; Hermandad Mexicana Nacional; Hispanic Chamber of Commerce; Hmong American Political Association; KHEIR; Latin Business Association; Latino Issues Forum; Mabuhay Alliance of San Diego; Mexican-American Grocers Association; Mexican-American Political Association; Mission Language & Vocational School; National Federation of Filipino American Associations; Nehemiah Ministries; Oakland Citizens Committee for Urban Renewal (OCCUR); Orange County Minority Business Council; Phoenix Urban League; San Francisco Black Chamber of Commerce; Search to Involve Filipino-Americans; Southeast Asian Community Center; TELACU; West Angeles Church of God in Christ; and West Coast Black Publishers Association. The Greenling Coalition, <http://greenlining.org/about/coalition.php>

70. Interview with John Gamboa, Founder, The Greenlining Institute, in Berkeley, Cal. (Mar. 3, 2008).

71. Interview with Ortensia Lopez, Board Member and co-Chair of The Greenlining Institute Board of Directors, The Greenlining Institute, in Berkeley, Cal. (Mar. 9, 2008).

engagement.<sup>72</sup> The Greenlining Institute also maintains formal relationships with regulated utilities as part of its regulatory legal strategy.<sup>73</sup> The Greenlining Institute co-founder, Robert Gnaizda, notes that without the support of and in-depth local knowledge of the coalition members, the organizations' work before the Commission would be limited.<sup>74</sup> Indeed, given its community-based information gathering and public policy focus, The Greenlining Institute promotes both consensus building and community organizing to influence social change.<sup>75</sup> Like Latino Issues Forum, the Greenlining Institute carefully considers the potential success or impact of each proceeding it intervenes in. Specifically, the Greenlining Institute seeks to intervene in Commission proceedings where there is not only a potentially negative impact on underserved Californians, but also the opportunity to use the proceeding to create positive long-term social change. For example, when intervening in a rate proceeding the Greenlining Institute focuses its advocacy in two distinct ways. First, it addresses the specific issue of the disproportionate impact of a rate increase on low-income ratepayers, and second it addresses larger social justice issues, such as economic equity and entrepreneurship, that the Commission can directly or indirectly impact within the scope of the proceeding.<sup>76</sup>

It is well accepted that community organizing has served as a tool to politicize and mobilize people who have lacked traditional access to established forms of political and economic power.<sup>77</sup> By intervening on behalf of coalitions, organizations such as Latino

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72. Interview with Robert Gnaizda, Founder, The Greenlining Institute, in Berkeley, Cal. (Sept. 10, 2007).

73. *Id.* (When the Greenlining reaches an agreement or accord with a utility in the scope of litigation, it requires the company meet annually or semi-annually with Greenlining leadership and coalition members to assess the progress of the goals set forth in the agreement).

74. *Id.*

75. Interview with John Gamboa, *supra* note 70.

76. Interview with Robert Gnaizda, *supra* note 72.

77. Julissa Reynoso, *The Impact of Identity Politics and Public Sector Reform on Organizing and the Practice of Democracy*, 37 COLUM. HUM. RTS. L. REV. 149, 150 (2005); JEROD S. AUERBACH, *UNEQUAL JUSTICE LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 14 (Oxford U. Press 1976); Mark Toney, *Power Concedes Nothing Without a Demand: Building Multiracial Organizations with Direct Action*, in *BEYOND IDENTITY POLITICS EMERGING SOCIAL JUSTICE MOVEMENTS IN COMMUNITIES OF COLOR*, 17-18 (South End Press 1996); Susan D. Bennett, *Little Engines that Could: Community Clients, Their Lawyers and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469, 471 (2002); SI KAHN, *ORGANIZING: A GUIDE FOR GRASSROOTS LEADERS* 7 (NASW Press 1991).

Issues Forum and The Greenlining Institute, more effectively present issues to the Commission, and ultimately negotiate agreements with regulated utilities, which impact a broad base of constituencies. Such a strategy is consistent with reducing conflict among individuals, and ultimately it saves time and resources.<sup>78</sup>

*B. Agreements Adopted as a  
Result of GO 156 Litigation*

The barriers to urban economic development are often described as being economic and political.<sup>79</sup> In fact, scholars assert that one critical barrier is access to financial capital.<sup>80</sup> With this understanding in mind, intervenors before the Commission have developed litigation focused on capital access-driven strategies.<sup>81</sup> Capital access-driven strategies center on directing funding and contracts towards traditionally disadvantaged business owners.<sup>82</sup> Although, unlike traditional capital access-driven strategies, litigation under GO 156 has been designed to impact specific communities.<sup>83</sup> By reaching agreements with utility companies, intervenors seek to create an influx of capital into specific ratepayer territories. GO 156 agreements also create strategic partnerships for minority business enterprises that are well accepted as an important bridge to urban markets.<sup>84</sup>

Partnerships are described as the social brokers that provide access, information, and timing to the market.<sup>85</sup> Without them, the challenge of overcoming institutional barriers to the market may be overwhelming for many diverse business enterprises. The agreements below illustrate that, through fostering partnerships, increasing access to contracts, and developing technical assistance initiatives through GO 156 litigation, The Greenlining Institute and

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78. Coglianese, *supra* note 53, at 182.

79. Jeffrey Robinson, *Urban Entrepreneurship: Patterns and Policy*, 30 W. NEW ENG. L. REV. 103, 105 (2007).

80. *Id.*

81. *Id.* at 109.

82. *Id.*

83. *Id.* at 104 (Historically the intent of capital access-driven strategies was to provide direct support to the minority-owned business).

84. *Id.* at 114.

85. *Id.*

Latino Issues Forum are directly impacting some of the barriers to economic development.

### 1. 2005 Merger of SBC and AT&T

In its final decision of the application for the merger between SBC and AT&T, the Commission formally accepted the agreement among Latino Issues Forum, The Greenlining Institute, AT&T, and SBC.<sup>86</sup> The Commission ordered the applicants to “. . . [m]ake a good faith effort to increase the supplier diversity goal for minority business enterprises from the current 23 percent to 27 percent by 2010.<sup>87</sup> To achieve this goal, minority, supplier, diversity spending in California could grow to \$40 million in 2006 and to \$80 million by 2010.”<sup>88</sup> The Commission also required “. . . as a condition of the merger that Applicants commit to the minimum diversity goals set forth in the settlement. We conclude that these diversity goals will be instrumental in satisfying the requirements of § 854(c).”<sup>89</sup>

### 2. 2005 Merger of MCI and Verizon

In its final decision of the application for the merger between MCI and Verizon, the Commission also adopted an accord reached among intervenors Latino Issues Forum, The Greenlining Institute, MCI, and Verizon. The decision ordered, “[Verizon California] make a good faith effort to increase the supplier diversity goal for minority business enterprises from the current 15 percent to a minimum of 20 percent by 2010.”<sup>90</sup> The Commission also ordered, consistent with the accord that “. . . [t]o achieve this goal, Verizon California anticipates spending \$1 million over five years in technical assistance to minority businesses. . . .”<sup>91</sup>

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86. In the Matter of the Joint Application of SBC Commc'ns, Inc. and AT&T Corp. Inc. for Authorization to Transfer Control, Cal. Pub. Util. Comm'n 05-11-028, 96-98 (2005) [hereinafter SBC & AT&T Joint Application] (opinion approving the application to transfer control).

87. *Id.* at 75.

88. *Id.* at 111.

89. In the Matter of Verizon and MCI, *supra* note 41.

90. *Id.*

91. *Id.*

### 3. 2006 Pacific Gas & Electric Company Rate Application

In the final decision approving the 2006 rate application of Pacific Gas & Electric Company, the Commission adopted the agreement between The Greenlining Institute and Pacific Gas & Electric Company, which stated:

PG&E will in good faith attempt to meet a minority contract goal of 20 percent by 2010 or earlier, and PG&E will seek a good faith aspirational goal of 27 percent by 2015, if not better . . . PG&E will be developing a wide range of internal strategies that will include: (1) factoring in achievement of supplier diversity goals in performance evaluations and compensation; and (2) setting an innovative technical assistance program beginning in 2008, with a special emphasis on small minority-owned business that will assist PG&E in its efforts to be the national leader in supplier diversity.<sup>92</sup>

### 4. 2007 Sempra Energy Rate Application

In 2007, during the rate increase application for San Diego Gas & Electric Company and Southern California Gas Company, Sempra Energy and The Greenlining Institute reached and jointly filed a Six-Year Leadership Agreement that formalized the utilities' commitment to supplier diversity, which stated:

Supplier diversity creates greater economic opportunities for minorities, women and disabled veterans and has long been a priority with Sempra. Sempra's commitment began even before the CPUC issued GO-156 and Sempra became the national leader in encouraging corporations to grant greater opportunities to women, minority, and disabled veteran-owned businesses.

Supplier diversity has a substantial financial benefit for Sempra as increased opportunities for minority, women and disabled veteran businesses creates greater competition, which can result in reduced costs to the utilities and

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92. Application of Pacific Gas and Electric Co. for Authority, Cal. Pub. Util. Comm'n 07-03-044, 2 (2007), available at [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/69644.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/69644.pdf) [hereinafter PG&E Application].



likewise, the ratepayers. For many years Sempra has been a national leader in recognizing this.

It is Sempra's intention to continue its progress in the area of supplier diversity and commits to a minimum of 30 percent of its contracts to women, minorities and disabled veteran-owned businesses within the six-year period of this agreement. This will include a special effort with Greenlining and its member's input to reach the CPUC set minimum goal for disabled veterans, a goal, which frankly, neither Sempra nor any other utility has come close to meeting.

To ensure that all categories benefit equally, it is Sempra's intention:

That each category meets the minimum CPUC goal and that all increases for women and minorities from 2006 be distributed in such a manner that each category will benefit, based on percentage increases equally.

To ensure that small business, (particularly those with \$3 million or less in revenue), which represent over 95 percent of businesses in Sempra's service area benefit from a focus on supplier diversity, it is Sempra's intention to develop a series of robust programs that will be of a special assistance to these businesses. This will include:

1. A \$6 million, six-year technical assistance and business development program, which includes capacity building; and
2. Requiring all Tier one suppliers to set and achieve goals for minorities, women and disabled veterans, similar to Sempra's achievements and to provide their technical assistance in the area of capacity building, where appropriate, to small minority, women, and disabled veteran-owned businesses.

Since Sempra has been, and intends in the future to be, a leader in this fundamental area of strengthening California's communities, Sempra will, on an annual basis, examine its achievements in the context of other regulated

California energy utilities and seek to equal and exceed their achievements.<sup>93</sup>

As each of the agreements reflects, litigation under GO 156 has led to increased commitments on behalf of California's regulated utilities in the area of economic investments, through contracting with minority business enterprises.<sup>94</sup> Not only have the agreements between intervenors and utility companies' become more robust in subsequent years, with respect to contracting goals, but they also include technical assistance, local and national leadership statements, and goals for unregulated suppliers for utilities to adopt similar objectives and benchmarks for contracting. The Greenlining Institute attributes its success in reaching GO 156 agreements with regulated utilities that include amplified terms and conditions to three unique features of administrative advocacy.<sup>95</sup> First, administrative advocacy occurs before a regulatory entity charged with serving the public good through policy actions and who must meet the mandates of a specific law implemented to promote economic equity. Second, administrative advocacy promotes corporate competition since regulated utilities are required, under GO 156, to publish yearly reports on their performance in the area of minority contracting. Third, administrative advocacy allows for community input into the decision-making process, which advances corporate social responsibility and transparency.<sup>96</sup>

*Utility Contracting with Minority Business  
Enterprises in Years 2006 and 2007*

It is important to consider not only the goals established by each of these agreements, but also the overall investments, through

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93. Motion for the Adoption of the Settlement Agreement, Application of Southern California Gas Company, Application 06-12-009, 12-15 (2007) [hereinafter SCGC Application], available at [http://www.socalgas.com/regulatory/documents/a-06-12-010/docs/212670-v1-A\\_06-12-009\\_010\\_SDGE\\_SCG\\_Joint\\_Motion\\_for\\_Adoption\\_for\\_Late\\_Filing.pdf](http://www.socalgas.com/regulatory/documents/a-06-12-010/docs/212670-v1-A_06-12-009_010_SDGE_SCG_Joint_Motion_for_Adoption_for_Late_Filing.pdf).

94. Motion for the Adoption of the Settlement Agreement, Application of San Diego Gas & Electric Company Application 06-12-010, 12-15 (2007), [hereinafter SDCEC Application]; see In the Matter of Verizon and MCI, *supra* note 41; see also PG&E Application, *supra* note 92.

95. Interview with John Gamboa, Founder, The Greenlining Institute, in Berkeley, Cal. (Jan. 18, 2008); Interview with Robert Gnaizda, Founder, The Greenlining Institute, in Berkeley, Cal. (Jan. 18, 2008).

96. CPUC 2007 REPORT, *supra* note 17; see also CPUC Small Business website, *supra* note 19.

contracts, these utilities have made as they move toward meeting their goals.

FIGURE 1

**Utility Spend in Years 2006-2007 with  
Minority Owned Business Enterprises in California**

	<i>2006</i>	<i>2007</i>
AT&T	\$506,602,020.00	\$463,148,119.00
Southern California Edison	\$384,609,275.00	\$364,867,810.00
Pacific Gas & Electric	\$333,843,255.00	\$398,762,652.00
San Diego Gas & Electric Company	\$111,845,199.00	\$118,981,820.00
Southern California Gas Company	\$71,950,431.00	\$97,315,880.00
Verizon California	\$78,202,295.00	\$101,018,043.00
<b>Total</b>	<b>\$1,487,052,475.00</b>	<b>\$1,544,094,324.00</b>

FIGURE 2

**Total Utility Spend in Years 2006-2007 in California**

<i>Company</i>	<i>2006</i>	<i>2007</i>
AT&T	\$2,520,464,812.00	\$2,778,976,722.00
Southern California Edison	\$2,409,314,191.00	\$2,447,254,956.00
Pacific Gas & Electric	\$2,271,956,640.00	\$2,759,235,519.00
San Diego Gas & Electric Company	\$642,685,211.00	\$650,574,383.00
Southern California Gas Company	\$442,648,573.00	\$535,394,092.00
Verizon California	\$482,214,425.00	\$523,758,051.00
<b>Total</b>	<b>\$8,769,283,852.00</b>	<b>\$9,695,193,723.00</b>

As Figure 1 and Figure 2 illustrate, subsequent to the adoption of GO 156 agreements CPUC regulated companies have focused on increasing their overall contracting with diverse business enterprises. For example, in 2006 AT&T invested \$506 million in contracts with

minority business enterprises.<sup>97</sup> In 2007 Verizon California invested \$101 million in contracts with minority business enterprises.<sup>98</sup> In 2007 Sempra Energy's utilities, San Diego Gas & Electric Company and Southern California Gas Company respectively invested, \$119 million and \$97 million with minority business enterprises.<sup>99</sup> It should be noted that while in 2007 Pacific Gas & Electric Company invested slightly less than in the previous year with minority business enterprises, it committed to increasing technical assistance and began partnerships with California stakeholders with the intention of moving closer to its rate application agreement commitments.<sup>100</sup> When viewed in the aggregate, this data reveals the potential of GO 156 litigation to significantly impact entrepreneurship and economic development. GO 156 litigation can be seen as a model for promoting capital access-driven strategies.

#### IV. CONCLUSION

Given the importance of small business development to the United States economy it is imperative for advocates to evaluate new legal and policy strategies for social justice.<sup>101</sup> As the data provided herein suggests, there are many opportunities for lawyers to advocate for reforms that advance minority entrepreneurship. Considering that minority business enterprises comprise approximately 20 percent of the total number of American businesses<sup>102</sup> and earn nearly \$700 billion in annual revenue<sup>103</sup>, it is critical that advocates pay close attention to the potential for impacting economic justice through regulatory processes.<sup>104</sup>

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97. CPUC 2006 REPORT, *supra* note 34.

98. CPUC 2007 REPORT, *supra* note 17.

99. *Id.*

100. *Id.*; see also PG&E Application, *supra* note 92, at 8-1. (In 2008, PG&E achieved its highest level of diversity spending at \$754.7 million or 23.9%).

101. ZOLTAN ACS ET AL., ENTREPRENEURSHIP AND URBAN SUCCESS: TOWARD A POLICY CONSENSUS 1,3 (Ewing Marion Kauffman Foundation 2008) (The formation and growth of new firms, especially those built around new products or ways of doing things, wherever this occurs, is clearly a positive sum game, not just for the locality, but for the nation as a whole.)

102. CARLOS M. GUTIERREZ AND RONAL N. LANGSTON, STATE OF MINORITY BUSINESS 2002 SURVEY OF BUSINESS OWNERS 13 (2006), available at <http://www.mbda.gov/minoritybizfacts/StateofMinorityBusiness2002SurveyofBusinessOwners.pdf>.

103. U.S. Dep't of Commerce Minority Bus. Dev. Agency, <http://www.mbda.gov/> (last visited Dec. 30, 2009).

104. *Id.*

Since the adoption of GO 156 in 1988, the regulatory landscape in California has changed dramatically.<sup>105</sup> Not only has the GO 156 mechanism been created, which allows intervenors to address issues related to economic equity and minority entrepreneurship, but through the implementation of formal agreements the Commission has also shown a willingness to develop local economic markets throughout California.<sup>106</sup>

But social justice advocates' work is far from over. In a time of economic challenges, it is important that the Commission does not lose sight of its charge to promote economic growth, nor do regulated utilities fail to meet their stated goals and objectives. Additionally, advocates should consider innovative litigation strategies in areas that the Commission has already established as priorities, such as the digital divide, environmental sustainability, health, educational pipelines, and workforce development.<sup>107</sup> When considering advocacy before the Commission individuals and organizations should draw upon the successes and failures of community-based intervenors, such as The Greenlining Institute and Latino Issues Forum.

For example, the positive results of GO 156 litigation would not have occurred without, at a minimum, some combination of the following elements being present: 1) a law, rule or regulation promoting public policy and public good objectives; 2) a stated focus by the Commission relevant to economic equity, evidenced by either prior proceedings, programs, or orders; 3) an existing corporate program or goal; 4) a broad social justice issue that can be framed to unify diverse constituencies; 5) a proceeding in which a utility company is seeking a Commission action; 6) a mechanism for accountability; and 7) the potential for short and long-term actions by the Commission and regulated utilities. While this is not an exhaustive list, it represents a potential series of questions that

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105. JAMES LOWRY, REALIZING THE NEW AGENDA FOR MINORITY BUSINESS DEVELOPMENT 7-9 (commissioned by The Ewing Marion Kauffman Foundation) (The Boston Consulting Group 2005); CPUC 2007 REPORT, *supra* note 17.

106. PG&E Application, *supra* note 92; SBC & AT&T Joint Application, *supra* note 86, at 96-98; In the Matter of Verizon and MCI, *supra* note 41, at 128-30; SCGC Application, *supra* note 93, at 12-15; SDCEC Application, *supra* note 94, at 12-15.

107. Cal. Pub. Util. Comm'n, PUC Divisions, <http://www.cpuc.ca.gov/PUC/aboutus/Divisions/> (last visited Mar. 25, 2010).

advocates can use to evaluate the potential success or impact of a Commission proceeding before intervening.

Consider issues related to digital divide.<sup>108</sup> It is clear that the digital divide won't close by itself, but as the 2005 agreements reached between community-based intervenors and applicants AT&T and Verizon reflect, powerful market forces can drive investments in equalizing access to technology. Similar to GO 156 litigation, by leveraging the Commission's authority to approve each of these mergers, community-based intervenors were able to negotiate long-term commitments with both AT&T and Verizon focused on improving digital access. In the final decision of the AT&T and SBC merger the Commission ordered that, AT&T "participate in a statewide Broadband Task Force"<sup>109</sup> and ". . . commit \$9 million per year for 5 years in charitable contributions (\$45 million total) . . . for the purpose of achieving ubiquitous access to broadband and advanced services in California, particularly in underserved communities, through the use of emerging technologies by 2010."<sup>110</sup> Likewise in the final decision of the Verizon and MCI merger the Commission ordered that Verizon, "participate in a statewide Broadband Task Force"<sup>111</sup> and ". . . commit \$3 million per year for five years in charitable contributions (\$15 million total) . . . for the purpose of achieving ubiquitous access to broadband and advanced services in California, particularly in underserved communities, through the use of emerging technologies by 2010."<sup>112</sup>

Advocates seeking to impact the digital divide and considering administrative advocacy strategies before the Commission could utilize these prior agreements to influence future actions by the

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108. The digital divide refers to the divide between those with access to new technologies and those without. See NAT'L TELECOMM. AND INFO. ADMIN. U.S. DEP'T OF COMMERCE (2009), <http://www.ntia.doc.gov/ntiahome/ftn99/contents.html>; see also PUB. POL'Y INST. OF CAL., CALIFORNIA'S DIGITAL DIVIDE (Jun. 2009), available at [http://www.ppic.org/content/pubs/jtf/JTF\\_DigitalDivideJTF.pdf](http://www.ppic.org/content/pubs/jtf/JTF_DigitalDivideJTF.pdf).

109. In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub corporation, Opinion Approving the Application to Transfer Control, Decision 05-11-028, 97-98 (2005).

110. *Id.* at 98.

111. In the Matter of Verizon and MCI, *supra* note 41, at 128-30.

112. *Id.*

Commission or regulated utilities. As in the case of GO 156 litigation there are clear laws, rules, and regulations reflecting a focus by the Commission and the California Legislature to promote digital access.<sup>113</sup> The Commission has adopted the digital divide as a critical issue in California, as evidenced by prior and on-going proceedings, and programs.<sup>114</sup> There is a strong potential for short and long-term actions by regulated utilities to transform communities.<sup>115</sup> The digital divide is also easily related to a broader social justice issue, such as education, that can be framed to unify diverse constituencies.<sup>116</sup>

Consider also issues related to environmental sustainability. The Commission has dedicated proceedings and programs addressing energy,<sup>117</sup> renewable energy,<sup>118</sup> climate change,<sup>119</sup> solar,<sup>120</sup> and as well as the intersection between environmental sustainability and low-income communities.<sup>121</sup> Furthermore, it is almost impossible to think of any regulated utility that has not developed a plan or commitment to environmental sustainability, which promotes minimizing environmental impacts in ways that are relevant to

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113. Assem. B. 2987, Reg. Sess. (Cal. 2006); CAL. PUB. UTIL. COMM'N Gen. Ord. 169 (2006); CAL. PUB. UTIL. COMM Resolution T-17182 (2008). *See also*, CAL. PUB. UTIL. COMM'N Resolution T-16782 (2003); Cal. Broadband Task Force, <http://www.calink.ca.gov/taskforce/default.asp>.

114. Cal. Pub. Util. Comm'n, Communications, <http://www.cpuc.ca.gov/PUC/telco/> (last visited Mar. 25, 2010).

115. *See* Gaurav Kalra, Note and Comment, *On the Verge of Information Apartheid: The Future of Governmental Intervention to Address the Digital Divide: The Need for a Broader Constituency*, 5 AFR.-AM. L. & POL'Y REP. 41, 46-49 (2002); Carol Ellison, *Municipal Broadband: A Potential Twenty-First Century Utility*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 453, 463-64 (2008); California Emerging Technology Fund, <http://cetfund.org/>.

116. Grace M. Mills, *The Digital Divide: Left Behind on the Other Side*, 30 U. LA VERNE L. REV. 381, 384-88 (2009) (discussing the relationship between the digital divide and education).

117. Cal. Pub. Util. Comm'n, Energy, <http://www.cpuc.ca.gov/PUC/energy/> (last visited Mar. 25, 2010).

118. Cal. Pub. Util. Comm'n (2009), Cal. Renewables Portfolio Standard, <http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm> (last visited Mar. 25, 2010).

119. Cal. Pub. Util. Comm'n, Climate Strategy Activities of the CPUC, <http://www.cpuc.ca.gov/PUC/energy/Climate+Change/> (last visited Mar. 25, 2010).

120. Cal. Pub. Util. Comm'n, Cal. Solar Initiative, <http://www.cpuc.ca.gov/PUC/energy/Solar/> (last visited Mar. 25, 2010).

121. Cal. Pub. Util. Comm'n CSI Single-Family Affordable Solar Homes (SASH) Program, <http://www.cpuc.ca.gov/PUC/energy/Solar/sash.htm>; Cal. Pub. Util. Comm'n (2009), <http://www.cpuc.ca.gov/PUC/energy/Low+Income/index.htm> (last visited Mar. 25, 2010); Low Income Oversight Board, <http://www.liob.org/> (last visited Mar. 25, 2010).

business and important to the communities they serve.<sup>122</sup> Unfortunately, as The Greenlining Institute,<sup>123</sup> GRID Alternatives,<sup>124</sup> and the Ella Baker Center for Human Rights<sup>125</sup> all note, too few community-based organizations representing the specific needs of low-income and minority communities intervene in proceedings related to these issues. Furthermore, only a handful of community-based organizations appear before the Commission's Low Income Oversight Board,<sup>126</sup> which is charged with providing the Commission with recommendations on issues impacting low-income consumers.

At the most basic level, administrative advocacy refers to any attempt to understand and intercede in a rulemaking process. As the data presented in this article demonstrates, the role of administrative advocacy in the area of business development and economic equity is evolving. This means that the ways in which government interacts with underserved communities can be greatly influenced by creative advocates questioning the role of the administrative state in unique contexts. Furthermore, as this article briefly explores, there are many new opportunities for community-based advocates to intervene before the Commission. Individuals and organizations interested in developing an administrative advocacy strategy should consider how they can adapt the social, political, and economic concerns of their individual constituencies to align with the public policy goals of the Commission. As Robert Gnaizda notes, when he first introduced the ideas of economic development, entrepreneurship, and supplier diversity in Commission proceedings, it was rejected as outside the

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122. PG&E, Environment, <http://www.pge.com/about/environment/>; SDGE, Environment, <http://www.sdge.com/environment/> (last visited Mar. 25, 2010); AT&T, Citizen and Sustainability, <http://www.att.com/gen/landing-pages?pid=7735> (last visited Mar. 25, 2010); SDGE, Helping the Environment, <http://www.socalgas.com/environment/index.html> (last visited Mar. 25, 2010); Southern Cal. Edison, Environment, <http://www.sce.com/PowerandEnvironment/> (last visited Mar. 25, 2010). See also Press release, Verizon Cal., Verizon's Green Initiatives Recognized in Environmental Defense Fund's Innovations Review 2009 (Apr. 21, 2009)(on file with author).

123. Interview with John Gamboa, *supra* note 95. (It is critical to find the strategies to make the workforce investments to match the green technology investments being made by venture capital and institutional investors.).

124. Interview with Erica Mackie, Executive Director and Co-Founder, GRID Alternatives, in San Francisco, Cal. (Jan. 14, 2008).

125. Interview with Ian Kim, Director Green-Collar Jobs Campaign, Ella Baker Center for Human Rights in San Francisco, Cal. (Jan. 14, 2008).

126. Interview with Ortensia Lopez, Board Member, Low Income Oversight Board, in Berkeley, Cal. (Mar. 9, 2008).



scope of litigation.<sup>127</sup> Now, as a result of community-based intervenors legal and public policy advocacy before the Commission, California's utilities regularly tout their investments with minority business enterprises.

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127. Interview with Robert Gnaizda, Founder, The Greenlining Institute, in Berkeley, Cal. (Mar. 13, 2008).