

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
207 GENESEE STREET
UTICA, NEW YORK 13501

In the Matter

- of -

the Application of Carey Electric Inc.
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 54599

RECOMMENDED ORDER

-by-

A handwritten signature in black ink, appearing to read "David A. Murad", is written over a horizontal line.

David A. Murad
Administrative Law Judge
June 12, 2025

This matter considers the appeal by Carey Electric Inc. (“Carey Electric” or “applicant”) pursuant to New York State Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a woman-owned business enterprise (“WBE”).

PROCEDURAL HISTORY

1. On September 13, 2024, Ms. Katie Carey, as President, applied on behalf of Carey Electric for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1; APP Exhibit 1)
2. On December 19, 2024, the Division denied the application on the following grounds (DED Exhibit 2; APP Exhibit 8):
 - (a) Minority group members or women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1); and
 - (b) Minority group members or women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR §144.2(c)(2).
3. On January 6, 2025, Carey Electric submitted a Request to Appeal via a Hearing. (DED Exhibit 3)
4. On February 24, 2025, a Notice of Hearing was sent to all parties. (DED Exhibit 4)
5. A hearing was held and concluded on May 29, 2025.

FINDINGS OF FACT

6. Carey Electric provides commercial and industrial electrical services. (DED Exhibit 1; APP Exhibit 1)
7. Katie Carey is the CEO and a 51% owner of Carey Electric. Michael Carey is the President and a 49% owner of Carey Electric. (DED Exhibit 1; APP Exhibit 1)
8. Katie Carey reviews and signs all contracts that come in; works with the preconstruction department to “set up the job” including procuring materials, reviews quotes from vendors and works with the project managers regarding scheduling field operations. (DED Exhibit 12; APP Exhibit 6)
9. Ms. Carey oversees every department and makes the final decisions on any part of the business. She communicates with the field operations manager. She makes sure projects run efficiently and smoothly. She is involved with the bidding regarding budget/timeline, payroll to oversee financial implications of each job, and meeting project deadlines and milestones. She works closely with the technology platform partners. She meets with the administrative team every day. She reviews every incoming contract and makes final decisions on any change orders. She has been around the industry for 21 years and has been an owner of Carey Electric since 2014. She learned how the company ran/operated. She is not an electrician by trade, but she acquired technical knowledge through being with the company. She has done field work under a trained electrician – running wire and hanging fixtures. Her experience is “akin to a low-level apprentice.” (Hearing Testimony of Katie Carey)
10. Ms. Carey reviews, modifies and approves, as needed, incoming contracts, change orders, purchase orders and lease agreements; completes payroll processing, communicates with the Field Operations Manager daily regarding manpower needs, scheduling and movement

for the construction projects and service department; meets with the marketing firm; discusses project specific updates with the Project Management team, including budgets, manpower forecasting and completion milestones and/or issues that arise on site; meets with the estimating department to review upcoming bid opportunities; and meets with the finance team to discuss quarterly progress and goals, strategic planning and market trends. (DED Exhibit 6; APP Exhibit 4)

11. Ms. Carey oversees every department and makes the final decisions on any part of the business. She communicates with the field operations manager. She makes sure projects run efficiently and smoothly. She is involved with the bidding regarding budget/timeline, payroll to oversee financial implications of each job, and meeting project deadlines and milestones. She works closely with the technology platform partners. She meets with the administrative team every day. She reviews every incoming contract and makes final decisions on any change orders. She has been around the industry for 21 years. She learned how the company ran/operated. She is not an electrician by trade, but she acquired technical knowledge through being with the company. She is not OSHA certified. She has done field work under a trained electrician – running wire and hanging fixtures. Her experience is “akin to a low-level apprentice.” (Hearing Testimony of Katie Carey)

12. Michael Carey Jr. is the “Principal in charge of electrical construction contracting operations.” He “oversees estimators, project managers, site supervisors, journeymen and apprentices.” He has over 25 years of experience in the electrical construction contracting trade profession. He has an Associate of Applied Sciences degree in Electrical Construction and Maintenance. He is a Licensed Master Electrician and a member of IBEW Local 236. Michael Carey’s Master Electrician license is not required for every project. The license is

required only in the cities of Albany, Schenectady and Troy, New York. (Hearing Testimony of Michael Carey, Jr.; DED Exhibit 7)

13. Mr. Carey reviews the incoming bid opportunities with the estimating department. He provides ‘the background experience and understanding of the physical work required by the company to support the business from a technical level He provides design build and consulting services to the company’s clients. He meets with the Project Management team to discuss job specific details, updates, and technical issues. (DED Exhibit 8)
14. Katie Carey’s day-to-day role includes reviewing estimates with the estimating team and reviewing all bids on the financial side and she will check on work sites when needed. She is also the strategic coordinator for pre-construction management. Technical ability is not necessary to run the business, management and leadership skills are more important. Katie Carey has a “substantial understanding of what we do”, and he “handles the technical side of things.” (Hearing Testimony of Michael Carey, Jr.)
15. At the time of the application and denial determination, Katie Carey and Kevin Bruno were responsible for estimating; and Michael Carey Jr. and Travis May were responsible for Supervising Field Operations. Mr. Travis May stated “On a daily basis, he will communicate manpower needs and moves to Katie Carey so she can gauge & prepare project adjustments in real time if needed.” (DED Exhibits 1 and 11; APP Exhibit 1)

APPLICABLE LAW

5 NYCRR §144.2(c) states in relevant part as follows:

Operation. Minority group members and women relied upon for certification must make day-to-day decisions concerning the operation of the business enterprise for which certification is sought. The division shall evaluate whether minority group members or women operate a business enterprise for which certification is sought based upon the following criteria:

- (1) Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things...
- (2) Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to:
 - (i) The products or services the business enterprise provides to clients; and
 - (ii) The means by which the business enterprise obtains contracts or orders.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by Carey Electric for certification as a WBE is not supported by substantial evidence (*see* State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. (*See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021))

DISCUSSION

Chiara Haueter, Esq. of Harris, Beach, Murtha Cullina PLLC, appeared on behalf of Carey Electric. The following witnesses testified on behalf of Carey Electric: Ms. Katie Carey, President,

Michael Carey, Jr., Vice President and Brad Molitor, Chief Operating Officer. Carey Electric offered the following exhibits which were admitted into evidence: APP Exhibits 1 - 8.

Amy O'Connor, Senior Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: Brian Cooke, Senior Certification Analyst, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 1 – 12)

I. Operation

The Division found that Ms. Carey does not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. “This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things.” 5 NYCRR §144.2(c)(1) In considering this regulation, the Division shall consider:

- (a) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
- (b) The extent to which academic credentials exist for persons employed in the industry;
and
- (c) The extent to which industry-specific expertise may be obtained via direct work experience.

5 NYCRR §144.2(c)(1)

During Ms. Carey’s interview with the Division, she stated that she reviews and signs all contracts that come in; works with the preconstruction department to “set up the job” including

procuring materials, reviews quotes from vendors and works with the project managers regarding scheduling field operations. (DED Exhibit 12; APP Exhibit 6)

Ms. Carey testified that she oversees every department and makes the final decisions on any part of the business. She communicates with the field operations manager. She makes sure projects run efficiently and smoothly. She is involved with the bidding regarding budget/timeline, payroll to oversee financial implications of each job, and meeting project deadlines and milestones. She works closely with the technology platform partners. She meets with the administrative team every day. She reviews every incoming contract and makes final decisions on any change orders. She testified that she has been around the industry for 21 years and has been an owner of Carey Electric since 2014. She learned how the company ran/operated. She testified that she is not an electrician by trade, but she acquired technical knowledge through being with the company. She testified that she has done field work under a trained electrician – running wire and hanging fixtures. Her experience is “akin to a low-level apprentice.” (Hearing Testimony of Katie Carey)

She testified that Michael Carey’s Master Electrician license is not required for every project. The license is required in the cities of Albany, Schenectady and Troy, New York. She testified that the experience she brings to the business are leadership, strategic planning, vision, marketing, and client relations. (Hearing Testimony of Katie Carey)

Brian Cooke testified that Ms. Carey lacks industry-specific knowledge. She has business management experience, which by itself does not satisfy the requirement of 5 NYCRR §144.2(c)(1). (Hearing Testimony of Brian Cooke)

A lack of hands-on experience is not enough, by itself, to deny certification. (*Matter of Era Steel Constr. Corp. v Egan*, 145 A.D.2d 795 (1988)) It is not always necessary that a woman owner have technical competence to demonstrate eligibility for certification (*Upstate Electrical, LLC v. New York State Department of Economic Development, et al*, 179 A.D.3d 1343, 1346 (3d Dept.

2020)) Here, unlike, *Panko Electric* Ms. Carey testified that she can read electrical blueprints, understand change orders and has a technical understanding of the electrical service industry. (*Panko Electrical and Maintenance Corporation v. Zapata*, 172 A.D.3d 1682 (2019)) The material before the Division along with the testimony of the applicant’s witnesses provides sufficient detail to establish that Ms. Carey has adequate industry-specific competence.” (*Matter of Gilligan Electric Corp.*, Recommended Order dated January 7, 2025, Final Order 25-01, dated January 28, 2025). (Hearing Testimony of Katie Carey; Hearing Testimony of Michael Carey, Jr.; DED Exhibit 5; APP Exhibit 2)

Based on the foregoing, I find that the Division’s determination to deny Carey Electric’s application under 5 NYCRR §§144.2(c)(1) was not based on substantial evidence.

The Division also found that Ms. Carey did not make operational decisions on a day-to-day basis with respect to critical functions of the business, as required by 5 NYCRR §144.2(c)(2). The eligibility criteria for MWBE certification requires that the woman-owner “exercises the authority to control independently the day-to-day business decisions of the enterprise”. See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, 179 AD 3d 1343 (3rd Dept. 2020). The woman-owner “must exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification...” See *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 A.D.3d 1517 (4th Dept. 2018).

“[C]ontrol is an essential prerequisite to certification” and, although *Panko* is not an electrician herself, such expertise is not required so long as she “retains operational control of the enterprise” See *Matter of Panko Electrical and Maintenance Corp. v. Zapata*, 172 AD 3d 1682 (3d Dept. 2019)

Ms. Carey reviews, modifies and approves, as needed, incoming contracts, change orders, purchase orders and lease agreements; completes payroll processing, communicates with the Field Operations Manager daily regarding manpower needs, scheduling and movement for the construction projects and service department; meets with the marketing firm; discusses project specific updates with the Project Management team, including budgets, manpower forecasting and completion milestones and/or issues that arise on site; meets with the estimating department to review upcoming bid opportunities; and meets with the finance team to discuss quarterly progress and goals, strategic planning and market trends. (DED Exhibit 6; APP Exhibit 4)

Michael Carey Jr. is the “Principal in charge of electrical construction contracting operations.” He “oversees estimators, project managers, site supervisors, journeymen and apprentices.” He has over 25 years of experience in the electrical construction contracting trade profession., He has an Associate of Applied Sciences degree in Electrical Construction and Maintenance. He is a Licensed Master Electrician and a member of IBEW Local 236. (Hearing Testimony of Michael Carey, Jr.; DED Exhibit 7)

Brian Cooke testified that the application states that Katie Carey and Kevin Bruno are responsible for estimating and that Michael Carey Jr. and Travis May are responsible for Supervising Field Operations. He testified that neither the application nor Ms. Carey’s resume show she has any direct work experience performing electrical work in the field. He testified that Travis May was listed as the person who oversaw all day-to-day operations, including scheduling manpower in the field and being the liaison between the field and office. Michael Carey, Jr. also supervised field operations. He testified that bidding/estimating are not the main critical functions of the business which provides electrical services. (Hearing Testimony of Brian Cooke; DED Exhibits 1, 5- 12; APP Exhibits 1, 2, 4, 5 and 6)

Ms. Carey testified that bidding and estimating are critical functions of the business and her involvement in bidding and estimating shows that she has the requisite control necessary for WBE certification. (Hearing Testimony of Katie Carey) In the *Matter of Electrical Contracting Solutions Corporation*, (Recommended Order January 19, 2024; Final Order 24-02 May 6, 2024), the Administrative Law Judge found that estimating and bidding is “an area critical to the core functions of the business”, a business which is also engaged in electrical contracting services.

At the time of the application, Mr. Travis May supervised field operations and stated “On a daily basis, he will communicate manpower needs and moves to Katie Carey so she can gauge & prepare project adjustments in real time if needed.” (DED Exhibit 11)

Michael Carey, Jr. testified that Katie Carey’s day-to-day role includes reviewing estimates with the estimating team and reviewing all bids on the financial side and that she will check on work sites when needed. She is also the strategic coordinator for pre-construction management. He stated technical ability is not necessary to run the business - that management and leadership skills are more important. He stated that Katie Carey has a “substantial understanding of what we do”, and he “handles the technical side of things.” (Hearing Testimony of Michael Carey, Jr.)

Brad Molitor testified that he is the Chief Operating Officer and formerly served as Estimator. He has 20 years of experience in the electrical industry. He is a union card holder. He testified that Katie Carey makes final decisions on what jobs to bid and finalizes the estimates. He further testified that Ms. Carey is heavily involved in the bidding and estimating process and has technical knowledge of the electrical industry. He testified that “everything runs through Katie.” On cross-examination when asked whether field experience was helpful in preparing bids, Mr. Molitor replied “no”; that one does not need electrical experience to estimate. (Hearing Testimony of Brad Molitor)

In *Panko*, the Court found that the woman-owner shared “control of its operations and management, and responsibility for managerial decisions and business transactions, ... such that she cannot be considered to exert independent control as required by the regulations”. (*Panko Electrical and Maintenance Corporation v. Zapata*, 172 A.D.3d 1682, 1684 (2019)) Here the result is quite different as Ms. Carey reviews, modifies and approves, as needed, incoming contracts, change orders, purchase orders and lease agreements. She communicates with the Field Operations Manager daily regarding manpower needs, scheduling and movement for both construction projects as well as the service department, discussing any technical improvements or needs that come up throughout the lifetime of a project. On a bi-weekly basis, she meets with the Project Management team to discuss project specific updates including budgets, manpower forecasting and completion milestones and/or issues that arise on site. She also meets with the estimating department to review upcoming bid opportunities, current projects that they are bidding on and reviews newly awarded jobs and timelines for both internal and external stakeholders. (DED Exhibit 6)

The testimony of Katie Carey, Michael Carey, Jr. and Brad Molitor clarify the information provided in the application and with the evidence in the record, establish that Ms. Carey makes operational decisions on a day-to-day basis with respect to the critical functions of the business, as required by 5 NYCRR §144.2(c)(2).

Based on the foregoing, I find that the Division’s determination to deny Carey Electric’s certification under 5 NYCRR §144.2(c)(2) was not based on substantial evidence.

CONCLUSION

Carey Electric met its burden to demonstrate that the Division’s determination to deny its application for certification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR § §144.2(c)(1) and 144.2(c)(2) was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, I recommend that the Director reverse the Division's determination to deny Carey Electric's application for certification as a woman-owned business enterprise,

In the Matter of Carey Electric, Inc.
DED File ID No. 54599
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP 1	WBE Application	Y	Y
APP 2	Katie Carey Resume	Y	Y
APP 3	City of Albany 2024 Master Electrician License	Y	Y
APP 4	Katie Carey Daily Narrative	Y	Y
APP 5	Katie Carey Experience Narrative	Y	Y
APP 6	Recorded Interview of Katie Carey	Y	Y
APP 7	Katie Carey Supplemental Estimating and Bidding Narrative	Y	Y
APP 8	Denial Determination	Y	Y
DED 1	Certification Application	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice of Hearing	Y	Y
DED 5	Resume of Katie Carey	Y	Y
DED 6	Katie Carey Narrative	Y	Y
DED 7	Resume of Michael Carey	Y	Y
DED 8	Michael Carey Narrative	Y	Y
DED 9	Resume of Kevin Bruno, Jr.	Y	Y
DED 10	Resume of Travis May	Y	Y

DED 11	Travis May Narrative	Y	Y
DED 12	Site Visit Interview	Y	Y