

Decision 18-11-007 November 8, 2018

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U39E) for a certificate of public convenience and necessity to provide:  
(i) full facilities-based and resold competitive local exchange service throughout the service territories of AT&T California, Frontier California Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California; and (ii) full facilities-based and resold non-dominant interexchange services on a statewide basis.

Application 17-04-010

**DECISION GRANTING MOTION TO WITHDRAW WITH CONDITIONS**

**Summary**

This decision grants Pacific Gas and Electric Company's (PG&E) motion to withdraw this application without prejudice on condition that PG&E disclose Application 17-04-010 and this Decision in any subsequent application requesting a Certificate of Public Convenience and Necessity (CPCN) for authority to provide telecommunications services filed by PG&E or brought by any of the applicant's current directors, officers, or owners of more than 10% of its outstanding shares. It also states the Commission's intent to use the record in this proceeding in any future application filed by PG&E requesting a CPCN for authority to provide telecommunications services in California, should one be filed. Finally, this decision authorizes parties otherwise eligible for intervenor

compensation to seek intervenor compensation for any substantial contributions in this proceeding. This proceeding is closed.

## **1. Background**

Pacific Gas and Electric Company (PG&E or Applicant) (U39E) has operated as a public utility providing electric and gas services in California since 1905. PG&E's principal place of business is located at 77 Beale Street, San Francisco, California 94105.

In Application 17-04-010, PG&E requested a Certificate of Public Convenience and Necessity (CPCN) to provide resold and competitive full facilities-based telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T California), Frontier California Inc. (Frontier California),<sup>1</sup> Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Frontier Communications), and Consolidated Communications of California Company (Consolidated Communications, formerly SureWest Telephone<sup>2</sup>) and interexchange service in California. PG&E proposed to provide competitive local exchange services to business customers via managed wavelength point-to-point connections, ethernet services, private fiber networks and wireless backhaul to telecommunications carriers and business, government, and education

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<sup>1</sup> Frontier California was formerly Verizon California, Inc. (Verizon). As of April 1, 2016, Verizon's operations in California were acquired and are now operated by Frontier California, Inc., pursuant to Decision (D.) 15-12-005.

<sup>2</sup> SureWest Telephone was acquired by Consolidated Communications Inc. in 2012, pursuant to D.12-06-004, and SureWest Telephone changed its name to Consolidated Communications of California Company as of January 1, 2016.

enterprises. Applicant did not propose to provide residential local exchange services.

On May 15, 2017, the Public Advocates Office of the Public Utilities Commission (Cal PA)<sup>3</sup> and The Utility Reform Network (TURN) filed protests to the application, while the California Cable and Telecommunications Association (CC&TA), City and County of San Francisco (CCSF), The Greenlining Institute (Greenlining), Crown Castle NG West LLC (Crown Castle) filed responses to the Application. On May 22, 2017, PG&E filed a reply to the protests.

The assigned Administrative Law Judge (ALJ) (Judge Hecht) set a prehearing conference (PHC) by e-mail ruling on May 25, 2017 and by ruling on May 31, 2017. On June 13, 2017, Judge Hecht held a PHC to discuss the parties, the scope, schedule and other procedural matters. On July 13, 2017, the assigned Commissioner issued a scoping memorandum and ruling (scoping memo).

On September 22, 2017, PG&E served additional testimony related to the expanded scope in the proceeding. Parties served intervenor testimony on November 22, 2017 and PG&E filed rebuttal testimony on December 8, 2017. On December 19, 2017, Judge Hecht granted, in-part, an extension of the procedural schedule by e-mail ruling.

On January 4, 2018, the Acting Chief ALJ (Judge Simon) issued a notice resetting the evidentiary hearing dates from January 8-12, 2018 to February 20-23, 2018. On January 18, 2018, the proceeding was reassigned from Judge Hecht to Judge Taira. On January 22, 2018, PG&E, TURN, Greenlining, CC&TA, CCSF

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<sup>3</sup> The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which the Governor approved on June 27, 2018.

and CALTEL jointly filed a case management statement; Cal PA filed a case management statement separately on the same day.

On February 9, 2018, Judge Taira issued an email ruling granting the parties' joint motion to take evidentiary hearings off-calendar to pursue settlement discussions. On May 10, 2018, Judge Taira set a settlement status conference by ruling. At the May 22, 2017 status conference, the parties discussed the progress of settlement discussions and the schedule of the proceeding.

On June 7, 2018, the proceeding was reassigned from Judge Taira to Judge Kline. On June 8, 2018, a settlement status conference was set for August 13, 2018 and evidentiary hearings were set September 25-28, 2018 by ruling. On June 19, 2018, the date of the settlement status conference was reset to August 8, 2018 by ruling. On August 2, 2018, Judge Kline issued a ruling requiring PG&E to file additional information. On August 3, 2018, PG&E, Cal PA, TURN and CC&TA filed a joint case management statement indicating they did not settle on any disputed issues and requesting the assigned ALJ take the settlement status conference off-calendar.

On August 7, 2018, PG&E filed a motion to withdraw its Application without prejudice. TURN and CALTEL filed a joint response to PG&E's motion to withdraw on August 22, 2018. On August 31, 2018, Judge Kline suspended the procedural calendar, with the exception of PG&E's reply, and took evidentiary hearings off-calendar by e-mail ruling. PG&E filed a reply to the joint response on September 4, 2018.

## **2. Jurisdiction**

Public Utilities Code (Pub. Util. Code) § 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Pub.

Util. Code § 234(a) as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.”

PG&E (U 39 E) is currently a public utility corporation engaged in providing electric and gas services in California. PG&E’s application proposed to provide resold and full facilities-based local exchange service and interexchange services. PG&E is a public utility subject to our jurisdiction.

### **3. Issues Before the Commission**

The issue before the Commission is whether to grant PG&E’s motion to withdraw, and if so, whether any conditions should attach, and what those conditions should be.

### **4. Discussion**

Only the Commission has the authority to close or dismiss a contested proceeding.<sup>4</sup> Although the Commission usually grants motions to withdraw, the Commission may deny motions to withdraw when doing so is in the public interest and may pursue matters of public concern after an applicant has moved to withdraw an application.<sup>5</sup> The Commission may also deny a motion for withdrawal when the applicant requests withdrawal for the purpose of avoiding an adverse outcome.<sup>6</sup>

PG&E seeks to withdraw its application without prejudice because PG&E “no longer believes that pursuing a [Competitive Local Exchange Company (CLEC)] business, at this time, is a prudent business decision,” stating that its

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<sup>4</sup> See D.04-06-016, D.92-04-027, D.03-07-032.

<sup>5</sup> D.04-06-016.

<sup>6</sup> D.04-06-016 at 7.

circumstances have significantly changed since it initially filed its application.<sup>7</sup> The matter is not yet submitted and the Commission does not foresee any harm to the public interest caused by closing this proceeding and allowing PG&E to withdraw its application. Furthermore, no parties to the proceeding oppose withdrawal of the application.<sup>8</sup> Accordingly, PG&E's motion to withdraw the application should be granted without prejudice, subject to conditions as discussed below.

The Commission may impose conditions on future applications even after an application is withdrawn and a proceeding is closed.<sup>9</sup> The Commission has often granted applicants' motions to withdraw with the condition that future applications brought by the same applicant or brought by any of the applicant's current directors, officers, or owners of more than 10% of its outstanding shares, are required to reference their prior applications and any decision granting the motion to withdraw their prior applications;<sup>10</sup> we do so here.

TURN and CALTEL jointly propose this Commission impose conditions on the withdrawal, including the following, 1) any subsequent Application should make an initial showing which substantively addresses the issues identified in the scoping memo of this A.17-04-010, 2) the Commission should direct PG&E to abandon its stage-gate approach to the application process and provide a business plan in its application instead; and 3) the "Commission

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<sup>7</sup> Motion of PG&E (U 39 E) to Withdraw Application 17-04-010 (Motion to Withdraw) at 2.

<sup>8</sup> See Response of TURN and CALTEL on Motion of PG&E to Withdraw A.17-04-010 (Response) at 1.

<sup>9</sup> D.04-06-016, D.01-02-040.

<sup>10</sup> D.18-08-003.

should require PG&E to describe how its current processes for providing access to PG&E support structures on a nondiscriminatory, first-come, first-served basis will be modified to ensure that PG&E CLEC, if granted a CPCN, will not be able to leverage its access to information and internal PG&E employees, processes and procedures to provide it with competitive advantages over other similarly situated third-party attachers.”<sup>11</sup> PG&E opposes the imposition of these conditions as unnecessarily prejudicial.<sup>12</sup>

While the Commission declines to impose the conditions proposed by TURN and CALTEL, recognizing that any future application may differ substantially from the application at issue; the Commission acknowledges the substantial work of parties in this proceeding and seeks to make efficient use of the existing record in any future application. The Commission has authorized the prospective use of the prior evidentiary record in similar circumstances<sup>13</sup> and we do so now. Accordingly, the Commission may incorporate the record of this proceeding in any future applications filed by PG&E requesting a CPCN for authority to provide telecommunications services in California. PG&E will have the burden of showing that the record in this docket is not relevant to requests in any future application concerning an application for a CPCN.

Finally, we invite parties otherwise eligible to seek intervenor compensation for substantial contributions made in this proceeding to do so. Although intervenor compensation is normally granted for work contributing to

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<sup>11</sup> Response at 7.

<sup>12</sup> Reply of PG&E to TURN and CALTEL’s Response to the Motion to Withdraw Application 17-04-010.

<sup>13</sup> D.04-06-016.

a final decision on the merits of an applicant's request, the Commission has broad delegated authority to implement the statutory intervenor compensation program when the record contains support for such an award.<sup>14</sup> The parties made a substantial contribution to the proceeding by expanding the scope of this proceeding from the usual scope of applications for CPCNs, as reflected in the scoping memo and ruling issued by the assigned commissioner. Subsequent to the assigned Commissioner's issuance of the scoping memo, parties' testimony and participation in settlement discussions contributed to PG&E's withdrawal of its application. PG&E filed its motion to withdraw its application only days after the parties reported failure to reach settlement on any disputed issues in the proceeding in the joint case management statement. Also, PG&E's motion to withdraw specifically cites to the controversial nature of issues in Sections 2.1 – 2.4 of the scoping memo as contentious and raising larger policy concerns that would be resolved by the withdrawal of PG&E's application.<sup>15</sup> The intervenors should not be penalized because the Applicant requested to withdraw its application. Accordingly, it is reasonable for parties otherwise eligible to request intervenor compensation to request it in this case given that they did contribute to the outcome, which is dismissal of the proceeding.

## **5. Comments on Proposed Decision**

The proposed decision of the assigned ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments

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<sup>14</sup> *New Cingular Wireless PCS, LLC v. Public Utilities Commission, Respondent; The Utility Reform Network et al., Real Parties in Interest*, 246 Cal. App. 4th at 821.

<sup>15</sup> Motion to Withdraw at 5.



were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

## **6. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Zita Kline is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. On April 6, 2017, PG&E filed an Application seeking a CPCN to provide resold and full facilities-based local exchange services and interexchange services in California.

2. PG&E's circumstances significantly changed after filing the Application such that it no longer believes pursuing a CLEC business is a prudent business decision at this time.

3. The scoping memo in this proceeding was expanded from the scope of a standard CPCN application, due to substantial input from intervenor parties posing additional issues related to PG&E's proposal to leverage existing telecommunications assets built with ratepayer funds from its operations as a public utility operating to provide electric and gas service.

4. Parties served testimony to develop the record on the expanded scope of issues in the proceeding.

5. Parties engaged in settlement negotiations in good faith in this proceeding.

6. PG&E filed a motion to withdraw the Application prior to evidentiary hearings.

7. Parties' efforts in submitting testimony and participating in settlement discussions subsequent to the issuance of the scoping memo contributed to PG&E's withdrawal of the application and application dismissal.

**Conclusions of Law**

1. PG&E's motion to withdraw its Application should be granted without prejudice.
2. PG&E should reference A.17-04-010 and this Decision in all future applications requesting a CPCN for authority to provide any form of telecommunications services in California, or brought by any of the applicant's current directors, officers, or owners of more than 10% of its outstanding shares.
3. The evidentiary record in this proceeding should be utilized in any future application filed by PG&E for a CPCN to provide telecommunications services in California to further judicial efficiency.
4. Intervenor parties should be granted intervenor compensation for substantial contributions made in this proceeding.

**O R D E R**

1. Pacific Gas and Electric Company's motion to withdraw their application is granted.
2. Application 17-04-010 is dismissed without prejudice.
3. Pacific Gas and Electric Company must disclose Application 17-04-010 and this Decision in any subsequent application requesting a Certificate of Public Convenience and Necessity for authority to provide telecommunications services filed by Pacific Gas and Electric Company or brought by any of the applicant's current directors, officers, or owners of more than 10% of its outstanding shares.
4. The Commission may incorporate the record of this proceeding in any future applications filed by Pacific Gas and Electric Company for a Certificate of Public Convenience and Necessity (CPCN) to provide telecommunications services in California. Pacific Gas and Electric Company will have the burden of

showing that the record in this docket is not relevant to requests in any future application concerning an application for a CPCN.

5. Parties otherwise eligible to seek intervenor compensation are authorized to seek intervenor compensation for substantial contributions to this proceeding.

6. Application 17-04-010 is closed.

This order is effective today.

Dated November 8, 2018, at Fresno, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners