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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
(Filed April 6, 2017)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Summary

This Scoping Memo and Ruling sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure¹.

1. Background

On April 6, 2017, Pacific Gas and Electric Company (PG&E) filed an application requesting a Certificate of Public Convenience and Necessity (CPCN)

¹ California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

to provide a variety of facilities-based and resold telecommunications services throughout the state of California. Seven parties filed timely protests or responses to this application on May 15, 2017. Specifically, the Office of Ratepayer Advocates (ORA), TURN, and the California Association of Competitive Telecommunications Companies (CalTel) filed protests to this application, and the California Cable and Telecommunications Association (CCTA), the City and County of San Francisco (CCSF), the Crown Castle NG West LLC (Crown Castle), and the Greenlining Institute (Greenlining) filed responses. These filings raised a variety of issues related to whether the CPCN should be granted, and, if it is granted, whether any modifications or conditions are necessary in order to ensure that granting the CPCN is in the interests of both PG&E ratepayers and California consumers generally. PG&E filed its reply to these the protests and responses on May 25, 2017. A prehearing conference (PHC) was set by a ruling dated May 31, 2017.

On June 13, 2017, a PHC was held to determine parties, discuss the scope, schedule, and other procedural matters, and to identify contested issues in the proceeding. Representatives of all parties except CCSF attended the PHC. This Scoping Memo and Ruling establishes the specific scope and schedule for the application, and provides direction to PG&E on topics for testimony in support of this Application.

2. Scope

Based on the application and parties' responses, we find that the following broad issues are within the scope of this proceeding:

1. Should PG&E be granted a CPCN to provide telecommunications services in California?
2. If PG&E is granted a CPCN, what aspects of its application should be adopted, and what, if any, aspects of its request should be modified?
3. If PG&E is granted a CPCN, what, if any, conditions or mitigation measures should be adopted to ensure the public interest is served?
4. Does this Application raise any safety issues that should be addressed before a CPCN is granted, and if so, what are those issues?

At the PHC, parties generally agreed that these are the core issues to be addressed in the proceeding. The scope of this proceeding encompasses any information reasonably necessary for the Commission to make findings on these issues. The specific questions that we anticipate will inform our findings on these issues are discussed in the following subsections. To facilitate the Commission's review of these issues, **PG&E is directed to work with Communications Division** staff to provide comprehensive information on the location and type of its existing infrastructure that may be used to provide services under a telecommunications CPCN. Section 2.5, below, also clarifies some broader policy issues that are not within the scope of this proceeding.

2.1. Should the CPCN be Granted?

In order to determine whether PG&E should be granted its requested CPCN, PG&E is directed to provide data and testimony on the following questions and issues.

1. Does PG&E meet the basic statutory and other requirements to be granted a CPCN?
2. What services, specifically (e.g. retail, wholesale, backhaul, other), does PG&E intend to provide if the CPCN is granted, and how do those services differ from the "dark

- fiber” services PG&E currently provides on a contract basis?
3. What is the basis of PG&E’s estimate that it will have between one and five customers within one year of receiving its CPCN? What specific potential customers, if any, has PG&E identified at this point?²
 4. Please provide projections of both net and gross revenues that PG&E expects to receive from telecommunications services provided under the CPCN within the first five years after the CPCN is issued.
 5. Does the PG&E proposal violate PG&E’s franchise agreement with CCSF or other localities?

In addition to addressing these questions, parties may also provide information on other issues that may affect whether the CPCN should be granted.

2.2. If a CPCN is granted, should any aspects of PG&E’s application be modified?

In order to determine whether PG&E’s proposals should be modified, PG&E is directed to provide data and testimony on the following questions and issues.

1. Please describe PG&E’s revenue sharing proposal, including its choice of sharing net rather than gross revenues from its telecommunications business, its method for calculating revenue, and its proposed 50/50 revenues sharing split.
2. What business structure does PG&E propose to use for operations related to its provision of telecommunications services under its CPCN? Testimony on this issue should

² This information may be submitted confidentially if PG&E provides the substantive declaration required by Decision 16-08-024. PG&E is encouraged to keep such confidentiality determinations to a minimum.

- include a description of whether PG&E plans to form an affiliate to oversee its telecommunications business or, if PG&E proposes to oversee those services within its existing business structure, where the operation and oversight of those services will be located.
3. If the CPCN is granted, to what extent will the PG&E telecommunications unit interact and share information with its energy operations?
 4. What affiliate transaction rules are or should be applicable to the telecommunications services PG&E plans to provide, and how will PG&E ensure that it will follow any applicable affiliate transaction rules?
 5. To what extent does PG&E plan to build new capacity to support its telecommunications business as opposed to using existing excess capacity? To the extent that existing excess capacity will be used, when was that excess capacity built and how is it distributed throughout PG&E's energy service territory?
 6. What specific facilities will PG&E use to provide the telecommunications services described in its Application?
 - a. How many fiber miles does PG&E now own and operate? What portion of that will be used?
 - b. How many of these fiber miles were built with ratepayer money?
 - c. How were these fiber miles described in PG&E rate cases over the last five years? (Please provide citations to the testimony.)
 7. What accounting methods, specifically, does PG&E plan to apply to its telecommunications business, and how will PG&E ensure that it keeps telecommunications expenses and revenues separate from its energy operations?
 8. Will or should PG&E make public the contracts or terms of sale, lease, or other agreements related to the telecommunications facilities or services provided under the CPCN?

Parties will have an opportunity to prepare testimony addressing these issues once PG&E's testimony has been served, as provided in the schedule below.

2.3. If a CPCN is granted, are any conditions necessary to ensure that the public interest is served?

In order to determine whether PG&E's CPCN, if granted, should be subject to any conditions to maintain healthy competition in the telecommunications market, PG&E is directed to provide data and testimony on the following questions and issues.

1. Is PG&E now in compliance with the Right-of-Way (ROW) Rules in D.98-10-058 and D.16-01-046? Please provide all copies (or, if publicly available, clearly identified descriptions) of all documents filed with or provided to the Commission in compliance with ROW Rule 6.C.
2. How does PG&E intend to manage compliance with ROW Rule 6.A? Please include discussions of:
 - a. Internal policies and procedures for reservation of space in and on PG&E support structures, and include forecasts for future reservation needs, if any, to accommodate its anticipated telecommunications services.
 - b. Statistics showing the mean and median times PG&E currently takes to respond to requests for access to its support structures, and for completing any rearrangements required to accommodate other attachers' attachments.
3. What impacts would PG&E's entry into the market have on competition and competitive choice? How is granting a CPCN likely to affect pricing of telecommunications services in the state?

4. How does PG&E plan to ensure non-discriminatory access to its facilities, including but not necessarily limited to solely or jointly owned poles?
5. Is PG&E's planned and existing telecommunications infrastructure located in the part of poles traditionally used for energy or telecommunications?
6. How does PG&E plan to ensure that its access to information on the company's facilities and customers does not place other telecommunications providers at a competitive disadvantage in entering into contracts?
7. How can the Commission ensure that PG&E avoids cross-subsidization of its CLEC business by its gas and electric customers?
8. What, if any, additional conditions are needed to ensure that PG&E does not use its control of facilities, or access to information about those facilities (including facility locations and available capacity), to engage in anti-competitive practices?

Testimony on this issue shall include a description of PG&E's current internal procedures and timelines for consideration of requests for access to its facilities, as well as its terms and conditions for leases and other agreements. PG&E testimony will also include a description of what, if any, changes it plans to those procedures, terms, and conditions if a CPCN is granted. Other parties may recommend additional conditions in their testimony, if they believe that those conditions are necessary to support competition in the communications market and non-discriminatory access to PG&E facilities.

2.4. Does PG&E's application raise any safety or other issues, and if so, how should those be addressed?

In order to determine whether PG&E's proposals should be granted, PG&E is directed to provide data and testimony on the following questions and issues.

1. Does this Application raise any safety issues that should be addressed before a CPCN is granted? If so, what are those issues and how should they be addressed?
2. Does this Application raise issues related to privacy, cybersecurity, or other subjects that should be addressed before a CPCN is granted? If so, what are those issues and how should they be addressed?
3. In the case of outages, will PG&E's wholesale and retail telecommunications services be restored at the same time PG&E restores its internal services necessary for the operation of its power network?

2.5. Issues outside the scope of this proceeding

As discussed at the PHC, this proceeding is not the appropriate venue for parties to attempt to resolve broad policy issues such as ensuring infrastructure access in general. Such policy issues are more appropriately addressed in other proceedings, such as the recently opened proceedings related to access to rights of way (Rulemaking (R.) 17-03-009), pole access by communications providers (R.17-06-028), and Electric Rule 20 on undergrounding (R.17-05-010).

Modifications to or conditions on PG&E's requested CPCN will be considered in this proceeding to the extent that they address potential effects of PG&E's proposals, and such modifications or conditions should be tailored to address concerns raised by the application.

3. Categorization

The Commission in Resolution ALJ 176-3396, issued on April 27, 2017, preliminarily determined that the category of the proceeding is ratesetting. Anyone who disagrees with the categorization must file an appeal of the categorization no later than ten days after the date of this scoping ruling. (See Rule 7.6.)

4. Need for Hearing

An evidentiary hearing is required due to disputed issues of material fact. The Commission in Resolution ALJ 176-3396 preliminarily determined that hearings are required. This scoping ruling confirms that hearings may be necessary and schedules the proceeding to include such hearings. Parties are encouraged to discuss the potential for settlement of factual or policy issues, or a narrowing of issues or facts in dispute to reduce the likelihood or duration of evidentiary hearings. Towards this end, the schedule in Section 7 requires parties to hold an informal technical workshop after testimony is served, and encourages parties to schedule a settlement conference, if appropriate.

5. Ex Parte Communications

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the ALJ are only permitted as described at Public Utilities Code § 1701.3(c) and Article 8 of the Rules.

6. Intervenor Compensation (for electric, gas, water, or telephone proceedings only)

Pursuant to Public Utilities Code § 1804(a)(1), a customers who intended to seek an award of compensation were required to file and serve a notice of intent

to claim compensation by July 10, 2017, 30 days after the PHC. Both TURN and Greenlining filed timely notices of intent.

7. Schedule

Parties discussed schedule at the PHC, and provided estimates of the time needed for discovery, preparation of opening and rebuttal testimony, evidentiary hearings (if needed), and briefs. The Commission has not received requests for public participation hearings, so none are being scheduled at this time.

The adopted schedule is:

EVENT	DATE
Application filed	April 6, 2017
Prehearing Conference	June 13, 2017
PG&E Testimony served	September 22, 2017
Intervenor Testimony served	November 22, 2017
Rebuttal Testimony	December 8, 2017
Technical Workshop	To be scheduled by parties, late November/early December.
Settlement Discussions (if needed)	December 2017 and ongoing
Case Management Statement served	December 21, 2017
Evidentiary Hearings	January 8-12, 2018 at 10:00 a.m. Commission Courtroom 505 Van Ness Avenue San Francisco, California
Closing Briefs and Request for Final Oral Argument filed and served	January 31, 2018
Reply Briefs filed and served/ Record submitted	February 9, 2018
Proposed Decision issued	May 2018
Comments on Proposed Decision	Within 20 Days of Service of the Proposed Decision
Replies to Comments on Proposed Decision	Within 5 Days of Service of

EVENT	DATE
	Comments
Anticipated Commission Meeting/Decision	30 Days after but no later than 60 days after the Proposed Decision

As suggested at the PHC, this schedule includes a technical workshop to be hosted by PG&E. The purpose of this workshop is to allow parties to ask clarifying questions about testimony, and if possible to narrow the factual issues in dispute before evidentiary hearings. PG&E will coordinate with other parties to schedule the workshop for a date and location that will enable all interested parties to participate, and will serve notice of the workshop on the proceeding's service list. This informal workshop will not be recorded or reported. Following this workshop, parties will file and serve a case management statement summarizing any undisputed facts agreed upon by parties, and listing any remaining disputed issues to be addressed at formal evidentiary hearings. Parties may also choose to engage in formal settlement talks, with or without assistance from the Commission's Alternate Dispute Resolution program.

The proceeding will be submitted upon the filing of reply briefs, unless the assigned Commissioner or the ALJ directs further evidence or argument. If hearings are held in this ratesetting proceeding, parties have the right to request a Final Oral Argument before the Commission, if the argument is requested within the Closing Brief (Rule 13.13.)

It is the Commission's intent to complete this proceeding within 18 months of the date this proceeding was initiated. This deadline may be extended by order of the Commission. (Public Utilities Code § 1701.5(a).) The assigned Commissioner or assigned Administrative Law Judge may modify this schedule

as necessary to promote the efficient management and fair resolution of this proceeding. If any formal workshops are held in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

8. Assigned Commissioner, Presiding Officer

Liane M. Randolph is the assigned Commissioner and Jessica T. Hecht is the assigned ALJ. Pursuant to Public Utilities Code § 1701.3 and Rule 13.2 of the Commission's Rules of Practice and Procedure (Rule or Rules), Jessica T. Hecht is designated as the Presiding Officer.

9. Filing, Service and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f). Discovery

10. Discovery

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Deadlines for responses and treatment of confidential information provided through discovery (for example, non-disclosure agreements if appropriate) may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

11. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

12. Settlement and Alternative Dispute Resolution

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR

services is voluntary, confidential, and at no cost to the parties. Trained ALJs serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at <http://www.cpuc.ca.gov/adr/>, for more information.

If requested, the assigned ALJ will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at adr_program@cpuc.ca.gov. The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will contact the parties to make pertinent scheduling and process arrangements. Alternatively, and at their own expense, the parties may agree to use outside ADR services.

IT IS RULED that:

1. The category of this proceeding is ratesetting. Appeals as to category, if any, must be filed and served within ten days from the date of this scoping memo.
2. Administrative Law Judge Jessica T. Hecht is designated as the Presiding Officer.
3. The scope of the issues for this proceeding is as stated in "Section 2. Scope" of this ruling.
4. Hearings are expected to be necessary.
5. The schedule for the proceeding is set in "Section 7. Schedule" of this ruling. The assigned Commissioner or Presiding Officer may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.
6. With limited exceptions that are subject to reporting requirements, ex parte communications are prohibited. (*See* Public Utilities Code § 1701.3(c); Article 8 of the Commission's Rules of Practice and Procedure.)

7. A party shall submit request for Final Oral Argument in its closing briefs, but the right to Final Oral Argument ceases to exist if hearing is not needed.

8. Parties shall adhere to the instructions provided in Appendix A of this ruling for submitting supporting documents (such as testimony and work papers).

Dated July 13, 2017 at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

/s/ JESSICA T. HECHT

Jessica T. Hecht
Administrative Law Judge

APPENDIX A

1. Electronic Submission and Format of Supporting Documents

The Commission's web site now allows electronic submittal of supporting documents (such as testimony and work papers).

Parties shall submit their testimony or workpapers in this proceeding through the Commission's electronic filing system.³ Parties must adhere to the following:

- The Instructions for Using the "Supporting Documents" Feature, (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546>) and
- The Naming Convention for Electronic Submission of Supporting Documents (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=100902765>).
- The Supporting Document feature does not change or replace the Commission's Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission's Rules of Practice and Procedures including but not limited to rules for participating in a formal proceeding, filing and serving formal documents and rules for written and oral communications with

³ These instructions are for submitting supporting documents such as testimony and work papers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony. Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.

Commissioners and advisors (i.e. “ex parte communications”) or other matters related to a proceeding.

- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony, work papers and workshop reports (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the CPUC.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (i.e. “record”) unless accepted into the record by the Administrative Law Judge.

All documents submitted through the “Supporting Documents” Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security - PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention - The Commission is required by [Resolution](#) L-204, dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.

- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Until further notice, the “Supporting Documents” do not appear on the “Docket Card”. In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: “[E-filed Documents](#) ”,
- Select “Supporting Document” as the document type, (do not choose testimony)
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams (kale.williams@cpuc.ca.gov) 415 703- 3251 and
- Ryan Cayabyab (ryan.cayabyab@cpuc.ca.gov) 415 703-5999